

**FINANCIAL SERVICES AND THE  
LGBTQ+ COMMUNITY: A REVIEW  
OF DISCRIMINATION IN  
LENDING AND HOUSING**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT  
AND INVESTIGATIONS  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES  
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**Tuesday, October 29, 2019**

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON OVERSIGHT  
AND INVESTIGATIONS,  
COMMITTEE ON FINANCIAL SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2128, Rayburn House Office Building, Hon. Al Green, [chairman of the subcommittee] presiding.

Members present: Representatives Green, Velazquez, Tlaib, Casten, Dean, Garcia of Texas, Phillips; Barr, Posey, Davidson, and Rose.

Ex officio present: Representatives Waters and McHenry.

Also present: Representatives Pressley and Wexton.

Chairman GREEN. The Oversight and Investigations Subcommittee will come to order.

Today's hearing is entitled, "Financial Services and the LGBTQ+ Community:—hereinafter, I will simply say, 'the community'—A Review of Discrimination in Lending and Housing."

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee may participate in today's hearing for the purposes of making an opening statement and questioning witnesses.

Dear friends, this is a landmark hearing, and it is long overdue. And if there is one thing that I would have you take away from this hearing, especially those persons who are members of the community, it is this: You are not alone. You have allies in the Congress of the United States of America. There are people here who have suffered invidious discrimination, understand the implications of it, do not want to manage it, and who want to end it. You are not alone.

I would also have you know that Dr. King was right when he reminded us that, "Life is an escapable network of mutuality, tied in a single garment of destiny. What impacts one directly, impacts all indirectly."

He went on to say that, "I can't be all that I ought to be until you are all that you ought to be. And you can't be all that you

ought to be, until I'm all that I ought to be." You are not alone. We are in this together.

And today, we have evidence, overwhelming evidence that will show invidious discrimination, invidious discrimination that quite frankly, until this hearing, I was not aware of.

I would also remind you that the staff has done an outstanding job in compiling this information, and I am honored to tell you that the Honorable Maxine Waters, the chairwoman of the full Financial Services Committee, has also indicated that she is supportive of this hearing.

You are not alone. The evidence is going to show many things.

And for the record, I am into my 5-minute dissertation, Mr. Ranking Member.

The record will show many things. The record and the evidence will show that there is economic insecurity among the LGBTQ+ community.

The record will show that the LGBTQ+ community experiences discrimination in housing and lending.

The record will show a lack of legal protections for the community. In fact, the Supreme Court is considering a trilogy of cases that will decide whether Federal laws prohibiting sex-based employment discrimination protect LGBTQ+ persons.

The record will show that when it comes to mortgage lending, the discrimination exists, and it is provable. When it comes to rentals, these discriminations exist, and it is provable.

And finally, the evidence is going to show that discrimination against elderly LGBTQ+ persons exists, as well.

As I indicated, you are not alone. We are going to do all that we can to not only present evidence of invidious discrimination, but we also want to have legislation to combat the discrimination. It is not enough for us to simply hold this hearing, present all of this empirical evidence, and then walk away, assuming that we have done our jobs. We have to produce meaningful evidence that can produce tangible results.

And if we should do this, we will have made a difference in the lives of not only the members of the community, but in the lives of all people within the country, because this is broader than the community. It is really about humanity and whether humanity will go forward together, recognizing that invidious discrimination is not something that we can tolerate.

For edification purposes, these hearings do make a difference. Unrelated to this hearing, but as evidence of the fact that the hearings make a difference, I have a document. It is a publication entitled, "Citigroup's Jane Fraser in Line to Become the First Female CEO of a Major Bank." This is in part because at a hearing, we had representatives of the major banks who were asked whether or not their successors would be a person of color, a member of the community, or a person who was a female. And the evidence that was displayed, the visual evidence has had an impact, and it looks like we are moving in the right direction.

We hope that this hearing will produce similar results. With that said, I shall now yield 5 minutes to the ranking member of the subcommittee, Mr. Barr, for his opening statement.



Mr. BARR. Thank you, Chairman Green, for holding this hearing, and for your continuing work to promote equality in financial services. I welcome our witnesses. I thank you all for being here.

I think we can all agree that discrimination based on race, gender, or sexual orientation, or any other immutable characteristic, is wrong and should not be tolerated anywhere, including in the mortgage and consumer lending industries. Unfortunately, despite Federal and State laws prohibiting discrimination on those bases in financial services, some evidence suggests that LGBTQ+ citizens may still face disparate treatment in housing and consumer lending.

Unfortunately, lenders' access to and reliance on data that is not demonstrable of creditworthiness, such as gender or race, may lead to subjective judgments that discriminate against certain populations. Lenders and landlords should rely more heavily on risk-based metrics for evaluating creditworthiness that are blind to demographics or immutable characteristics.

Data-driven decisions could prevent discrimination or judgments that may be clouded by unintended biases, or intended biases for that matter. Credit reports do not utilize data on gender, sex at birth, sexual orientation, or race. They rely solely on metrics that reflect a borrower's credit history and ability to repay, such as number of open lines of credit, balances due, payment history, and whether the borrower has filed for bankruptcy. Reliance on these metrics without consideration of race, color, religion, or sexual orientation can promote equality in financial services and guard against deliberate or unintended biases.

Some of our witnesses today relied on data provided by lenders under the Home Mortgage Disclosure Act, or HMDA, for their research. Among other things, HMDA requires lenders to collect and report gender data on their borrowers. While this may be useful information, it has the potential to allow for biased underwriting.

We need to ask ourselves: Are data provided pursuant to HMDA doing more harm than good? Are there more effective ways to collect necessary information that could offset unintended biases? This is a conversation that I very much look forward to having with the chairman and other members of the committee as we work to close the gap of financial services in underserved populations.

Research indicates that LGBTQ+ Americans utilize basic financial services, such as bank accounts and retirement plans, at a lower rate than the non-LGBTQ+ population. It should be a goal of this committee to expand access to financial products and services to all corners of the population regardless of race, gender, sexual orientation, or whether they live in an urban or rural community.

Expanding financial inclusion initiatives and improving financial literacy are critical to closing the gaps for unbanked and underbanked citizens in our country. In an age of economic prosperity, we should work to ensure that all citizens feel the benefits. And data-driving decision-making, based on financial technology, and innovation driven through free enterprise, is very likely the best antidote to discrimination.

Once again, I thank Chairman Green for holding this important hearing, and I thank the witnesses for being here today. And I will yield the remainder of my time to the ranking member of the Full Committee, Mr. McHenry.

Mr. MCHENRY. I thank the ranking member. And I believe every citizen should have an equal opportunity for home ownership. We have important laws on the books, Federal and State laws, that prohibit discrimination. But as we will hear from witnesses today, there are indications that discrimination based on gender identity and sexual orientation may be occurring.

As it stands now, the Home Mortgage Disclosure Act, or HMDA, forces lenders to identify and report the gender of their borrowers. On one hand, HMDA provides a useful source of data. But on the other hand, the presence of gender information on mortgage applications may be contributing to discrimination in the first place.

This hearing is important for us to understand what is happening in the real world and to change policy where necessary. I yield back.

Chairman GREEN. The Chair recognizes the gentlelady from California, Chairwoman Maxine Waters, the chairwoman of the Full Committee, for 1 minute.

Chairwoman WATERS. Thank you very much, Congressman Green, for holding this important hearing.

Americans who identify as lesbian, gay, bisexual, transgender, or queer have long been subjected to discrimination while attempting to access quality education, employment, healthcare, housing, and basic financial services. Faced with such prolific injustice, LGBTQ+ individuals, especially LGBTQ+ persons of color, are more likely to experience economic insecurity than non-LGBTQ+ individuals.

Alarmingly, the Trump Administration has sought to gut Federal regulations that guard against anti-LGBTQ+ discrimination in lending and housing. In May 2019, for example, HUD proposed changing its own rules to allow federally funded homeless shelters to deny admission to transgender individuals based on their gender identity. It is unacceptable that this Administration is using taxpayer dollars to put already vulnerable Americans further at risk.

I thank you, Mr. Chairman. And I have a question I will ask later on, if I have the opportunity. I yield back.

Chairman GREEN. The gentlelady yields back.

At this time, I would like to welcome the witnesses, and I am pleased to introduce the witnesses: Harper Jean Tobin, director of policy, National Center for Transgender Equality; Michael Adams, CEO of SAGE; Kerith Conron, research director, Williams Institute, UCLA School of Law; Alphonso David, president, Human Rights Campaign; Hua Sun, associate professor of finance, Iowa State University; and Francis Creighton, president and CEO, Consumer Data Industry Association. I welcome the witnesses and thank you for being here.

The witnesses will be recognized for 5 minutes each to give an oral presentation of their testimony. And without objection, the witnesses' written statements will be made a part of the record. Once the witnesses finish their testimony, each Member will have 5 minutes within which to ask questions.

On your table are three lights: green means go; yellow means that you have one minute left, which means that you are running out of time, and you should start to conclude your remarks; and the red light means that you are out of time. When the red light is visible, you will probably hear me give a light tapping of the gavel, which will give you further indication that you are out of time.

With that, Ms. Tobin, you are recognized for 5 minutes for your opening statement.

**STATEMENT OF HARPER JEAN TOBIN, DIRECTOR OF POLICY,  
NATIONAL CENTER FOR TRANSGENDER EQUALITY**

Ms. TOBIN. Thank you, Chairman Green and Ranking Member Barr, and Chairwoman Waters and Ranking Member McHenry—it's nice to have you with us today—and members of the subcommittee and the Full Committee.

My name is Harper Jean Tobin. I am director of policy for the National Center for Transgender Equality (NCTE), and I am pleased to be able to testify for this historic hearing.

Nearly 2 million transgender Americans live all across this country. And while being transgender need not and should not be a barrier to opportunity in the United States, transgender Americans today do face severe and widespread discrimination.

In 2015, NCTE conducted the U.S. Transgender Survey with nearly 28,000 respondents in every State. We found homeownership rates one-quarter that of the U.S. population.

We found nearly one in four respondents had faced housing discrimination or housing instability as a result of being transgender in the past year alone.

We found nearly one in three respondents had been homeless in their lives. More than one in 10 of them have been homeless in the past year alone. These rates were even higher among transgender people of color and those with disabilities.

In the previous year, 7 in 10 transgender people seeking emergency shelter had faced discrimination there, including harassment, physical assault, or being turned away simply because they were transgender. And one in four respondents who had been homeless in the past year reported they did not even try to seek shelter out of fear.

For nearly 20 years, Federal courts have overwhelmingly held that laws such as the Fair Housing Act and the Equal Credit Opportunity Act prohibit anti-transgender discrimination. Unfortunately, the Trump Justice Department has rejected the majority view of the courts and urged the Supreme Court to strip those protections away.

In 2012, independently of those laws, HUD adopted the Equal Access Rule, explicitly prohibiting discrimination in all HUD-funded programs. And in 2016, after further study, it added clarifying language to the rule providing that individuals should be placed, served, and accommodated in accordance with their gender identity.

Secretary Carson has repeatedly assured Congress he had no plans to roll back that rule, most recently on May 21st of this year. However, the very next day, HUD revealed that it in fact planned

to do just that and had already sent a plan to do that to the Office of Management and Budget a month previously.

The Secretary's explanation for misleading the Congress and this committee was essentially the same one the White House has given for its ban on transgender troops, which is to say we are against discrimination, but that turning transgender people away is not discrimination, which is nonsense.

HUD's proposal is inconsistent with authorizing statutes that direct it to ensure every person in the United States has access to decent shelter. It also conflicts with the Violence Against Women Act and the Fair Housing Act. Advocates for the homeless and for survivors of sexual and domestic violence were quick to condemn this heartless move, but HUD has seemingly doubled down.

Last month, Secretary Carson shocked his own staff with an unprompted and demeaning anti-transgender tirade. While it is understandable that some people may have questions or concerns about how non-discrimination protections for transgender people work in practice, we do not have to imagine the answers to those questions. We already have them from decades of experience with hundreds of State and local laws; with 2 decades of Federal case law; with several years of implementation of the HUD rule nationally, and the parallel protections of VAWA; and from HUD's extensive past consultation with leaders and experts in the field.

We need to address housing and lending discrimination against LGBTQ+ Americans and the high rates of homelessness among these communities. To do that, Congress should act in several ways.

First, to immediately block HUD from rolling back Equal Access protections as this committee has already voted to do, and to stop other Administration attacks on housing opportunities, such as the Mixed Immigrant Status rule that would evict tens of thousands of children.

This committee should demand answers and transparency from Secretary Carson about the process by which he developed his anti-transgender proposal.

The Congress should clarify and strengthen our fair housing and lending laws by passing the Equality Act, as the House has already done.

And finally, we need to make ambitious investments in ending homelessness in this country. I know the chairwoman has introduced a bill that would get us some way towards those investments. These problems are grave, but they are not inevitable. By committing to equality and investing in opportunity, we can ensure all Americans have access to a decent home. Thank you.

[The prepared statement of Ms. Tobin can be found on page 70 of the appendix.]

Chairman GREEN. Thank you for your testimony, Ms. Tobin.

Mr. Adams, you are recognized for 5 minutes for an opening statement.

**STATEMENT OF MICHAEL ADAMS, CEO, SAGE (SERVICES AND ADVOCACY FOR LGBT ELDERS)**

Mr. ADAMS. Thank you, Chairman Green and Ranking Member Barr, for the opportunity to be here today on behalf of SAGE, the

country's oldest and largest organization advocating on behalf of 3 million LGBT older adults.

My goal today is to add to the committee's understanding of the causes, as well as the costs, of financial insecurity and housing discrimination in particular as it impacts LGBT older people.

Let me start by briefly sharing two stories of our LGBT elder pioneers. Like countless members of the LGBT community, Jay Toole, now 71, has stood up to a lifetime of ignorance, harassment, and danger simply for being who she is.

At 13, Jay was forced to leave home because of her family's homophobia. At 20 and homeless, Jay witnessed the start of the Stonewall Uprising on June 28, 1969. Fifty years later and after a lifetime of community service, Jay now struggles to get by financially, and also struggles mightily to find discrimination-free housing which she can afford.

As a boy, Jeremiah Newton realized that he was gay. He knew that he would have to fight for his place in the world. Jeremiah recently said, "As a young gay man, I witnessed the first night of the Stonewall Rebellion. It's important to know that everybody who is LGBT, whether we are 15 or 100, has been through our own personal stonewall. We've gone through something difficult. We've jumped over that wall to be free."

Jay and Jeremiah's experiences touch on themes SAGE sees consistently across the LGBT elder population: Economic insecurity and disproportionate susceptibility to financial scams and abuse. Many LGBT elders also face housing and employment discrimination, and the cumulative impact of discrimination over course of their lives.

As a result, LGBT older people are far more concerned than older Americans in general about their financial security as they age. Nationally, same-sex older couples have lagged significantly behind different-sex, married households in income, assets, and home ownership. This is especially true for older lesbians or transgender elders and for LGBT elders of color.

Moreover, LGBT older people struggle with thin support networks and severe social isolation. For example, LGBT elders are 4 times less likely than older Americans in general to be parents, and twice as likely to grow old single, a particular challenge given the crucial support that adult children and partners provide in old age.

Partly because of this isolation, LGBT elders are even more susceptible to financial abuse than older Americans in general. Despite advances in legal protections, LGBT older people are one of the most underserved and at-risk populations among our nation's older adults, and this is even more true of subpopulations. For example, many LGBT older adults are living with HIV as they age, reflective of the fact that by 2020, 70 percent of Americans living with HIV will be 50 and over.

Many LGBT Hispanic older people report that they suffer from multiple layers of discrimination, but they lack the community support they need.

Older LGBT African Americans are at higher risk for serious health conditions, like Alzheimer's, and are less likely to have access to culturally competent care.

Transgender elders are more likely to face social and geographic isolation, to be denied appropriate healthcare, and to struggle from financial insecurity.

The challenges that LGBT older adults face manifest especially when it comes to housing. A 2014 10-State investigation found that 48 percent of same-sex, older couples seeking senior rental housing experienced discrimination. That is 48 percent.

This data shows the pervasive challenges that older LGBT people face when trying to find housing. Yet, despite these statistics and the many stories that we have to demonstrate the real harm that is done, in most States, LGBT elders are not explicitly protected from discrimination based on their sexual orientation and/or their gender identity. And as a result of rampant discrimination and a lack of legal protections, many LGBT elders are forced back into the closet as they age.

The challenges that LGBT older people face are daunting. We at SAGE cannot address them alone. We yearn to once again look to the Federal Government as a partner to bring financial security and discrimination-free housing, care, and services to LGBT elders.

Unfortunately, through its various anti-LGBT policy moves, the Trump Administration presents a powerful impediment to the well-being of LGBT older adults rather than a source of support. We ask Congress to closely monitor the Administration and to reverse those trends because our elders deserve the support of all Americans and all branches of our government.

Thank you.

[The prepared statement of Mr. Adams can be found on page 36 of the appendix.]

Chairman GREEN. Thank you, Mr. Adams.

Ms. Conron, you are now recognized for 5 minutes for an opening statement.

**STATEMENT OF KERITH CONRON, RESEARCH DIRECTOR,  
WILLIAMS INSTITUTE, UCLA SCHOOL OF LAW**

Ms. CONRON. Thank you. Thank you, Chairman Green, Ranking Member Barr, Chairwoman Waters, and members of the Subcommittee on Oversight and Investigations. Thank you for the opportunity to speak with you today about housing lending in the LGBTQ+ community, a population of 11 million LGBT adults and 2 million LGBT youth.

My name is Kerith Conron. I am the research director for UCLA School of Law's Williams Institute, a center that focuses on the impact of law and public policy on LGBTQ+ people. As a social epidemiologist, my research examines sexual orientation and gender identity-based differences in socioeconomic status, contributors to those differences, and the consequences of such differences.

A large body of research has found that LGBT people experience discrimination and harassment in housing, employment, and other domains of life. LGBT adults are twice as likely as non-LGBT people to report ever having been prevented from moving into or buying a house or apartment by a landlord or REALTOR.

Controlled experiments funded by the U.S. Department of Housing and Urban Development found that same-sex couples and

transgender individuals were less likely to receive responses about rental units and were shown fewer rental units than others.

LGBT adults are more likely to report being fired or denied a job than non-LGBT adults. They are also more likely to report being denied a promotion or receiving a negative job evaluation than non-LGBT adults.

And an extensive body of research shows that LGBT students, both in secondary school and in college, are more likely to be bullied and otherwise victimized than non-LGBT students. And as Dr. Sun will describe, same-sex mortgage applicants are less likely to be approved than different-sex loan applicants. Discrimination contributes to homelessness and housing instability and lower rates of home ownership among LGBT+ people.

These patterns have been observed in convenient sample studies for quite some time, but we are now at the point in the field where we have population-based representative studies that show the same patterns; we have experimental designs that show the same patterns; and we also have records from administrative complaints. So, these patterns of discrimination are undeniable.

In terms of homelessness and some statistics, LGBT youth and transgender adults are far more likely to be homeless and unstably housed than non-LGBT youth and adults. Recent analyses conducted with the TransPop data, funded by NIH, found that 30 percent of transgender adults reported that they had to move twice or more in the prior 2 years, compared to only 11 percent of cisgender. And when I say that, I mean non-transgender people.

LGBT adults are less likely to own homes and are more likely to rent than non-LGBT adults. We conducted analyses of data collected by the CDC across 35 States in preparation for this hearing and found that half of LGBT adults on average own their homes, compared to about 70 percent of non-LGBT adults. Rates of home ownership are even lower for transgender adults at about 25 percent. Homelessness and housing instability dramatically increase the risk of violence victimization, exploitation, and poor health, and there is literature to support this.

What I have shared with you today relies upon the best available data, but gaps in existing Federal data systems need to be filled. If questions about sexual orientation, gender identity, and assigned sex at birth were included in the American Community Survey and the American Housing Survey, then the committee could request information about home ownership, mortgages, housing and rental costs, and housing quality for LGBTQ+ communities directly from the Census Bureau.

Similarly, if the Survey of Consumer Finance, as conducted by the Federal Reserve Board, included similar questions, then information about credit usage and refusals, housing and educational loans, debts, and assets would also be available to the committee.

Many surveys conducted by the Census include information about the sex of married and cohabitating partners. And while that is very valuable and was radical to include in those surveys in 1990, which is the year that I graduated high school and, as you can see from my hair, is now many decades past.

We now know that only 80 percent of people who are LGBT are living in cohabitating households, which means that—sorry, 20 per-

cent, which means that we are missing data for about 80 percent of the LGBT adult population by not including questions about sexual orientation, gender identity, and assigned sex at birth in these surveys.

In summary, increasing access to affordable housing will mean prohibiting discrimination in employment, housing, education, lending, and the public accommodations, as well as expanding Federal data collection systems designed to monitor the public well-being.

Thank you.

[The prepared statement of Ms. Conron can be found on page 49 of the appendix.]

Chairman GREEN. Thank you, Ms. Conron.

Mr. David, you are now recognized for 5 minutes for your opening statement.

#### **STATEMENT OF ALPHONSO DAVID, PRESIDENT, HUMAN RIGHTS CAMPAIGN**

Mr. DAVID. Thank you. Thank you, Chairman Green, Ranking Member Barr, and members of the subcommittee.

My name is Alphonso David. I am the president of the Human Rights Campaign, which is the nation's largest civil rights organization working to achieve equality for lesbian, gay, bisexual, transgender, and queer people. On behalf of our more than 3 million members and supporters, I appreciate the opportunity to appear at this hearing.

Tonight, more than 10,000 LGBTQ+ young people do not have a safe place to sleep. In some U.S. cities, 30 percent of the homeless adult population is LGBTQ+. The faces behind these numbers reflect that the most vulnerable members of our community are our youth, our transgender siblings, and people living with HIV.

Our community faces discrimination and rejection in every area of life: at school; at work; and at home. Distressingly, the weight of this discrimination falls disproportionately on the shoulders of LGBTQ+ people who are racial minorities, specifically Black and Brown members of our community.

Black male couples are the most likely type of family to experience discrimination when seeking rental housing.

Transgender people feel these stark, racial disparities even more acutely. Nearly 40 percent of Black transgender people have reported eviction and racial disparities because of their gender identity, and report rates of homelessness 3 times of that of white transgender people.

Latinx, Native American, and multi-racial transgender people report similarly significant higher rates of discrimination.

Before law school, I volunteered at the Whitman Walker Clinic, the LGBT health center right here in Washington, D.C., working directly with people living with HIV to receive aid through Federal programs. I have seen the impact of a lifetime of discrimination in the eyes of people who have met closed door after closed door. The epidemic of LGBTQ+ homelessness is a national crisis and it demands a national response.

Unfortunately, we have a President in the White House and a Secretary of HUD who are not just ignoring us; they are



weaponizing our nation and our programs against us. For the past decade, HUD has interpreted the Fair Housing Act to include protection for LGBTQ+ people. This interpretation is consistent with robust, judicial trajectory determining that discrimination on the bases of sexual orientation and gender identity is unlawful sex discrimination under our nation's civil rights laws.

These Federal court decisions are not just novel outliers, but rather markers of the evolution of the judicial understanding of discrimination to more faithfully accomplish the mission of the underlying statutes. In fact, this is the law in half of the circuits in this country. Prioritizing ideology over law, the Trump Justice Department withdrew specific guidance regarding gender identity discrimination and has replaced it with a narrow and legally specious interpretation of Title VII that would exclude LGBT workers from its protection.

Trump has promoted this retrograde interpretation in Supreme Court briefs. In three cases this term, the Court will determine whether Title VII actually protects LGBTQ+ people. The outcome of these cases will directly influence the interpretation of protections under similar civil rights statutes, including the Fair Housing Act.

Secretary Carson has also narrowly interpreted the rules, specifically the rulemaking for Equal Access. This rule provides crucial protections from discrimination for LGBTQ+ people in HUD programs, including loans backed by the Federal Housing Administration (FHA). Access to FHA loans has traditionally served as a critical tool to bridge opportunity gaps based on discrimination for chronically underserved populations, like people who are low income, LGBT, and people of color.

Although the Equal Access Rule has been previously interpreted to protect people, LGBTQ+ people, unfortunately, this Administration is taking a different tack.

Secretary Carson's HUD has also placed a target on these regulations that have meant so much to people in the past. He has proposed replacing tested regulations with a vague laundry list that would allow emergency shelters, for example, to choose how or whether to serve transgender people.

LGBT people listening to my testimony today face discrimination in almost every facet of their lives, and we need the Administration to actually protect them, not to subject them to further discrimination.

Thank you.

[The prepared statement of Mr. David can be found on page 59 of the appendix.]

Chairman GREEN. Thank you, Mr. David, for your testimony.

Professor Sun, you are recognized for 5 minutes for your opening statement.

**STATEMENT OF HUA SUN, ASSOCIATE PROFESSOR, FINANCE,  
IOWA STATE UNIVERSITY**

Mr. SUN. Thank you, Chairman Green, Ranking Member Barr, and subcommittee members for giving me this opportunity to testify. My name is Hua Sun, and I am an associate professor of finance at Iowa State University.

I recently published a paper jointly with my coauthor at PNAS that looks at the potential disparate lending practice to same-sex mortgage borrowers. We found that compared to different-sex borrowers of similar profiles, same-sex borrowers are statistically more likely to be rejected when they apply for a loan. And when approved, they pay a higher interest rate or fees on average. And we are unable to find statistical evidence that same-sex borrowers are more risky to lenders than comparable hetero-sex borrowers.

The primary data used in our loan underwriting analysis is a 20 percent random sample of the publically available HMDA data between 1990 and 2015. It gives us over 30 million loan application records that involve both a borrower and a co-borrower. We used the mandatorily-disclosed sex information to distinguish same-sex borrowers and hetero-sex borrowers. We then merged the HMDA data with the publically-available Fannie Mae single-family loan performance data on over 400,000 approved loans originated since 2004, and we used this merged data to check the financing cost and subsequent loan performance.

Our findings show that compared to hetero-sex borrowers with similar characteristics, same-sex borrowers experience about a 3 to 8 percent lower approval rate. Further, in the loans that are approved each year, lenders charge higher interest or fees to same-sex borrowers in the range between 2 to 20 basis points. Our inferred dollar value on the higher financing costs burdened by same-sex borrowers nationwide is equivalent to an annual total of up to \$86 million. Yet, we failed to find any evidence that same-sex borrowers are more risky. Indeed, our data shows that same-sex borrowers are equally likely to default on a loan, but less likely to pre-pay for their mortgage. So, on average, there is some evidence that same-sex borrowers seem to be slightly less risky.

As sexual orientation is not disclosed in the data, we calculated the correlation between our inferred same-sex population density and a 2015 Gallup LGBT population survey at the State level. We found that, depending on the matter used, the correlation is between 0.61 to 0.85.

As another robustness check, and in order to rule out the possibility that a borrower and a co-borrower are relatives, we only look at same-sex borrowers who are of different races. We continue to find significantly lower approval rate on this restricted sample of same-sex borrowers.

One limitation on HMDA data is its lack of borrowers' information, such as credit history. We cross-validated our findings of lower approval rate by using the data on the sample of borrowers in the Boston metropolitan area in 1990. This data was collected by the Federal Reserve Bank of Boston. Previously, this Boston-based data has been used by many researchers to study minority lending discrimination.

The strength of this data is that it has very detailed information such as a borrower's credit history, working experience, educational backgrounds, et cetera.

The Boston data reveals that after controlling for the borrower and the mortgage characteristics, same-sex applicants are 73.12 percent more likely to be denied when they apply for a loan than different-sex borrowers.

We also looked at loan underwriting in time series and found that the lower approval rate to same-sex borrowers is quite persistent over time. Indeed, the HMDA data implies that the gap was even larger in 2015 than in 1990.

In regard to lending practice on agency versus non-agency loans, we found that the largest gap is on conventional loans, where the gross approval rate to same-sex borrowers is about 7 percent lower than different-sex borrowers. The gap is about 4 percent on VA loans, and about 0.8 percent on FHA loans.

To summarize, our study documents some statistically and economically significant evidence on adverse lending outcomes to same-sex borrowers. The lending disparity appears to be throughout the life cycle from applying to paying off a loan.

Like any empirical research, our study is subject to limitations, such as omitted veritable buyers. Having said that, I believe these findings are still concerning given that the current credit protection laws, such as the Fair Housing Act and the Equal Credit Opportunity Act, do not explicitly list sexual orientation as a protection class.

I hope that our study and this testimony can help initiate a meaningful discussion on the need and the means to provide stronger protection to LGBT borrowers.

Thank you very much.

[The prepared statement of Professor Sun can be found on page 66 of the appendix.]

Chairman GREEN. Thank you for your testimony, Professor Sun. Mr. Creighton, you are recognized for 5 minutes.

**STATEMENT OF FRANCIS CREIGHTON, PRESIDENT AND CEO,  
CONSUMER DATA INDUSTRY ASSOCIATION (CDIA)**

Mr. CREIGHTON. Thank you for the opportunity to appear before you today at this historic hearing on a very important issue.

CDIA, my organization, promotes the responsible use of consumer data to help all consumers, regardless of age, race, gender identity, sexual orientation, or any other discriminatory qualifier, achieve their financial goals, and to help businesses, governments, and volunteer organizations avoid fraud.

Consumer reporting agencies are governed by many Federal and State statutes, rules, and judicial opinions, but the touchstone of the laws that govern our industry is the Fair Credit Reporting Act (FCRA). According to the law's findings, Congress expressly sought to make sure the credit-reporting system is fair for consumers, for all consumers.

As a result of the FCRA, and the hard work of our members in the entire credit reporting ecosystem, consumers today benefit from a democratic, accurate, and fair credit system. Consumers have the liberty to access credit anywhere in the country from a wide variety of lenders based solely on their own personal history of handling credit. If a consumer has been a responsible user of credit in the past, lenders and others are more likely to offer credit at the most favorable terms.

Credit reporting companies and other CDIA members are helping solve the problem of the unbanked and the underbanked by expanding the kinds of data collected, such as rental history or pay-

ments on telephone and other utility bills, giving lenders and others information that allows more consumers to responsibly access traditional financial services and integrate consumers into the mainstream financial system.

Consumers are the main beneficiary of our credit reporting system. Most consumers pay their bills on time and are rewarded for doing so when they seek out new credit and their report shows a positive history. Without the credit reporting system, lenders would not be able to judge whether individuals applying for credit have previously paid their bills on time, and interest rates on loan products would have to increase for everyone to account for the added risk, with consumers who have been consistently paying bills on time losing out.

Credit reports also give a variety of different kinds of lenders access to the same kind of information, giving a local community bank or a credit union a chance to compete against a trillion-dollar financial institution.

As we begin this hearing, it is important to know what is and is not in a credit report.

Credit reports do not include sexual orientation.

Credit reports do not include gender identity or sex assigned at birth.

Credit reports do not include marital status or spouse.

They also do not contain data on race, color, religion, or national origin.

Credit reports do include the following identifying information: name; address; date of birth; and Social Security number, which is only used as an identifier.

For each account, credit reporting agencies maintain the creditor name, account type, account number, date opened, the credit line, the balance, and the payment history. And if an individual has had a bankruptcy in the last 10 years, that appears, as well.

One of the great benefits of our nation's competitive credit reporting system is that it delivers factual information, which serves as a check against individual biases and assumptions. The reliable consumer report information provided by our members gives lenders and creditors the tools they need to fairly achieve the goal of equitable treatment for each consumer, while also contributing to safe and sound lending practices. Without this system, subjective judgments could be made even more on factors other than the facts of creditworthiness.

Thank you for the opportunity to contribute to this hearing. I look forward to your questions.

[The prepared statement of Mr. Creighton can be found on page 54 of the appendix.]

Chairman GREEN. Thank you, Mr. Creighton, for your comments.

The Chair will now recognize the gentlelady from New York, Ms. Velazquez, for 5 minutes for questions.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Adams, as you know, New York City's LGBTQ+ senior population struggles with substandard housing conditions, poverty, and homelessness, particularly in parts of lower Manhattan that I represent. In fact, according to one study, nearly one in four of New

York City's LGBTQ+ senior population was reported living in sub-standard housing.

Can you speak to the unique challenges our LGBTQ+ seniors face, not only in New York, but across the country? And what recommendations do you have for addressing these issues?

