

## Recent Developments in the New Administration Impacting the LGBTQ+ Community

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Since inauguration, the Biden Administration has used Executive Orders, guidance and regulations, and cabinet nominations to make clear that LGBTQ+ protections are a top policy priority. In the [January 26, 2021, press briefing](#), Domestic Policy Advisor Susan Rice stated that “[e]very agency will place equity at the core of their public engagement, their policy design, and program delivery to ensure that government resources are reaching Americans of color and all marginalized communities — rural, urban, disabled, LGBTQ+, religious minorities, and so many others.” The following is a summary of President Biden’s early actions impacting the LGBTQ+ Community.

- On December 16, 2020, President Biden formally nominated Pete Buttigieg to be his Transportation Secretary. Pete Buttigieg was confirmed with an 86-13 final vote, making him the first openly gay man to be confirmed by the Senate as a Cabinet member and one of the youngest cabinet members in history. Secretary Buttigieg served two terms as mayor of South Bend, Indiana and also served for seven years as an officer in the U.S. Navy Reserve. Secretary Buttigieg is a graduate of Harvard University and a Rhodes Scholar at Oxford.
- On January 19, 2021, President Biden announced the nomination of Dr. Rachel Levine to be his assistant secretary of health. Dr. Levine is currently the Pennsylvania Health Secretary. She has experience as a pediatrician and a former Pennsylvania physician general, and she has led the state’s response to the coronavirus pandemic. She is a graduate of Harvard and Tulane Medical School, she is the current president of the Association of State and Territorial Health Officials, and she has written on the opioid crisis, medical marijuana, adolescent medicine, eating disorders, and LGBTQ+ medicine. If Dr. Levine is approved, she will be the first openly transgender federal official to be confirmed by the U.S. Senate.
- On January 20, 2021, President Biden signed an Executive Order, titled “[Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation](#),” which ordered all federal agencies to fully implement the U.S. Supreme Court decision in *Bostock v. Clayton* (2020). The decision ruled that Title VII of the Civil Rights Act of 1964 protects against sex-based discrimination, including gender identity and sexual orientation. The Order notes that the decision also includes protections within Title IX of the Education Amendments of 1972, the Fair Housing Act, and Section 412 of the Immigration and Nationality Act.

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The Executive Order recognizes the various manifestations of discrimination on the basis of gender identity or sexual orientation and the intersection of gender identity or sexual orientation-based discrimination with race or disability-based discrimination. The Executive Order states that “[e]very person should be treated with respect and dignity and should be able to live without fear” regardless of sexual orientation or gender identity. It focuses on preventing and combating this form of discrimination in schools, the workplace, housing, healthcare, and policing.

- On January 25, 2021, President Biden signed an Executive Order, titled “[Enabling All Qualified Americans to Serve Their Country in Uniform](#),” which requires all military branches to establish a process for transgender service members to transition gender while serving; to “immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service on the basis of gender identity”; to identify and reinstate service members who were “involuntarily separated, discharged, or denied reenlistment or continuation of service, on the basis of gender identity”; and to issue guidance on correcting the military records of those impacted by the Trump Administration’s policy on transgender service members. The Executive Order provides for a 60-day progress report on the directives outlined above.

The Executive Order states that “[a]ll Americans who are qualified to serve in the Armed Forces of the United States should be able to serve [and t]he All-Volunteer Force thrives when it is composed of diverse Americans who can meet the rigorous standards for military service, and an inclusive military strengthens our national security.” It seeks to provide protections to transgender service members so that they may serve “openly and free from discrimination.” The Executive Order cites to a nonpartisan, federally-funded 2016 comprehensive study of the impact of allowing transgender individuals to serve in the military[1], to 2018 testimony from the then-most-senior leadership for each military branch[2], and to a statement from a group of former United States Surgeons General[3] to temper any concerns regarding transgender service members.

- On January 26, 2021, President Biden published a Memorandum, titled “[Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies](#),” which orders the Secretary of Housing and Urban Development (HUD) to examine four rules that have recently been subject to regulatory actions. The four rules that will be evaluated are the following:
  - August 7, 2020, Rule: “Preserving Community and Neighborhood Choice”
  - July 16, 2015, Rule: “Affirmatively Furthering Fair Housing”
  - September 24, 2020, Rule: “HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard”
  - The Amendment to the February 15, 2013, Rule: “Implementation of the Fair Housing Act’s Discriminatory Effects Standard”

The Executive Order states that “[d]iverse and inclusive communities strengthen our democracy.” It acknowledges that, “[d]uring the 20th century, Federal, State and local governments” implemented discriminatory housing policies that resulted in a legacy of “residential segregation and

discrimination[.]” including “systemic barriers to safe, accessible, and affordable housing for . . . lesbian, gay, bisexual, transgender, gender non-conforming, and queer (LGBTQ+) individuals.” Following the policy underlying the Fair Housing Act, the administration seeks to “provide redress to those who have experienced housing discrimination” by eliminating all “forms of discrimination in all stages of homebuying and renting, to lift barriers that restrict housing and neighborhood choice, to promote diverse and inclusive communities, to ensure sufficient physically accessible housing, and to secure equal access to housing opportunity for all.”

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[1] The 2016 study concluded that allowing transgender individuals to serve in the military does not have any meaningful negative impact on the Armed Forces, “only minimally impacts military readiness and healthcare costs,” and has “no significant impact on operational effectiveness or unit cohesion in foreign militaries.”

[2] “[I]n 2018, the then-serving Chief of Staff of the Army, Chief of Naval Operations, Commandant of the Marine Corps, and Chief of Staff of the Air Force all testified publicly to the Congress that they were not aware of any issues of unit cohesion, disciplinary problems, or issues of morale resulting from open transgender service.”

[3] A group of former United States Surgeons General stated that “transgender troops are as medically fit as their non-transgender peers and that there is no medically valid reason — including a diagnosis of gender dysphoria — to exclude them from military service or to limit their access to medically necessary care.”

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