



February 17, 2023

Colette Pollard
Office of Policy Development and Research
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

**RE: Public Comment in Response to 30-Day Notice of Proposed Information Collection:
Housing Choice Voucher Program and Tribal HUD-VASH, OMB Control No.: 2577-0169
[RIN 2023-00805]**

Dear Ms. Pollard,

On behalf of the Human Rights Campaign's more than three million members and supporters nationwide, we write in response to the request for public comment on the notice of the proposed amendment and reauthorization of various information collection-related forms used as part of the Housing Choice Voucher Project, the Project-based Voucher Program, and the Tribal HUD-VA Supportive Housing Program.¹

As the nation's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality, we strongly support the proposal by the Department of Housing and Urban Development (HUD) to amend these forms to expressly reference existing protections against sexual orientation and gender identity discrimination under the Fair Housing Act. We applaud the Biden Administration for taking this essential step toward ensuring LGBTQ+ people seeking housing assistance and support through these programs are fully aware of their rights under federal law. Congress has long recognized the need for and adopted strong nondiscrimination protections within the context of housing that courts—alongside HUD and other government entities—have increasingly found encompass discrimination based on sexual orientation and gender identity. Amending the forms to reflect the current state of the law accurately and completely would therefore be consistent with and necessary for the proper performance of HUD's functions in facilitating individuals' access to housing and preventing illegal discrimination under its programs.

LGBTQ+ people live in every state and county and reflect the breadth of diversity and lived experiences of the communities in which they live. Using data collected through the U.S. Census Bureau's Household Pulse Survey, we recently estimated that at least 20 million adults in

¹ 30-Day Notice of Proposed Information Collection: Housing Choice Voucher Program and Tribal HUD-VASH, OMB Control No.: 2577-0169, 88 Fed. Reg. 2959 (Jan. 18, 2023).

the U.S. identify as LGBTQ+.² Consistent with others' research, we have also found evidence that younger people are more likely to identify as LGBTQ+.³ LGBTQ+ people are a demographically diverse population, with the Williams Institute using Gallup Daily Tracking survey data from 2012–2017 to estimate that 58% of LGBT adults identify as female and that 42% identify among communities of color, including 1% of LGBT adults that identify as American Indian and Alaska Native.⁴ And, data from the Behavioral Risk Factor Surveillance System indicate that LGBTQ+ adults, and transgender adults in particular, are significantly more likely than non-LGBTQ+ adults to self-report having at least one disability.⁵

A longstanding body of research indicates that LGBTQ+ people are significantly more likely to be living in poverty than their straight and cisgender counterparts.⁶ LGBTQ+ people also report being significantly overrepresented among those experiencing homelessness or housing instability,⁷ with LGBTQ+ youth and transgender and gender non-conforming people often being particularly disproportionately represented including among those experiencing unsheltered homelessness.⁸ Additionally, while Americans from all walks of life continue to experience discrimination across a variety of contexts, LGBTQ+ people uniquely experience harassment and

² HUMAN RIGHTS CAMPAIGN FOUND., WE ARE HERE: UNDERSTANDING THE SIZE OF THE LGBTQ+ COMMUNITY (2021), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/We-Are-Here-120821.pdf>.

³ SHOSHANA K. GOLDBERG ET AL., HUMAN RIGHTS CAMPAIGN & BOWLING GREEN STATE UNIV., EQUALITY ELECTORATE: THE PROJECTED GROWTH OF THE LGBTQ+ VOTING BLOC IN COMING YEARS (2022), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/LGBTQ-VEP-Oct-2022.pdf>. The Williams Institute has previously estimated that at least 2 million youth ages 13–17 identify as LGBT in the U.S., including approximately 300,000 youth who are transgender. JODY L. HERMAN ET AL., WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>; KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

⁴ *LGBT Demographic Data Interactive*, WILLIAMS INST. (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#demographic>.

⁵ Human Rights Campaign Found., *Understanding Disability in the LGBTQ+ Community*, HUMAN RIGHTS CAMPAIGN (Aug. 12, 2022), <https://www.hrc.org/resources/understanding-disabled-lgbtq-people>.

⁶ M. V. LEE BADGETT ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>; see also BIANCA D.M. WILSON ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES (2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Poverty-COVID-Feb-2023.pdf> (using data from the Behavioral Risk Factor Surveillance System and the Census Bureau's Household Pulse Survey to analyze poverty rates during the early days of the COVID-19 pandemic).