Mr. ADAMS. Thank you for that important question. And to your point, I think what we see is a housing crisis that LGBTQ+ older adults face in New York City and across the nation for several fundamental reasons.

One is extremely high levels of discrimination against LGBT older adults in housing. As I mentioned in my testimony, we have a study from the Equal Rights Center conducted in 2014 that found that 48 percent of LGBT older adults who were applying for senior rental housing are subjected to discrimination in that process.

Then what we see is for LGBT older folks who find housing, often they are subjected to harassment, discrimination, and mistreatment by their neighbors.

This challenge is also exacerbated by the fact that we have substantially higher levels of poverty among LGBT older adults than older Americans in general.

Ms. VELAZQUEZ. Recommendations?

Mr. ADAMS. Yes. In terms of recommendations, first and foremost, we need to pass the Equality Act, which would prohibit discrimination in housing against folks who are LGBT. This is fundamental. Eliminating discrimination is critical.

Second, we need to ensure that there is support for LGBT-friendly elder housing developments. In New York City, as you mentioned, there are two LGBT-friendly affordable housing developments that are in construction now. There are a number of them across the country. We have to substantially increase the number of those.

And third, I would say that we need policies that encourage and mandate training for housing providers to ensure that they do not engage in discrimination and that they provide culturally competent housing to LGBT elder adults.

Ms. VELAZQUEZ. Thank you.

Mr. ADAMS. Thank you for the question.

Ms. VELAZQUEZ. Professor Sun, your research study found significant and costly discrimination in mortgage lending to LGBTQ+ borrowers, with same-sex borrowers facing lower approval rates and higher interest fees than different-sex borrowers.

First, can you explain your findings? And second, what impact do these lending patterns have on the financial security of same-sex couples and the lifestyle choices they make?

Mr. SUN. According to our study, same-sex borrowers on average experience about a 3- to 8-percent lower approval rate, which implies that the homeowner rates for same-sex couples are likely to be lower, in a similar range.

And also, once their loan is approved, they pay a higher interest rate or fees, so their effective interest rate is about 2 to 20 basis points higher than the hetero-sex borrowers.

So, we infer that nationwide, the annual actual premium charge to same-sex borrowers is somewhere between \$8.6 million to \$86 million.

Ms. VELAZQUEZ. Thank you. Professor Sun, earlier this year, I introduced H.R. 963, the Home Loan Quality Transparency Act of 2019, which reinstates the Dodd Frank Act's expanded HMDA reporting requirements that were stripped out last year as part of the passage of S.2155. Senator Cortez Masto has introduced companion legislation in the Senate.

Can you talk about the importance of HMDA's reporting requirements and how, without HMDA finding and prosecuting discriminatory lending practices, will be far less effective?

Mr. SUN. First of all, I do want to point out that HMDA data is very crucial when we try to examine the disparate lending practice to like same-sex borrowers or minority borrowers. However, using mortgage data can be misleading if our purpose is to study the more general demographic patterns of LGBT people in general.

Having said that, in the HMDA data, right now the biggest limitation with the HMDA data is that it does not have a lot of mortgage characteristics, information like loan to value ratio, debt to income ratio, and it does not have a lot of information about the borrower, such as the borrower's credit score, working histories, age, et cetera.

As an empirical researcher, that makes it very difficult for us to draw any—like a causal impact or potential disparate lending practice to this group.

Ms. VELAZQUEZ. I gather that you will be supportive of my legislation?

Chairman GREEN. The gentlelady's time has expired, long since. You may answer. You may respond.

Mr. SUN. Sorry. I missed the question.

Chairman GREEN. The question was, would you support her legislation?

Mr. SUN. Definitely.

Chairman GREEN. The gentlelady yields back.

Ms. VELAZQUEZ. Thank you. I yield back.

Chairman GREEN. The Chair now recognizes the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Thank you, Chairman Green, for holding this hearing today.

I believe Americans want a fair financial system where access to credit and mortgage finance is determined by creditworthiness and absolutely free from bias that has nothing to do with a person's ability to repay the loans they seek. That is a principle that I supported in all the considerations we hear before this committee. And perhaps the best way to ensure that our financial system is unbiased is to ensure that the information that supports the decisions is free from bias.

I am pleased that we have here today Mr. Creighton, the CEO of the Consumer Data Industry Association, that represents the credit reporting agencies that provide the information I have in mind here.

Mr. Creighton, I had the opportunity to look at the report by Dr. Ann Schnare, entitled, "Credit Bureaus in the Digital Age: Recommendations for Policy Makers." It was released by the Consumer Data Industry Association (CDIA). I commend your efforts to focus

attention on consistent and integrated standards and regulations for credit reporting.

The study makes some interesting observations about the benefits of credit bureaus. One of those benefits is ensuring credit availability and economic resiliency by giving lenders the information they need to assess the risk of potential new borrowers, and to design and price products to meet the needs of previously underserved populations.

Focusing on the last part of that, can you share with us how good credit bureau data helps to design and price products to meet the needs of the previously underserved?

Mr. CREIGHTON. Thank you for that question, Congressman.

There are really two areas that I would mention as part of this. One is the continued exploration by our members and trying to get non-traditional data into credit reporting: things like rental data, are you paying your rent on time, every month; utility data, are you paying your gas bill and your electric bill?

These are not traditionally thought of as credit accounts, right? But if you are paying your bill every month on time for 10 years, that should be an indicator that in fact you are going to be able to pay your credit bills on time later.

That expands the people who can get access to credit because you have a population right now who is not being served because they do not have a traditional credit card or something else. So, when they need a financial product, they cannot go to a bank or somewhere else because they have a thin file or no file. That's one way.

Another way is by doing something called trended data. Instead of just looking at a credit report in just a snapshot moment of your credit history, where are you right now, by using something called trended data, we are able to look back over time and to see how all of your credit accounts are moving. For example, if you have a spike in your credit at this moment, but it is explainable because of other things in the past that can be incorporated into the score.

Mr. POSEY. Good. Thank you, Mr. Creighton.

Is the information provided through credit bureaus completely free of the kind of information that might enable the discrimination we are hearing about today in this committee?

Mr. CREIGHTON. Yes, it is, and that is not to say that there is not discrimination in the entire system. All that we are able to say is that it is not being provided at this point in the process by the consumer reporting system.

Mr. POSEY. Okay.

Mr. CREIGHTON. As I said in my opening statement, we just do not have this data, and we would not want to collect it.

Mr. POSEY. Okay. Thank you.

We have had several hearings on perceived bias in financial institutions based on membership in various groups of the population. I am always puzzled that competition among lenders does not simply drive out discrimination of that nature. There are lots of alternative lenders in the market.

Do you believe that market competition is or can be an effective force in reducing or eliminating bias in lending?

Mr. CREIGHTON. Sure. Absolutely. If there is a market that is not being served because of discrimination, I believe that other lenders

will likely come in and take advantage of that and provide products and services to that group. I do not represent lenders, so I cannot say specifically, but sure, that does make a lot of sense.

Mr. POSEY. Can you think of any examples offhand?

Mr. CREIGHTON. I think about, in the small business space, what is going on in Fintech right now and how the Fintech companies are in there kind of offering new financing tools to people in the small business space that otherwise, those communities were not getting served. It's relatively small-dollar loans. That is one example of where.

Mr. POSEY. That is good to hear, that the market can actually change processes like that. I see my time has expired, Mr. Chairman. I yield back. Thank you.

Chairman GREEN. The gentleman yields back.

The gentleman from Illinois, Mr. Casten, is recognized for 5 minutes.

Mr. CASTEN. Thank you, Mr. Chairman. And thank you all so much for being here today.

I am really struck by Mr. David's comments that 40 percent of homeless youth identify as LGBTQ+. And if I understand right, I think one-third of all transgender folks have experienced homelessness at some point in their life. For so many, the shelters are really the last refuge, and especially the government-funded shelters.

And I am particularly concerned in light of that, about some of the decisions that have been made in light of the Hobby Lobby decision, to essentially legally allow discrimination as long as we wrap it up in some kind of a religious theory.

In particular, there have been two recent decisions. First, the Department of Housing and Urban Development's draft rule that would allow shelters to house people while considering the shelter administrator's religious beliefs and the individual's sex as reflected on official government documents.

And then second, on August 14th of this year, a Department of Labor draft rule that essentially used the Hobby Lobby to justify hiring, which, at least as I read it, would affect government housing and decisions that are made there.

Ms. Tobin, is there any evidence that allowing transgender people into homeless shelters conforming with their gender identity poses a risk to other residents?

Ms. TOBIN. No, there is none, Congressman.

Mr. CASTEN. What about for the broader LGBT community?

Ms. TOBIN. No, there is none. And, in fact, we have, as I said, decades of experience across the country that what protections like the Equal Access Rule result in is simply that some people, who did not have the opportunity before, have the opportunity to come out of the cold and be connected with shelter, and ultimately with permanent housing.

Mr. CASTEN. Is there any evidence that forcing transgender people onto the streets or into shelters that do not conform with their gender identity causes harm to themselves or others?

Ms. TOBIN. Of course. The whole reason we invest in emergency shelter is because we want people to be safe, to be healthy, to be able to connect with permanent housing. And it does not make any sense to cut a large portion of the population out from those pro-



grams when Congress has directed HUD to ensure that every American has access to decent shelter.

Mr. CASTEN. Would you describe a decision to refuse shelter to a member of the LGBTQ+ community as merciful?

Ms. TOBIN. I would not. There is nothing more important in most faith traditions than loving your neighbor and serving people in need. And there are scores of faith-based organizations around the country, from San Diego to Boise to programs that Covenant House runs across the country, that serve transgender people in accordance with their gender identity every day. And we know that there are some who, for various reasons, refuse to serve our community. And we respect everyone's beliefs, but ultimately, HUD taxpayer funds are first and foremost for serving everyone in need.

Mr. CASTEN. Are you familiar with the Sermon on the Mount?

Ms. TOBIN. Yes, Congressman.

Mr. CASTEN. Would you care to comment on how one can justify a decision to discriminate based on a book that blesses the merciful, the meek, the persecuted, and the peacemakers?

Ms. TOBIN. Sir, I am certainly not here to take issue with anyone's theology. But I would hope that we can all agree that the—as I said, the foundations in most faith traditions are serving people in need. Most faith-based organizations see no issue with complying with these non-discrimination rules. And again, first and foremost, our taxpayer funds are to serve everyone who is in need. And that should really be the deciding factor.

Mr. CASTEN. Thank you. I yield back.

Chairman GREEN. The gentleman yields back.

Ordinarily, the Chair would recognize someone from the other side. However, given that we have been informed that there are no more Members present from the other side, the gentlewoman from Pennsylvania, Ms. Dean, is recognized for 5 minutes.

Ms. DEAN. Thank you, Mr. Chairman, and I am pleased to be a part of this historic hearing. Thank you to all the witnesses for your expertise and for bringing us important information.

I would like to start with Dr. Conron. In your testimony, you write that homelessness and housing instability dramatically increase the risk of violence victimization, exploitation, poor health, incredibly grave circumstances for the community. Could you highlight some of the data and the statistics that you are citing?

Ms. CONRON. Sure. When people do not have stable places to stay, they are in circumstances where they are on the street, where they are subject to increased risk of violence victimization and/or they are at risk of needing to exchange sex for a place to stay. And when people engage in sex work, they are at increased risk of STI infection, HIV infection, and violence. They are at increased risk of being picked up by the police and then further victimized by the police and being charged with sex work crimes.

We see an overrepresentation of LGBT people in the criminal justice system. We see an overrepresentation of LGBT people who are poor, and food insecure, particularly bisexual, transgender people, and LGBT people of color communities. And, so, it is really this systematic, pervasive pattern of stigma discrimination that elevates risk for vulnerability at lots of points in the life course, and particularly for youth and particularly for transgender adults.

Ms. DEAN. Thank you very much.

Mr. David, in your testimony, and it has been talked about here, you stated that 40 percent of homeless youth identify as members of the community.

I am also lucky to serve on the Diversity and Inclusion Subcommittee. And this summer, we held diversity and inclusion roundtables, one in particular on LGBTQ+ individuals. During that event, a leader of the PA Youth Congress described working with a college student who was being evicted because his same-sex partner, also a caretaker because the student has MS, was not on the original lease.

Given that kind of consequence, can you talk about other similarly situated in that kind of discrimination?

Mr. DAVID. Sure. Unfortunately, we are seeing across this country LGBT people being targeted for discrimination, not only in terms of lending practices, but also mortgages and rentals, as well. And unfortunately, because we do not have comprehensive protections that are on the State level, and we certainly see that the Federal protections are being challenged in the U.S. Supreme Court, LGBT people are at risk of being discriminated against.

The Administration, unfortunately, as you know, has taken a position, the Trump Administration, to advance regulations that would effectively enshrine discrimination into our regulations, and it further exacerbates a problem because LGBTQ+ people are facing discrimination every single day. A same-sex couple who is seeking to purchase an apartment in any part of this country may be discriminated against simply because they are LGBTQ+. If they are racial minorities, it is even worse.

And so, we need to pass the Equality Act, and we also need to fight back against these regulations that are seeking to enshrine discrimination into our regulations.

Ms. DEAN. Thank you, and I want to stick with you if I could, Mr. David.

I share with you your grave concern over the course of this Administration, and I was sitting here thinking about it. The pattern is always the same, whether we are talking about anything from the environment to equality, and everywhere in between, the Trump Administration seeks to tear down protections, tear down the things that actually would make us more equal, would make us more safe, would protect our planet, as I said, and everywhere in between. They want to strip away protections.

You began in your testimony to talk about how we could make a change. Number one, pass the Equality Act. What specifically do we need to do as policymakers?

Mr. DAVID. We need to pass the Equality Act. I know the House of Representatives has already passed the Act.

Ms. DEAN. Correct.

Mr. DAVID. We are waiting on the Senate to take action. And that bill would effectively provide protections, comprehensive protections, on a national level.

Right now, we have circuit court decisions for the past 2 decades that have concluded that LGBTQ+ people are indeed protected under Title VII. What many people do not know is that there is no Federal public accommodation statute that would protect racial mi-

norities, as an example. So, if I went into a Gap department store to purchase a shirt, I could be discriminated against, and there is no Federal protection based on race. There are State protections, but no Federal protection. The Equality Act would fix that.

And we also need to make sure that—as I said before, the Equal Access Rule has been in place for years. There is no reason to modify the Equal Access Rule, and modifying the Equal Access Rule will have disproportionately negative impacts on LGBTQ+ people and racial minorities.

Ms. DEAN. Thank you for helping us lift up the Equality Act. We were proud as members of this committee—

Chairman GREEN. The gentlelady's time—

Ms. DEAN. —in the House—

Chairman GREEN. —has expired.

Ms. DEAN. —to pass it. Thank you, Mr. Chairman.

Chairman GREEN. The gentlewoman from Texas, Ms. Garcia, is recognized for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Mr. Chairman, and thank you so much for convening this very important and historic hearing on this topic.

I think it is a topic that has been of great concern for many of us. And certainly coming from Texas and being a leader against the fight, the Texas Bathroom Bill, we all know that—at least I am convinced—that part of the reason that many people have some of these views and do discriminate is because they simply fear the unknown. Many of them that we talked to during those hearings had never even sat down and visited with anyone who was transgender. They had not even met anyone who was transgender. They did not even know what it meant. Hence, the fear about the bathrooms.

So, I think it is moving in the right direction, but I wanted to get to the heart of it because, as Ms. Dean said, it is really about how do we protect the protections, if you will, and how do we move forward.

Mr. Adams, I was a geriatric social worker in one of my prior lives, and I remember going into a nursing home where there was an elderly person who was, quite frankly, in need of psychiatric counseling because they felt completely isolated because nobody wanted to be their roommate—it was back in the day where, especially in Medicaid-funded facilities, you always had to have someone in the room, it was two to a room—because the person was gay. And the recreation area was like nobody really wanted to play with her. She was shunned, stigmatized.

Have we made any progress in that area, or are we still faced with a lot of overt discrimination like that?

Mr. ADAMS. We have made—

Ms. GARCIA OF TEXAS. In particular in the elder area, in nursing facilities and homeless shelters, et cetera?

Mr. ADAMS. We have made some progress in those areas, in part because of policy progress at the State level. We have a couple of States across the country that have enacted laws requiring what we sometimes call cultural competency training to train provider staff in how to address the kinds of situations that you are describing. And we have a growing national program that provides that

kind of training in nursing home settings to long-term care providers. So, yes, we have made some progress.

Having said that, this challenge of discrimination and stigmatization of LGBT elder adults in nursing care, in long-term care, is a profound challenge, and we still have much, much further to go. And, in fact, what we are seeing is that upwards of 40 percent of LGBT elder adults hide their sexual orientation, hide their gender identity, if they are able to, in order to protect themselves from that kind of discrimination. So, they are being forced back into the closet late in life.

So, we are making some progress, but we have much, much further to go, and we need anti-discrimination protections and training to continue to make that progress.

Ms. GARCIA OF TEXAS. Will the Equality Act help any in regard to some of the funding for some of these services in nursing homes and other social program networks?

Mr. ADAMS. The Equality Act will absolutely help because it will prohibit discrimination in public accommodations, which includes long-term care, on the basis of sexual orientation and gender identity. So, it will provide that regime of legal protections that we need.

And then there are other avenues that we can use, like the Older Americans Act, to provide funding and support for related services.

Ms. GARCIA OF TEXAS. Mr. Adams, do you think that the Equality Act and/or the Title VII cases will help to ease the burdens of some of the issues related to pensions, social security, and retirement benefits for same-sex couples?

Mr. ADAMS. I think that with regard to Title VII cases, it depends, obviously, on how they are decided by the Supreme Court. What we see when it comes to LGBT older adults is that the cumulative impact of a lifetime of discrimination in employment and hiring and compensation and government-sponsored benefits leads to much higher levels of poverty as people enter their old age. If we receive a decision from the Supreme Court—

Ms. GARCIA OF TEXAS. But the question is, do you think that the Equality Act will help ensure that with a same-sex couple, there will not be any issues about any of the spousal benefits, any of the retirement benefits, and that they will have greater financial security?

Mr. ADAMS. Yes. The Equality Act will absolutely, if enacted, lead to greater financial security for LGBT people in general, and LGBT elder adults more specifically.

Ms. GARCIA OF TEXAS. And very quickly—

Chairman GREEN. The gentlelady's time has expired.

Ms. GARCIA OF TEXAS. Do we need to ask the question on the Census?

Chairman GREEN. The Chair now recognizes the gentlewoman from Massachusetts, Ms. Pressley, for 5 minutes.

Ms. PRESSLEY. Thank you, Mr. Chairman, for hosting this critically important, again, and historic and timely hearing, and thank you for waiving me onto this subcommittee to be a part of this conversation.

Our forever Oversight chairman, Elijah Cummings, often said that sunlight is the best disinfectant, so I am pleased to see our

Financial Services Subcommittee on Oversight and Investigations shedding light on the continued discrimination and injustices subjected onto our LGBTQ+ neighbors and community members.

I am proud to say that the Commonwealth is home to the second largest LGBTQ+ community in the nation, and for decades, our Commonwealth has led the way in securing equality and justice for our LGBTQ+ community.

In 1989, after a nearly 20-year fight, the Commonwealth became the second State in the nation to pass a law prohibiting discrimination based on sexual orientation in employment, housing, and other public accommodations. In 1989.

In 2003, we became the first State to legalize same-sex marriage. And while our track record is laudable, disparities persist.

One in five LGBTQ+ individuals across our country live in poverty.

One in three transgender individuals and cisgender bisexual women are living below the poverty line.

LGBTQ+ youth of color in the greater Boston area are disproportionately more likely to be unemployed.

Almost two-thirds of transgender individuals across the Commonwealth report experiencing discrimination in public spaces.

We know these problems are interconnected, and the solution must also operate from a level of intersectionality in order to address these negative outcomes for one's health, safety, and overall prosperity.

Because the quest for equality and justice does not stop at the stroke of a pen and the passage of a bill, it takes continued work to ensure compliance and to hold industry and bad actors accountable when they are breaking the law. This is even more important now as we face an Administration set on, quite literally, terrorizing the LGBTQ+ community. So this hearing, again, is timely.

And I am wearing another hat because I also have the honor of vice-chairing the Aging and Families Task Force. And, so, one of my priorities on this task force is to develop policies that are nuanced and that speak to the life experiences of our seniors, especially those who are, sadly, re-closeting, just for the purposes of having housing. So, LGBTQ+ justice is senior justice, and senior issues are LGBTQ+ issues.

In 2012, the Commonwealth's Executive Office of Elder Affairs was the first to designate LGBTQ+ elders as a population of greatest need under the Older Americans Act. Again, in many ways, the Commonwealth—and I am representing the Massachusetts 7th—I am proud to say we are leading, but these inequities and disparities exist and they persist.

We have spoken about the impact of the Equality Act and what that could do. But in an effort to continue to shine some sunlight here on the extent of these injustices, Mr. Adams, thank you so much for speaking to the impact of having fewer assets and less capital in retirement savings, and speaking to isolation, and limited opportunities for long-term care and senior housing.

But I just want us to speak, and Ms. Tobin, if you would, more to the social impact of this. This is traumatic. The community is being terrorized, and so, I hope that the Senate will do their job, and we will continue to organize to unfortunately have to force

their hand to do that. But if you could just speak more to the confluence of all of those mini hurts. What is this impact?

Ms. TOBIN. Congresswoman, it will take years, I think, to understand the true scope of the harms done by the government's turning on a vulnerable minority of Americans, and in fact, of course, many vulnerable minorities of Americans, in this way.

We know even the FBI's woefully incomplete hate crime statistics have been spiking.

We know that we hear from more and more parents and families and students around the country all the time who are scared because the atmosphere created by this—the President did not create this kind of hate, but he does seem to be feeding it every day.

And it is very scary for families that we hear about every day. We already see many transgender people, as I have said, who are homeless and afraid to seek shelter, and the kinds of steps that HUD is taking could further deter people and leave them out on the streets, vulnerable to violence. We are aware already of many cases of transgender people, transgender women on the street, being targeted for violence. So, it is very serious.

Ms. PRESLEY. That is my time. I hope there will be a second round. Thank you.

Chairman GREEN. The gentlelady's time—

Ms. PRESSLEY. Thank you for being here.

Chairman GREEN. —has expired. The gentlewoman from Virginia, Ms. Wexton, is recognized for 5 minutes.

Ms. WEXTON. Thank you, Mr. Chairman, for yielding, and I thank you also for holding this very important hearing. And thank you to the witnesses for appearing today.

As a few of you have already mentioned in your testimonies, HUD Secretary Ben Carson testified here before this committee in May, indicating that the Agency was not considering revising the Equal Access Rule. In fact, he unequivocally told me on the record, "I am not currently anticipating changing the rule." But the very next day, HUD released a proposed rule that would roll back the Equal Access Rule's essential anti-discrimination protections for transgender people experiencing homelessness.

The Equal Access Rule protections are critical because they ensure that transgender people can access HUD-funded shelter consistent with their gender identity. There is a lot of misinformation out there, and I think it is important that the public understand the implications that rolling back these critical protections would have on the transgender community.

Ms. Tobin, how were transgender people seeking safe shelter treated before the Equal Access Rule was put in place?

Ms. TOBIN. As I said, Congresswoman, our research and that discussed by the other witnesses has found discrimination of both staggering levels of homelessness among the populations, so the need is extraordinary, and widespread discrimination in shelter access.

We certainly have seen through the efforts of State and local communities and leaders in the field, together with the Equal Access Rule, has helped quite a bit. And we do think that most programs today are moving solidly in the direction of welcoming people without discrimination, which is why it is all the more impor-

tant that we not go backwards when the risks that people face being put out on the street are so serious.

Ms. WEXTON. And following up on that, I know that you had talked a little bit earlier about how housing transgender people according to their gender identity does not endanger the safety of others.

How about privacy? Secretary Carson, you may remember, said something about big, hairy men being threatening or invading the privacy of women in shelters. Can you explain whether this is founded or what you have found with regard to privacy?

Ms. TOBIN. I am glad you asked. The Equal Access Rule actually requires shelters to have policies and procedures and to respond to any privacy concern raised by any resident, and that is, in my experience, what shelters do. And it is because of that, that the National Task Force to End Sexual and Domestic Violence has strongly supported these protections.

Shelter providers have found that this is absolutely not an issue. In fact, when I was at a community forum you held, Congresswoman, some months ago, we spoke with a woman there from down in Winchester, who said she had been turned away at one point from a women's shelter, forced to stay as the only woman in a men's shelter, where she was a target for sexual harassment because she so obviously stuck out, and later was welcomed into a women's shelter, and said the only time that being transgender even came up during the time she stayed there, sharing a room with several other women, was when several of the other women that she had met and befriended there said to her that they were inspired by getting to know her, and that she was persevering in the face of all the same struggles that they all faced, with homelessness and dealing with the stigma of being transgender on top of that, and they found that inspiring. And that was the only way that her being transgender even came up staying in a women's shelter and sharing a room together. So, that is very much reflective of what we hear from across the country.

Ms. WEXTON. HUD also announced changes to its Continuum of Care program in its 2019 Notice of Funding Availability, or NOFA. The 2019 NOFA removes all prior mentions of LGBTQ+ people, including incentives to promote effective services to transgender people experiencing homelessness. It also removes any mention of the 2016 Equal Access Rule.

Ms. Tobin, can you explain how these changes to the NOFA affect transgender people experiencing homelessness?

Ms. TOBIN. This is part of a pattern, even before HUD revealed its plan to roll back the rule, to gut it, to stop, to pull back everything, guidance, notices, everything that informs providers and shelter-seekers about the rule and their rights and helps people understand how to implement it and, in essence, gives a green light to discrimination.

Now, I don't think most providers, fortunately, are going to take them up on that, but some will. And that really means that people could be out in the cold and facing a lot of risks, which is exactly what HUD's programs have been established by Congress to prevent.

Ms. WEXTON. Thank you very much. I yield back.

Chairman GREEN. The gentlelady yields back.

The Chair now recognizes the gentlewoman from Michigan, Ms. Tlaib, for 5 minutes.

Ms. TLAIB. Thank you, Mr. Chairman. And thank you all so much for being here.

The Detroit Free Press published a story about a local resident who is transgender. In 2015, Emani Love, a 22-year old outreach coordinator and worker at a program for homeless and disenfranchised LGBTQ+ youth, legally changed her name, and she was able to get the new name on her State ID. However, the clerk refused to change the gender. Over the years, the State of Michigan's refusal to issue her correct ID has led to numerous humiliating and uncomfortable situations.

Emani's story is like other individuals in the trans community nationwide. The transgender community not only has to go through the difficulty of discrimination and violence before, during, and after transitioning, but they also face discrimination from their employers and from their communities, as you all know.

Worse, they face challenges from the government that is tasked with protecting them by having to fight for legal documentation that reflects their gender in name, a basic right indignity that gender individuals are granted every day.

Question for Ms. Tobin: Can you talk about those kinds of challenges, as well as associated costs and processes the transgender community faces when making gender name changes on legal documentation?

Ms. TOBIN. I am glad you asked that, Congresswoman. Transgender people do face many challenges. We all increasingly have to use ID every day for all sorts of things including accessing housing, employment, healthcare, and services. And for trans people who cannot easily get those documents updated and accurate, it can expose them to discrimination, harassment, and all manner of problems.

States across the country are making rapid progress in improving those procedures, but there are still significant barriers. And one of the problems with HUD's proposal to gut the Equal Access Rule is that it would actually go in exactly the opposite direction of the Housing First approach that experts in the field support, and HUD has until recently supported, by encouraging shelters to adopt strict requirements about ID and scrutinizing whether people's ID matches their gender presentation and so forth.

That would just increase barriers to shelter, not just for a minority of people who are at increased risk and need, but really for everyone. We should be reducing barriers to accessing emergency shelter, not increasing them.

Ms. TLAIB. And Mr. David, what role does proper legal identification play in the process of finding safe housing?

Mr. DAVID. Unfortunately, as Ms. Tobin mentioned, it has become a huge problem. Many members of the transgender community face additional obstacles simply getting access to housing, whether it be transitional housing or permanent housing. And if you are seeking to apply for a mortgage or you are going through the lending process and your vital documents do not actually correspond to your gender expression, you face additional obstacles,



which is one of the reasons why we are pushing so hard to pass the Equality Act. We need to make sure we enshrine those protections in statute. We do have some protections through judicial decisions, but we do not have them in statute on the Federal level.

But members of our transgender community, because in some States they do not allow transgender members to change their vital documents because they do not recognize their gender identity and expression, that is an additional obstacle that they have to face.

Ms. TLAIB. I represent the third poorest congressional district in the country, and nearly one-third of the transgender people in Michigan, 30 percent, are living in poverty. We continually talk about economic opportunities, jobs, and so forth, to try to combat poverty.

And I don't know, Ms. Tobin or Mr. David, if you can talk a little bit about—because one of the things that I did is we reached out to a center that helps a lot of my youth through the transition, trying to create care. And it always comes down to the stuff that we don't talk about enough here, which is the documentation that helps and gives us a role as government to allowing easy access to that, right? It's pretty simple.

I want to talk about how, for me, as a Member of Congress, am I able to really combat poverty in the transgender community if I cannot even get them the documentation that they need?

Chairman GREEN. The gentlelady's time has expired. We will have a second round, and you will be permitted to take up your question in the second round.

At this time, the Chair will recognize himself for 5 minutes.

Is it fair to say that market-based solutions will not prevent the invidious discrimination that is continuing currently? If you agree, would you kindly raise your hand, that market-based solutions will not prevent the invidious discrimination that is occurring now?

All hands have been raised. Let the record so reflect.

Is it fair to say that credit reports do not prevent intentional invidious discrimination? Credit reports do not prevent it? If you agree, would you raise your hands? A credit report.

Let the record reflect that all hands have been raised.

I am doing this because invidious discrimination is irrational. It makes no sense. And because it makes no sense, you cannot prevent it with something as simple as a credit report because people do it with intentionality. There are people who do not like us because they do not like the way we look, in my case, or because they perceive a person to be of a certain sex. It is irrational, and that kind of irrationality has to be circumvented with more than legislation that provides a civil remedy. Going to court is a great remedy if you have the money, if you have the lawyers. If you can perfect litigation, that can be efficacious.

It is my belief that we need criminal penalties. People who steal money from you at the bank can suffer from criminal penalties, penalties associated with fines and time in jail. I do not want to manage invidious discrimination; I want to end it. And one of the best ways to end it is with legislation that will penalize people who intentionally, and knowingly, discriminate against persons, and do so currently with a certain degree of impunity.

I have a bill, H.R. 166, the Fair Lending for All Act. This legislation carries with it penalties and fines so that persons who intentionally, knowingly discriminate will suffer more than some civil penalty leveled against the institution. People who discriminate have to be called out. They have to be dealt with. It is time for us to move to the next level in this fight, and the next level includes criminal penalties for stealing, for the theft, of my opportunity to have a loan.

This is more than simply a slap on the wrist, and I understand it. But we have to do it because, quite frankly, lending institutions sort of ignore these laws, and people are finding themselves having to come out of pocket with huge sums of money to fight this invidious discrimination.

I want you to take a look at my bill, H.R. 166, if you would, and send back to me your comments in terms of how you think it can impact what we are trying to accomplish with invidious discrimination.

I am also going to—because of the landmark nature of this hearing and the empirical evidence that has been presented—place all of your statements not only in this record, but also on my website. I want people to have access to what you have said. The evidence is unbelievably overwhelming, and we ought not just have a hearing today and let this be the end of it. This information has to be received and transmitted across the length and breadth of the country so that people will understand that what we are dealing with is real and that people are being impacted on a daily basis by this level of invidious discrimination. I will place it on my website at [algreen.house.gov](http://algreen.house.gov) and persons can go to that website and you will find all of these statements—[algreen.house.gov](http://algreen.house.gov).

With this said, I am going to yield back the balance of my time and recognize the gentlelady from Texas, Ms. Garcia, for an additional 5 minutes.

MS. GARCIA OF TEXAS. Thank you, Mr. Chairman. Thank you for the opportunity to ask two more questions that I had that, because of time in the first round, I could not do.

