

March 25, 2018

Office of the Assistant Secretary for Civil Rights  
U.S. Department of Agriculture  
Jamie L. Whitten Building, Room 507-W  
1400 Independence Ave. SW  
Washington, DC 20250

Re: “Strengthening Civil Rights Management” Request for Information

The undersigned organizations write to express our concerns regarding the Department of Agriculture’s (the Department’s) notice of March 13, 2018 regarding a proposed reorganization of the agency’s Office of the Assistant Secretary for Civil Rights (OASCR).

### Background

Despite the widely held misconception that LGBT people are found only in urban areas, on the coasts, and in liberal enclaves across the country, people in the LGBT community – like every other community – work, raise families, and make their homes all over rural America. Because of this misconception, the rural LGBT community faces serious problems that stem from a lack of visibility.

According to the Williams Institute at UCLA School of Law analysis of the 2010 Census data, approximately 64,000 cohabitating same-sex couples live in rural America, which represents almost 10 percent of all cohabitating same-sex couples in the country.<sup>1</sup> Thousands of these same-sex couples are raising children in rural areas as well. Moreover, according to the same research, same-sex couples are most likely to be raising children in the south than in New England or the Pacific states. Research also shows that there are transgender people living in every community in the country.<sup>2</sup>

LGBT people and families are often particularly vulnerable in these communities. For example, same-sex couples living in rural communities are more likely to struggle financially than straight rural couples *and* same-sex couples in urban areas.<sup>3</sup> LGBT people and families in these areas often face an intersection of identities that subject them to an even greater degree of marginalization. For instance, these couples are also more likely to be of color, to live in poverty, and are significantly more likely to receive public assistance.<sup>4</sup> Rural communities have also

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<sup>1</sup> See Gary J. Gates, Williams Distinguished Scholar, Williams Inst., UCLA Sch. of Law, Keynote Address at Loyola of Los Angeles Law Review Symposium: LGBT Identity and the Law (Oct. 21, 2011) (presentation *available at* <http://www.outandequal.org/documents/2012ExFoPresentationGGates.pptx>); Bill Bishop, Same-Sex Couples in Rural America, DAILY YONDER (Oct. 10, 2011) *at* <http://www.dailyyonder.com/same-sex-couples-rural-america/2011/10/07/3555>.

<sup>2</sup> See [http://www.thetaskforce.org/static\\_html/downloads/reports/fact\\_sheets/transsurvey\\_prelim\\_findings.pdf](http://www.thetaskforce.org/static_html/downloads/reports/fact_sheets/transsurvey_prelim_findings.pdf)

<sup>3</sup> Gary Gates, Economic Disadvantage in the LGBT Community, MGMT. INFO. EXCHANGE J., Spring 2012, at 47; Colleen S. Poon & Elizabeth M. Saewyc, Out Yonder: Sexual-Minority Adolescents in Rural Communities in British Columbia, 99 AM. J. PUB. HEALTH 118, 120 (2009).

<sup>4</sup> See <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

tended to be located in areas that are less likely to have state and local protections for LGBT people and families.<sup>5</sup> Those in rural LGBT communities remain extremely vulnerable to housing instability and discrimination in accessing services.<sup>6</sup> LGBT adults who live outside of urban areas are poorer than non-LGBT people, and more likely to live in poverty than are LGBT people in urban areas.<sup>7</sup> And LGBT adults and adults in same-sex couples are more likely than non-LGBT adults and adults in different-sex couples to experience food insecurity and participate in the federal Supplemental Nutrition Assistance Program (SNAP).<sup>8</sup>

USDA has had a long-standing commitment to expanding economic opportunity and helping those living in rural communities to thrive. This commitment is not only for a few. It is not only for some. It is a commitment to *all* people and families who depend on USDA to provide resources, promote production and growth, and strengthen the foundations that allow rural communities to prosper.