⁷ See, e.g., ILAN H. MEYER ET AL., WILLIAMS INST., LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES 11 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf> (finding that among a nationally-representative sample of LGBTQ adults, 15.2% of all respondents reported moving residences three or more times in a two-year period); BIANCA D.M. WILSON ET AL., WILLIAMS INST., HOMELESSNESS AMONG LGBT ADULTS IN THE US (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf> (providing the first-ever estimates from a nationally-representative sample of homelessness among LGBT adults, including that 16.9% of non-transgender LGB adults reported experiencing homelessness in their lifetimes, or at almost three times the rate of the general population at the time).

⁸ See, e.g., TANYA DE SOUSA ET AL., HUD, THE 2022 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS – PART 1: POINT-IN-TIME ESTIMATES OF HOMELESSNESS – DECEMBER 2022 at 15 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf> (noting that the number of people who experienced homelessness and identified as transgender increased between 2020 and 2022 among both those in shelters and those left unsheltered); MATTHEW MORTON ET AL., CHAPIN HALL AT UNIV. OF CHI., VOICES OF YOUTH COUNT COMPREHENSIVE REPORT: YOUTH HOMELESSNESS IN AMERICA (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/Voices-of-Youth-Report.pdf>.

discrimination based on their sexual orientation and gender identity, which research demonstrates has often led to disparities in negative outcomes when compared to their non-LGBTQ+ counterparts,⁹ including when they are seeking housing and emergency shelter.¹⁰ Discrimination against LGBTQ+ communities takes many forms, and can become insidiously commonplace and lead to devastating consequences for those holding multiple marginalized identities experiencing the combined brunt of racism, colorism, misogyny, ableism, and other forms of hate.¹¹ And sadly, much like their rates of experiencing poverty and homelessness (and very likely reinforcing them), transgender communities report significantly higher rates of experiencing discrimination and harassment related to housing even when compared to their cisgender LGB peers; for example, 70% of respondents to the largest sample of transgender adults in the U.S. to date reported some form of mistreatment because of being transgender while staying in a shelter in the past year.¹²

The costs of discrimination for anyone seeking housing and related support are significant. Research on minority stress and related concepts indicates that this problem is particularly salient for LGBTQ+ people,¹³ and can often lead to their experiencing routine denials of basic dignity and fairness merely for being who they are that may in turn be driving negative outcomes like observed rates of unsheltered homelessness.¹⁴ Increasing awareness of existing law and therefore compliance with existing federal housing protections by covered entities nationwide is of course important to all Americans, but is of particular concern for LGBTQ+ people in light of this research and the current patchwork of express state-level protections against sexual orientation and gender identity housing discrimination in place across the country.¹⁵

Fortunately, federal law already includes protections against sexual orientation and gender identity that can meet these gaps in protective policy across the states. In 2017, the United States District Court for the District of Colorado was the first to hold that protections against sex

⁹ See generally NPR, ROBERT WOOD JOHNSON FOUND. & HARVARD T.H. CHAN SCH. OF PUB. HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF LGBTQ AMERICANS (2017), <https://legacy.npr.org/documents/2017/nov/npr-discrimination-lgbtq-final.pdf> (experiences in variety of contexts).

¹⁰ See generally ADAM P. ROMERO ET AL., WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

¹¹ Cf. BIANCA D.M. WILSON ET AL., WILLIAMS INST., RACIAL DIFFERENCES AMONG LGBT ADULTS IN THE U.S.: LGBT WELL-BEING AT THE INTERSECTION OF RACE (2022) <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Race-Comparison-Jan-2022.pdf>.

¹² SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 176 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹³ INSTITUTE OF MEDICINE, THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING 20–21 (2011), <https://www.ncbi.nlm.nih.gov/books/NBK64806/>; see HUMAN RIGHTS CAMPAIGN, MENTAL HEALTH AND THE LGBTQ COMMUNITY (2017), https://suicidepreventionlifeline.org/wp-content/uploads/2017/07/LGBTQ_MentalHealth_OnePager.pdf; see also JODY L. HERMAN & KATHRYN K. O'NEILL, WILLIAMS INST., SUICIDE RISK AND PREVENTION FOR TRANSGENDER PEOPLE: SUMMARY OF RESEARCH FINDINGS (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Suicide-Summary-Sep-2021.pdf>.