I want to ask Ms. Conron and Professor Sun the question about the Census. Do you think that it would be helpful, and for what reasons? In what areas would it be helpful to get a question on sexual orientation or gender identity on the Census?

MS. CONRON. Thank you for the question. It would be unbelievably helpful to get questions about sexual orientation, gender identity, and assigned sex at birth on the U.S. Census, as well as other surveys that are managed by the Census Bureau, like the American Community Survey, the current population survey, the surveys about housing, and so on and so forth.

These surveys are critical sources of information about socioeconomic status. They provide information about housing, information about employment, occupation, income, wages, and they really are critical for monitoring discrimination against people on the basis of all sociodemographic characteristics.

It would be a tremendous help to get these questions on the surveys, and frankly, it is a long time coming. We have about 20 years' experience collecting these data, and there really is no reason not

to put these items on the Census and these other surveys at this point in time.

Thank you.

Ms. GARCIA OF TEXAS. Professor Sun?

Mr. SUN. Thank you. I agree with Dr. Conron that the Census definitely should collect more information in this regard.

Although, they have started collecting some of the information since 1990, so they provide some like percentage of same-sex population at the neighborhood level up to like the ZIP Code or block level. But certainly more information, more detailed information in terms of demographics of same-sex people, would be very beneficial.

Ms. GARCIA OF TEXAS. Right. And Mr. David, with regard to this topic, it would take more than just the Equality Act or any of the Title VII cases in process; it would take action from Congress?

Mr. DAVID. Correct. Additional action from Congress to ensure that this information is actually enshrined in the Census.

Ms. GARCIA OF TEXAS. Right. Have you all met with or visited with the Census Bureau folks on this issue?

Mr. DAVID. I have had conversations with the Census Bureau on this issue in the past. I do not know whether or not their views have changed. Their initial views were not accommodating—that is probably the best word to use—but we will continue to have those conversations.

Ms. GARCIA OF TEXAS. Ms. Tobin, I wanted to follow up on some of the questions that Ms. Tlaib brought up with regard to the data and getting your birth certificate changed for the gender marker.

This is not only troublesome in many States—and I know in Texas, it is. It is not only troublesome; it is burdensome. You have to go to court. You have to have an affidavit from a doctor. It is a long process. And, in fact, it is so troublesome that in Harris County, my home county, and the home county of the Chair of this subcommittee, there was no judge before this last election who even wanted to take up the gender change because it requires a court hearing. They did not want to hear them, so people had to travel all the way to Austin to do it.

Could you just crystalize for us the average time the process goes through? Because there really are some people who think that we can sit here today and just decide overnight that we are going to change. For example, I would change and decide I am going to be a man beginning tomorrow, and the chairman would decide he was going to be a woman tomorrow. It is not that simple, is it?

Ms. TOBIN. Congresswoman, the procedures for name and gender changes on ID and birth certificates vary a great deal from State to State. These things are managed at the State level.

There is a tremendous amount of reform and improvement happening, but it is a process that can take many weeks or months in some jurisdictions. Even in jurisdictions that have streamlined that process a great deal, individuals do have to sign a statement stating under penalty of law that they are undertaking that change for purposes of being consistent with their gender identity and not for any other purpose. States have found that requirement to be sufficient to serve all of their official needs. That has been very successful across the country.

But even then, it can be a costly and time-consuming process, which is why it is important for Federal programs, that we not tie eligibility and access to critical services, especially things like emergency shelter, to things like ID document gender changes that can be so variable and burdensome to get across the country.

Ms. GARCIA OF TEXAS. Thank you. I yield back.

Chairman GREEN. The gentlelady's time has expired.

The Chair now recognizes the gentlewoman from Michigan, Ms. Tlaib, for 5 minutes.

Ms. TLAIB. Thank you, Mr. Chairman.

One of the things I think folks do not understand is that being poor can—you can die from being poor. It kills. Poverty in our country kills, maybe not getting access to clean drinking water, a home, food, whatever it is, healthcare.

It is important for me, as I am trying to combat poverty with all of my residents. It always starts with this documentation and getting this information in their hands so they can apply for the help, so they can seek it out.

And, so, if you can continue the conversation we started about that. I just want a lot of the neighbors and folks to fully understand it is not this—even the transitioning and everything that happens, the impact on their—especially my transgender neighbors, in that process, that it is not only discrimination and violence, horrible violence, but it is also their own government not making it easy on them, and that is something that I wanted to highlight here.

Mr. DAVID. Sure. I think putting it in context for people is critically important. If you do not have the appropriate documentation, you cannot get into a government building. You may not be able to get onto an airplane. But when we are talking about basic necessities, getting a job, getting a home, getting access to certain types of public accommodations, if you do not have vital documentation that is consistent with your gender identity, it makes it very, very difficult to talk about getting out of poverty. And many members of our transgender community face additional challenges.

Coming out as transgender, and we talked about—well, we actually did not talk about that specifically here. But the suicide rate, as an example, among Black transgender women is 47 percent: 47 percent of Black transgender people attempt suicide at some point in their life because of all of the challenges that they face.

Without this vital document, whether it be a driver's license or passport or some type of documentation, it is very difficult to get out of poverty. It makes it very difficult to get and sustain a job. It makes it very difficult to obtain housing.

One of the tools that I think is incredibly important for legislators to think about is creating solutions at the State level as we continue to fight to pass the Equality Act because many members of the transgender community need those changes now. So, in order for them to get the job and the housing, we need the State protections.

Ms. Tobin, I don't know if there is more that you want to add to that?

Ms. TOBIN. You stated it very well. There certainly are still some States in which you have to pay high fees, and wait many months

to go to court. There is a small and shrinking, but still a number of States that require you to show proof of medical procedures that might even be medically contraindicated for you, without which you cannot obtain appropriate documentation, and you can have exactly all of the barriers to opportunity that Mr. David outlined.

And, so, it is definitely important that we pass the Equality Act at the Federal level, and that we work at the State level to continue to make accurate ID available to everyone.

Ms. TLAIB. Thank you, Ms. Tobin, and thank you, Mr. David. I yield back, Mr. Chairman.

Chairman GREEN. The gentlelady yields back.

The Chair now recognizes the gentlewoman from Massachusetts, Ms. Pressley, for 5 minutes.

Ms. PRESSLEY. Thank you, Mr. Chairman.

I know it is off topic, not germane to the subject for today, but I would be remiss if I did not just offer to all of you, and I would love to enlist you as accomplices in this work. I support the Dignity for Incarcerated Women Act. And given the confluence of all of the intersectionality of both oppression and trauma and discrimination here, we know that so many transgender individuals have no other choice but to do sex work.

I am for decarceration, but while folks are incarcerated, we need to make sure they are treated with dignity and that they are safe. And, so, I hope that some of you would be willing to work with me on those protections and those issues specifically. And as I mentioned earlier, I am vice chairing the Task Force on Aging and Families, these specific nuance issues facing our LGBTQ+ elders.

But my question, Mr. Creighton, was actually on the consumer reporting side of things. I am a firm believer in data. The best policies are informed by data; that data to mean the lived experiences of people. I also believe that that which gets measured, gets done. So we need that reporting for the purposes of transparency and accountability.

Your organization prides itself on being the voice of the consumer reporting industry. How can an eviction be reflected on an individual's credit report or rental history report?

Mr. CREIGHTON. Right now, we do not collect that information, because it is not predictive in whether or not somebody is going to pay back a loan. And we would suggest that there is nothing in the gender identity or sexual orientation of an individual that would be predictive for a loan. And, so, we would not collect it. Our business is in credit reporting.

Ms. PRESSLEY. I see.

Mr. CREIGHTON. Not in—

Ms. PRESSLEY. Okay. Does eviction information specify whether discrimination played a role in the eviction?

Mr. CREIGHTON. Eviction records are what they are. We do not—we are just passing on the eviction records that we get from other places in consumer reports. Of course, eviction is not part of a credit report. It is part of the other kind of consumer reports that we do.

Ms. PRESSLEY. And do you believe the lack of information about discrimination in rental history reports puts LGBTQ+ individuals at a further disadvantage when seeking rental housing?

Mr. CREIGHTON. I don't know the answer to that.

Ms. PRESSLEY. Any other opinion you would like to elaborate on where that is concerned?

Mr. CREIGHTON. Eviction records are important for landlords to consider when they are looking to rent an apartment to somebody, and it is one of many factors that they are going to take into account. It should not be the determinative factor, but it should be a factor. Eviction records are public records, and so we help landlords get access to them.

Ms. PRESSLEY. Okay. Anyone else on the panel care to comment?

Mr. SUN. I just want to add that when we tried to merge the HMDA data with the Fannie Mae single family loan performance data, we did find that there is some evidence that same-sex couples are less likely to prepay their mortgage. In terms of default risk, there is no prediction power whether they are more likely or less likely. They are equally likely to default on the loan.

But in terms of the prepaying risk, that is still a legitimate risk factor to lenders. There is a prediction power that same-sex couples turn out to be less likely to prepay for their loan.

So, there is some chance that it might have some prediction power in terms of the overall credit risk assessment.

Ms. PRESSLEY. Thank you, Professor Sun. Anyone else? We have about a minute and 19 seconds left here.

Mr. ADAMS. I would just add that I think that there is ample evidence that the failure to ask for data on sexual orientation and gender identity in fact contributes to discrimination and marginalization, and we need to look no further than the Trump Administration's efforts to remove those questions from the National Survey of Older Americans Act participants in 2017. In fact, when those questions and when that data was being collected, what it demonstrated was the failure of federally funded elder services to arrive at and be received by LGBTQ+ older adults. If we stop asking those questions, we do not identify that problem of discrimination and access.

Ms. PRESSLEY. Mr. David?

Mr. DAVID. And I also say that, although the data may not be collected in the form that we want now, we do know that in the mortgage and lending industry, same-sex couples are facing discrimination. If you receive a lending application or mortgage application from Ben and Peter, as opposed to Ben and Susan, we know that that application is being treated differently.

And we know from our history, we know from redlining, we know from mortgage-backed securities, that the financial sector has, unfortunately, treated racial minorities, and disadvantaged groups, differently. And unfortunately, it is the same here for same-sex couples and members of the LGBTQ+ community.

Ms. PRESSLEY. Thank you. Thank you, panel.

Chairman GREEN. The gentlelady's time has expired.

The Chair recognizes himself for a final 5 minutes.

Let's continue where you left off, Mr. David. Can you give other examples of how the loan officer can ascertain that the borrower is a member of the LGBTQ+ community?

Mr. DAVID. In addition to the mortgage application, which would reflect the names of the parties seeking the mortgage, in some

cases, there may be an interview where the parties will show up to talk about their interest in purchasing a home. And at that point, they identify their relationships.

In other instances, they indicate that they are married on the application itself, and they indicate the person to whom they are married. And under all of those circumstances, the financial institution will have information with respect to the sexual orientation of the party seeking to purchase the loan, or seeking to enter into some type of financial transaction with the institution.

Chairman GREEN. Let's move to the area of housing. How have we been able to ascertain that the discrimination exists with same-sex couples? Perhaps testing might be a part of the answer. Would someone care to respond? Mr. Adams?

Mr. ADAMS. Yes. Thank you. We have good beginner data on that question because of research that has included testing-based research. The study that I referred to previously that documents discrimination at the level of 48 percent against older, same-sex couples, is testing-based discrimination in which different-sex couples and same-sex couples applied for senior rental housing. That kind of testing can ferret out discrimination and identify where we need to take action.

And I might add that studies like that demonstrate that market incentives are not enough to eliminate discrimination. There are plenty of market centers and senior rental housing, and we still see very high levels of discrimination.

Chairman GREEN. Thank you. I am going to conclude with some statements.

I think this hearing has been exceedingly important because we have legitimized data. We have legitimized the fact that this invidious discrimination occurs.

It is important for us to first recognize that the problem exists if we are going to do something about it. For too long, people would simply ignore the facts, not have to do something, because there was no harm taking place because it was being ignored. Some people would simply say, well, that is just not true. People do not discriminate against gay people.

But today, we have demonstrated with empirical evidence that this level of invidious discrimination exists, such that it is quite harmful not only to the persons who are being discriminated against, but also to the country. Because I have some evidence here indicating that the community, the LGBTQ+ community, consists of persons numbering in the millions—approximately 16 million, I believe, is the number that I have—and that we have a trillion dollars' worth of buying power within the LGBTQ+ community. So, it makes no sense for us to discriminate because we are hurting ourselves when we do this. But it does happen. We have legitimized it, the discrimination, that the discrimination exists.

And I would add this: There are people who believe that we should approach these problems with each community acting on its own. I am not one of them. I think that as an ally of the LGBTQ+ community, but not a member of it, I have a duty to do all that I can to prevent the discrimination.

But I should not be alone. I think that when it comes to discrimination against African Americans, then I should have the support

of the LGBTQ+ community. And when it comes to discrimination against Asian Americans, we should support the effort to end that discrimination. We cannot silo ourselves and deal with these problems in an effective way. We have to deal with them in concert with each other.

And we have to be bold enough and brave enough to tell people within our own communities that we have to reach across the chasm to persons in the other communities so that we may work together. It is with this strength that we can not only manage, but eliminate these problems.

I started this hearing by indicating that you are not alone. And I will end with, you are not alone. You have allies within this Congress who are going to fight with you and for you.

I would like to thank the witnesses for their testimony and for devoting the time and resources to travel here and share their expertise with this subcommittee. Your testimony today has helped to advance the important work of this subcommittee and of the United States Congress.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Without objection, the hearing is now adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]



# **A P P E N D I X**

October 29, 2019

October 29, 2019  
 United States House of Representatives  
 Financial Services Committee  
 Subcommittee on Oversight & Investigations

Financial Services and the LGBTQ+ Community:  
 A Review of Discrimination in Lending and Housing

Testimony of Michael Adams, CEO, SAGE

Thank you Chairman Green and Ranking Member Barr for the opportunity to be here today on behalf of SAGE. I am honored to share the stories of the challenges that LGBT older people endure and their resilience in the face of financial insecurity and housing discrimination.

SAGE is uniquely situated in understanding this population that we serve each and every day in communities across the country.

**About SAGE**

Founded in 1978, SAGE is the world's oldest and largest organization dedicated to improving the lives of LGBT older people. SAGE's mission is to lead in addressing issues related to LGBT aging. In partnership with its constituents and allies, SAGE works to achieve a high quality of life for LGBT older people, supports and advocates for their rights, fosters a greater understanding of aging in all communities, and promotes positive images of LGBT life in later years. We fulfill our mission through advocacy and by providing direct and supportive social services, social and recreational activities, education, and technical assistance programs both locally and nationally. SAGE has four decades of experience piloting and scaling programs.

Over the organization's lifetime, SAGE has pioneered first-in-the-nation programs, including:

- the country's first full-time LGBT senior center, The Edie Windsor SAGE Center in Midtown Manhattan, since expanded to Harlem, Brooklyn, the Bronx, and Staten Island;
- the country's first Friendly Visiting program for homebound and frail LGBT older people;
- the country's first LGBT Older Adult Drop-In Center (now "SAGE at The Center");
- the country's first support group for LGBT older people with HIV;
- the country's first LGBT aging training and credentialing program, SAGECare; and
- New York State and City's first LGBT-welcoming affordable elder housing complexes being developed in the Fort Greene neighborhood of Brooklyn (Stonewall House) and the Tremont neighborhood of the Bronx (Crotona Senior Residences).

Today, SAGE serves as a safety net for tens of thousands of LGBT older adults who face the challenges of aging, but also confront marginalization and discrimination due to their sexual orientation and/or gender identity. SAGE offers a safe and welcoming space for community, connection, and support. To ensure that LGBT older people can access a full continuum of services, SAGE partners with diverse organizations across the aging and health fields and LGBT communities. No other organization in the nation provides this comprehensive range of programming to LGBT older people.

SAGE's unique role as a local service provider and a national organization allows us to work with affiliates and partners nationwide to incubate, share, and elevate successful intervention models across the country, reaching LGBT older Americans nationwide. From Alaska to Puerto Rico, SAGE's national network of 29 affiliates – SAGENet – helps to reduce isolation, improve financial security and enhance quality of life for LGBT older Americans living in every region of the U.S. Affiliates work closely with SAGE to engage stakeholders in their communities in grassroots advocacy in support of LGBT older adults.

SAGE's advocacy work ensures that the unique needs of LGBT older people are addressed by our state, local, and federal governments. Our organization has a unique voice, bringing a much-needed elder perspective to the needs of the LGBT community, and an LGBT perspective to the aging community.

SAGECare trains and credentials elder care providers on LGBT cultural competence. Since its launch in 2016, SAGECare trainings have reached more than 66,000 elder care professionals. Across 48 states, 373 agencies and providers have been credentialed. As a result, nearly 133,000 LGBT older Americans are now receiving LGBT competent care from trained SAGECare providers.

SAGE's National Resource Center on LGBT Aging (NRC), a partnership with the U.S. Administration on Community Living, is the country's only comprehensive national resource center focused on LGBT older adults. Led by SAGE, in collaboration with 18 organizations from around the U.S., the NRC offers technical assistance and vital educational resources, including our online portal, six best practice guides on a variety of issues that affect LGBT older people, and various fact sheets, guides, and assistance on nearly a thousand topics relevant to LGBT aging. These include caregiving, LGBT-inclusion and cultural competency, elder abuse and neglect, healthcare and insurance, and housing. Its website has been accessed more than 1 million times.

Recognizing that LGBT older people face profound challenges in securing welcoming and affordable housing, SAGE launched our national LGBT Elder Housing Initiative to address LGBT elders' housing challenges. Aimed at increasing the LGBT-welcoming elder housing options available to LGBT older people across the country, the Initiative leverages five strategies to bring systemic change to the housing sector. These strategies include: building LGBT-friendly housing in New York City; advocating nationally against housing discrimination; training eldercare providers to be LGBT culturally competent; educating LGBT older people about their housing rights; and helping builders across the U.S. replicate LGBT-friendly elder housing.

Reflective of the diversity of the older LGBT community, SAGE employs a cross-sector alliance of partners from the LGBT, aging, HIV, people of color, and other communities to work toward our goals. SAGE integrates learnings from our work with these coalitions into our own program development to better serve diverse LGBT elders.

SAGE is also a founding member of the Diverse Elders Coalition, which includes the National Caucus and Center on Black Aging (NCBA), National Asian Pacific Center on Aging (NAPCA); National Hispanic Council on Aging (NHCOA); National Indian Council on Aging (NICOA); and Southeast Asia Resource Action Center (SEARAC). Partnerships like the DEC enable SAGE to effectively elevate the issues affecting diverse communities of elders and their unique needs.

Also, SAGE leads the National LGBT Aging Roundtable, a coalition of 129 LGBT and HIV serving agencies across the nation, to share information and strategize around LGBT-inclusive and HIV-inclusive aging policy.

### **Introduction**

My goal today is to add to the Committee's understanding of the causes as well as the economic and social costs of discrimination, particularly those relating to fair housing, as they relate to LGBT older adults.

After sharing two stories of our elder pioneers, I will address the overall statistics on the growing population of LGBT elders, their financial insecurity, housing insecurity, and the health and other challenges they face as the first generation to be "out and proud." I will shed some light on how SAGE and others are working to address these issues. And I will talk about the need for Congress to act in the face of the Trump administration's assault on the rights and wellbeing of LGBT elders.

As a starting point, it is important to ground our understanding in the lived experiences of the elders we serve.

### **Jay Toole**

Like countless members of the LGBT community, Jay Toole has stood up to a lifetime of ignorance, harassment, and danger simply for being who she is.

At 13, Jay was forced to leave home because of her family's vehement homophobia. At 20 and homeless, Jay learned that something extraordinary was taking place at New York City's Stonewall Inn. Now 71, Jay reflects on how much has changed in the decades since Stonewall.

*I was 20 during the Stonewall Uprising. It was amazing to see so many LGBT people come together for that one moment in time to say to the police and the world, 'Enough is enough! You have to stop harassing us, beating us, arresting us!'*

*Before that night, we'd all had so much violence and viciousness aimed at us. By that first night of Stonewall, I'd already had my ribs broken multiple times by the police—and by straight guys who would come to the village to beat us up. We got arrested all the time, just for being ourselves and hanging out together in bars. To me, one of the biggest lessons of Stonewall is that we were much stronger than we thought. I don't think the LGBT community realized we had the strength to protest and fight back. Stonewall taught us that if we join together, we can defend ourselves. We are strong. We are a movement.*

### **Jeremiah Newton, Activist and Filmmaker**

As a boy, Jeremiah Newton realized that he was gay. He knew he would have to fight for his place in the world. It was nearly a decade before the Stonewall Uprising.

*I knew I had to keep being gay a secret. At a certain point, I thought: 'OK, this is what you are. It makes you happy, it fulfills your needs. I'm not changing for anybody.' I was 10 or so at the time.*

Even at that young age, Jeremiah had a strong enough sense of self to stand up for who he was and affirm himself despite all the dangers every LGBT person had to face at that time. Jeremiah would bear witness to the birth of the modern LGBT rights movement.

*As a young gay man, I witnessed the first night of the Stonewall Rebellion. We thought it was yet another raid on a gay bar — nothing new. But something big started that night.*

*It's important to know that everybody who is LGBT, whether we are 15 or 100, has been through our own personal Stonewall. We've gone through something difficult. We've jumped over that wall, to be free.*

Inspired by what he witnessed — and galvanized by the massive discrimination he and others in the LGBT community continued to face — Jeremiah became an activist. Today, Jeremiah speaks eloquently about the power of standing up for our own and the continuing need to defend our community's safety, despite all the progress our brave pioneers have made since Stonewall.

*I'm 70 years old now. At a certain point in life, as you age, you are who you are. You're not going to change for anybody. And you want to live your life with decency and grace.*

*Six years ago, I was forced to retire. I had an accident at work and my health started declining. I was having trouble walking.*

*The SAGE social worker, Jane, was encouraging and knowledgeable. She visited me at home because I was not able to travel. She helped me navigate the bureaucracies of unemployment benefits, Social Security, Medicaid, and more. Getting these things set up is daunting and complicated. When you're ill, you just can't do it alone. Jane referred me to a physical therapist and helped arrange for home aides, since I am currently bedridden. I also have a wonderful SAGE Friendly Visitor who visits me every week. She is a delightful, positive person. And, as a documentary filmmaker like me, we have a lot to talk about.*

Like many people, Jay and Jeremiah's experiences touch on themes SAGE sees consistently across the LGBT elder population — financial vulnerability, economic insecurity, and disproportionate susceptibility to financial scams and financial abuse. The stories of many LGBT elders are exacerbated by housing insecurity, housing discrimination, and discrimination in the job market, to create a cumulative impact of discrimination across the life course, which as we see with Jay and Jeremiah, severely and negatively impacts LGBT older people into their later years.

### **A Growing Population and Growing Financial Insecurity**

We are witnessing an exponential boom in the population of older adults in the United States. By 2060, one in five U.S. residents will be over the age of 65. The same is true for LGBT older people; by 2030, the LGBT elder demographic in the U.S. will grow to 7 million. Due to longer life-spans, persistent poverty, high cost of living, and decline in retirement savings, many older people are now aging into financial insecurity — and that fact is even more pronounced for LGBT older people.

According to the National Council on Aging (NCOA), over 23 million Americans age 60 and older are economically insecure.<sup>1</sup> The outlook for LGBT older people is even more concerning. SAGE's *Out and Visible* study, conducted by Harris Poll, reveals that LGBT older people are far more

<sup>1</sup> National Council on Aging, *Economic Security for Elders: Fact Sheet*. 2014.

concerned than non-LGBT older people about their financial security and retirement.<sup>2</sup> This is not surprising: LGBT older people are at increased risk for poverty. In fact, a study by the Williams Institute at UCLA found that 24% of lesbian and 15% of gay men are poor, compared to 19% and 13% of heterosexual women and men. Nationally, same-sex partnered older people lag behind different-sex married households in income, assets, and home ownership; elder same-sex partnered households have 37.4% less income from retirement savings than elder heterosexual couples.<sup>3</sup>

Older people in same-sex relationships have suffered the cumulative effects of discrimination. This uneven playing field has real and lasting effects on financial security, particularly in retirement years. For example, having not had the right to marry for so long, many same-sex couples are not eligible for spousal or survivor benefits.

Moreover, LGBT older people's thin support networks further contribute to their heightened experience of social isolation. In fact, 90% of LGBT older adults report being childless compared to 20% of their cisgender heterosexual counterparts, limiting their familial support network. Given these statistics, it is not surprising that married different-sex older couples have an income 4.3 times higher than same-sex older couples when entering retirement, and their retirement income is 34.7 percent higher.

LGBT older people are disproportionately worried that they have not saved enough money to retire. In fact, 42% of LGBT older people are very or extremely concerned that they will outlive the money they have saved for retirement, as compared to 25% of non-LGBT older people. Forty-four percent of LGBT older people are very or extremely concerned that they will have to work well beyond retirement age just to have enough money to live, as compared to 26% of non-LGBT older people. And finally, 43% percent of LGBT older people are very or extremely concerned that they will not be able to deal with unexpected, major emergencies in retirement, as compared to 30% of non-LGBT older people.

Moreover, today's older people are both more vulnerable to persistent economic insecurity and are at greater risk to be victimized by financial abuse and fraud. The National Center on Elder Abuse (NCEA) estimates that approximately five million older adults experience financial abuse per year.<sup>4</sup> The widespread abuse and resulting personal losses can have devastating impacts on older adults' physical, mental, and financial health.<sup>5</sup> In SAGE's experience working with tens of thousands of LGBT older adults across the country, LGBT elders are even more susceptible to financial abuse because they frequently lack the familial and social support networks that help guard against such abuse.

#### **Life at the Margins: Social Isolation, Health Challenges, Stigma, and Discrimination**

<sup>2</sup> SAGE. *Out and Visible: The Experiences and Attitudes of Lesbian, Gay, Bisexual and Transgender Older people, Ages 45-75*. 2014.

<sup>3</sup> Albelda, R. et al. Poverty in the Lesbian, Gay, and Bisexual Community. The Williams Institute. University of California School of Law. March 2009.

<sup>4</sup> Wasik, John F. *The Fleecing of America's Elderly*. Consumer Digest, 77-83. March/April 2000.

<sup>5</sup> MetLife Mature Market Institute, National Committee for the Prevention of Elder Abuse, and Center for Gerontology at Virginia Polytechnic Institute and State University. *Crimes of Occasion, Desperation, and Predation against America's Elders*. June 2011.

In addition to poverty, the effects of a lifetime of stigma and discrimination put many LGBT older people at a greater risk for physical and mental distress, social isolation, depression and anxiety, chronic illness, delayed care-seeking, poor nutrition and premature mortality. Yet, despite their need for care, LGBT older people are less likely than their heterosexual and cis-gender peers to access aging services and to reach out to providers, senior centers, meal programs and other earned benefit programs because they fear discrimination and harassment if their sexual orientations or gender identities become known. The fear of encountering an unwelcoming health care provider can lead many LGBT elders to delay seeking necessary care or make them reluctant to disclose their sexual orientations or gender identities to health care providers, which can compromise their patient care plans. In some instances, an LGBT elder might only seek assistance for emergency care, which can be costly to his/her health and to the health care system.

Despite advances in LGBT civil rights, LGBT older people remain pushed to the margins, and one of the most invisible, underserved and at-risk populations among our nation's older adults. They, like their non-LGBT peers, generally prefer to age in their own homes rather than in institutions, especially when many institutions are not LGBT culturally competent. LGBT older people, however, are more likely to lack the familial and social support systems that are essential to healthy aging, and they often lack the capacity or resources to age in their own homes or communities. Researchers at Fordham University found that, compared to older people in the general population, LGBT older people in New York City are:

- Twice as likely to live alone;
- Half as likely to have spouses, life partners or significant others;
- Half as likely to have close relatives to call for help;
- More than four times less likely to have children to help them; and
- More likely to have no one to call upon in an emergency.

A 2014 SAGE-Harris Poll study, *Out and Visible*, revealed various challenges that LGBT older people in the United States face, including:

- Profound concerns about physical decline, remaining independent, loneliness, and the loss of support systems;
- A fear of judgment and inferior care from healthcare providers, causing many not to disclose their sexual orientations or gender identities to their providers; and
- Smaller support systems over time, including high numbers of LGBT single older people living alone and in fear of discrimination in housing and long-term care settings.

*Out and Visible* also found that far more LGBT older people are worried that they have not saved enough money to retire. Despite their lack of financial preparedness, *Out and Visible* also reveals that, when planning for retirement, LGBT older people rely largely on their own knowledge and education. Understanding where and how LGBT older people access information to address their financial and other retirement questions is critical to supporting their choices over time.

Thin support networks coupled with unique needs and health disparities means that the diverse community of today's LGBT older people often need to rely more on aging providers and non-profit organizations. Unfortunately, there is a dearth of LGBT culturally competent geriatric health care services, even in metropolitan areas, leaving LGBT older

people to access mainstream providers who typically lack proficiency in the unique needs of LGBT older people.

Now consider the additional burden for older people living with HIV. As of 2015, half of all Americans living with HIV were age 50 or older; that proportion is expected to rise to more than 70% by 2020 – just next year. Few programs are designed to address the unique social service and healthcare needs of older people living with HIV. This further complicates and harms their health and health care.

### **Intersectionality: an Important Consideration in Health and Financial Security**

Differences in aging concerns among subpopulations within the LGBT community affect other groups as well when it comes to health and financial security. For example, like the African-American community, Hispanic Americans experience an income gap when compared to the general population. The Diverse Elders Coalition (DEC), of which SAGE is a founding member, reports that low education levels and language barriers are factors that have historically kept many Hispanic elders in low-wage and low-benefits jobs. In addition, according to the DEC, economic security is one of the three biggest challenges facing Hispanic elders today, alongside health and leadership development and empowerment.

Therefore, many Hispanic elders face economic insecurity, poverty, the threat of hunger and an inability to save for retirement. As a result, Hispanic elders are more likely to be partially to entirely dependent on Social Security income than their peers. Without Social Security income, half of Hispanic older people would live in poverty. Further, given that many Hispanic elders worked in labor-intensive jobs that had physical effects on their bodies, re-entering the workforce can also be difficult if they are not physically able.

Compounding the challenges for an aging Hispanic LGBT population, a needs assessment undertaken in 2013 by the National Hispanic Council on Aging (NCHOA), uncovered that LGBT Hispanic older people feel isolated from their various communities – whether it is their families, their Hispanic community, or their LGBT community. The fact that many LGBT Hispanic older people report that they suffer from multiple layers of discrimination and that they cannot count on their communities and those who should be closest to them for support is particularly troubling. Research shows that, in early life, LGBT Hispanics endure mental health issues and bias associated with HIV, racism, and their LGBT identities at even higher rates than the general LGBT population.

Hispanic LGBT older people also face economic difficulties, which can have a negative impact on health. In later life, LGBT Hispanics suffer from poorer health, including higher incidence of HIV, diabetes, asthma, and impaired vision, because of poor health earlier in life. Yet, they are less likely than other LGBT older people to be able to afford prescription medication. With the lowest access to health insurance of all racial and ethnic groups, Hispanic people are more likely to enter old age, and Medicare, in poor health. In fact, LGBT Hispanic older people likely face among the most severe health burdens of the LGBT, Hispanic, and older people populations. Making matters worse, Hispanic LGBT older people are less likely to have social support and more likely to endure victimization, neglect, and mental health problems than the general LGBT elder population.



African American older people experience similar challenges. According to the U.S. Department of Health and Human Services, African Americans face an array of health disparities, including a higher death rate from asthma, influenza, pneumonia, diabetes, heart disease, stroke, cancer, and HIV/AIDS.<sup>6</sup> In addition, the Alzheimer's Association reports that African Americans are at greater risk of vascular dementia and that "[t]he prevalence, incidence, and cumulative risk of Alzheimer's disease appears to be much higher in African-Americans than in non-Hispanic whites."<sup>7</sup> Likewise, AARP's report, *Disrupting Racial and Ethnic Disparities: Solutions for New Yorkers Age 50+*, states that, "[w]idespread and well-documented racial and ethnic health disparities persist across New York State, driven by a multitude of interacting factors including access, affordability and other health care system factors, as well as socioeconomic factors that contribute to social disadvantage, such as poverty, residential segregation, unemployment or low educational attainment."<sup>8</sup> Inevitably, when these identities intersect, older African Americans who also happen to be LGBT, are not only at a higher risk for a variety of comorbidities, but they are also less likely to have access to the culturally competent care they need to remain healthy.

### **Transgender Elders: Unemployment, Discrimination, and Financial Insecurity**

The Trump administration's policies have repeatedly put a target on the back of transgender people.<sup>9</sup> Countless federal agencies have demonstrated the administration's animus, as we have seen with: the Department of Education withdrawing guidance designed to protect and respect transgender students in schools; a move pushed by the President himself to discriminate against transgender patriots who wish to serve in the military; HUD denying the ability of transgender people to seek safe and affirming refuge in homeless shelters; the US Department of Health and Human Services seeking to gut the Affordable Care Act's non-discrimination protections; the Department of Labor gutting non-discrimination protections for federal contractors; and the Administration for Community Living attempting to delete a question on transgender elders from the National Survey of Older Americans Act Participants.

This is all the more shameful given the challenges transgender older people already face. Transgender adults in particular face higher rates of under and unemployment than cis-gender people because of discrimination on the basis of gender identity – something that is so prevalent that transgender older people believe that it is a “normal” part of their lives.<sup>10</sup>

<sup>6</sup> <https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=61>

<sup>7</sup> <https://www.alz.org/media/Documents/african-americans-silent-epidemic-r.pdf>

<sup>8</sup> <https://aarp-states.brightspotcdn.com/99/73/da48247723efcc428025125d3ddb/aarp-disparitiespapersummary-booklet-final.pdf>

<sup>9</sup> <https://transequality.org/the-discrimination-administration>

<sup>10</sup> Conron, K.J., Scott, G., Stowell, G.S., & Landers, S.J. (2012). Transgender health in Massachusetts: Results from a household probability sample of adults. *American Journal of Public Health*, 102, 118–122; Grant, J.M., Mottet, L.A., Tanis, J., Harrison, J., Herman, J.L., & Keisling, M. (2011). *Injustice at every turn: A report of the National Transgender Discrimination Survey*. Available from Washington, DC: [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf) (last accessed March 10 2017); Persson, D.I. (2009). Unique challenges of transgender aging: Implications from the literature. *Journal of Gerontological Social Work*, 52, 633–646.

Discrimination has far-reaching effects beyond the employment arena - it can impact social connectedness, mental health, and adversely impact access to aging services and supports. Research shows that negative experiences not only with social exclusion but also with discrimination can preclude some LGBT people from creating support networks, which can lead to social isolation and mental health challenges. In fact, transgender older people are more likely to face cultural, social, or geographic isolation.<sup>11</sup> On top of that, LGBT older people who grew-up when they were marginalized and stigmatized, who carry those experiences and fear of discrimination with them, may now have fewer social connections. Together, stigma and discrimination intensify a lack of social supports and increase social isolation.

This discrimination also impacts LGBT individuals' health and access to healthcare. For transgender older people who need services and supports, the shortage of culturally competent providers and the fear of discrimination by service providers are especially acute. Research shows that fear of discrimination because of internalized stigma creates challenges in accessing health care.<sup>12</sup> Researchers have also found that both LGBT victimization and discrimination are strong predictors of physical and mental health challenges for LGBT older people.<sup>13</sup> In fact, transgender older people are even more likely than are other LGBT older people to suffer from physical and mental disabilities, including unique health issues related to the process of transitioning.

Of note for this Committee, transgender older people are more likely to have an income level at or below the poverty line.<sup>14</sup> Even if they do not live in poverty, transgender older people are more likely than other LGBT older people to face financial insecurity. For example, while a recent study found that 26% of LGBT older people ages 65 and older live at or below 200% of the federal poverty level, this figure rises to 48% for transgender older people.<sup>15</sup>

The Trump administration's policies are making these disparities worse, not better.

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<sup>11</sup> A recent AARP study found that transgender older adults are significantly less likely than other LGBT older adults to have cisgender friends, family members, or neighbors as a part of their "personal support network." Angela Houghton, AARP Research, *Maintaining Dignity: Understanding and Responding to the Challenges Facing Older LGBT Americans: An AARP Survey of LGBT Adults Age 45-Plus* (2018) ("AARP Survey"), available at [www.aarp.org/content/dam/aarp/research/surveys\\_statistics/life-leisure/2018/maintaining-dignity-lgbt](http://www.aarp.org/content/dam/aarp/research/surveys_statistics/life-leisure/2018/maintaining-dignity-lgbt).doi:10.26419%252Fres.00217.001.pdf.

<sup>12</sup> Dibble, S. L., Eliason, M. J., & Christiansen, M. A. (2007). Chronic illness care for lesbian, gay, & bisexual individuals. *Nursing Clinics of North America*, 42, 655- 674; viii. doi:10.1016/j.cnur.2007.08.002

<sup>13</sup> Fredriksen-Goldsen, K. I., Kim, H. J., Shiu, C., Goldsen, J., & Emlet, C. A. (2015). Successful aging among LGBT older adults: Physical and mental health-related quality of life by age group. *The Gerontologist*, 55, 154–168. doi:10.1093/geront/gnu081

<sup>14</sup> An estimated 29 percent of all transgender people live below the poverty line, compared to 14 percent of the general population. See Sandy E. James et al., Nat'l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey 5* (2016) ("2015 U.S. Transgender Survey"), available at <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

<sup>15</sup> Movement Advancement Project & Services and Advocacy for Gay, Lesbian, Bisexual and Transgender Elders, *Understanding Issues Facing LGBT Older Adults* at 10 (2016), available at <http://www.lgbtmap.org/file/understanding-issues-facing-lgbt-older-adults.pdf>.

### **Housing Insecurity**

These disparities manifest when accessing one of our most basic needs: housing. Quality, affordable housing is the most basic social determinant of health.<sup>16</sup> Affordable housing is the single most powerful public health intervention. Safe, stable housing has been shown to positively impact the health of entire communities and improve overall health equity. Service-enriched housing is a critical part of this housing continuum and plays a particularly important role in addressing health disparities among people with no or extremely low-incomes and living with chronic health conditions.<sup>17</sup> Appropriate housing is a prerequisite for optimal health, quality of life, and independence for LGBT older people.

LGBT older people, however, face profound challenges in accessing welcoming housing. A 2014 ten-state investigation conducted by the Equal Rights Center found that 48% of same-sex older couples seeking housing in older adult independent living facilities across the country experienced discrimination. This pervasive discrimination was also noted in a 2013 study by the U.S. Department of Housing & Urban Development (HUD), *An Estimate of Housing Discrimination against Same-Sex Couples*, which found that same-sex couples are far less likely to receive favorable responses to e-mail inquiries for electronically advertised housing rentals.

The data from these studies, combined with reports by SAGE constituents, shows the pervasive challenges that LGBT older people face when trying to find appropriate housing. One need look no further than the case of Mary Walsh and Bev Nance, who in 2016 faced blatant discrimination when applying to live at Friendship Village, an elder community in St. Louis, Missouri. The facility denied them housing, saying that Mary and Bev's marriage did not comport with Friendship Village's biblical view of marriage.

Yet despite these stories and these statistics, many LGBT older people have no recourse to address their experienced discrimination. In a majority of states in this country, LGBT people – including vulnerable LGBT elders – are not protected from discrimination based on their sexual orientation and/or gender identity.

The data shows the pervasive nature of the challenges faced by LGBT older people in need of housing and helps explain why 44% of LGBT older people who responded to SAGE and Harris Poll's 2014 national market study indicated that they were "somewhat or very interested" in living in housing specifically designed for LGBT older people. LGBT older people need – and deserve – better access to LGBT-affirming housing, care and supportive services. Yet very few programs are designed to address their unique needs.

This housing crisis among LGBT older people will only deepen. Despite the growing LGBT elder population, there are less than a thousand units of affordable housing nationwide that are built or being built that are specifically LGBT-welcoming, and developed to respond to the unique needs of

<sup>16</sup> Corporation for Supportive Housing (July 2014). *Housing is the Best Medicine Supportive Housing and the Social Determinants of Health*.

<sup>17</sup> Henwood, BF, Cabassa LJ, Craig CM, Padgett DK. (December 2013). *Permanent Supportive Housing: Addressing Homelessness and Health Disparities?* American Journal of Public Health; Vol. 103 Supplement 2:S188-92.

LGBT older people. As such, the vast majority of LGBT older people who need elder housing in their later years live in mainstream housing communities that, more often than not, are not equipped to appropriately care for LGBT populations. As a result, many LGBT older people are forced back into the closet in their golden years.

#### **National LGBT Elder Housing Initiative**

SAGE is transforming the national landscape of LGBT aging and affecting real change in the affordable housing sector for LGBT Americans across the country. Through technical assistance and coordinating partnerships with skilled affordable housing developers, owners and operators of residential rental housing, government bodies and state and municipal agencies, commercial and government lending institutions, syndicators and investors, and community partners, SAGE is pioneering innovative approaches and solutions for inclusive housing.

SAGE's National LGBT Elder Housing Initiative, launched in 2015, is our coordinated response to systemically address the housing crisis facing LGBT older Americans. This Initiative is a comprehensive national initiative aimed to increase the LGBT-welcoming elder housing options available to LGBT older people across the country. SAGE's National LGBT Elder Housing Initiative is comprised of five inter-locking strategies to bring systemic change to the housing sector to ensure that the nation's existing elder housing stock is safe and welcoming to LGBT older people and accelerate the development of housing specifically designed for them. The five strategies are:

- Building LGBT-friendly housing in New York City
- Advocating nationally against housing discrimination
- Training eldercare providers to be LGBT culturally competent
- Educating LGBT older people about their housing rights
- Helping builders across the U.S. replicate LGBT-friendly housing

In 2017 for example, SAGE published, *Understanding the Affordable Housing Development Process: A Primer for LGBT Aging Providers*, which profiled seven LGBT-welcoming developments – either completed or in process – that add 618 units of LGBT elder-friendly housing to the market. SAGE provides technical assistance to communities considering or moving forward with new LGBT-welcoming housing options. We have created and disseminated best practices in LGBT-welcoming housing through SAGE's *Welcome Home* housing portal. And we have produced webinars, capacity building tools, and a developer resource directory of twenty-six mainstream community development organizations and professionals nationwide interested in LGBT-friendly elder housing.

Ultimately, SAGE's work serves as the foundation for increased LGBT cultural competency and awareness of LGBT elder issues among mainstream housing providers, the development of new LGBT-welcoming elder housing in locations throughout the country, and the creation of replicable strategies for new communities engaging in this work.

#### **Building LGBT Friendly Elder Housing**

SAGE is expanding access to housing for LGBT older people by building the nation's largest, and New York City and State's first LGBT-welcoming affordable elder housing: Stonewall House in Fort Greene, Brooklyn (anticipated to open this December) and Crotona Senior Residences in the Bronx (anticipated to open in February 2020). These buildings will

offer 100% affordable housing to elders, with a set aside for formerly homeless elders coming from shelters. Each of these buildings will feature ground floor, full service SAGE Centers, open to building residents, SAGE Center constituents from our existing centers in each of these boroughs and older people from the surrounding local communities.

In accordance with the federal government's Low-Income Housing Tax Credit (LIHTC) rent limits, Stonewall House's rent is capped at 50% of Area Median Income (AMI). The New York City Housing Authority (NYCHA) is providing project-based Section 8 vouchers for the project and units will be continually affordable to elders as they age in place.

The marquee of Stonewall House will be a ground-floor 6,500 square foot SAGE Center – open to residents and older community members – that will offer the same comprehensive health, educational and cultural services as SAGE's existing network of SAGE Centers. Residents and non-residents will be able to access LGBT-affirming programs and services at the SAGE Center – which will include a state-of-the-art Cyber Center – that will offer on-site social services, educational workshops, access to health care and counseling, health, wellness and nutrition classes, peer support and congregate meal service.

Stonewall House was borne of the New York City Housing Authority's (NYCHA) NextGeneration Ingersoll Community Vision Plan. NYCHA reports that the average income level of households living in the Ingersoll Houses, the NYCHA property on which Stonewall House is being built, is \$23,889. SAGE anticipates that Stonewall House's SAGE Center will serve a demographic of low-income elders that mirrors this income level. In addition, 43 (30%) of the units will house chronically homeless elders. We project that at least 1/3 of the units will be occupied by elders earning no more than 10-20% of AMI; and that the vast majority of the units will fall within the 10-50% AMI range.

Demographically, SAGE anticipates serving predominantly LGBT older people of color mirroring the composition of the Fort Greene neighborhood in Brooklyn where the project will be located. Those demographics are as follows: Black 55.1%; Hispanic 20.0%; White 14.5%; Asian 5.8%; Other 7.6%.

### **One Step Forward, Two Steps Back: Erosion of Federal Housing Protections Under the Trump Administration**

What SAGE is building, the Trump administration is figuratively tearing down. Despite the advances that SAGE is making in our efforts to promote and secure LGBT friendly elder housing across the nation, the Trump administration is moving in the opposite direction. Most recently, HUD announced efforts to roll back protections for transgender people accessing shelters who wish to do so in accordance with their gender identity.<sup>18</sup> Likewise, earlier this month, the administration argued at the Supreme Court in three Title VII cases that discrimination protections on the basis of sex do not protect individuals from discrimination on the basis of their sexual orientation and/or gender identity. Not only does such an argument diminish the employment prospects for LGBT older people, propelling LGBT older people into further financial insecurity, but it also undercuts

<sup>18</sup> <https://www.washingtonpost.com/business/2019/05/22/proposed-hud-rule-would-strip-transgender-protections-homeless-shelters/>

protections with respect to accessing healthcare, and, perhaps most significantly for this hearing, it undercuts protections for LGBT people under the Fair Housing Act.

### **Conclusion**

The challenges LGBT older people face are daunting. We at SAGE cannot address them alone. Thankfully, we have partners in every state, in big and small cities and rural communities across the country. Yet we yearn for a time when we can once again look to the federal government as a partner rather than an impediment in this important endeavor to bring financial security, discrimination-free housing, and equality and discrimination-free care and services to LGBT older adults. Recognizing that the Trump administration presents a unique and dangerous impediment to the wellbeing of LGBT older adults, we ask Congress to closely monitor the administration – to hold it accountable for each and every action it takes and attempts to take that undercuts the financial security, housing security, and overall wellbeing of LGBT older people. Our LGBT elders, who launched the modern LGBT rights movement 50 years ago with the Stonewall Uprising, deserve the support of Congress and all Americans.

### **Reports:**

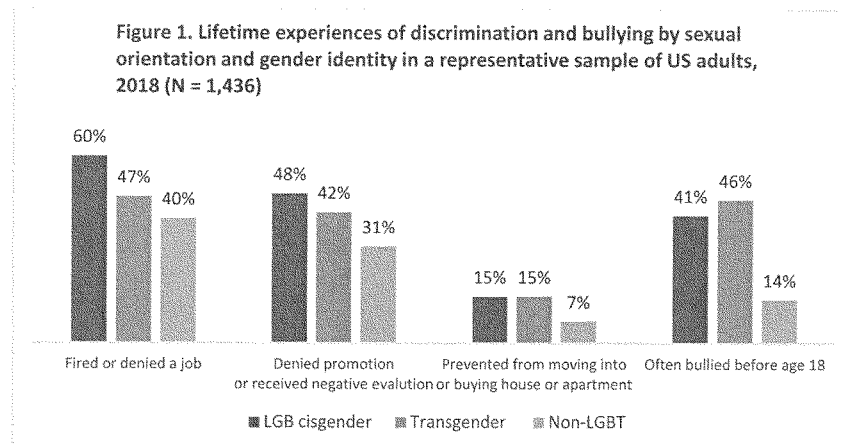
- SAGE/ERC Report: [https://equalrightscenter.org/wp-content/uploads/senior\\_housing\\_report.pdf](https://equalrightscenter.org/wp-content/uploads/senior_housing_report.pdf)
- Out and Visible: <https://www.sageusa.org/wp-content/uploads/2018/05/sageusa-out-visible-lgbt-market-research-full-report.pdf>
- Maintaining Dignity: [https://www.aarp.org/content/dam/aarp/research/surveys\\_statistics/life-leisure/2018/maintaining-dignity-lgbt.doi.10.26419%252Fres.00217.001.pdf](https://www.aarp.org/content/dam/aarp/research/surveys_statistics/life-leisure/2018/maintaining-dignity-lgbt.doi.10.26419%252Fres.00217.001.pdf)
- Justice in Aging Study: <https://www.justiceinaging.org/customers.tigertech.net/wp-content/uploads/2015/06/Stories-from-the-Field.pdf>
- MAP Report: <http://www.lgbtmap.org/policy-and-issue-analysis/understanding-issues-facing-lgbt-older-adults>
- Met Life Study: <https://www.asaging.org/sites/default/files/files/mmi-still-out-still-aging.pdf>
- Williams Institute Report: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Aging-A-Review.pdf>

**Testimony of Kerith Conron, ScD, MPH Prepared for the US House of Representatives  
Committee on Oversight and Investigations Hearing on Financial Services and the LGBTQ+  
Community: A Review of Discrimination in Lending and Housing**

Chairman Green and members of the Committee on Oversight and Investigations, thank you for the opportunity to speak with you today about housing, lending, and the LGBTQ+ community -- a population of 11 million adults and 2 million youth [1]. My name is Kerith Conron and I am the Research Director for the Williams Institute, a research center at UCLA School of Law that focuses on the impact of law and public policy on LGBTQ+ people. As a social epidemiologist, my research examines sexual orientation and gender identity-based differences in socioeconomic status, contributors to those differences, and the consequences of such differences.

**LGBT people experience discrimination and harassment in housing, employment, and other domains of life [2-16].**

- LGBT adults are twice as likely as non-LGBT people to report ever being prevented from moving into or buying a house or apartment by a landlord or realtor [12, 13]. (See Figure 1.)
- Controlled experiments funded by the U.S. Department of Housing and Urban Development found that same-sex couples and transgender people are less likely to receive responses about rental units and are shown fewer units than others [2, 3].
- LGBT adults are more likely to report ever being fired or denied a job than non-LGBT adults. They are also more likely to report being denied a promotion or having received a negative job evaluation than non-LGBT adults [12, 13]. (See Figure 1.)
- LGBT students are more likely to be bullied than their non-LGBT peers [8, 11].
- As Dr. Sun will describe, same-sex mortgage applicants are less likely to be approved than different-sex loan applicants [17].



**Discrimination contributes to homelessness and housing instability and lower rates of home ownership among LGBTQ+ people [18-34].**

- LGBT youth and transgender adults are far more likely to be homeless and unstably housed than non-LGBT youth and adults [16, 35]. Recent analyses of data collected for the NIH-funded TransPop study, found that 30% of transgender adults in a representative US sample reported that they moved twice or more often in the prior two years compared to 11% of cisgender adults [13].
- LGBT adults are less likely to own homes and are more likely to rent than non-LGBT adults. Recent analyses of representative data collected by the CDC and 35 states and conducted by the Williams Institute show that half (49.8%) of LGBT adults, on average, own homes compared to 70.1% of non-LGBT adults. Rates of home ownership are even lower (25%) for transgender adults [13].



**Homelessness and housing instability dramatically increase risk of violence victimization, exploitation, and poor health [16, 36, 37].**

**My findings rely upon the best available data, but gaps in existing federal data systems**

**should be filled.** If questions about sexual orientation, gender identity, and assigned sex at birth were included in the American Community Survey and the American Housing Survey, then the Committee could request information about home ownership, mortgages, housing and rental costs, and housing quality for LGBTQ+ communities directly from the Census Bureau. Similarly, if the Survey of Consumer Finances conducted by the Federal Reserve Board included questions to identify LGBTQ+ respondents, then information about credit usage and refusals, housing and educational loans, debt and assets would also be available to the Committee. Questions about the sex of married and cohabitating partners, which are included on the US Census and many surveys run by the Census, provide no information about approximately 80% of LGBT adults because they are not cohabitating with a same-sex partner.

In summary, increasing access to safe, affordable housing for LGBTQ+ communities will entail prohibiting discrimination in housing and lending, as well as in education, employment, and public accommodations<sup>1</sup>, and expanding federal data collection systems designed to monitor the public well-being.

Thank you.

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<sup>1</sup> Over 5.6 million LGBT adults live in states without statutory protections against sexual orientation and gender identity discrimination in housing and 8 million lack such protections in credit. About half of LGBT workers—4.1 million people—live in states without protections in employment and about 2.1 million students ages 15 and older live in states that lack statutory protections against sexual orientation and gender identity discrimination in education. Approximately 6.9 million LGBT people live in states that do not statutorily prohibit sexual orientation and gender identity discrimination in public accommodations.

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Statement of Francis Creighton

President & CEO

Consumer Data Industry Association

Before the

Subcommittee on Oversight & Investigations

Committee on Financial Services

United States House of Representatives

Hearing on

“Financial Services and the LGBTQ+ Community:

A Review of Discrimination in Lending and Housing”

October 29, 2019

Chairman Green, Ranking Member Barr, and Members of the Subcommittee, thank you for the opportunity to appear before you.

My name is Francis Creighton, and I am President & CEO of the Consumer Data Industry Association. You have asked me to testify about discrimination in lending and housing experienced by the LGBTQ+ community and I appreciate the opportunity to appear before you.

CDIA is the voice of the consumer reporting industry including the nationwide credit reporting agencies (CRAs), regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help all consumers – regardless of age, race, gender identity, sexual identification or any other discriminatory qualifier – achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud.

Through data and analytics, CDIA members help to ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs. Our members' market-leading innovations prevent fraud and ease people into homes, jobs and cars with quiet efficiency. CDIA members' data and analytics are used to locate crime victims and fugitives and help keep workplaces and apartment tenants safe. Our members work every day to empower economic opportunity for consumers, businesses, government agencies and nonprofits.

Consumer reporting agencies are governed by many federal and state statutes, rules and judicial opinions, but the touchstone of the laws that govern our industry is the federal Fair Credit Reporting Act (FCRA). According to the law's findings (15 U.S.C. § 1681(a)(4)), Congress expressly sought to make sure the credit reporting system is fair for consumers.

As a result of the FCRA and the hard work of our members, data furnishers and data users, consumers today benefit from a democratic, accurate and fair credit system. Consumers have the liberty to access credit anywhere in the country from a wide variety of lenders based solely on their own personal history of handling credit. Families buying a home for the first-time access mortgage products that suit their individual needs and capabilities. Young people who have new jobs in a new city can go to an auto dealer and drive away with a financed car even without any history in that community. Thanks to our members' data and analytics, new credit opportunities from new kinds of lenders are constantly evolving to meet individual needs.

If a consumer has been a responsible user of credit in the past, lenders and others are more likely to offer credit at the most favorable terms – terms that previously were reserved for the wealthy. Credit reporting companies and other CDIA members are helping solve the problem of the unbanked and credit invisible populations by expanding the kinds of data collected, such as rental history or payments on telephone and other utility bills, giving lenders and others information that allow more consumers to responsibly access traditional financial services and integrate consumers into the mainstream financial system.

Consumers are the main beneficiary of our credit reporting system. Most consumers pay their bills on time and are rewarded for doing so when they seek out new credit and their report shows a positive history. Without the credit reporting system, lenders would not be able to judge whether individuals applying for credit have previously paid their bills on time, and interest rates on loan products would have to increase for everyone to account for the added risk, with consumers who have been consistently paying bills on time losing out.

Credit reports also give a variety of different kinds of lenders access to the same kind of information, giving a local community bank or credit union a chance to compete against a trillion-dollar financial institution. As Richard Cordray, former Director of the Consumer Financial Protection Bureau (CFPB), said in 2012 at a Field Hearing:

“Without credit reporting, consumers would not be able to get credit except from those who have already had direct experience with them, for example from local merchants who know whether or not they regularly pay their bills. This was the case fifty or a hundred years ago with “store credit,” or when consumers really only had the option of going to their local bank. But now, consumers can instantly access credit because lenders everywhere can look to credit scores to provide a uniform benchmark for assessing risk.”<sup>1</sup>

For this hearing, it is important to know what is and is not in a credit report. Credit reports do not include sexual orientation. Credit reports do not include gender identity or sex assigned at birth. Credit reports do not include marital status or spouse. They also do not contain data on race, color, religion or national origin.

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<sup>1</sup> Cordray, Richard. Prepared Remarks by Richard Cordray on Credit Reporting (July 16, 2012) (accessed October 24, 2019), <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-by-richard-cordray-on-credit-reporting/>.

Credit reports include the following identifying information: name, address, date of birth and Social Security Number (used only as an identifier). For each account, or "tradeline," credit reporting agencies maintain: creditor name, account type, account number, date opened, credit line, balance and payment history. If an individual has had a bankruptcy in the last ten years, that appears as well.

One of the great benefits of our nation's competitive credit reporting system is that it delivers factual information which serves as a check against individual biases and assumptions. The reliable consumer report information provided by our members gives lenders and creditors the tools they need to achieve the goal of fair and equitable treatment for each consumer, while also contributing to safe and sound lending practices. Without this system, subjective judgements could be made on factors other than the facts of creditworthiness.

In closing, we again thank you for the opportunity to contribute to this hearing. I hope my testimony today has offered the Subcommittee some helpful insights in to the fair and equitable contributions consumer reporting agencies have made to the American economy and consumers in this country. I look forward to your questions.



Written Statement of  
Alphonso David  
President  
Human Rights Campaign

To the  
Committee on Financial Services  
Subcommittee on Oversight and Investigations  
United States House of Representatives  
Financial Services and the LGBTQ+ Community: A Review  
of Discrimination in Lending and Housing

10/29/2019

Chairman Green, Ranking Member Barr, and Members of the Committee:

My name is Alphonso David, and I am the President of the Human Rights Campaign, the nation's largest civil rights organization working to achieve equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. On behalf of our more than 3 million members and supporters, I am honored to testify at this hearing.

Every day, we fight in the halls of Congress, in state legislatures, and in the courtroom for our right to live and work free from discrimination. Systemic discrimination (including in housing, employment and credit), family rejection, and the persistence of the school to prison pipeline weigh heavily on our community's shoulders and make breaking even, much less getting ahead, feel utterly impossible.<sup>1</sup> Discrimination and stigma push many members of our community so far to the margins that they have literally run out of safe places to be. For example, the rates of homelessness among LGBTQ people are breathtaking—40% of homeless youth identify as LGBTQ and young Black men report the highest rates of homelessness.<sup>2</sup>

The faces behind these numbers, many of whom are Black and Brown, reflect some of our community's most vulnerable—our youth, our transgender siblings, and people living with HIV.

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<sup>1</sup> Morton, M.H., Dworsky, A., & Samuels, G.M. (2017). Missed opportunities: Youth homelessness in America. National estimates. Chicago, IL: Chapin Hall at the University of Chicago.

<sup>2</sup> Durso, L.E., & Gates, G.J. (2012). Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth who are Homeless or At Risk of Becoming Homeless. Los Angeles: The Williams Institute with True Colors Fund and The Palette Fund.

Once on the streets, we are more likely to be targets of violence, and we are less likely to be able to secure a job or be able to access and sustain daily maintenance medications.

The Trump Administration continues to propose aggressive policies that limit or exclude our community from accessing the shelters and programs our taxpayer dollars have funded. Without explicit federal protections, too many of us will face the hard and devastating reality of housing and credit discrimination, with no recourse. Accordingly, we strongly oppose Secretary Carson's proposed revisions to the landmark housing regulations, *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* and *Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs*, referred to collectively as the HUD Equal Access Rule. Further, we urge the Department of Housing and Urban Development to withdraw proposed revisions to the regulation implementing the Fair Housing Act's disparate impact standard. The existing disparate impact rule has served as a critical tool to combat facially neutral policies that disproportionately impact so many in our community. The increased burden of proof introduced by the proposed rule would drastically weaken this powerful enforcement mechanism.

Finally, we oppose the Justice Department's revised interpretation of the sex discrimination provisions of the 1964 Civil Rights Act. The Justice Department briefs filed in *Bostock v. Clayton Cnty.*; *Altitude Express, Inc. v. Zarda*; and *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC & Aimee Stephens* at the Supreme Court argue for the adoption of a narrow, and legally specious interpretation of Title VII of the 1964 that would exclude lesbian, gay, bisexual, and transgender workers from its protection. This directly conflicts with existing judicial and administrative precedent, including the interpretation of "sex discrimination" employed by the Equal Employment Opportunity Commission. These cases and the actions of the Department of Justice directly influence the interpretation of protections under similar civil rights statutes including the Fair Housing Act.

**LGBTQ people, particularly those in communities of color, shoulder the weight of discrimination at unconscionably high rates.**

Based on research conducted by the Department of Housing and Urban Development (HUD), same-sex couples experience significant levels of discrimination when responding to advertised rental housing nationwide. Specifically the research shows that different-sex couples were routinely favored over gay male or lesbian couples by a significant margin<sup>3</sup>. Transgender people

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<sup>3</sup> U.S. Department of Housing and Urban Development, Office of Policy Development and Research (June 2013). *An Estimate of Housing Discrimination Against Same-Sex Couples*. Retrieved from: [http://www.huduser.org/portal/Publications/pdf/Hsg\\_Disc\\_against\\_SameSexCpls\\_v3.pdf](http://www.huduser.org/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf).

experience discrimination in housing even more often. Nearly one in four transgender people have reported being refused a home or apartment because of their gender identity or expression.<sup>4</sup>

Tonya and Rachel Smith a loving, married same-sex couple from Colorado experienced this discrimination. Rachel is also transgender. In 2015, the couple were looking for a new home for their family. Their must-haves were simple—they needed a home that was affordable, with outdoor space for their young children, located near a quality public school. They found the perfect duplex in the community of Gold Hill. However, only a few hours after touring the property the landlord emailed, informing them that they could not rent the unit because of their “unique relationship.”<sup>5</sup> In 2017, the United States District Court for the District of Colorado held that the landlord’s refusal violated the Fair Housing Act’s nondiscrimination provision.<sup>6</sup>

This decision is consistent with the developing trajectory regarding discrimination on the basis of sexual orientation and gender identity as unlawful sex stereotyping under federal civil rights laws. The *Smith* court relied on the landmark Supreme Court sex stereotyping case *Price Waterhouse v. Hopkins*. The court held that “discrimination against women (like [Smith]) for failure to conform to stereotype norms concerning to or with whom a woman should be attracted, should marry, and/or should have children is discrimination on the basis of sex under the FHA.”

The federal bench has overwhelmingly adopted this interpretation to include LGBTQ people under the protective umbrella of sex nondiscrimination statutes. The First, Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits and many district courts have all recognized that claims of discrimination on the basis of gender identity is sex discrimination under Title VII and other federal civil rights laws based on *Price Waterhouse*. Likewise, the Second and Seventh Circuits and multiple district courts have concluded sexual orientation discrimination as a form of sex discrimination as well.

Recent studies confirm that discrimination faced by our community is further compounded by race and ethnicity—rates of discrimination in housing are higher for Black and Latinx same-sex couples and transgender people. According to a recent study, Black male couples are the most likely to experience discrimination when seeking rental housing of all family types.<sup>7</sup> Some studies have found Black LGBTQ people face twice the levels of discrimination as their white counterparts.<sup>8</sup>

These stark racial disparities hold true for transgender individuals as well. Nearly 40% of Black transgender people have reported eviction because of their gender identity and report rates of

<sup>4</sup> James S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

<sup>5</sup> *Smith v. Avanti*, 249 F. Supp. 3d 1194 (2017).

<sup>6</sup> *Id.*

<sup>7</sup> David Schwegman (2018): Rental Market Discrimination Against Same-Sex Couples: Evidence From a Pairwise-Matched Email Correspondence Test, Housing Policy Debate.