¹⁴ See, e.g., HUD, HUD 2022 CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS HOMELESS POPULATIONS AND SUBPOPULATIONS (2022), https://files.hudexchange.info/reports/published/CoC_PopSub_NatlTerrDC_2022.pdf (recent data noting that more transgender people reported being unsheltered than the combined totals of those living either in an emergency shelter or transitional housing).

¹⁵ CHRISTY MALLORY ET AL., WILLIAMS INST., LEGAL PROTECTIONS FOR LGBT PEOPLE AFTER *BOSTOCK V. CLAYTON COUNTY* 10–11 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bostock-State-Laws-Jul-2020.pdf>.

discrimination under the Fair Housing Act encompass sexual orientation and gender identity discrimination as well, finding in favor of a married, same-sex couple (a member of whom was also transgender) that were told they could not rent an apartment unit due to their “unique relationship.”¹⁶ In 2018, the Seventh Circuit Court of Appeals similarly affirmed that a lesbian woman alleging unlawful discrimination based on her sexual orientation due to being subjected to fifteen months of harassment while in a senior residential community had a cognizable claim under the Fair Housing Act.¹⁷

This trajectory has continued and even accelerated following the U.S. Supreme Court’s decision in *Bostock v. Clayton County*, which found that discrimination based on sexual orientation and gender identity is barred by the sex discrimination prohibition contained within Title VII of the Civil Rights Act of 1964 (Title VII).¹⁸ While Title VII is a law on employment discrimination,¹⁹ *Bostock* was decided using general principles of statutory interpretation applicable to other contexts.²⁰ Its reasoning has therefore been extended to other civil rights laws long interpreted in line with Title VII, including the Fair Housing Act itself by the Eighth Circuit Court of Appeals.²¹ An executive order was issued requiring the full implementation of the Court’s decision in *Bostock*,²² and indeed, HUD has already acted to implement those requirements by announcing its intent to interpret the Fair Housing Act consistent with this line of cases.²³

We therefore support HUD’s proposal in its entirety, as the updated forms would have practical utility in strengthening the effectiveness of HUD’s efforts to inform LGBTQ+ and all individuals of the full scope of their rights under federal law, which would likely in turn promote greater compliance by entities bound by said nondiscrimination requirements and therefore facilitate more individuals’ access to housing consistent with the mission of HUD and these specific programs. These benefits outweigh any possible increased burden on covered entities, given decades of research on LGBTQ+ people and their lived experiences with discrimination including specifically in the context of housing, though we note that this proposed amendment would ultimately not require that entities collect any more information than they are currently, suggesting only a net benefit should it be finalized. Accordingly, we encourage that this proposed amendment be finalized without change as soon as possible.

¹⁶ Smith v. Avanti, 5 F. Supp. 3d 1194 (D. Colo. 2017).

¹⁷ Wetzel v. Glen St. Andrew Living Community, 901 F.3d 856, 862 (7th Cir. 2018).

¹⁸ 140 S. Ct. 1731 (2020).

¹⁹ 42 U.S.C. § 2000e-2(a).

²⁰ *Bostock*, at 1738 (deferring to the “ordinary public meaning” of the prohibition on discrimination “because of . . . sex” contained within Title VII).

²¹ See, e.g., *Walsh v. Friendship Village of South County*, No. 19-1395 (8th Cir. 2020) (remanding previously dismissed sexual orientation-based discrimination claim under the Fair Housing Act for reconsideration in light of *Bostock*); see also *College of the Ozarks v. Biden*, No. 21-2270 (8th Cir. 2022) (affirming dismissal due to lack of jurisdiction, but noting in dicta that had the subject of plaintiff’s challenge not been in place, HUD would still have been required to “consider the meaning of the Fair Housing Act in light of *Bostock* and its interpretation of similar statutory language.”).

²² Exec. Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, 86 Fed. Reg. 7023 (Jan. 20, 2021).

²³ JEANINE M. WORDEN, ACTING ASSISTANT SEC’Y, HUD, IMPLEMENTATION OF EXECUTIVE ORDER 13988 ON THE ENFORCEMENT OF THE FAIR HOUSING ACT (Feb. 11, 2021), https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf.

Thank you for the opportunity to submit comments in favor of this important step toward ensuring LGBTQ+ and all individuals can meaningfully access housing free from discrimination.