<sup>8</sup> *Id.*

homelessness three times that of white transgender people.<sup>9</sup> Latinx, Native American, and multi-racial transgender people report similarly significant higher rates of discrimination.<sup>10</sup>

Transgender people rejected from home, denied a rental unit, or evicted because of their gender identity may turn to an emergency shelter for relief. These emergency shelters receive federal and state tax dollars and are designed as the final safety net from exposure to the elements. Before publication of the HUD Equal Access Rule, which prohibits discrimination in HUD-funded programs on the basis of sexual orientation and gender identity, nearly half of transgender people seeking emergency shelter reported that these shelters required them to be housed with the wrong gender in order to obtain shelter.<sup>11</sup> In many cases, these policies resulted in a transgender woman housed as the only woman in a men's shelter. As a result of these dangerous policies, one in four transgender women reported physical assaults during their stay and 22% reported experiencing sexual assault at the shelter. Half of all respondents provided that they chose to return to the street rather than stay in the shelter because of safety concerns.<sup>12</sup>

The consequences of homelessness, particularly for LGBTQ youth and young adults, are far reaching and can last a lifetime. Homelessness is harmful to mental and physical health, and increases risk for sexual violence and exploitation, substance abuse, social stigma and discrimination. Young adults who experience homelessness also report lower levels of long-term educational attainment—placing them at an even greater disadvantage when they enter the job market. Housing insecurity and homelessness can contribute to catastrophic consequences for economic stability, educational attainment and life expectancy.

**Discrimination in credit and lending limit growth of financial stability.**

In addition to high rates of discrimination in the rental market, LGBTQ people also continue to experience discrimination when purchasing a home and securing a mortgage. People of color experience similar discriminatory and predatory practices when seeking credit, or are often met with a flat denial of credit for mortgages. For LGBTQ people of color living at the intersection of this discrimination, home ownership and the stability it can provide are all too often out of reach. Studies have shown that banks routinely favor different-sex couples over same-sex couples applying for mortgages by a startling 73%.<sup>13</sup> Homeownership in the transgender

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<sup>9</sup> City of Philadelphia (June 2018). *Mayor's Taskforce on Eviction Prevention and Response: Report and Recommendations*. Retrieved from: <https://www.phila.gov/hhs/PDF/Mayors%20Task%20Force%20on%20Eviction%20Prevention%20and%20Response-Report.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> J.M. Grant, L.A. Mottet, J. Tanis, J. Harrison, J.L. Herman, M. Keisling, *Injustice at Every Turn: A Report on the National Transgender Discrimination Survey*, 118 (2011).

<sup>12</sup> *Id.*

<sup>13</sup> Lending practices to same-sex borrowers, Hua Sun, Lei Gao Proceedings of the National Academy of Sciences May 2019, 116 (19) 9293-9302.

community is less than half the national average at only 33%.<sup>14</sup> Discrimination in accessing credit continues to be one of the most prominent barriers for LGBTQ people seeking to buy a home or start a business. LGBTQ people frequently report denial of a loan that they are otherwise qualified for simply because of their sexual orientation or gender identity.

Access to federally backed mortgages, particularly through the Federal Housing Authority (FHA) has traditionally served as a critical tool to bridge opportunity gaps based on discrimination. FHA loans serve as a critical stepping-stone to the American dream for many buyers chronically underserved by traditional lenders including low-income populations, LGBTQ people, and people of color. A 2011 study revealed that half of all mortgage loans taken out by Black and Latinx Americans were FHA loans.<sup>15</sup> Under the HUD Equal Access Rule, FHA lenders can no longer take a borrower's sexual orientation or gender identity into account when determining credit worthiness. This has made the dream of homeownership, and the financial and family stability it can provide, a reality for the first time for many LGBTQ homebuyers.

The HUD Equal Access Rule has proven to be an effective tool to end harmful discrimination in housing and loan programs. Within a year of publication, HUD announced a settlement with a major banking institution for discriminating against a Florida lesbian couple seeking a home loan insured by the FHA.<sup>16</sup> Patty Snyder and her partner Shelley applied for an \$87,000 home loan to purchase their dream home in South Daytona, Florida. The lender assured the couple that there would be no problem with the loan and advised them to schedule the closing. Despite qualifying for the loan, the bank refused to finalize the loan when they realized they were a same-sex couple. Although the case was resolved in favor of the couple, the months-long delay resulted in the loss of their dream home to another buyer.

#### **Equal access to housing is essential for people living with HIV.**

As we enter the fourth decade of the HIV/AIDS epidemic, people living with the virus continue to face stigma and discrimination including in housing. Although this discrimination is barred by statute, people living with HIV continue to be denied rental housing and credit if the property owner or bank is aware of their status. The high cost of treatment can also strain individual and family finances, increasing the risk for homelessness.

For individuals living with HIV, housing is health care. Research has shown that stable housing is a valid predictor in health care outcomes, particularly for those living with HIV. It is critical to maintaining continuity of care to achieve and maintain viral suppression, and for accessing

<sup>14</sup> The Federal Home Loan Mortgage Corporation (May 2018). *The LGBT Community: Buying and Renting Homes*. Retrieved from: [http://www.freddiemac.com/fmac-resources/research/pdf/Freddie\\_Mac\\_LGBT\\_Survey\\_Results\\_FINAL.pdf](http://www.freddiemac.com/fmac-resources/research/pdf/Freddie_Mac_LGBT_Survey_Results_FINAL.pdf).

<sup>15</sup> Federal Housing Administration (Fiscal Year 2015). *The Financial Status of the FHA Mutual Mortgage Insurance Fund: Annual Report to Congress*. Retrieved from: <https://www.hud.gov/sites/documents/2015FHAANNUALREPORT.PDF>.

<sup>16</sup> *In re: Matter of Bank of America*, Docket- No. 12-1657-N1R (November 1, 2012).

needed supportive services that can enhance the quality of life. Having stable housing is associated with fewer hospitalizations, and reduced mortality rates.<sup>17</sup> Housing status has more impact on health outcomes than demographics, drug and alcohol use, mental health status, or receipt of social services.<sup>18</sup>

**Vigorous enforcement and preservation of existing protections is critical.**

For the past decade, the Department of Housing and Urban Development has interpreted the Fair Housing Act to include discrimination against LGBTQ people through informal guidance on the basis of sex stereotyping and perceived or actual disability.<sup>19</sup> In 2012 and 2016 HUD engaged in formal rulemaking explicitly prohibiting discrimination on the basis of sexual orientation and gender identity in all HUD-funded programs.<sup>20</sup> Following publication in 2012, HUD vigorously enforced these provisions, engaged in diverse outreach and education efforts, and provided covered entities and organizations with concrete, clear guidance regarding their obligations.<sup>21</sup>

In 2013, HUD further clarified the reach of the Fair Housing Act in a regulation implementing the Act's disparate impact standard. Disparate impact claims under the Act are critical to addressing systemic housing discrimination and segregation in the United States. This original rule provided significant safeguards for individuals from particularly pernicious aspects of oft-overlooked discrimination that may lack—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.

These policies worked. Even before federal marriage equality in 2015, HUD's enforcement of the Equal Access Rule ensured that LGBTQ families were served by programs funded by the Department. Same-sex couples and their children are entitled to receive services as a family unit and cannot not be separated or treated as legal strangers by a family shelter.<sup>22</sup> HUD also provided emergency shelters serving transgender people with explicit guidance regarding housing and placement and how to best serve this vulnerable population.<sup>23</sup>

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<sup>17</sup>U.S. Department of Health and Human Services. *Housing and Health*. Retrieved from: <https://www.hiv.gov/hiv-basics/living-well-with-hiv/taking-care-of-yourself/housing-and-health>.

<sup>18</sup> *Id.*

<sup>19</sup> U.S. Department of Housing and Urban Development. *Housing Discrimination and Persons Identifying as LGBTQ*. Retrieved from: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/housing\\_discrimination\\_and\\_persons\\_identifying\\_lgbtq](https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq)

<sup>20</sup> *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* 77 FR 5359 (Feb. 3, 2012); *Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs* 81 FR 64763 (Sept. 21, 2016).

<sup>21</sup>U.S. Department of Housing and Urban Development, Office of Community Planning and Development (September 2016). *Notice on Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's CPD Program*. Retrieved from: <https://files.hudexchange.info/resources/documents/Notice-on-Equal-Access-Rights.pdf>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

As of today, these policies remain in place. But Secretary Carson's HUD has placed a target on these regulations that have meant so much, to so many, who have so little. He has proposed replacing these tested, functioning regulations with a vague laundry list that would allow emergency shelters to choose how to serve transgender people—or not. The federal government has not announced the settlement of a claim of housing discrimination on the basis of LGBTQ status since Trump took office, and it is unclear whether HUD's Office of Fair Housing and Equal Opportunity (FHEO) continues to accept and investigate these claims. Secretary Carson has proposed revisions to the Department's disparate impact regulation increasing the burden on individuals who have experienced discrimination. Under Carson, the Office also excluded information on sexual orientation and gender identity discrimination from the FHEO annual reports to Congress for the first time since 2008. In 2017, HUD withdrew guidance regarding enforcement of the Equal Access Rule that would have required people served by the rule to be given information about their rights.

Housing discrimination is a nationwide problem that has real human impacts. The federal government must be committed to enforcing and maintaining the existing strong policies designed to protect our most vulnerable.

**We need explicit, federal statutory protections. We need the Equality Act.**

Today, LGBTQ people who are evicted from their home, denied a mortgage, or simply ignored by prospective landlords because of who they are or whom they love are forced to rely on a patchwork of state and local laws, an openly hostile federal government, and court precedent that—while robust—is the subject of a Supreme Court challenge. Explicit, federal protections in statute are critical to end discrimination. That is why we need the Equality Act (H.R. 5/S. 788). The Equality Act amends the Fair Housing Act of 1968, adding sexual orientation and gender identity to the list of protected characteristics. It simply affords to all Americans basic housing protection from discrimination based on irrational prejudice.

No one should be turned away from an apartment, kicked out of their home, or sent back to the street simply because of who they are or whom they love. LGBTQ people and our families demand fair and equal access to housing opportunities. We want affordable homes, we want quality schools, and we want to feel safe when we lay our heads down at night. These are simple things, but without them the right to fully participate and contribute to our communities as equal members is simply out of reach. Discrimination continues to persist and, for an agency that purports to ensure housing for all, it is illogical and frankly morally bankrupt to harm those in our community who are often closest to the edges. We can, and must, do better.

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**Testimony of**

**Dr. Hua Sun**

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**Ames, IA 50011**

**Before the**

**Subcommittee on Oversight and Investigations**

**of the**

**Committee on Financial Services**

**U.S. House of Representatives**

**Financial Services and the LGBTQ+ Community: A Review of Discrimination in  
Lending and Housing**

**October 29<sup>th</sup>, 2019**

Chairwoman Waters, Ranking Member McHenry, Subcommittee Chairman Green and Members of the subcommittee, thank you for giving me the opportunity to testify at this hearing. My name is Hua Sun, and I am an associate professor of finance at Iowa State University. I earned my Ph.D in real estate from University of British Columbia and my research interests include mortgage lending and housing economics. I am pleased to have this opportunity to discuss our findings on potentially disparate lending practices to same-sex mortgage borrowers.



In April, 2019, I published a paper jointly with my co-author at the Proceedings of National Academy of Sciences of USA (PNAS) that looks at this issue. We found that compared to hetero-sex borrowers of similar profiles, same-sex borrowers are statistically more likely to be rejected when they apply for a loan. Further, when approved, it was shown that they pay higher interest rates and/or fees on average. Lastly, we were unable to find statistical evidence that same-sex borrowers are more risky to lenders than comparable hetero-sex borrowers.

The primary data used in our loan underwriting analysis is a 20% random sample from the publicly available Home Mortgage Disclosure Act (HMDA) data between 1990 and 2015. It gives us over 30 million observations on residential loan application records that involve both a borrower and a co-borrower. The study used the mandatorily disclosed sex information to distinguish same-sex borrowers and hetero-sex borrowers. We then merged the HMDA data with the publicly available Fannie Mae single-family loan performance data on over 400,000 approved loans originated since 2004. The merged data afforded us the opportunity to examine the financing cost and succeeding loan performance. Our findings show that, compared to hetero-sex borrowers with similar characteristics, same-sex borrowers experience about a 3% to 8% lower approval rate. Further, among the loans that are approved, each year lenders charge a higher interest and/or fees to same-sex borrowers in a range between two to twenty basis points. Our inferred dollar value on the higher cost burdened by same-sex borrowers nationwide is equivalent to an annual total in a range of \$8.6 to \$86 million. Yet, we were unable to find evidence that same-sex borrowers are more risky. Indeed, our data shows

that same-sex borrowers appear to be slightly less risky on average as they exhibit similar default risk but lower prepayment risk than comparable hetero-sex borrowers.

As sexual orientation is not disclosed in the data, we calculated the correlation between our inferred same-sex population density and a 2015 Gallup LGBT population survey at the state level. We found that, depending on the measure used, the correlation is between 0.61 and 0.85. As a result, it is our hope that this research into the lending experiences of same-sex borrowers will shed a light on the adverse lending practices applied to LGBT borrowers. As another robustness check, and in order to rule out the possibility that a borrower and a co-borrower are relatives, we only looked at same-sex borrowers that are of a different race. In this instance, we continued to find a significantly lower approval rate on this restricted sample.

One limitation on HMDA data is its lack of borrower's information such as credit history. In an effort to minimize this, we cross-validated our finding of lower approval rate by using the data on a sample of borrowers in the Boston MSA in 1990. This data was collected by the Federal Reserve Bank of Boston. Previously this Boston-fed data has been used by many academic researchers to study minority lending discrimination. The strength of this data is that it has detailed information such as a borrower's credit history, work experience, and educational background. The Boston data revealed that, after controlling for the essential

borrower and mortgage characteristics, same-sex applicants are 73.12% more likely to be denied when they apply for a loan than hetero-sex borrowers.

We also looked at loan underwriting over a series of time periods and found that the lower approval rate to same-sex borrowers is persistent over time. Indeed, the HMDA data implies that the gap is even larger in 2015 than in 1990.

In regard to lending practices on agency vs. non-agency loans, we found that the largest gap is on conventional loans, where the raw approval rate (i.e., without any econometric adjustment) on same-sex borrowers is about 7% lower than those on hetero-sex borrowers. The gap is about 4% on VA loans, and about 0.8% on FHA loans.

To summarize, our study documents some statistically and economically significant findings on adverse lending outcomes to same-sex borrowers. The lending disparity appears to be throughout the life cycle from applying to paying off a loan. Like any empirical research, our study is subject to limitations such as potential omitted variable bias. That said, I believe these findings are still concerning. Given that the current federal credit protection laws such as Fair Housing Act (FHA) and Equal Credit Opportunity Act (ECOA) do not explicitly list sexual orientation as a protected class, it is my wish that our study and this testimony will help initiate a meaningful discussion on the need, and the means, to provide stronger protections for same-sex borrowers.

STATEMENT OF  
HARPER JEAN TOBIN, DIRECTOR OF POLICY  
NATIONAL CENTER FOR TRANSGENDER EQUALITY

Hearing on  
“Financial Services and the LGBTQ+ Community: A Review of Discrimination in Lending  
and Housing”

House Committee on Financial Services  
Subcommittee on Oversight & Investigations

OCTOBER 29, 2019

Chair Green, Ranking Member Barr, and Members of the Subcommittee: My name is Harper Jean Tobin, and I am the Director of Policy for the National Center for Transgender Equality, a role I have served in since 2009. Thank you for the opportunity to testify regarding the challenges of, solutions to, discrimination in housing and lending faced by LGBTQ Americans.

The National Center for Transgender Equality (NCTE) is a nationwide, non-profit, non-partisan organization founded in 2003 to promote public understanding, opportunity, and well-being for the nearly two million Americans who are transgender. NCTE works with federal and state policymakers to promote informed and equitable public policies in a wide range of areas, including housing, homelessness, economic opportunity, civil rights, bias-motivated violence. In 2015, NCTE conducted the largest survey of transgender people to date, the US Transgender Survey (USTS), which explored the life experiences of nearly 28,000 transgender people.<sup>1</sup>

**I. Transgender People Are a Part of the American Community**

Transgender people—people who know themselves to be a gender that is different from the one they were thought to be at birth—live in every state and every Congressional district. It is estimated that 1.4 million American adults and 150,000 youth between the ages of 13 and 18 identify as transgender.<sup>2</sup> In all, nearly two million Americans are transgender. The geographic distribution of the transgender Americans is similar to that of the United States population overall.<sup>3</sup> Transgender people are of every age,<sup>4</sup> every faith,<sup>5</sup> every race and ethnicity,<sup>6</sup> and come from every walk of life.

<sup>1</sup> Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* (2016), [www.ustranssurvey.org/reports](http://www.ustranssurvey.org/reports).

<sup>2</sup> Andrew R. Flores et al., *How Many Adults Identify as Transgender in the United States?* (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-UnitedStates.pdf> (estimating that 0.6% of adults in the United States identify as transgender); Jody L. Herman et al., *Age of Individuals who Identify as Transgender in the United States* (2017), <https://williamsinstitute.law.ucla.edu/wpcontent/uploads/TransAgeReport.pdf> (estimating that 0.7% of people in the United States between the ages of 13 and 17, or 150,000 adolescents, are transgender).

<sup>3</sup> Flores et al., *supra* note 2, at 3-4; 2015 USTS, *supra* note 1, at 53.

<sup>4</sup> Herman et al., *supra* note 2, at 3.

While being transgender need not and should not be an obstacle to success or opportunity in this country, an enormous body of research demonstrates that today transgender Americans face severe and widespread stigma and discrimination.

## II. Findings of the 2015 U.S. Transgender Survey

The 2015 U.S. Transgender Survey (USTS) is the largest survey examining the experiences of transgender people in the United States, with 27,715 respondents from all fifty states, the District of Columbia, American Samoa, Guam, Puerto Rico, and U.S. military bases overseas. Conducted in the summer of 2015 by the National Center for Transgender Equality, the USTS was an anonymous, online survey for transgender adults (18 and older) in the United States, available in English and Spanish. Findings from the 2015 USTS provide a detailed look at the experiences of transgender people across a wide range of categories, such as education, employment, family life, health, housing, and interactions with the criminal justice system. The report of the 2015 USTS, along with the numerous secondary analyses of its data conducted by researchers since its publication, has helped shift how the public and policymakers view the lives of transgender people and the challenges they face.<sup>7</sup>

The findings of the USTS revealed disturbing patterns of mistreatment and discrimination and staggering disparities between transgender people in the survey and the U.S. population when it comes to the most basic elements of life, such as finding a job, having a place to live, accessing medical care, and enjoying the support of family and community. These extraordinary disparities were found across all segments of the transgender population, but were most pronounced among transgender people of color, transgender people with disabilities, those living with HIV, undocumented immigrants, and current and former sex workers.

Despite the undeniable hardships faced by transgender people, USTS respondents' experiences also show some of the positive impacts of growing visibility and acceptance of transgender people in the United States. One such indication is the unprecedented number of transgender people—nearly 28,000—who completed the survey. This number of transgender people who elevated their voices reflects the historic growth in visibility that the transgender community has seen in recent years.

### *Methodology*

The 2015 U.S. Transgender Survey was developed in order to examine the experiences of transgender adults across a wide range of areas of their lives. The survey instrument was comprised of thirty-two sections with 324 possible questions, covering a broad array of topics. In addition to housing, homelessness, and shelters, it included topics related to employment,

<sup>5</sup> James et al., *supra* note 1, at 55.

<sup>6</sup> Andrew R. Flores, Taylor N. T. Brown, & Jody L. Herman. *Race and Ethnicity of Adults Who Identify as Transgender in the United States* (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf>.

<sup>7</sup> All findings in this section are taken from James et al., *supra* note 1, primarily from Chapter 13, "Housing, Homelessness, and Shelter Access," pp. 175-83. The full report, and other topical reports based on the 2015 USTS, can be found at [www.ustranssurvey.org/reports](http://www.ustranssurvey.org/reports).

schools, interactions with the criminal justice system, faith communities, and family life, among others. The survey was available in English and Spanish over a 34-day period. It was open to adults (age 18 and over) living in the United States who are transgender, including men, women, and people whose gender is not male or female (e.g., non-binary people). T

The USTS questionnaire was developed over the course of a year by a core team of researchers in collaboration with dozens of individuals with lived experience, advocacy and research experience, and subject-matter expertise. When developing the survey instrument, the research team focused on creating a questionnaire that could provide data to address both current and emerging needs of transgender people while gathering information about disparities that often exist between transgender people and non-transgender people throughout the United States. To achieve this, questions were included that would allow comparisons between the USTS sample and known benchmarks for the U.S. population. Questions were selected to best match those previously asked in federal government or other national surveys on a number of measures, such as measures related to income, employment status, and health.

#### *Findings on Housing, Homelessness, and Shelters*

The USTS examined respondents' experiences related to housing and homelessness, including their experiences with specific forms of housing discrimination and instability occurring in the past year because of their transgender status. It also examined respondents' access to shelters and the treatment they received in those shelters as transgender people.

##### 1. Lower rates of home ownership

Respondents were asked what their current living arrangements were at the time they participated in the survey. Only 16% reported that they were living in a house, apartment, or condo that they owned. By contrast, the homeownership rate at the time of the survey in the U.S. was 63%, meaning that respondents were about four times less likely to own a home than the U.S. population overall.

Large differences in the rate of homeownership were consistent among age groups. For example, respondents aged 25-34 were more than three times less likely to own a home than people aged 25-34 in the U.S. overall. Respondents aged 35-44 were half as likely to own a home as members of that age group in the U.S. overall. Less than half of respondents aged 45-54 owned a home, compared to more than two thirds in the U.S. population. The homeownership rate among respondents aged 55-64 was 58%, and among respondents aged 65 and older it was 69%—compared to 75% and 78% in the U.S. population, respectively.

##### 2. High rates of homelessness

#### **Nearly one third (30%) of respondents had experienced homelessness during their lifetime.**

The homelessness rate was substantially higher among those whose family had kicked them out of the house for being transgender, with nearly three-quarters (74%) of those respondents experiencing homelessness. Compared to the overall sample, the homelessness rate was nearly twice as high among respondents who have done sex work (59%) and respondents living with HIV (59%), as well as respondents who have lost their job because of being transgender (55%).

Transgender women of color, including Native (59%), Black (51%), multiracial (51%), and Middle Eastern (49%) women, also experienced especially high rates of homelessness.

Looking only at the year prior to taking the survey, **12% of respondents reported that experienced homelessness during that year as a result of anti-transgender bias.** The homelessness rate for the previous year was especially high among those currently working in the underground economy (such as in sex work, drug sales, and other work that is currently criminalized) (37%), undocumented residents (32%), and those living with HIV (27%). Transgender women of color, including Black (31%) and Native (27%) women, were also substantially more likely to report experiencing homelessness in the past year because of being transgender.

Respondents were also asked about their living situation at the time that they took the survey. Experiences of homelessness and housing instability occurred at high rates, even though respondents who were experiencing housing instability at the time the survey was fielded were likely underrepresented in the sample. **Nearly one in ten (9%) respondents was living temporarily with friends or family because they could not afford their own housing. Approximately half of one percent (0.53%) of respondents were experiencing homelessness at the time they participated in the survey,** including those who were living in a shelter (other than a domestic violence shelter) or on the street. For context, in 2015 the Department of Housing and Urban Development estimated that on a given night 0.18% of the U.S. population was experiencing homelessness. While it is not possible to generalize from the USTS sample to the general population—especially when it comes to estimates of people experiencing homelessness, who were likely underrepresented in the USTS sample—if this rate were to hold true for the transgender population overall, it would suggest that there may more than 7,400 transgender people experiencing homelessness at a given time in the United States.

### 3. Housing discrimination and instability in the previous year

Respondents were asked about specific experiences with housing discrimination and instability that occurred *in the past year* because they were transgender.<sup>8</sup> These experiences included, among others, being evicted from their home, being denied a home or apartment, experiencing homelessness, or having to sleep in different places for short period of time (such as on a friend's couch).

In the year prior to taking the survey, 6% of respondents were denied a home or apartment because of being transgender when they attempted to buy or rent one. While the USTS cannot be generalized to the transgender population as a whole, it is noteworthy that 6% of the adult transgender population would represent approximately 84,000 individuals. Housing discrimination was even more common among transgender people of color. More than one in six (17%) Black women had been denied a home or apartment in the previous year because of being

<sup>8</sup> Respondents were given the choice of answering “yes,” “no,” or “does not apply to me” for each housing situation. For example, a respondent who did not try to rent or buy a home or apartment in the past year could select “does not apply to me” when asked about being denied a home or apartment.

transgender. Multiracial women (15%) and Latinas (11%) also reported this experience at higher rates.

In just the year prior to taking the survey, five percent (5%) of respondents were evicted from their home or apartment because of being transgender. Undocumented residents faced especially high rates of eviction in the past year that occurred specifically because of their transgender status, with nearly one fifth (18%) reporting this experience. Transgender people with disabilities (8%) and people of color, including Native (9%) and Black (9%) respondents, were also more likely to report eviction.

Overall, **nearly one third (30%) of respondents to whom these situations applied—23% of all respondents—experienced one or more forms of housing discrimination or instability in the previous year because they were transgender.** This rate was especially high among respondents who were currently doing sex work or other work in the underground economy, with more than half (59%) reporting one of more of these experiences. More than half (59%) of respondents who had been kicked out of the house by their family at some point experienced housing instability in the previous year. Undocumented residents (50%) and transgender women of color were also more likely to have had one or more of these experiences in the past year, including Black (49%), multiracial (39%), Native (39%), and Latina (37%) women.

#### 4. Barriers to accessing emergency shelter

Respondents who experienced homelessness in the previous year because of being transgender were asked if they had gone to a homeless shelter during that year. More than one quarter (26%) reported that, in the previous year, they *did not try* to go to a homeless shelter because they were afraid of being mistreated as a transgender person. Additionally, 6% were outright denied access to a shelter because of being transgender, a rate that spiked to 30% among multiracial women and 13% among Black women.

Those who did stay in shelters frequently experienced mistreatment because of being transgender. **In the previous year, seven in ten transgender shelter-seekers (70%) faced mistreatment at a shelter because of being transgender,** such as being forced out, harassed, or physically assaulted because they were transgender.

Nearly one in ten (9%) respondents who stayed at a shelter in the past year was thrown out after the shelter staff found out that they were transgender. Nearly half (44%) decided to leave the shelter because of being mistreated or feeling unsafe, even when they had nowhere else to go.

Transgender people are frequently denied access to shelters consistent with their gender identity, often forcing them to choose between suppressing their deeply held identity and attempting to present themselves as the sex they were assigned at birth on one hand, and foregoing shelter access entirely on the other. One quarter (25%) of respondents decided to dress or present as the “wrong gender” (the phrasing used in the questionnaire) in order to feel safe in a shelter. Additionally, 14% said the shelter staff forced them to dress as the “wrong gender” as a condition of staying in the shelter. This could mean, for example, that a transgender woman who



has lived as a woman for many years is forced to hide her breasts and pretend to be a man in order to access shelter.

Respondents who stayed at a homeless shelter in the past year were also asked about harassment and violence they may have faced. Nearly half (49%) reported that they were verbally harassed at a shelter because they were transgender. Nearly one fifth (19%) were physically attacked, and 17% were sexually assaulted at the shelter because they were transgender.

Unfortunately, other researchers have also found that some shelters continue to turn away people in need simply because they are transgender.<sup>9</sup> Researchers have also found that LGBTQ people turned away from shelters cannot easily find someplace else to go.<sup>10</sup>

#### *Additional USTS Findings on the Drivers and Impacts of Homelessness*

Transgender people's experiences with housing and homelessness are affected by and contribute to their health, financial stability, and overall wellness. Several key findings from the USTS are presented here to provide important context.

##### 1. Transgender people face high rates of unemployment and poverty

The high rates of homelessness and low rates of home ownership in the USTS should be understood in the context of high rates of poverty and unemployment. Transgender people in the sample were far more likely to be unemployed and living under the poverty line than the adult population in the United States overall. At the time that the survey was fielded, the unemployment rate in the U.S. was 5%. Among USTS respondents, the unemployment rate was three times higher (15%).

Similarly, while the poverty rate among U.S. adults was 12%, nearly one in three (29%) USTS respondents were living under the poverty line.

##### 2. Family support or rejection is a key factor in transgender homelessness

While most respondents reported that their family was supportive of them as a transgender person, too many faced rejection from their families. One in twelve (8%) respondents who were out to their immediate family were kicked out of the house because of being transgender, and one in ten (10%) ran away from home. Many transgender people are forced to leave their homes to avoid abuse. In the USTS, one in ten (10%) respondents who were out to their immediate family experienced violence at the hands of a family member because they were transgender.

<sup>9</sup> Caitlin Rooney, Laura E. Durso, & Sharita Gruberg, *Discrimination Against Transgender Women Seeking Access to Homeless Shelters* (Jan. 7, 2016), <https://www.americanprogress.org/issues/lgbt/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/> (reporting results of matched-pair testing of 100 shelters in four states in 2015).

<sup>10</sup> Sarah Kellman, Laura E. Durso, Sharita Gruberg, & Caitlin Rooney, *The Dire Consequences of the Trump Administration's Attack on Transgender People's Access to Shelters* (Jul. 31, 2019), <https://www.americanprogress.org/issues/lgbt/news/2019/07/31/472988/dire-consequences-trump-administrations-attack-transgender-peoples-access-shelters/> (reporting results from nationally representative 2017 survey of LGBTQ adults).

USTS respondents were substantially less likely to face homelessness and housing instability when they had their family's support. Noted above is the stark finding that almost three quarters (74%) of respondents who were kicked out of the house for being transgender faced homelessness. Among respondents who face violence from a family member because of being transgender, nearly six in ten (59%) experienced homelessness. Those with unsupportive families were far more likely to experience homelessness than those with supportive families: 45% of those who said that their families were generally unsupportive experienced homelessness, compared to 27% of those who said that their family was currently supportive.

### 3. Transgender homelessness is linked to poor health, suicidality, and victimization

Respondents who experienced homelessness faced far poorer health outcomes compared to the sample overall. For example, 59% of those who have experienced homelessness have attempted suicide, compared to the already-startling rate of 40% in the sample overall. These respondents were also nearly twice as likely as the general sample and nine times more likely than the U.S. population to be living with HIV, with an HIV prevalence of 2.7%.

Those who had experienced homelessness in their lifetime were more likely to face abuse and violence. In the overall sample, nearly half (47%) of respondents had been sexually assaulted. Among people who had experienced homelessness, that figure spikes to nearly two thirds (65%). Additionally, 61% experienced intimate partner violence.

### 4. Survivors of conversion therapy report higher rates of homelessness

Conversion therapy is the harmful and medically baseless attempt to change someone's gender identity or try to stop them from being transgender. Approximately one in seven (13%) USTS respondents had experienced conversion therapy directed at their gender identity.<sup>11</sup> Those respondents were more likely to have experienced homelessness, with about half (46%) having been homeless.

## III. Fair housing and lending laws forbid anti-transgender discrimination

For nearly twenty years, federal courts have overwhelmingly held that discrimination targeting transgender people is covered by federal sex discrimination statutes, including the Fair Housing Act and the Equal Credit Opportunity Act.<sup>12</sup> As early as 2000, the First Circuit held that

<sup>11</sup> Additionally, 10% experienced conversion therapy directed at their sexual orientation.

<sup>12</sup> See, e.g., *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034 (7th Cir. 2017) (holding that discrimination against transgender students constitutes sex discrimination under Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the U.S. Constitution); *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217 (6th Cir. 2016) (holding that discrimination against transgender students likely constitutes sex discrimination under Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the U.S. Constitution); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011) (holding that termination of employee based on her gender transition, transgender status and unsubstantiated "bathroom concerns" constitutes sex-based discrimination in violation of the Equal Protection Clause of the U.S. Constitution); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005) (holding that termination of employee based on her gender transition constitutes sex-based discrimination under Title VII of the 1964 Civil Rights Act); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004) (holding that termination of employee based on her gender transition constitutes sex-based discrimination under Title VII); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000) (holding that refusal to serve transgender customer constitutes sex-based discrimination under the Equal Credit Opportunity Act); *Schwenk v. Hartford*, 204 F.3d 1187

discriminating against a person because they are transgender or do not conform to gender stereotypes is unlawful sex discrimination under the Equal Credit Opportunity Act.<sup>13</sup> In that case, a bank teller refused to serve a customer she perceived to be male because the customer wore traditionally feminine clothing, instructing the customer to go home and change. Describing the customer in now-outdated language as “cross-dressing,” the First Circuit held that the customer could state a sex discrimination claim under the Equal Credit Opportunity Act, because the teller perceived the customer to be male and “she thought that [the customer’s] attire did not accord with his male gender,” whereas she would have served a customer whom she perceived to be female if they dressed in the same manner.<sup>14</sup>

In 2010, HUD followed this body of case law in adopting the view that the Fair Housing Act prohibits discrimination against transgender people.<sup>15</sup> In accordance with this interpretation, in 2013 the Justice Department brought an action under the Fair Housing Act against a housing provider who allegedly evicted a woman and her partner because she was transgender.<sup>16</sup> In 2014, the Justice Department successfully settled this case, obtaining relief for the couple.<sup>17</sup>

In 2016, in the preamble to its final rule on discriminatory harassment under the Fair Housing Act, HUD again confirmed its adherence to this understanding of the Fair Housing Act:

HUD agrees with the commenters’ view that the Fair Housing Act’s prohibition on sex discrimination prohibits discrimination because of gender identity. In *Price Waterhouse v. Hopkins*, the Supreme Court interpreted Title VII’s prohibition of sex discrimination to encompass discrimination based on non-conformance with sex stereotypes, stating that “[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.” Taking note of *Price Waterhouse* and its progeny, in 2010, HUD issued a memorandum recognizing that sex discrimination prohibited by the Fair Housing Act includes discrimination because of gender identity. In 2012, the Equal Employment Opportunity Commission (EEOC) reached the same conclusion, “clarifying that claims of discrimination based on transgender status, also referred to as claims of discrimination based on gender identity, are cognizable under Title VII’s sex discrimination prohibition.” Following the EEOC’s decision, the Attorney General also concluded that:

the best reading of Title VII’s prohibition of sex discrimination is that it encompasses discrimination based on gender identity, including transgender status. The most straightforward reading of

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(9th Cir. 2000) (holding that the Gender Motivated Violence Act (GMVA) applied to targeting of a transgender person); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008); see also *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2007) (holding that discrimination against transgender workers may sometimes constitute sex discrimination under Title VII but that such discrimination was not covered in all cases).

<sup>13</sup> *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000).

<sup>14</sup> *Rosa*, 214 F.3d at 215–16.

<sup>15</sup> See Dep’t of Housing & Urban Dev., *HUD Issues Guidance on LGBT Housing Discrimination Complaints*, Press Release (July 1, 2010), <https://archives.hud.gov/news/2010/pr10-139.cfm>.

<sup>16</sup> *U.S. v. Toone*, No. 6:13-cv-00744 (E.D. Tex. filed Oct. 3, 2013).

<sup>17</sup> *U.S. v. Toone*, No. 6:13-cv-00744, Mediated Settlement Order (E.D. Tex. July 17, 2014).

Title VII is that discrimination “because of . . . sex” includes discrimination because an employee’s gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex.

HUD reaffirms its view that under the Fair Housing Act, discrimination based on gender identity is sex discrimination. Accordingly, quid pro quo or hostile environment harassment in housing because of a person’s gender identity is indistinguishable from harassment because of sex.<sup>18</sup>

In recent years, the vast majority of federal courts and the EEOC have continued to adhere to the view that sex-based discrimination includes anti-LGBTQ discrimination. In 2017, for example, a federal district court ruled on the case of a landlord who refused to rent to two women and their children because one of them was transgender, saying their “uniqueness” would jeopardize the landlord’s “low profile” in the community.<sup>19</sup> The court held that the case squarely presented allegations of discrimination on the basis of sex stereotypes under *Price Waterhouse v. Hopkins*. Applying similar principles, in 2018 the U.S. Court of Appeals for the Seventh Circuit held that a pattern of harassment towards an assisted living facility resident based on her 30-year relationship with another woman, in which “[f]or 15 months, she was bombarded with threats, slurs, derisive comments about her family, taunts about a deadly massacre, physical violence, and spit,” constituted sex-based discrimination under the Fair Housing Act.<sup>20</sup>

In addition to the sale and rental of housing, the Fair Housing Act applies to a wide range of residential facilities, from assisted-living and skilled nursing homes to transitional housing programs. In some cases, the Fair Housing Act also applies to emergency shelters. Courts have held that whether a facility constitutes a covered “dwelling” under the Act is a fact-specific inquiry based on factors including how long individuals reside there and whether they view it as a place to return to during that time.<sup>21</sup> Applying this standard, courts have held that some homeless shelters are covered under the Fair Housing Act, while others are not, based on the application of these factors to how the shelter is operated.<sup>22</sup> Accordingly, many (though not all) homeless shelters are covered under the Fair Housing Act’s prohibition on discrimination on the basis of sex, including discrimination against LGBTQ individuals.

<sup>18</sup> Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act; Final Rule, 81 Fed. Reg. 63054, 63058 (Sept. 14, 2015) (internal citations omitted).

<sup>19</sup> *Smith v. Avanti*, 249 F.Supp.3d 1194 (D. Colo. Apr. 5, 2017).

<sup>20</sup> *Wetzel v. Glen St. Andrew Living Cmty.*, 901 F.3d 856 (7th Cir. 2018).

<sup>21</sup> See, e.g., *United States v. Columbus Country Club*, 915 F.2d 877 (3d Cir. 1990); *United States v. Hughes Memorial Home*, 396 F.Supp. 544 (W.D.Va. 1975).

<sup>22</sup> Compare, e.g., *Hunter ex rel. A.H. v. D.C.*, 64 F.Supp.3d 158, 177 (D.D.C. 2014) (homeless shelter is a dwelling under the FHA); *Boykin v. Gray*, 895 F.Supp.2d 199, 207 (D.D.C. 2012) (same); *Jenkins v. New York City Dep’t of Homeless Servs.*, 643 F.Supp.2d 507, 517–18 (S.D.N.Y.2009) (same); *Woods v. Foster*, 884 F.Supp. 1169, 1173 (N.D.Ill.1995) (same); with *Intermountain Fair Hous. Council v. Boise Rescue Mission Ministries*, 717 F.Supp.2d 1101, 1109 (D. Idaho 2010), aff’d on other grounds, 657 F.3d 988 (9th Cir. 2011) (homeless shelter is not a dwelling under the FHA).

However, the Justice Department under the Trump Administration has repudiated that view, first in an October 6, 2017 Attorney General memo,<sup>23</sup> and more recently in briefs to the Supreme Court in three cases arising under Title VII of the 1964 Civil Rights Act. The first two consolidated cases, *Bostock v. Clayton County Georgia* and *Altitude Express, Inc. v. Zarda* present the question of whether the prohibition of sex-based discrimination in Title VII of the Civil Rights Act of 1964 applies to discrimination based on an individual's sexual orientation.<sup>24</sup> In a third case to be heard separately, *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission*, the Supreme Court will decide whether Title VII prohibits discrimination against transgender people based on (1) their transgender status or (2) sex stereotyping under the Court's 1989 precedent *Price Waterhouse v. Hopkins*.<sup>25</sup>

The Trump Administration has asked the Supreme Court to strip away legal protections that LGBTQ Americans have enjoyed, and that numerous federal courts have recognized, for many years. While the Fair Housing Act and the Equal Credit Opportunity Act are separate and distinct statutes, these cases could have implications for housing and lending protections, underscoring the need to preserve protections for all Americans.

#### **IV. HUD's Equal Access Rule is the product of extensive deliberation and based on substantial evidence**

Independent of federal sex discrimination statutes, HUD is authorized to, and has wisely chosen to, prohibit arbitrary discrimination in HUD-funded programs. The current HUD Equal Access Rule (codified at 5 C.F.R. sections 5.105 and 5.106) is the product of years of development, study, and experience by HUD in consultation with direct service providers across the country. The Rule, and particularly its 2016 clarification, built on the success of the 2013 Violence Against Women Reauthorization Act, which extended the same protections to VAWA-funded programs, with broad support from the domestic and sexual violence field.<sup>26</sup> The Rule also reflects the successful experiences of hundreds of cities and counties and over 20 states, covering nearly half the U.S. population, that have similar laws protecting equal housing opportunity and equal access to emergency shelters.<sup>27</sup>

As previously noted, HUD first recognized that the Fair Housing Act prohibits anti-LGBTQ bias as early as 2010. In 2011, after consultation with housing providers and advocates, HUD first proposed the Equal Access Rule, citing "evidence suggesting that LGBT individuals and families do not have equal access to housing," and stating that, "[i]n considering the mounting evidence of violence and discrimination against LGBT persons, the Department is concerned that its own

<sup>23</sup> Memorandum from Attorney General Jeff Sessions, *Revised Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (Oct. 4, 2017), <https://assets.documentcloud.org/documents/4067383/Attachment-2.pdf>.

<sup>24</sup> 139 S. Ct. 1599 (2019).

<sup>25</sup> 139 S. Ct. 1599 (2019).

<sup>26</sup> See, e.g., National Task Force to End Sexual and Domestic Violence, *Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community* (Apr. 17, 2018), <http://www.4vawa.org/ntf-action-alerts-and-news/2018/4/17/anti-sexual-assault-and-domestic-violence-organizations-in-support-of-full-and-equal-access-for-the-transgender-community>.

<sup>27</sup> See Movement Advancement Project, *Equality Maps: Nondiscrimination Laws* (last accessed Oct. 24, 2019), [https://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](https://www.lgbtmap.org/equality-maps/non_discrimination_laws).

programs may not be fully open to LGBT individuals and families.”<sup>28</sup> In finalizing the rule in 2012, HUD stated further that “the exclusion of an individual or family from HUD housing for no reason other than that the individual is LGBT or the family has one or more LGBT members is inconsistent with HUD’s mission to ensure decent housing and a suitable living environment for all.”<sup>29</sup> It further explained that these protections are critical to fulfilling HUD’s mission and the programs authorized by Congress:

HUD’s mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. This includes LGBT persons, who have faced difficulty in seeking housing. Excluding any eligible person from HUD-funded or HUD-insured housing because of that person’s sexual orientation or gender identity contravenes HUD’s responsibility under the Department of Housing and Urban Development Act to work to address “the needs and interests of the Nation’s communities and of the people who live and work in them.” (See 42 U.S.C. 3531.) Congress has repeatedly charged the Department with serving the existing housing needs of all Americans.<sup>30</sup>

In the 2012 final rule, HUD did not specify how the Rule’s nondiscrimination requirement applied to emergency shelter programs that were sex-specific, stating that it wished conduct further research and “monitor its programs so as to ascertain whether additional guidance may be necessary.”<sup>31</sup> However, the Rule by its terms prohibits discrimination in all HUD-funded programs, including emergency shelters.

Following further study and consultation with housing providers and advocates, and further legal developments, HUD issued guidance in early 2015 strongly urging shelters to provide equal access in accord with an individual’s sincerely held gender identity.<sup>32</sup> Shortly thereafter, HUD

<sup>28</sup> Equal Access to Housing in HUD Programs—Regardless of Sexual Orientation or Gender Identity, 76 Fed. Reg. 4194, 4195 (proposed Jan. 24, 2011) (to be codified at 24 C.F.R., pts. 5, 200, 203, 236, 570, 574, 982).

<sup>29</sup> Equal Access to Housing in HUD Programs Regardless of Sexual Orientation of Gender Identity; Final Rule, 77 Fed. Reg. 5662, 5673.

<sup>30</sup> *Id.* at 5672 (citing section 2 of the Housing Act of 1949, 42 U.S.C. 1441 (“The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require...the realization as soon as feasible the goal of a decent home and a suitable living environment for every American family...”); section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 (“The Congress affirms the national goal, as set forth in section 2 of the Housing Act of 1949, of ‘a decent home and a suitable living environment for every American family’”); sections 101 and 102 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12701-702 (“The Congress affirms the national goal that every American family be able to afford a decent home in a suitable environment.... The objective of national housing policy shall be to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American by strengthening a nationwide partnership of public and private institutions able...to ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness...[and] to improve housing opportunities for all residents of the United States”); and section 2(b) of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 note (“The purpose of this Act, therefore, is—(1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing for all Americans.”))

<sup>31</sup> *Id.* at 5666.

<sup>32</sup> Dep’t of Housing & Urban Dev., *Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities* (Feb. 20, 2015).

proposed to clarify the Equal Access Rule's application to sex-specific programs, in accordance with the guidance.<sup>33</sup> In so doing, HUD stated:

Given HUD's mission to provide equal housing opportunities for all, and the significant violence, harassment, and discrimination faced by transgender individuals and other persons who do not identify with the sex they were assigned at birth in attempting to access programs, benefits, services, and accommodations, HUD has a responsibility to provide leadership in establishing a policy for HUD's community development programs that addresses these serious concerns.<sup>34</sup>

HUD explained that it reviewed existing research and the experiences of HUD's programs since 2012 to assess the need for more specific guidance:

As a result of its review, HUD determined that the 2012 Equal Access Rule did not adequately address the significant barriers faced by transgender and gender nonconforming persons when accessing temporary, emergency shelters and other facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or bathing facilities. Specifically, HUD found that transgender and gender nonconforming persons continue to experience significant violence, harassment, and discrimination in attempting to access programs, benefits, services, and accommodations. For instance, at a listening session on lesbian, gay, bisexual, and transgender (LGBT) issues conducted with the U.S. Interagency Council on Homelessness, homeless service providers reported that transgender persons are often discriminatorily excluded from shelters or face dangerous conditions in the shelters that correspond to their sex assigned at birth. Some commenters reported that, if given the choice between a shelter designated for assigned birth sex or sleeping on the streets, many transgender shelter-seekers would choose the streets.<sup>35</sup>

HUD therefore added clarifying language to the Equal Access Rule, making clear that in order to avoid discrimination in these settings, individuals should be "placed, served, and accommodated in accordance with that individual's gender identity."<sup>36</sup> The Department further explained that it adopted this approach only "[a]fter considering the feedback from HUD recipients and subrecipients, the experiences of the beneficiaries of HUD's community development programs who have been denied access because of their gender identity, research on transgender discrimination in shelter settings, and the actions taken by other Federal agencies to address access to programs, benefits, services, and accommodations in accordance with an individual's

<sup>33</sup> Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs, 80 Fed. Reg. 72642 (proposed Nov. 20, 2015) (to be codified at 24 C.F.R. pt. 5).

<sup>34</sup> *Id.* at 72645.

<sup>35</sup> *Id.* at 72644.

<sup>36</sup> 24 C.F.R. § 5.106(b)(2).

gender identity.”<sup>37</sup> Around the same time, HUD also adopted a companion rule for HUD’s Native American and Native Hawaiian programs.<sup>38</sup>

Over the course of several years, HUD conducted three comment periods and received over 2,500 public comments on the Equal Access Rule from a wide range of stakeholders. Comments from housing and homelessness organizations, including direct providers of emergency shelter, overwhelmingly supported the Rule’s approach. The 2015 guidance subsequently codified in the Rule was announced with fanfare at the National Conference on Ending Homelessness, hosted by the National Alliance to End Homelessness.<sup>39</sup>

HUD correctly determined in adopting the Rule in 2012 and in clarifying it in 2016 that the Rule does not impose any new costs on shelters or local communities, save for the *de minimis* cost of keeping records of policy changes.<sup>40</sup> But the Rule produces substantial benefits by providing clear national guidelines that are consistent with state and federal law and help ensure people are served based on need rather than who they are. As HUD stated in adopting the 2016 final rule:

This clarification will benefit clients accessing CPD-funded programs, including those with temporary, emergency shelters and other buildings and facilities, by assuring that all clients receive equal access and will benefit the CPD-funded facilities by making compliance with HUD’s equal access requirements easier.

These requirements benefit all occupants by ensuring that providers understand that they need to be responsive to individual health, safety, security, and privacy concerns, while ensuring that they do not take any discriminatory steps to address these concerns.<sup>41</sup>

The HUD Equal Access Rule, as adopted in 2012 and clarified in 2016, thus represents an approach proven to be successful through decades of experience across the country in a wide variety of settings, consistent with applicable laws, and developed over many years through extensive engagement with a wide range of stakeholders. Every question and concern raised about the Rule by the current Administration was thoroughly considered, tested, and debunked years ago.

#### **V. The Trump Administration has worked consistently to undermine Equal Access protections**

Despite the robust evidence, experience, deliberation, and stakeholder engagement that produced the Equal Access Rule, the Trump Administration has sought to undermine Equal Access protections since its inception.

<sup>37</sup> *Id.* at 72645.

<sup>38</sup> Equal Access to Housing in HUD’s Native American and Native Hawaiian Programs—Regardless of Sexual Orientation or Gender Identity; Final Rule, 81 Fed. Reg. 80989 (Nov. 17, 2016).

<sup>39</sup> National Alliance to End Homelessness, *HUD Secretary Julián Castro’s Keynote Remarks, 2015 Family and Youth Homelessness Conference* (Mar. 2, 2015), <https://endhomelessness.org/hud-secretary-julian-castro-keynote-remarks-2015-family-and-youth-homeless>.

<sup>40</sup> Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs; Final Rule, 81 Fed. Reg. 64763, 64781 (Sept. 21, 2016).

<sup>41</sup> *Id.*



On March 10, 2017, HUD announced it would withdraw two important agency-proposed policies designed to protect LGBTQ people experiencing homelessness. One would have required HUD-funded emergency shelters to put up a poster or “notice” to residents of their right to be free from discrimination under the Equal Access Rule.<sup>42</sup> The other announced a program evaluation to assess the impact of the LGBTQ Youth Homelessness Prevention Initiative, implemented by HUD and other agencies over the last three years.<sup>43</sup> The program evaluation notice was later reissued<sup>44</sup>; the equal access notice was not.

Also in March 2017, HUD removed links to four key HUD publications from its website, which it had developed together with service providers to outline practices for serving transgender people facing homelessness and complying with the Equal Access Rule.<sup>45</sup> Despite directives from House appropriators,<sup>46</sup> HUD has never restored those publications, although NCTE has housed them on our own website ever since.<sup>47</sup>

Since that time, HUD has consistently and publicly assured stakeholders that it had no plans to roll back the Equal Access Rule—including in a statement by Secretary Ben Carson to this committee on May 21, 2019. However, the very next day HUD released its Spring 2019 Regulatory Agenda, revealing that it was in fact planning to cut back the Equal Access Rule after all. In its Regulatory Agenda, HUD stated that it intended to roll back the Rule’s protections for those seeking emergency shelter, permitting programs to deny shelter and services to transgender people.<sup>48</sup> Remarkably, even before Secretary Carson’s false claims to this committee, HUD had already quietly sent this proposal to the Office on Management and Budget a month prior, with no public description.

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<sup>42</sup> 60-Day Notice of Proposed Information Collection: Notice on Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD’s Community Planning and Development Programs, Withdrawal, 82 Fed. Reg. 13359 (Mar. 10, 2017).

<sup>43</sup> 60-Day Notice of Proposed Information Collection: Implementation Phase Review of the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Youth Homelessness Prevention Initiative, Withdrawal, 82 Fed. Reg. 13359 (Mar. 10, 2017).

<sup>44</sup> Notice of Proposed Information Collection: Implementation Phase Evaluation of LGBTQ Youth Homelessness Prevention Initiative, 82 Fed. Reg. 55389 (Nov. 21, 2017).

<sup>45</sup> Nat’l Ctr. For Transgender Equality, *HUD Purges Publications that Helped Shelters Keep Transgender People Safe*, Press Release (Apr. 27, 2017), <https://transequality.org/press/releases/hud-purges-publications-that-helped-shelters-keep-transgender-people-safe>.

<sup>46</sup> See Office of Congressman Mike Quigley, *Quigley Leads T-HUD Member Letter to Secretary Carson on Continued Absence of LGBT Housing Resources*, Press Release (Oct. 4, 2018), <https://quigley.house.gov/media-center/press-releases/quigley-leads-t-hud-member-letter-secretary-carson-continued-absence>.

<sup>47</sup> Nat’l Ctr. For Transgender Equality, *HUD Purges Publications that Helped Shelters Keep Transgender People Safe*, Press Release (Apr. 27, 2017), <https://transequality.org/press/releases/hud-purges-publications-that-helped-shelters-keep-transgender-people-safe>.

<sup>48</sup> Dept. of Housing and Urban Development, Spring 2019 Regulatory Agenda, “Revised Requirements Under Community Planning and Development Housing Programs (FR-6152); Proposed rule,” RIN: 2506-AC53.

The Secretary's explanation for lying to this committee was essentially the same one the White House has given for its ban on transgender troops: we don't discriminate, but turning transgender people away isn't discrimination.<sup>49</sup>

Advocates for the homeless and for survivors of sexual and domestic violence have been quick to condemn this heartless move. Well over a year ago, the National Task Force to End Sexual and Domestic Violence denounced HUD's efforts to undermine the Rule, stating:

We serve everyone in domestic and sexual violence shelters and programs, including men, women, and non-binary survivors, as all individuals need a safe place to go when experiencing interpersonal violence. The reasoning is simple. Transgender people experience unconscionably high rates of sexual assault and domestic violence—and forcing them out of facilities consistent with the gender they live every day makes them further vulnerable to assault.<sup>50</sup>

The National Task Force has since reiterated its opposition to this attempted rollback of protections, as have leading other national and local groups working to end homelessness and domestic violence.<sup>51</sup>

Yet despite opposition from the leading voices on the front lines, HUD has doubled down on these attacks. On July 3, HUD erased from its 2019 Notice of Funding Availability all mentions or incentives for ensuring that homelessness programs don't discriminate and that they make efforts to reach vulnerable LGBTQ Americans.<sup>52</sup> And last month, Secretary Carson shocked his own staff by launching into an unprompted and demeaning tirade against transgender people while visiting a HUD field office.<sup>53</sup> The Secretary has refused to apologize, and dismissed criticism of his comments and his policy proposals as "identity politics" and "political correctness."<sup>54</sup>

<sup>49</sup> See Justin Wm. Moyer, *Rep. Jennifer Wexton says 'inept' Ben Carson should resign as HUD secretary*, Wash. Post (May 23, 2019), [https://www.washingtonpost.com/local/virginia-politics/rep-jennifer-wexton-says-inept-ben-carson-should-resign-as-hud-secretary/2019/05/23/45f8d9f0-7d84-11e9-a3dd-d481bcdabfe6\\_story.html](https://www.washingtonpost.com/local/virginia-politics/rep-jennifer-wexton-says-inept-ben-carson-should-resign-as-hud-secretary/2019/05/23/45f8d9f0-7d84-11e9-a3dd-d481bcdabfe6_story.html).

<sup>50</sup> National Task Force to End Sexual and Domestic Violence, *Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community* (Apr. 17, 2018), <http://www.4vawa.org/ntf-action-alerts-and-news/2018/4/17/anti-sexual-assault-and-domestic-violence-organizations-in-support-of-full-and-equal-access-for-the-transgender-community>

<sup>51</sup> See, e.g., Office of Information and Regulatory Affairs, EO 12866 Meetings Search Results: RIN 2506-AC53, <https://www.reginfo.gov/public/do/eo12866SearchResults?pubId=201904&rin=2506-AC53>.

<sup>52</sup> See Office of Congresswoman Jennifer Wexton, *Reps. Wexton, Pressley Slam Secretary Carson's Latest Attack on Transgender Americans*, Press Release (Sept. 19, 2019), <https://wexton.house.gov/media/press-releases/rep-wexton-pressley-slam-secretary-carson-s-latest-attack-transgender>.

<sup>53</sup> Tracy Jan & Jeff Stein, *HUD Secretary Ben Carson makes dismissive comments about transgender people, angering agency staff*, WASH. POST (Sept. 19, 2019), <https://www.washingtonpost.com/business/2019/09/19/hud-secretary-ben-carson-makes-dismissive-comments-about-transgender-people-angering-agency-staff/>.

<sup>54</sup> Tracy Jan, *Pressed on transgender comments, HUD's Carson says political correctness is 'going to destroy our nation'*, WASH. POST (Oct. 22, 2019), <https://www.washingtonpost.com/business/2019/10/22/pressed-transgender-comments-hud-carson-says-political-correctness-is-going-destroy-our-nation/>; Tracy Jan, *As Democrats call for his resignation, HUD Secretary Ben Carson defends his controversial comments about transgender people*, WASH. POST (Sept. 20, 2019), <https://www.washingtonpost.com/business/2019/09/20/democrats-call-his-resignation-hud-secretary-ben-carson-defends-his-controversial-comments-about-transgender-people/>.

## VI. HUD's proposal is inconsistent with authorizing statutes and other federal laws

The Administration's attempt to gut the Equal Access Rule flies in the face of the very Congressional enactments that authorize HUD's programs and that authorized the Rule in the first place, and conflicts with federal civil rights statutes.

### *Purposes of HUD's authorizing statutes*

As previously discussed, the Rule is grounded in Congress's clear directions across the Department's authorizing statutes that HUD funds be used to help those in need. For example, Section 2 of the Housing Act of 1949 states that its purpose is the "realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family."<sup>55</sup> Similarly, the purpose of the McKinney-Vento Homeless Assistance Act of 1987 is "to meet the critically urgent needs of the homeless of the Nation."<sup>56</sup> Likewise, the stated Congressional purpose of the National Affordable Housing Act of 1990 is "to ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness."<sup>57</sup>

The Equal Access Rule serves these purposes by ensuring that no person facing homelessness is denied shelter or assistance simply because of who they are. It flouts the will of Congress for HUD to encourage recipients to use these program funds to turn people out on the street and prolong homelessness in a population that already faces it at extreme rates.

Moreover, HUD's plan to endorse discrimination in shelter access would directly conflict with statutory requirements under the Violence Against Women Act (VAWA), and create confusion for agencies receiving both HUD and VAWA funding. VAWA, as amended in 2013, prohibits discrimination against transgender survivors of violence seeking shelter and services.<sup>58</sup> VAWA's nondiscrimination protections were strongly supported by the National Task Force to End Sexual and Domestic Violence and its hundreds of member organizations and have been successfully in place for years. HUD has recognized that VAWA applies to many HUD programs and recipients of HUD funding, codifying its own regulations that incorporate VAWA protections.

As previously discussed, the Fair Housing Act's prohibition on sex discrimination applies, in many cases, to emergency shelters and transitional housing programs, and the vast majority of federal courts agree that it applies to anti-transgender discrimination. A proposal to authorize discrimination against transgender shelter-seekers would therefore condone and encourage practices that the Fair Housing Act forbids. Whatever the merits of the current Justice Department's contrary legal view, the legal landscape in this area could soon shift, and it would be inappropriate to move forward with any rulemaking at this time in light of the Supreme Court's pending decisions in three cases potentially impacting the legal underpinnings of this rule. Although the Fair Housing Act is a separate and distinct statute from Title VII of the Civil Rights Act, the resolution of these cases could potentially have the effect of altering the contours of or even invalidating the legal underpinnings of HUD's proposed changes. This could render any resulting regulation either invalid or unnecessary, or require further rulemaking to clarify or

<sup>55</sup> 42 U.S.C. § 1441.

<sup>56</sup> 42 U.S.C. § 11301(b)(2).

<sup>57</sup> 42 U.S.C. § 12702(1).

<sup>58</sup> 34 U.S.C. § 12291(b)(13)(A).

correct its provisions. As such, proceeding with rulemaking at this time could lead to overwhelming confusion and legal uncertainty for HUD-funded entities, local communities, and individuals seeking help. Additionally, given the substantial implications these pending decisions have for HUD's planned changes, a final rule adopted without benefit of public comment informed by the Supreme Court's rulings would deprive the public of a meaningful opportunity to comment under the Administrative Procedure Act.

**VII. HUD has failed to provide a reasoned basis for rolling back these critical protections**

HUD has failed to provide any real evidence that the carefully considered protections in the Rule, which mirror laws long in place across much of the nation, must be rescinded. While it is understandable that someone not familiar with the history of this issue might have questions and concerns about how nondiscrimination protections for transgender people would work in practice, we do not have to imagine the answers to those questions. We already have those answers in the form of decades of experiences with hundreds of state and local laws that now cover half the country; two decades of federal case law; several years of nationwide experience with the Rule itself and VAWA's parallel protections; and HUD's extensive past consultations with experts in the field. The Department twice determined that the Rule poses no substantial costs and creates important benefits for covered entities and for some of our nation's most vulnerable residents. As previously noted, the Equal Access Rule has been successful and widely embraced by leaders in the field based on actual experience, which has long disproven the myths and speculations raised by Secretary Carson to justify this policy change.<sup>59</sup>

*The Rule requires shelters to address individual privacy concerns*

Secretary Carson has falsely claimed that the Equal Access Rule somehow compromises personal privacy, a claim that ignores the facts, the law, and very text of the Rule itself. The Equal Access Rule explicitly requires that HUD-funded shelters "must take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants."<sup>60</sup> At the same time, the Rule provides shelters with broad flexibility to determine how best to address any privacy concerns that are brought to staff, which could include a variety of steps to provide more private accommodations or visual separation for an individual upon request, or for all residents.

The Rule's prohibition on discrimination, while permitting programs to address individual privacy concerns, is consistent with the longstanding policies of many shelter providers, and with the requirements of hundreds of local and state laws and of federal case law. The consistent experience of these states and local communities has been that simply welcoming shelter-seekers who are transgender without discrimination helps those in need and harms no one. Moreover, numerous courts across the country over the last two decades have held that nondiscrimination laws and policies that permit transgender and non-transgender individuals alike to access public

<sup>59</sup> National Task Force to End Sexual and Domestic Violence, *Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community* (Apr. 17, 2018), <http://www.4vawa.org/ntf-action-alerts-and-news/2018/4/17/anti-sexual-assault-and-domestic-violence-organizations-in-support-of-full-and-equal-access-for-the-transgender-community>.

<sup>60</sup> 24 C.F.R. § 5.106(c)(2).

facilities consistent with their deeply and sincerely held gender identity do not violate any right to privacy or discriminate against any individual.<sup>61</sup>

*The Rule is consistent with religious freedom*

There is nothing more sacred to most faith traditions than helping all those in need. Pursuant to federal laws and HUD regulations, faith-based organizations can and do participate in HUD programs and do good work every day, complying with the same program requirements as well other organizations.<sup>62</sup> In the Fair Housing Act, Congress established significant exemptions for religious organizations, but did not extend them to shelters that serve all persons in need regardless of their faith.<sup>63</sup> Faith-based programs across the country can and do welcome transgender people every day without exclusion or discrimination, in compliance with the Equal Access Rule and the Fair Housing Act. When any entity uses federal funds to help some of our most vulnerable neighbors, HUD needs to ensure that all eligible people in need are served equally.

*Court cases cited by HUD demonstrate the appropriateness of the Rule*

To justify rolling back the Rule's protections, HUD has pointed to two lawsuits that do not involve the Rule, and do nothing to justify a policy of encouraging shelters to put transgender people on the streets.<sup>64</sup> On the contrary, these cases illustrate the need for and appropriateness of the Equal Access Rule.

In one case, an Anchorage shelter repeatedly turned away a homeless woman named Samantha Coyle simply because she is transgender.<sup>65</sup> She had been referred there by another shelter, and knew she could not safely stay in a men's shelter as the only woman there. After being turned away, she was forced to sleep outdoors in the woods. When it received an inquiry from a local human rights agency, the shelter claimed that Anchorage's nondiscrimination ordinance violated the federal and state constitutions.<sup>66</sup> Ultimately, the district court ruled that the specific local Anchorage ordinance didn't apply to the shelter in the first place.<sup>67</sup> This case centered on a local law and did not involve the Equal Access Rule, but it does illustrate the kind

<sup>61</sup> *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018), reh'g en banc denied, 897 F.3d 515 (3d Cir. 2018); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 983 (8th Cir. 2002); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F.Supp.3d 1075 (D. Or. 2018); *Crosby v. Reynolds*, 763 F. Supp. 666 (D. Me. 1991). In one recent case, a court held that a Title IX claim by a girl who objected to transgender-inclusive policies could withstand a motion to dismiss, noting that "[w]hether [plaintiff] can ultimately prevail on this claim is a question for another day." *Students and Parents for Privacy v. Township High Sch. Dist. 211*, 377 F.Supp.3d 891, 900 (N.D. Ill. 2019). The judge did not find there was any substantive violation, but observed that simply pleading "I was subjected to sexual harassment" is sufficient to survive a motion to dismiss under circuit precedent, *id.*, and that plaintiffs also alleged verbal harassment by peers and school officials. *Id.* at 895-96. The court dismissed the privacy claims. *Id.* at 901-02.

<sup>62</sup> See 24 CFR § 5.109.

<sup>63</sup> 42 U.S.C. § 3607(a).

<sup>64</sup> See HUD Press Office, *WHAT YOU NEED TO KNOW: HUD to Help Local Homeless Shelters Serve Their Clients' Needs* (May 23, 2019).

<sup>65</sup> Jill Burke, *Transgender woman at center of Downtown Soup Kitchen lawsuit speaks out*, KTUU (Jan. 17, 2019), <https://www.ktuu.com/content/news/Transgender-woman-at-center-of-Downtown-Soup-Kitchen-lawsuitspeaks-out-504529741.html>.

<sup>66</sup> *Downtown Soup Kitchen v. Municipality of Anchorage*, 3:18-cv-00190, at \*12 (D. Alaska Aug. 9, 2019).

<sup>67</sup> *Downtown Soup Kitchen*, 3:18-cv-00190, at \*33.

of unfortunate and harmful discrimination against vulnerable shelter-seekers that the Rule was designed to address.

In the other case cited by HUD, a group of former residents claim that staff at a shelter in Fresno failed to protect them from harassment by another woman at the shelter, who allegedly made lewd comments and tried to view them while they showered.<sup>68</sup> In addition, the plaintiffs argue the shelter should not have admitted the woman who allegedly harassed them, and instead should have turned her away because she was transgender. This case, which is currently in the midst of discovery,<sup>69</sup> has nothing to do with the Equal Access Rule. The conduct alleged in the complaint in this case, if true, would be inappropriate for any shelter resident, transgender or not. The Equal Access Rule does not prevent shelter staff from addressing and stopping inappropriate behavior by anyone—in fact, it requires them to do so. In the 2016 final rule, HUD urged that “providers should have policies and procedures in place to support residents and staff in addressing and resolving...harassment” in shelters,<sup>70</sup> and noted that harassment in shelters may violate the Rule as well as the Fair Housing Act.<sup>71</sup> Furthermore, as noted, the Rule explicitly requires shelters to respond to privacy concerns raised by residents.<sup>72</sup>

In sum, none of the rationales cited by HUD for its proposed rollback have a credible basis in facts or law.

#### **VIII. HUD’s planned rollback would impose many serious costs on shelter-seekers and society**

As described in HUD’s Spring 2019 Regulatory Agenda, the planned rollback of the Equal Access Rule would carry serious costs for covered entities, local communities, vulnerable shelter-seekers, and society as a whole. These costs include:

- **Costs of having to sleep outside of shelters and of spending longer periods of time without stable housing.** HUD’s proposal will likely lead to transgender people being turned away from, and in some cases simply giving up on even seeking, emergency shelter, and instead sleeping on the street or engaging in survival sex or survival crimes. As previously discussed, this problem could potentially affect thousands of people each year. More discriminatory denials of shelter will also likely increase the time it takes for these individuals to be connected to stable housing. HUD should consider existing research on the costs of lack of shelter access and homelessness in assessing these impacts.<sup>73</sup>

<sup>68</sup> *McGee v. Poverello House*, No. 1:18-cv-00768, at \*2 (E.D. Cal. Jul. 1, 2019).

<sup>69</sup> *See McGee*, No. 1:18-cv-00768 at \*1.

<sup>70</sup> Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs; Final Rule, 81 Fed. Reg. 64763, 64768 (Sept. 21, 2016).

<sup>71</sup> *Id.* at 64777, n. 23; *see also* 24 C.F.R. § 100.600 (implementing the Act’s harassment protections).

<sup>72</sup> 24 C.F.R. § 5.106(c)(2).

<sup>73</sup> While HUD might argue that some communities never have enough beds for everyone, and beds unavailable to transgender people will be filled by others, this is not always true and the rule may cause a net decrease in access to shelter. HUD has no evidence that non-transgender individuals experiencing homelessness are actually suffering decreased access or other harms because of the current rule that will lead to offsetting savings from rolling back current protections. Moreover, transgender shelter-seekers are unusually vulnerable on the street due to the high

- **Health costs of experiencing discrimination.** A large body of research demonstrates that experiences of discrimination, such as being turned away from a shelter, have measurable short- and long-term effects on both physical and mental health, which can in turn affect morbidity and mortality, with economic and non-economic costs for individuals, families, the health care system, and the economy.<sup>74</sup>
- **Health costs of the nationwide, high-profile stigmatizing message of the Proposed Rule.** A body of research demonstrates that high-profile public policy changes regarding the civil rights of LGBTQ people can have significant positive or negative effects on population health.<sup>75</sup>
- **Costs caused by encouraging shelters to adopt higher barriers to access for everyone, such as requiring shelter-seekers to show ID to verify gender.** Barriers such as requiring IDs are contrary to evidence-based practices for ensuring access to shelter for those who need it most. To the extent the Proposed Rule encourages shelters to require ID or other documentation of gender or ask invasive personal questions, this could act as barriers for many shelter-seekers, not just those who are transgender. HUD should consider existing research on the benefits of low-barrier shelter practices and the costs of high barriers, and estimate costs resulting from the Proposed Rule by assuming a percentage of shelters who may adopt new barriers as result.
- **Familiarization, administrative, and legal costs for covered entities.** Because it is a departure from past policy, creates confusion regarding the national standard, and may conflict with other federal, state, and local laws and regulations, the Proposed Rule will require more effort to understand than simply having an employee spend an hour reading it, as HUD estimates. They may also need legal advice and, if they engage in discriminatory conduct in reliance on the new rule, they may incur costs related to litigation, state enforcement actions, or loss of state or local funding. Entities that operate in more than one locality or state currently benefit from a consistent national standard, and will have to spend more resources understanding differing laws and requirements.
- **Intangible costs in decreased fairness, equity, personal freedom, personal privacy, and respect for fundamental rights.** Under applicable Executive Orders and OMB

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rates of violence and other forms of trauma that they face, so a night on the street typically incurs a higher societal cost for a transgender person than a non-transgender person.

<sup>74</sup> See, e.g., Jaclyn M. White Hughto, Sari L. Reisner, & John E. Pachankis, Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions, 147 *SOCIAL SCIENCE & MEDICINE* 147, 222–231 (2015); Mark L. Hatzenbuehler, et al., Stigma as a Fundamental Cause of Population Health Inequalities, 103 *AM J. PUB. HEALTH* 813, 816 (2013); Tohru Nemoto, Birte Bodeker, & Mariko Iwamoto, Social Support, Exposure to Violence and Transphobia, and Correlates of Depression Among Male-To-Female Transgender Women with a History of Sex Work, 101 *AM J. PUB. HEALTH* 1980 (2011); Kristen Clements-Nolle, Rani Marx, & Mitchell Katz, Attempted Suicide Among Transgender Persons: The Influence of Gender-Based Discrimination and Victimization, 51 *J. HOMOSEXUALITY* 53 (2009); Ilan H. Meyer, Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence, 129 *PSYCHOL. BULLETIN* 674, 679–85 (2003); Vickie M. Mays & Susan D. Cochran, Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States, 91 *AM J. PUB. HEALTH* 1869, 1874 (2001).

<sup>75</sup> See, e.g., Julia Raifman et al., *Difference-in-Differences Analysis of the Association Between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, 171 *JAMA PEDIATR.* 350 (2017); John R. Blosnich et al., *Mental Health of Transgender Veterans in US States With and Without Discrimination and Hate Crime Legal Protection*, 106 *AM. J. PUB. HEALTH* 534 (2016); Mark L. Hatzenbuehler et al., *Effect of Same-Sex Marriage Laws on Health Care Use and Expenditures in Sexual Minority Men: A Quasi-Natural Experiment*, 102 *AM. J. PUB. HEALTH* 285 (2012); Mark L. Hatzenbuehler et al., *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 *AM J. PUBLIC HEALTH*, 452 (2010).

guidance, agencies must also consider such intangible costs of proposed rules. Courts have repeatedly recognized that the Constitution protects transgender people's rights to define and express their identity, to make personal and medical decisions regarding their transition, to privacy regarding their transgender status and details of their transition, and to equal dignity and treatment. This proposal would erode respect for those fundamental rights and freedoms.

In assessing these potential costs, HUD should consider a range of assumptions regarding the percentage (whether 5, 10, 25, or 50 percent) by which the current Equal Access Rule would likely affect these phenomena over a ten-year period, in light of existing demographic data on the size of the transgender population.<sup>76</sup> Ultimately, for all the reasons described above, it is impossible to justify rolling back the Equal Access Rule's protections for vulnerable shelter-seekers.

#### **IX. Congress should take action to ensure equal opportunity in housing and lending and access to emergency shelter**

Housing and lending discrimination against transgender people, including discrimination in access to emergency shelter and other critical safety-net programs, remains widespread. Together with other social and economic barriers, this problem drives lower rates of home ownership and staggering rates of homelessness among transgender Americans. To date, many states and localities have adopted explicit nondiscrimination protections, as has HUD for programs it funds, and courts have long recognized that the Fair Housing Act and Equal Credit Opportunity Act also prohibit anti-transgender bias. However, the Trump Administration's efforts to undermine both those statutory protections and the HUD Equal Access Rule are deeply concerning and threaten to roll back progress in advancing housing opportunity.

There are many steps Congress can and should take to address this serious national problem. Ultimately, **one of the most important steps Congress can take is to enact H.R. 5, the Equality Act, which has already been passed by the House.** The Equality Act would explicitly clarify that existing statutes, including the Fair Housing Act and the Equal Credit Opportunity Act, prohibit discrimination on the basis of gender identity and sexual orientation. In addition, the Equality Act would extend civil rights protections in public spaces and services and federally funded programs, including HUD programs—essentially codifying the Equal Access Rule. By ensuring clear, comprehensive, and nationwide protections, the Equality Act would not only directly address housing and lending discrimination but would also combat the stigma and economic marginalization that drive housing disparities. Approximately seven in ten (69%) Americans support laws protecting LGBT people from discrimination, with majorities in every state, across political parties, and across age groups.<sup>77</sup> NCTE joins civil rights, business, and faith leaders across the country in urging the Senate to pass it.

Absent Senate action on the Equality Act, **the House should act immediately to pass H.R. 3018, offered by Rep. Wexton and already passed by this committee, which would block**

<sup>76</sup> See, e.g., Jody L. Herman et al., *Age of Individuals who Identify as Transgender in the United States*. (2017).

<sup>77</sup> Daniel Greenberg et al., *Americans Show Broad Support for LGBT Nondiscrimination Protections* (Mar. 12, 2019), <https://www.prii.org/research/americans-support-protections-lgbt-people>.



**HUD from rolling back Equal Access protections.** This simple, narrowly targeted bill would block the current rule change proposed by HUD and preserve the Equal Access Rule's critical and proven protections.

In addition, HUD's anti-transgender proposal must be understood in the context both of the Trump Administration's wider assault on the dignity and freedoms of transgender Americans, and of HUD's wide-ranging efforts to undermine years of progress and best practices in increasing housing opportunities and ending homelessness. This committee has rightly focused attention on other troubling and callous moves by HUD in recent months, including:

- HUD's proposal to evict tens of thousands of children in mixed-immigrant status families;
- HUD's proposal to effectively gut the Fair Housing Act's disparate impact protections, which have been critical in addressing discrimination based on race, disability, and sex, including discrimination targeting domestic violence survivors;
- HUD's retreat from supporting the proven Housing First model embraced by leaders across the country, which to date has included not only public swipes at the model by Secretary Carson but actually removing Housing First principles and incentives from HUD funding notices; and
- HUD's push for legislation to dramatically increase rents for public housing.

These alarming steps show a pattern of callousness toward our most vulnerable community members and undermine any claim that rolling back Equal Access protections is somehow aimed at protecting anyone.

**Congress should block other Administration attacks on housing opportunity by advancing measures such as H.R. 2763, which would prevent the eviction of tens of thousands of families under the HUD mixed-immigrant status rule.**

To fully ensure that all Americans, including LGBTQ Americans, can have access to safe, stable, and affordable housing, civil rights enforcement must go hand in hand with critical investments in increasing housing opportunities and ending homelessness. Accordingly, **Congress should make ambitious investments in ending homelessness, such as those contemplated in H.R.1856, the Ending Homelessness Act of 2019.**

Finally, **Congress, including this committee, should pursue vigorous oversight of HUD's civil rights activities, including its efforts to undermine and roll back protections for LGBTQ Americans at some of the most vulnerable moments in their lives.** We applaud the efforts of this committee to date to demand answers and hold Secretary Carson and Administration officials accountable for their responsibilities to vulnerable Americans, and urge you to continue doing so, including by uncovering the processes by which HUD has developed its ill-considered attack on the Equal Access Rule.

The National Center for Transgender Equality applauds the Subcommittee for holding this important hearing, and we look forward to working with you to advance these goals.



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In 2015, the Center for American Progress and the Equal Rights Center conducted match-paired test calls of 100 homeless shelters across four states (Connecticut, Washington, Tennessee, and Virginia) to measure the degree to which transgender homeless women can access shelter in accordance with their gender identity.

- Only 30 percent of the shelters called were willing to appropriately house transgender women with women.
- 1 in 5 outright refused to serve transgender women.
- Shelters in the states with LGBT nondiscrimination protections, Connecticut and Washington, were twice as likely to be willing to appropriately house transgender women.

Enclosed are two columns which provide additional details from the study, including details about discriminatory treatment the test callers faced. *"The Dire Consequences of the Trump Administration's Attack on Transgender People's Access to Shelters"* also provides data on the impact of shelter refusals from a nationally representative survey from the Center for American Progress in 2017 of LGBTQ adults.

- Among all LGBTQ-identified respondents, 62 percent said it would be somewhat difficult, very difficult, or not possible to find an alternative homeless shelter if turned away.
- For LGBTQ people living in metropolitan areas such as rural areas or small towns, 76 percent said it would be somewhat difficult, very difficult, or not possible to find alternative homeless shelter if turned away.

## The Dire Consequences of the Trump Administration's Attack on Transgender People's Access to Shelters

By Sarah Kellman, [Laura E. Durso](#), [Sharita Gruberg](#), and Caitlin Rooney Posted on July 31, 2019, 9:00 am



Getty/Sarah L. Voisin/The Washington Post A transgender woman and founder of a bilingual LGBTQ organization and shelter in Washington, D.C., tells the story of her fight as a human rights activist, February 2019.

The U.S. Department of Housing and Urban Development's (HUD) [fall 2019 regulatory agenda](#) revealed that the agency is planning to essentially eliminate critical nondiscrimination protections for transgender people seeking safe shelter. This is despite the fact that HUD Secretary Ben Carson assured Rep. Jennifer Wexton (D-VA) [during a congressional hearing](#) that such protections would remain in place. Transgender people face [persistent social, cultural, and economic barriers](#) due to discrimination which lead to high rates of homelessness, including higher rates of unemployment; vulnerability to eviction because of their gender identity; family rejection; and interpersonal violence. In the general population, the lifetime rate of homelessness is around [4 in every 100](#) people. According to the 2015 U.S. Transgender Survey, however, nearly [1 in 3](#) transgender respondents experienced homelessness at some

point in their lives. Policies that prohibit discrimination based on gender identity such as HUD's 2016 Equal Access Rule are necessary to ensure safe and equal access to shelters for people in need. HUD's latest proposal would unnecessarily erode these strong protections, causing confusion for providers and putting transgender people, nonbinary people, and others at risk.

### **Proposed revisions to the Equal Access Rule would undermine protections for transgender people**

Recognizing the need for clear protections against discrimination in housing, HUD promulgated a rule in 2012 to ensure that all HUD-assisted or -insured housing programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. In 2016, HUD issued a rule to clarify that gender identity nondiscrimination includes equal access to sex-segregated shelters. The rule provides crucial support for transgender people who are unstably housed, chronically homeless, and/or seeking emergency shelter by ensuring equal treatment.

In its latest attack on transgender people, the Trump administration is proposing to remove the existing clear and explicit nondiscrimination protections for transgender people seeking shelter. This proposal would transform the Equal Access Rule's strong legal protections into unenforceable guidance by allowing shelter providers to create their own policies for access to single-sex or sex-segregated facilities. This radical change could come with no potentially enforceable requirement other than stating that the policies are consistent with the organization's overall policy as well as local and state law.

HUD's attempt to formalize LGBTQ-exclusionary practices and undermine the Equal Access Rule is additionally evident in the 2019 Continuum of Care Program Notice of Funding Availability, the requirements for funding communitywide programs to support individuals and families experiencing homelessness. HUD not only removed additional points awarded to applicants for partnering with LGBTQ-serving organizations and conducting annual trainings for providers on effectively implementing the 2012 and 2016 Equal Access Rules, but it also removed all mention of LGBTQ people from the notice. While HUD continues to award additional points to communities with anti-discrimination policies, the 2019 notice only listed adherence to the Fair Housing Act and the 2012 Equal Access Rule as required nondiscrimination policies. Because the 2016 Equal Access Rule was a clarification of the 2012 rule and remains the law, it is critical that HUD hold grantees accountable for complying with the Equal Access Rule in its entirety, including protections against discrimination for transgender people seeking shelter.

The administration's pending proposal cites a number of factors that providers can consider when making determinations about access to sex-segregated spaces that are particularly concerning, including an "individual's sex as reflected in official government documents" and "religious beliefs." An individual's gender identity is listed last in the list of factors. There is no significant evidence that emergency shelters have petitioned the federal government for the kind of changes that HUD is considering. For example,

HUD's response to a May 31, 2017, Freedom of Information Act (FOIA) request from the Center for American Progress for information regarding waivers or religious accommodations made under the 2012 and 2016 Equal Access rules from their date of publication to May 31, 2017, failed to locate any waiver requests from service providers. It also turned up no records of complaints from service providers pertaining to the rules under both the Obama and Trump administrations. This indicates that no religious exemptions had been requested under either administration.

Furthermore, a [June 2019 Reuters poll](#) revealed that most Americans do not support religious objections as a legitimate reason to deny service to an LGBTQ person in the arenas of business (57 percent opposed), health care (64 percent opposed), or employment (62 percent opposed). While housing was outside of the scope of the poll, these findings highlight an overall trend that Americans are against using religious exemptions as a license to discriminate.

### **Discrimination is a major barrier for transgender people to access shelter**

Access and safety are significant concerns for transgender people when seeking shelter. According to the 2015 U.S. Transgender Survey, 70 percent of respondents who were homeless in the year prior to the survey reported mistreatment in shelters due to their gender identity, and 52 percent experienced verbal, physical, and/or sexual harassment and/or assault during their stay. Ultimately, 44 percent left the shelter due to poor treatment or unsafe conditions, despite having nowhere else to go. Nearly 1 in 10 respondents who stayed in a shelter in the year prior to the survey were thrown out when staff found out they were transgender.

Without strong and clear protections, transgender people seeking shelter are vulnerable to mistreatment, abuse, and refusals of service. [In a 2016 matched-pair test](#) of shelters, conducted by CAP and the Equal Rights Center, trained callers reached out to homeless shelters across four states in order to measure the degree to which transgender women could access shelter in accordance with their gender identity. As [published in a previous CAP report](#), of the 100 shelters contacted, only 30 percent were willing to properly accommodate transgender women in accordance with their gender identity and 1 in 5 outright refused to serve transgender women. Shelters in states with explicit gender identity nondiscrimination protections were twice as likely to accommodate a transgender client with appropriate shelter, indicating that clear nondiscrimination laws may increase access to shelters, and policies such as the Equal Access Rule are important tools for improving treatment of transgender people in public services.

Lack of access to services such as emergency shelters is one consequence of discrimination. The CAP and Equal Rights Center research also demonstrated that transgender testers were often subjected to other forms of discrimination and harassment by shelter employees. These ranged from invasive questions on the state of their genitals to deliberate misgendering and other comments designed to discredit the caller's identity and humanity.

#### **Examples from Virginia shelters**

The shelter employee initially told the test caller to call the assessment center but gave the wrong phone number. On a second follow-up call with the same shelter employee, the test caller asked if the employee was able to answer some questions about accommodation. The shelter employee replied, "Yeah, I'd like to know that too, sir. Call the number I gave you and they can answer your questions. That's their job." Then the shelter employee hung up.

The test caller was told that she would be housed with the men—even if she could provide documentation of female status.

The shelter employee initially told the test caller that she would be housed with the women in a suite-style room. After speaking with her supervisor, however, the employee said that the shelter puts "transgenders" up in motels and that the test caller would not be allowed to stay in the shelter.

#### **Examples from Tennessee shelters**

The shelter employee stated that they are a Christian shelter and not obliged to her accommodate her but would try to "in keeping with good Christian nature." The shelter employee then told the test caller that it would not be easy for her there, and perhaps she should consider going somewhere else. The test caller asked if she could be considered for placement as a woman if she provided documentation of hormone therapy. The shelter employee asked what her "real gender" was and said that the shelter would ultimately rely on her genitalia when deciding where to house her.

The shelter employee told the test caller that she could only stay at the shelter if she had surgery because the shelter was only for "full women" and the employee could not accommodate her if she had "man parts." When the test caller asked if staying at the men's shelter would be an option, the employee said, "I guess so, but I wouldn't recommend that because I'd be concerned for your safety there."

The test caller was told that she could only be housed alone in a family room, but it was currently taken, and they would not house her with men or women.

The shelter employee said that the test caller could not stay at the shelter because it only accepts "straight-up women," and they have a waiting list.

#### **Example from a Connecticut shelter**

When the test caller asked what kind of accommodations the shelter had for transgender women, the shelter employee responded, "We don't" accommodate. The test caller then asked if she meant that she didn't know, and employee replied firmly, "No, we cannot accommodate you." The shelter employee told the test caller to call 211 and ask them what they can do to accommodate test caller's "special situation."

### **LGBTQ inclusivity does not put public safety at risk**

Shelter employees also indicated concerns over the perceived threat to public safety posed by transgender people staying in shelters. Shelter employees insinuated that the presence of a transgender person would make other shelter residents feel uncomfortable or unsafe and stoke “fears of rape”—even though federal courts have ruled that it is not a violation of privacy to simply share space with a transgender person. In addition, nondiscrimination protections do not undermine existing prohibitions against sexual violence or harassment. A 2018 peer-reviewed study from the Williams Institute found no link between passing gender-identity-inclusive public accommodations laws and public safety incidents, indicating no correlation between inclusivity and risk. Additionally, a 2016 consensus statement by the National Task Force to End Sexual and Domestic Violence, endorsed by more than 300 domestic violence and sexual violence organizations across the country, supports access to gender-specific facilities by transgender individuals for the explicit purpose of public safety. Overall, research demonstrates a rampant practice of exclusion, discrimination, and violation of humanity within shelters and highlights a significant need for federal legal protections based on gender identity to protect transgender people’s safety.

### **LGBTQ people who experience discrimination have limited alternative shelter options**

Reducing the Equal Access Rule’s strong protections to mere guidance with numerous exemptions would enable discrimination to become formalized policy. New analysis of data from a 2017 nationally representative CAP survey show how difficult it is for LGBTQ people to find alternative shelter if they are refused.\* Among all LGBTQ-identified respondents, 61.5 percent said it would be somewhat difficult (24.9 percent), very difficult (22.3 percent), or not possible (14.3 percent) to find an alternative homeless shelter if turned away. Among transgender respondents, 26.1 percent said it would be somewhat difficult to find an alternative, 17.4 percent said that it would be very difficult, and 20.7 percent said that it would not be possible to find an alternative if refused service.

For LGBTQ people who live in nonmetropolitan areas such as rural areas or small towns, 75.7 percent stated it would be somewhat difficult (13.6 percent), very difficult (33 percent), or not possible (29.1 percent) to find alternative homeless shelter if turned away. In comparison, 57.1 percent of metropolitan-residing LGBTQ people reported that it would be at least somewhat difficult to find an alternative if turned away. Nonmetropolitan respondents were approximately 2.5 times more likely than metropolitan respondents to say that finding an alternative would not be possible, at 29.1 percent versus 12 percent, respectively. This research highlights a significant lack of access to alternative shelters by both metropolitan and nonmetropolitan LGBTQ people if they are turned away, with particularly dire conditions for those residing in nonmetropolitan areas.

### **The government must ensure equal protection and access in housing for transgender people**

The transgender community risks further discrimination, rejection, and violence if the Trump administration undermines the Equal Access Rule's explicit protections. Discrimination can negatively affect an individual's spiritual, physical, and emotional well-being in addition to their overall safety. Without the Equal Access Rule's clear and explicit protections, many transgender people will be left without safe shelter. Vulnerable individuals who are unstably housed, homeless, or at risk of homelessness maintain finite resources. However, they are unduly expected to advocate for themselves and navigate complicated, discriminatory housing systems. In short, the removal of protections ensured under the Equal Access Rule would unduly burden transgender people while further destabilizing and unhousing an already vulnerable population.

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*\*Author's note: Data are from a nationally representative sample of 1,864 individuals, including 857 individuals who identified as LGBTQ, conducted in 2017. Participants were asked to read and respond to the following question: "Thinking about the city or town in which you currently live, please answer the following questions. Below is a list of businesses and services that are typically open to the public. Imagine that you needed the goods or services available from each one and that you went to the nearest place within your city or town to get them. Now imagine that when trying to access each place, you were denied service by the employees or staff. Please rate how difficult it would be for you to find the same type of service at a different location: Homeless shelter." Respondents who refused to answer this item were dropped from the present analysis, leaving 819 total observations. The excerpts included are from notes taken by the test callers and provided to the research team. They have been lightly edited for style and clarity. For further details about the survey, please see Caitlin Rooney and Laura E. Durso, "The Harms of Refusing Service to LGBTQ People and Other Marginalized Communities" (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/lgbt/reports/2017/11/29/443392/harms-refusing-service-lgbtq-people-marginalized-communities/>.*



Center for American Progress



## Discrimination Against Transgender Women Seeking Access to Homeless Shelters

By Caitlin Rooney, Laura E. Durso, and Sharita Gruberg January 7, 2016

The Center for American Progress and the Equal Rights Center, or ERC, recently conducted telephone tests on 100 homeless shelters across four states. The tests measured the degree to which transgender homeless women can access shelter in accordance with their gender identity, as well as the types of discrimination and mistreatment they face in the process. While accessing homeless shelters is difficult for anyone, transgender women face particular issues and barriers that have yet to be addressed.

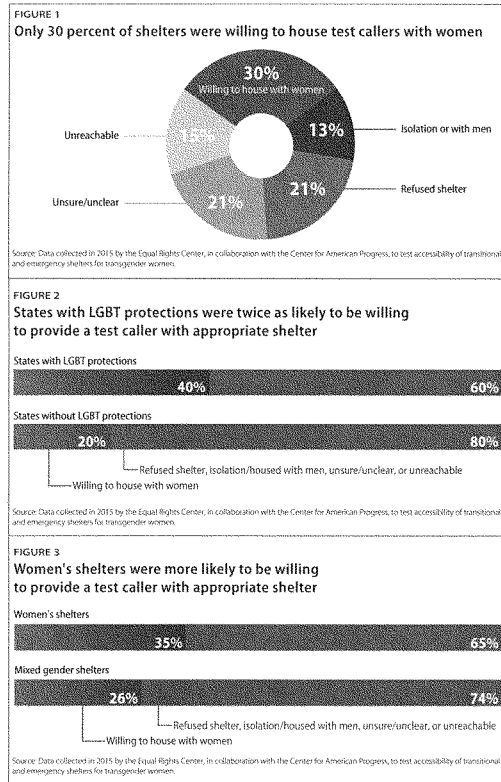
### Current law: the Equal Access Rule

Lesbian, gay, bisexual, and transgender, or LGBT, people are not explicitly protected from discrimination under the federal Fair Housing Act.<sup>1</sup> However, the U.S. Department of Housing and Urban Development, or HUD, sought to remedy this through the Equal Access Rule, or EAR, which makes it illegal to discriminate against LGBT individuals and families in any housing that receives funding from HUD or is insured by the Federal Housing Administration, regardless of local laws. As currently written, EAR prohibits inquiries into an individual's sexual orientation and gender identity and does not address the right of transgender shelter-seekers to access shelter in accordance with their gender identity.

### Study results

Overall, only a minority of shelters was willing to properly accommodate transgender women. This willingness varied depending on state laws and shelter type.

1 Center for American Progress | Discrimination Against Transgender Women in Access to Homeless Shelters



7 ways transgender women were mistreated by shelter employees:

1. There was a discrepancy between the positive information given to the advance caller and the negative information given to the test caller. One shelter, for example, hung up on the tester immediately after she revealed she was transgender.
2. A shelter employee deflected the decision or service to another employee or agency.
3. The test caller was told that she would be isolated or given separate facilities at the shelter.
4. A shelter employee misgendered the tester or made other statements to discredit her identity.
5. A shelter employee made references to genitalia or to surgery as requirements for appropriate housing.
6. A shelter employee made insinuations that other residents would be made uncomfortable or unsafe by the tester.
7. A shelter employee explicitly refused to shelter the tester or placed the tester in a men's facility or in isolation. This happened 34 percent of the time.<sup>2</sup>

Examples of interactions between caller and shelter employee

The following are excerpts from notes taken by the test callers and provided to the research team. They have been lightly edited for style and clarity.

*Examples from Virginia shelters:*

The shelter employee explained that other women would not find it fair or comfortable that they have to share their bathroom with a "man" and said that ultimately the test caller's placement would be determined by genitalia and legal status. The shelter employee said that test caller had to be "complete" otherwise it would not be fair to the other women. The shelter employee also told the test caller that there were other shelters in Alexandria, Virginia and Falls Church, Virginia that the test caller could try. The employee seemed to get frustrated at the end of the call and gave the test caller the phone number for the intake line and told the test caller to just explain her situation to them. The shelter employee referred to test caller as "sir" throughout the call.

The test caller was told that she would have to be housed with men if she had not had surgery. The shelter employee said the reason was fear of rape on the women's floor. The test caller asked about her own safety on the men's floor and was told that she would be put in a separate room with a door that locked.

*Example from a Washington shelter:*

The test caller was informed that she could only stay at the shelter if she had had surgery. The shelter employee's supervisor reiterated that policy and said that because the test caller still had "man parts" she was still a man and would make the other women uncomfortable.

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 What should be done?

- Congress should pass the Equality Act<sup>3</sup> to ensure that all LGBT people are protected from discrimination in areas such as housing, public accommodations, employment, and credit. States without these protections should pass comprehensive nondiscrimination legislation.
- The U.S. Department of Housing and Urban Development should issue guidance to modify the equal access rule in order to clarify that individuals have the right to be housed according to their gender identity and that the only exception to this would be if the transgender person requests alternative accommodations for their own safety.
- HUD should also modify the equal access rule to allow shelters to ask about an individual's sexual orientation and gender identity in order to properly accommodate them, but still prohibit them from using this information to discriminate.

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 Methodology

The phone survey consisted of calls to 25 homeless shelters in each of four states, for a total of 100 shelters. These calls were made over the course of three months, from March 1, 2015 to June 1, 2015. Each test consisted of a control call in advance—conducted by a cisgender, female Equal Rights Center staff member or intern—followed by the test call from one of four self-identified transgender women recruited and trained by ERC. The advance caller provided control information like bed availability and extent of follow-up. The test caller introduced herself as a transgender woman who was homeless and in need of shelter. She then asked about the availability of a bed and the shelter's willingness to house her with other women.

The shelters were spread across four states: Connecticut, Washington, Tennessee, and Virginia. Forty shelters exclusively served women, while 60 were mixed-gender shelters. Twenty-seven percent of the shelters had ever received funds from the U.S. Department of Housing and Urban Development in the past.

The four states were selected based on a range of characteristics. Two states—Connecticut and Washington—have gender identity nondiscrimination protections, while the other two—Tennessee and Virginia—lack them.<sup>4</sup> There are variations in the size of the LGBT population across the states: 3.4 percent in Connecticut, 4 percent in Washington, 2.6 percent in Tennessee, and 2.9 percent in Virginia.<sup>5</sup> The four states are also geographically diverse and have comparable seasonal weather, which controls for variation in service due to these conditions.

Connecticut and Washington use a centralized system—the 211 line—for accessing homeless shelters; Tennessee and Virginia do not. The methodology was adjusted accordingly. For shelters in Connecticut, the tester told the shelter employees that she had previously called 211 and had been told to contact the shelter directly to see if she could be accommodated there before going through the 211 intake process. For the shelters in Washington, the test caller was instructed to attempt the test with the standard assigned methodology. If the test caller was told to call the central referral line, she stated that 211 suggested that she contact the shelter directly to see if she could be accommodated before going through the intake process.

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## Endnotes

1 Fair Housing Act, 42 U.S. Code Chapter 45.

2 Data collected in 2015 by the Equal Rights Center, in collaboration with the Center for American Progress, to test accessibility of transitional and emergency shelters for transgender women.

3 Equality Act, H.R. 3185, 114<sup>th</sup> Cong. 1 sess. (Government Printing Office, 2015), available at <https://www.congress.gov/bills/114th-congress/house-bill/3185>.

4 Movement Advancement Project, "State Policy Profile: Connecticut," available at [http://www.lgbtmap.org/equality\\_maps/profile\\_state/CT](http://www.lgbtmap.org/equality_maps/profile_state/CT) (last accessed December 2015); Movement Advancement Project, "State Policy Profile: Washington," available at [http://www.lgbtmap.org/equality\\_maps/profile\\_state/WA](http://www.lgbtmap.org/equality_maps/profile_state/WA) (last accessed December 2015); The State of Tennessee, "Tennessee Code Annotated Title 4, Chapter 21" (2014), available at [http://tn.gov/assets/entities/humanrights/attachments/TBRC\\_Statutes\\_Updated\\_18aug\\_Jan\\_2015.pdf](http://tn.gov/assets/entities/humanrights/attachments/TBRC_Statutes_Updated_18aug_Jan_2015.pdf); Movement Advancement Project, "State Policy Profile: Virginia," available at [http://www.lgbtmap.org/equality\\_maps/profile\\_state/VA](http://www.lgbtmap.org/equality_maps/profile_state/VA) (last accessed December 2015).

5 Gary J. Gates and Frank Newport, "LGBT Percentage Highest in D.C., Lowest in North Dakota," Feb. 15, 2013, Gallup, available at <http://www.gallup.com/poll/160517/lgbt-percent-age-highest-lowest-north-dakota.aspx>.

**Written Testimony of The Center for American Progress**  
**To the House Committee on Financial Services Subcommittee on Oversight and**  
**Investigations**  
**Hearing on Financial Services and the LGBTQ+ Community**  
**October 29, 2019**

The Center for American Progress (CAP), the nation's foremost progressive think tank dedicated to improving the lives of all Americans through bold, progressive ideas, is pleased to offer written testimony for the record detailing the pervasiveness of discrimination against LGBTQ people. For over fifteen years, CAP's research has documented both the extent of discrimination against LGBTQ people, racial and ethnic minorities, and women and the negative impact of this discrimination on people's lives, as well as our country as a whole.

**I. LGBTQ people experience widespread discrimination**

Discrimination against LGBTQ people and their families is a pervasive problem urgently in need of solutions. Data from a nationally-representative survey of LGBTQ adults conducted by CAP and published in 2017 show that 1 in 4 respondents experienced some form of discrimination in the year prior to the survey.<sup>1</sup> Consistent with findings that discrimination has a significant, negative impact on LGBTQ communities, survey respondents reported that discrimination affected their psychological, physical, and spiritual wellbeing, as well as the environments they regularly found themselves in such as their neighborhoods and communities. Social science research clearly demonstrates a link between experiencing discrimination, or even the fear of experiencing discrimination, and negative psychological and physical health outcomes among LGBTQ individuals, including depression and anxiety<sup>2</sup> and chronic pain.<sup>3</sup> CAP's research has shown that LGBTQ people sometimes take significant steps to avoid experiencing discrimination in their lives, such as making specific decisions about where to live, moving away from a rural area, or moving away from family.<sup>4</sup> Importantly, LGBTQ people who had previously experienced discrimination were far more likely to report engaging in behaviors to avoid experiencing it again, demonstrating the long-term impact of discrimination on people's everyday lives.

<sup>1</sup> Sejal Singh and Laura E. Durso, "Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways" (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>.

<sup>2</sup> Institute of Medicine, "The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding" (Washington: 2011), available at <http://www.nationalacademies.org/hmd/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx>; Ilan H. Meyer, "Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence," *Psychol Bull* 125 (5) (2003): 674-697, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2072932/>.

<sup>3</sup> D.J. Lick and others, "Minority Stress and Physical Health Among Sexual Minorities: Recent Evidence and New Directions," *Perspect Psychol Sci*. 8 (5) (2013): 521-48, available at <https://www.ncbi.nlm.nih.gov/pubmed/26173210>.

<sup>4</sup> Singh and Durso, "Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways."

## II. LGBTQ people face discrimination in housing and credit

LGBTQ people face pervasive discrimination in housing, from accessing shelters to renting apartments to buying homes. Studies also suggest that LGBTQ people face homelessness and housing insecurity at higher rates than non-LGBTQ people.<sup>5</sup> It is therefore crucial that LGBTQ people are able to access shelter and affordable housing without facing discrimination.

### A. LGBTQ people face discrimination accessing housing

About thirty thousand incidents of housing discrimination are reported each year, of which less than one percent are related to sexual orientation.<sup>6</sup> LGBTQ people might not report incidents of discrimination because they do not know how to file a complaint, do not believe that anything will be done, fear retaliation for reporting an incident, or simply because they do not recognize the treatment as discrimination. The number of fair housing law violations is estimated to be greater than four million.<sup>7</sup> States with more funding for fair housing assistance report higher numbers of complaints, suggesting that fair housing assistance and public education can improve the enforcement of fair housing laws.<sup>8</sup>

Since housing applications do not collect information on sexual orientation or gender identity, researchers have studied discrimination by comparing results for pairs of LGBTQ and non-LGBTQ applicants for the same units. These paired-test studies have found that different-sex couples were favored over same-sex couples and that cisgender applicants were favored over transgender applicants.<sup>9</sup> LGBTQ older adults were also found to experience discrimination in the senior housing market.<sup>10</sup> In these situations, discrimination can be so subtle that an applicant

<sup>5</sup> Samantha Friedman and others, “An Estimate of Housing Discrimination Against Same-Sex Couples” (Washington: U.S. Department of Housing and Urban Development, 2013), available at [http://www.huduser.org/portal/publications/pdf/Hsg\\_Disc\\_against\\_SameSexCpls\\_v3.pdf](http://www.huduser.org/portal/publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf); Caitlin Rooney, Laura E. Durso, and Sharita Gruberg, “Discrimination Against Transgender Women Seeking Access to Homeless Shelters” (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/lgbt/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>; Sandy E. James and others, “The Report of the 2015 U.S. Transgender Survey” (Washington: National Center for Transgender Equality, 2015), available at <https://transequity.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>; John Ecker, Tim Aubry, and John Sylvestre, “A Review of the Literature on LGBTQ Adults Who Experience Homelessness,” *Journal of Homosexuality* 66 (3) (2018): 1–27, available at <https://doi.org/10.1080/00918369.2017.1413277>; Matthew Morton and others, “LGBTQ Young Adults Experience Homelessness at More than Twice the Rate of Peers” (Chicago: Chapin Hall and the University of Chicago, 2018), available at <https://www.chapinhall.org/research/lgbtq-young-adults-experience-homelessness-at-more-than-twice-the-rate-of-peers/>.

<sup>6</sup> National Fair Housing Alliance, “Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report” (Washington: 2018), available at [https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report\\_4-30-18.pdf](https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf).

<sup>7</sup> National Fair Housing Alliance, “Modernizing the Fair Housing Act for the 21st Century: 2013 Fair Housing Trends Report” (Washington: 2013), available at [https://nationalfairhousing.org/wp-content/uploads/2017/04/2013\\_trends\\_report.pdf](https://nationalfairhousing.org/wp-content/uploads/2017/04/2013_trends_report.pdf).

<sup>8</sup> Sarah McBride and others, “We The People: Why Congress and U.S. States Must Pass Comprehensive Nondiscrimination Protections” (Washington: Center for American Progress, 2014), available at <https://cdn.americanprogress.org/wp-content/uploads/2014/12/LGBT-WeThePeople-report-12.10.14.pdf>.

<sup>9</sup> Friedman and others, “An Estimate of Housing Discrimination Against Same-Sex Couples”; Jamie Langowski and others, “Transcending Prejudice: Gender Identity and Expression-Based Discrimination in the Metro Boston Rental Housing Market,” *Yale Journal of Law and Feminism* 29 (2) (2018): 321–371, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2941810](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2941810).

<sup>10</sup> The Equal Rights Center, “Opening Doors: An Investigation of Barriers to Senior Housing for Same-Sex Couples” (Washington: 2014), available at <https://equalrightscenter.org/news-posts/opening-doors-an-investigation-of-barriers-to-senior-housing-for-same-sex-couples/>.

would not even realize it, such as asking for a higher deposit or quoting a higher price, or as explicit as telling a same-sex couple that they cannot rent an apartment. Most fair housing complaints are filed by renters, possibly because it may be easier for them to perceive discrimination than borrowers or homebuyers. Home mortgage loan applicants may expect that lending decisions based on algorithmic scoring of their applications would result in fair treatment. However, facially neutral policies and practices can have a disparate impact on LGBTQ borrowers. Under the legal theory of disparate impact, policies and actions are considered discriminatory if they have a disproportionately negative effect on protected characteristics, even if that was not the intent of those actions. Analysis of home mortgage application data found that male same-sex applicants were more likely to be denied than different-sex applicants, particular when one or both of the same-sex applicants was black.<sup>11</sup> Although discrimination against same-sex applicants was found to be equally prevalent in urban and rural areas and at larger and smaller banks, this disparity was significantly lower in areas with state and local laws prohibiting sexual orientation discrimination.<sup>12</sup>

*B. LGBTQ people face pervasive discrimination seeking shelter*

When LGBTQ people are turned away from shelters – or avoid shelters out of fear of discrimination and mistreatment – the consequences can be dire. For example, LGBTQ youth experiencing homelessness are more likely than other youth to engage in survival sex and to experience sexual abuse.<sup>13</sup>

Unfortunately, this discrimination is all too common, especially for transgender people. According to a study conducted by CAP and Equal Rights Center in 2015, only 30 percent of shelters tested were willing to appropriately house transgender women with other women.<sup>14</sup> Instead of housing them according to their gender identity, 13 percent of shelters would only house transgender women in isolation or with men and one in five refused them shelter outright. In one case, the shelter employee said if the transgender woman hadn't had surgery, she would need to be housed with men because there was a concern about rape on the women's floor. The transgender woman asked about her own safety if she were housed with men, at which point the shelter employee said she would instead be isolated.<sup>15</sup> In another case:

“When the test caller asked what kind of accommodations the shelter had for transgender women, the shelter employee responded, “We don’t” accommodate. The test caller then asked if she meant that she didn’t know, and employee replied firmly, “No, we cannot

<sup>11</sup> J. Shahar Dillbary and Griffin Edwards, “An Empirical Analysis of Sexual Orientation Discrimination,” *The University of Chicago Law Review* 86 (1) (2019): 1-75, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3152015](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3152015).

<sup>12</sup> Ibid.

<sup>13</sup> Meredith Dank and others, “Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex” (Washington: Urban Institute, 2015), available at <https://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>.

<sup>14</sup> Caitlin Rooney, Sharita Gruberg, and Laura E. Durso, “Discrimination Against Transgender Women Seeking Access to Homeless Shelters.”

<sup>15</sup> Ibid.



accommodate you.” The shelter employee told the test caller to call 211 and ask them what they can do to accommodate test caller’s ‘special situation.’”<sup>16</sup>

In addition to denying access and insinuating transgender women are a threat to others and that their own safety doesn’t matter, shelter employees also mistreated transgender shelter seekers during the phone calls by misgendering them, asking them about their genitalia, giving them different information than they gave cisgender shelter seekers, and even hanging up when the caller revealed she was transgender.

Even when transgender people are able to receive shelter, they often face discrimination once inside. According to the 2015 U.S. transgender survey, more than four in ten transgender people who stayed in a shelter in the past year left due to poor treatment or unsafe conditions.<sup>17</sup> Nearly one in ten transgender people who spent time in a shelter in the past year were subsequently thrown out of the shelter once staff learned they were transgender. Discrimination can also deter transgender people from seeking shelter: one in four transgender people who had experienced homelessness in the past year didn’t seek shelter out of fear of discrimination and mistreatment based on their gender identity.<sup>18</sup>

As reviewed here, discrimination can occur at any point during the process of seeking and obtaining shelter and is not limited to the denial of services. Thus, both nondiscrimination protections and technical assistance and training are vitally important to ensuring LGBTQ people are able to secure the services and programs they need, especially when those services promote health and safety in a time of crisis. While opponents of extending nondiscrimination protections to LGBTQ people have argued that an individual can simply find alternative services that are welcoming,<sup>19</sup> data from a 2017 nationally representative CAP survey suggest this is not a viable solution to the problem of discrimination. In that survey, LGBTQ respondents were asked how difficult it would be for them to find alternative shelter if they were refused service at a homeless shelter. Among all LGBTQ-identified respondents, 61.5 percent said it would be somewhat difficult (24.9 percent), very difficult (22.3 percent), or not possible (14.3 percent) to find an alternative homeless shelter if turned away. Among transgender respondents, 26.1 percent said it would be somewhat difficult to find an alternative, 17.4 percent said that it would be very difficult, and 20.7 percent said that it would not be possible to find an alternative if refused service.<sup>20</sup>

The perceived difficulty was even more pronounced for LGBTQ people living in nonmetropolitan areas such as rural areas or small towns. Among those respondents, 75.7

<sup>16</sup> Sarah Kellman and others, “The Dire Consequences of the Trump Administration’s Attack on Transgender People’s Access to Shelters” (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/issues/lgbt/news/2019/07/31/472988/dire-consequences-trump-administrations-attack-transgender-peoples-access-shelters/>.

<sup>17</sup> Sandy E. James and others, “The Report of the 2015 U.S. Transgender Survey.”

<sup>18</sup> Ibid.

<sup>19</sup> Caitlin Rooney and Laura E. Durso, “The Harms of Refusing Service to LGBTQ People and Other Marginalized Communities” (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/lgbt/reports/2017/11/29/443392/harms-refusing-service-lgbtq-people-marginalized-communities/>.

<sup>20</sup> Sarah Kellman and others, “The Dire Consequences of the Trump Administration’s Attack on Transgender People’s Access to Shelters.”

percent stated it would be somewhat difficult (13.6 percent), very difficult (33 percent), or not possible (29.1 percent) to find alternative homeless shelter if turned away. In comparison, 57.1 percent of metropolitan-residing LGBTQ people reported that it would be at least somewhat difficult to find an alternative if turned away. Nonmetropolitan respondents were approximately 2.5 times more likely than metropolitan respondents to say that finding an alternative would not be possible (29.1 percent versus 12 percent, respectively). These data suggest that the availability of homeless shelters is already limited for most LGBTQ people and that geographical isolation would make it even more difficult for an LGBTQ person who was denied service to find stable shelter elsewhere.

Although the Department of Housing and Urban Development has interpreted the Fair Housing Act's protections against sex discrimination to cover sexual orientation and gender identity<sup>21</sup> and has clarified that this requires that HUD-funded shelters house transgender people according to their gender identity,<sup>22</sup> the department is currently proposing rules to undermine these critical protections, particularly for transgender women seeking shelter. The data reviewed here demonstrate that any changes to regulations that reduce the ability of LGBTQ people, and especially transgender people, to obtain housing and emergency shelter will likely have dire consequences for this community. The House should pass H.R. 3018, which has already been passed by this committee and would prevent HUD from rolling back the Equal Access Rule's protections.

### **III. LGBTQ people face discrimination in federally funded supportive housing programs**

#### *A. LGBTQ youth are vulnerable to discrimination in homelessness prevention services*

LGBTQ youth are 120 percent more likely to experience homelessness than their non-LGBTQ peers.<sup>23</sup> LGBTQ young people are overrepresented in the child welfare and juvenile justice systems, where they may be targeted for bullying or harassment because of their identity.<sup>24</sup> If they are harassed for their identity in a group home or if staff at the youth shelter refuse to house them according to their gender identity, LGBTQ young people may look for the first opportunity

<sup>21</sup> Department of Housing and Urban Development, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity," final rule, *Federal Register* 77 (23) (2012): 5662-5676, available at [https://www.hudexchange.info/resources/documents/EqualAccess\\_FinalRule\\_2.3.12.pdf](https://www.hudexchange.info/resources/documents/EqualAccess_FinalRule_2.3.12.pdf).

<sup>22</sup> Department of Housing and Urban Development, "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs," final rule, *Federal Register* 81 (183) (2016): 64763-64782, available at <https://www.govinfo.gov/content/pkg/FR-2016-09-21/pdf/2016-22589.pdf>.

<sup>23</sup> Matthew H. Morton, Amy Dworsky, and Gina H. Samuels, "Missed Opportunities: Youth Homelessness in America: National Estimates" (Chicago, IL: Chapin Hall at the University of Chicago, 2017), available at <http://voicesofyouthcount.org/brief/national-estimates-of-youth-homelessness/>.

<sup>24</sup> Human Rights Campaign, "LGBTQ Youth in the Foster Care System" (Washington: 2015), available at <https://assets2.hrc.org/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf>; Center for American Progress, Movement Advancement Project, and Youth First, "Unjust: LGBTQ Youth Incarcerated in the Juvenile Justice System" (2017), available at <http://www.lgbtmap.org/policy-and-issue-analysis/criminal-justice-youth-detention>.

to leave that living situation, making them vulnerable to abuse and exploitation.<sup>25</sup> Without access to safe shelters, LGBTQ survivors of violence are forced to choose between homelessness or returning to abusive partners or violent family environments.<sup>26</sup> This is particularly challenging for LGBTQ youth who may have less access to financial or social resources to find other sources of housing.

The homelessness prevention system needs to prioritize LGBTQ equity to be effective. The reauthorization of the Runaway and Homeless Youth and Trafficking Prevention Act (RHYTPA), which provides federal funding for shelters, transitional living programs, street outreach programs, and other essential services, must contain full and explicit protections against discrimination based on sexual orientation and gender identity. Similarly, the federal government should reinstate incentives for partnering with LGBTQ-serving organizations in communitywide responses to homelessness. The 2019 Notice of Funding Availability for the HUD Continuum of Care Program not only removed specific incentives for partnering with LGBTQ-serving organizations, it did not contain a single mention of LGBTQ people.<sup>27</sup> Ensuring a welcoming environment for LGBTQ people in all federally funded emergency shelters, transitional housing, wraparound services, and street outreach programs is an essential way to address the disparity in homelessness for LGBTQ youth.

*B. Discrimination contributes to LGBTQ people being more likely to access public benefits*

Prohibiting discrimination in federally funded programs that provide basic living standards for low-income people and their families is also crucial since LGBTQ people are disproportionately likely to need these programs. According to a national representative survey conducted by CAP in 2017, LGBTQ people and their families were more likely to receive public housing assistance.<sup>28</sup> Unfortunately, discrimination may prevent some LGBTQ families from receiving the benefits they need or may deter LGBTQ people from seeking such benefits out of fear of discrimination. According to the same 2017 CAP survey, 17 percent of LGBTQ people who had experienced anti-LGBTQ discrimination in the past year reported avoiding getting services they or their family needed out of fear of facing further discrimination.<sup>29</sup> Strong prohibitions on discrimination against LGBTQ people in federally funded services as well as enforcement of these protections and technical assistance for providers are important to ensure LGBTQ people and their families are able to access the supports they need.

#### **IV. Conclusion**

<sup>25</sup> Casey Quinlan, "Homeless LGBTQ Youth Struggle to Escape Harassment at Shelters," ThinkProgress, June 29, 2017, available at <https://thinkprogress.org/homeless-lgbtq-youth-a0f35cab620e/>.

<sup>26</sup> Emily Waters and Ericka Dixon, "Violence and LGBTQ Youth Homelessness" in *At the Intersections* (New York, NY: True Colors United, 2019), available at <https://truecolorsunited.org/wp-content/uploads/2019/04/2019-At-the-Intersections-True-Colors-United.pdf>.

<sup>27</sup> Steve Berg, "The CoC Program NOFA is Here," National Alliance to End Homelessness, July 9, 2019, available at <https://endhomelessness.org/the-coc-nofa-is-here/>.

<sup>28</sup> Caitlin Rooney, Charlie Whittington, and Laura E. Durso, "Protecting Basic Living Standards for LGBTQ People" (Washington: Center for American Progress, 2018), available at <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>.

<sup>29</sup> Singh and Durso, "Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways."

LGBTQ people face widespread and pervasive discrimination in housing and lending, however there is a lot that Congress can do to prevent and respond to discrimination. Enacting H.R. 5, the Equality Act, which has already passed the House, is one of the most important things Congress must do to protect LGBTQ people from housing discrimination by explicitly ensuring the Fair Housing Act and Equal Credit Opportunity Act prohibit discrimination on the basis of gender identity and sexual orientation. The Equality Act would also prohibit discrimination in federally funded programs. In addition to passing the Equality Act, Congress must hold HUD accountable for its numerous attempts to undermine existing protections, as well as ensure its programs are serving everyone, including LGBTQ people.

**Supplemental Statement of Professor Hua Sun**

**House Committee on Financial Services Oversight and Investigations Subcommittee Hearing**

Personally, I don't think limiting the scope of coverage on HMDA reporting will play any constructive role on mitigating potential lending discrimination. It is quite the opposite. The reason is because lenders don't make their lending decision based on what they report to HMDA, they simply disclose part of the information they possess to the public to comply with HMDA. As a result, removing any information covered from HMDA, say, gender, will not affect lender's decision making process because they still have this information. However, if gender information is missing from HMDA, it will make overseeing much more difficult, if not impossible. A perfect example is our PNAS study. Without the gender information on both applicant and co-applicant, we will not be able to infer the potential lending discrimination to the same-sex couples. The same reason applies to other crucial information on loan underwriting that can be potentially captured by HMDA, such as race, loan to value ratio, or credit worthiness, etc.

Even if we make a strong (but unrealistic) assumption that when lenders stop reporting certain information to HMDA, they will stop collecting it on an application file, we still cannot prevent potential discrimination from happening. There is a classic study published at American Economic Review. In this study, race is not explicitly disclosed to employers. However, the authors show that employers can effectively identify minority job seekers by their names. Hence, in this spirit, even if we prevent lender from asking (or disclosing) certain information when processing a loan application, there is a very high chance that lenders will still possess that information. Again using gender as an example. As long as lenders still need to ask for the names of a mortgage applicant (and co-applicant if applicable), they can easily infer the gender information. Hence, restricting the scope of reporting under HMDA only makes the job more difficult for others to detect any disparate lending practices, but it will not better discipline lenders from engaging this kind of practices.

Reference:

Bertrand M, Mullainathan S. Are Emily and Greg more employable than Lakisha and Jamal? A field experiment on labor market discrimination. American economic review, 2004, 94(4): 991-1013.



October 29, 2019

The Honorable Al Green  
Chairman  
House Financial Services Committee  
Subcommittee on Oversight and Investigations  
2347 Rayburn HOB  
Washington, DC 20515

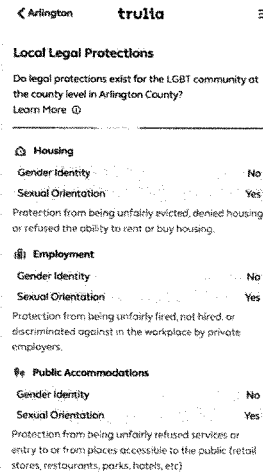
The Honorable Andy Barr  
Ranking Member  
House Financial Services Committee  
Subcommittee on Oversight and Investigations  
2430 Rayburn HOB  
Washington, DC 20515

Dear Chairman Green and Ranking Member Barr:

On behalf of Zillow, we appreciate the opportunity to share our LGBTQ+ consumer insights and submit this letter for the record in connection with the House Financial Services Subcommittee on Oversight and Investigations hearing, "Financial Services and the LGBTQ+ Community: A Review of Discrimination in Lending and Housing". We applaud and commend you for convening this timely and important hearing.

Zillow is the leading real estate and rental marketplace and a trusted source for data, inspiration and knowledge among both consumers and real estate professionals. Zillow believes that all Americans deserve to find a home, free from discrimination in the process and we are proud to leverage our platform to meaningfully promote fair housing, including for the LGBTQ+ community, through unique product features, advocacy, user and public education, and economic research.

For example, in January 2018, we launched our Local Legal Protections feature (see image below) on the Trulia platform to help the LGBT community understand what local protections exist in different jurisdictions to support their home search. With the Local Legal Protection feature, which was created in partnership with the Movement Advancement Project, homebuyers and renters will know if their prospective new home is in a place where laws protect against discrimination based on sexual orientation and gender identity in the areas of housing, employment and public accommodation.



Zillow has also leveraged our voice to advocate for LGBTQ+ fair housing legislation and promote content to help users and the public understand the unique fair housing challenges that exist for that community. For example, Trulia created an [LGBTQ+ Home Buyer Guide](#) detailing tips and resources to find a fair and equitable path to homeownership. Additionally, Zillow in 2018 partnered with ATTN: media to create and promote a video - [When Love Isn't Enough: LGBTQ Housing Discrimination](#) - that shines the light on housing discrimination against LGBTQ people. The video garnered over half a million views on our social media outlets. Finally, Zillow is a proud endorser of H.R. 5, the Equality Act and H.R. 2402, the Fair and Equal Housing Act.

Zillow also operates an economic research team that regularly publishes research on inequities that exist in the housing market. Some of our recent research demonstrates that inequities exist for the LGBTQ+ community and communities of color. Most notably, we partnered with the National Fair Housing Alliance to survey homeowners and renters about their perception of discrimination in our 2018 Zillow Housing Aspirations Report. This survey found that<sup>1</sup>:

**3%** of adults in major US metros said they believed they were treated differently in their search for housing due to their sexual orientation.

**2%** of adults in major US metros said they believed they were treated differently in their search for housing due to their gender identity.

<sup>1</sup> Zillow Research, 2018 Zillow Home Aspirations Survey, October 2018

Given that 4.5 percent of U.S. adults identify as LGBT, according to a UCLA Williams Institute Study, Zillow's survey results suggest a possibility that a significant share of this community has perceived discrimination in their housing search.

In addition to the LGBTQ+ community believing they were treated differently in their housing search, we also found that they are being treated differently in lending. Our 2019 Consumer Housing Trend Report found that<sup>2</sup>:

**Share of mortgage buyers that are denied a mortgage at least once before being approved, by sexual orientation and gender identity.**



**Share of mortgage buyers that are more likely to consider "qualifying for a loan" difficult or very difficult, by sexual orientation and gender identity**



Zillow's research goes beyond what is highlighted above, and is summarized for the Committee's use in Attachment A.

Zillow believes that all Americans deserve to find a home, free from discrimination in the process. Yet, these data points help illustrate the breadth of inequities and frustrations that many LGBTQ+ Americans experience in their home search. We appreciate the opportunity to share this research with the Committee and hope it will help inform the Committee's discussions on these important issues.

Sincerely,

Racquel Russell  
Vice President, Government Relations and Public Affairs  
Zillow

<sup>2</sup> Zillow Research, 2019 Consumer Housing Trends Report, October 2019





## Attachment A

October 2018 Zillow Home Aspirations Survey<sup>3</sup>

- 3% of adults in major US metros said they believed they were treated differently in their search for housing due to their sexual orientation.
- 2% of adults in major US metros said they believed they were treated differently in their search for housing due to their gender identity.

2019 Consumer Housing Trend Report (CHTR)<sup>4</sup>

Relevant LGBTQ+ Stats for Buyers (defined as households who purchased a home and moved in the past year):

- 59% of mortgage buyers who identify as LGBTQ+ said they were concerned about qualifying. Among that group, 53% said they were concerned the lender would discriminate against them based on their race, gender identity and/or sexual orientation.
- 51% of cisgender and heterosexual buyers report that they completely agree with the statement “I feel accepted for who I am by those around me where I live”, compared to 28% of LGBTQ+ buyers.
- 32% of LGBTQ+ mortgage buyers are denied a mortgage at least once before being approved, compared to 17% of cisgender heterosexual mortgage buyers.
- Cisgender heterosexual mortgage buyers are more than twice as likely to put down more than 20% (20% of cisgender heterosexual mortgage buyers do, compared to 7% of LGBTQ+ mortgage buyers).
- LGBTQ+ mortgage buyers are more likely to put down less than 20%: 71% do compared to 55% of cisgender heterosexual mortgage buyers.
- LGBTQ+ buyers are more likely to buy a townhome (17% v 7%) or duplex/triplex (8% v 3%).
- LGBTQ+ buyers are more likely to expect to buy for higher than the listing price (40%) than cisgender heterosexual buyers (27%).
- LGBTQ+ buyers are more likely to report at least one financial sacrifice to afford their home (71%) compared to 55% of cisgender heterosexual buyers.
  - 13% of LGBTQ+ buyers rent out a portion of the home, compared to 5% of cisgender heterosexual buyers.
  - 24% of LGBTQ+ buyers postpone or cancel upcoming vacation plans, compared to 16% of cisgender heterosexual buyers.
  - 14% of LGBTQ+ buyers postpone or cancel upcoming health services, compared to 8% of cisgender heterosexual buyers
- LGBTQ+ buyers are more likely to consider the following difficult or very difficult:

<sup>3</sup> Survey Description: The Zillow Home Aspirations Report is a semi-annual Ipsos survey of 10,000 homeowners and renters in 20 metro areas nationwide. As part of the October 2018 survey, Zillow partnered with the National Fair Housing Alliance to include several questions related to perception of discrimination. Read the Zillow Research blog post associated with this survey [here](#).

<sup>4</sup> Survey Description: The Zillow Group Consumer Housing Trends Report (CHTR) is an annual nationally representative survey of 13,000 home buyers, sellers, homeowners and renters, conducted through YouGov, an independent market research and data analytics firm. Read the full 2019 CHTR report [here](#).

- "Having my offer accepted on a home I was interested in purchasing" (24% for LGBTQ+ v. 14% for cisgender heterosexual)
- "Determining how much home I could afford" (25% of LGBTQ+ v. 14% of cisgender heterosexual)
- "Qualifying for a loan" (25% of LGBTQ+ v. 12% of cisgender heterosexual)
- "Locating all of my personal documentation for the purposes of getting a loan" (31% of LGBTQ+ v. 19% of cisgender heterosexual)

Relevant LGBTQ+ Stats for Renters (defined as households who rent their home and moved in the past year):

- Renters that are cisgender and heterosexual are more likely to get timely responses from all of the landlords they contacted (51%) than LGBTQ+ renters (42%).
- LGBTQ+ renters are more likely to pay an application fee (73%) than cisgender heterosexual renters (63%).
- 40% of cisgender heterosexual renters report that they completely agree with the statement "I feel accepted for who I am by those around me where I live", compared to 29% of LGBTQ+ renters.
- 36% of cisgender heterosexual renters say that finding a home within their desired price range is easy or very easy, compared to 27% of LGBTQ+ renters.
- 39% of cisgender heterosexual renters say that juggling family responsibilities while searching for a new rental home is easy or very easy, compared to 31% of LGBTQ+ renters.
- 35% of cisgender heterosexual renters say that saving for upfront rental costs (e.g. application fees, security deposit, first/last month rent) was difficult or very difficult, compared to 45% of LGBTQ+ renters.
- 80% of cisgender heterosexual renters agree that they're satisfied with the process of renting their home (rather than dissatisfied) compared to 72% of LGBTQ+ renters.
- LGBTQ+ renters are almost twice as likely to report living with roommates (23% compared to 12% of cisgender and heterosexual renters) – meaning that landlords that bar a certain number of unrelated tenants from renting any given unit may disproportionately impact LGBTQ+ renters.
- While cisgender heterosexual renters are similarly likely to say that student debt delayed their decision to buy a home, LGBTQ+ renters are more likely to have such debt. LGBTQ+ renters are more likely to have student loans (46%) compared to 31% of cisgender and heterosexual renters – this may have to do with the fact that renters that report being LGBTQ+ skew younger. LGBTQ+ renters are also more likely to have medical debt (30%) compared to cisgender heterosexual renters (23%).