LGBT people and families are fundamental to the success of their rural communities, so the programs that serve these areas must likewise be accessible to all people and families. This is why relatively recent recognition of civil rights protections for LGBT people in USDA conducted programs – for sexual orientation in 1999 and for gender identity in 2014 - were so important. These protections ensure that USDA programs and services are available in every rural community, in every home, for every person, and for every family. Whether a family makes their home in a big city or a small town, the services and programs available to help them succeed should never be restricted based on their sexual orientation or gender identity. We hope to see those protections applied to the Department’s assisted programs.

The LGBT community has been proud to work with USDA to ensure equal opportunity for LGBT people in rural communities who rely on the agency’s services and programs. Through initiatives such as the National Center for Lesbian Rights’ Rural Pride campaign, USDA went into communities across the country to speak directly to LGBT residents and hear their concerns. The agency also briefed these communities on its programs and the critical nondiscrimination protections noted above that ensure their availability to everyone.

Given the challenges faced by LGBT people in rural communities and the importance of USDA’s civil rights protections in addressing some of those challenges, we are concerned about the potential impact of the proposed changes to the Office of the Assistant Secretary for Civil Rights. We set forth these concerns below.

### Comments on the Proposed Realignment

Our overarching concern is that taken together, the changes in the proposed restructuring will weaken civil rights enforcement. The administration has not yet named an Assistant Secretary for Civil Rights at USDA; undertaking a significant restructuring, involving the elimination of

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<sup>5</sup> See [http://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](http://www.lgbtmap.org/equality-maps/non_discrimination_laws).

<sup>6</sup> This is true even in states like California with relatively progressive policies with respect to sexual orientation and gender identity. See, e.g., <https://williamsinstitute.law.ucla.edu/wp-content/uploads/California-LGBT-Divide-Jan-2016.pdf>.

<sup>7</sup> See <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

<sup>8</sup> See <https://williamsinstitute.law.ucla.edu/research/lgbt-food-insecurity-2016/>.

significant functions, against this backdrop suggests an alarming downgrading of civil rights enforcement at the agency.

Our concerns regarding specific elements of the proposal are as follows:

- Eliminating the position of Deputy Assistant Secretary for Civil Rights

We are concerned that the proposed reorganization includes the elimination of the position of Deputy Assistant Secretary for Civil Rights. The notice states that the goal of eliminating this position is to “flatten the organization” without explanation as to why this will be beneficial to enforcement of USDA’s civil rights obligations. Elimination of this high-level leadership position within OASCR appears to signal a de-prioritization of civil rights within the agency, with negative effects on the implementation of the agency’s goals with respect to civil rights enforcement. This concern is rendered more acute by the fact that the administration has yet to appoint an Assistant Secretary for Civil Rights at USDA.

- Eliminating the Policy Division

The proposed reorganization would also eliminate the Policy Division within the Office of Compliance, Policy, Training and Cultural Transformation. This proposal is particularly troubling, as the only rationale provided is that we are purportedly in “an era of decreased regulations.” Yet the Department’s civil rights obligations remain unchanged. The Policy Division is charged with developing various forms of policy guidance across the Department to assist in the implementation of essential civil rights laws, policies and other requirements, and also conducts trainings and issues reports on various statutory obligations of the Department. The notice suggests, with no detail, that the “reduced” functions of this Division will be performed by other staff.

- Eliminating the Training and Cultural Transformation Division

Elimination of this division will diminish the Office’s ability to ensure that all USDA staff and outside partners are educated on all applicable civil rights obligations, including those that are newer, such as protections on the basis of gender identity. It seems counterproductive to both eliminate the training office and increase the workload of the office charged with adjudication and enforcement (see below). It seems inevitable that the result will be less understanding of civil rights obligations and an enforcement arm with less capacity to adjudicate claims; more claims will be generated with fewer resources to effectively resolve them.

- Combining the Office of Adjudication and the Program Planning and Accountability Division

The notice states that the functions of the Program, Planning and Accountability Division will become part of the Office of Adjudication. We are concerned that this will slow down investigation and adjudication of civil rights complaints, which have been the purview of the Office of Adjudication, while also undermining the independence of the enforcement function by housing program and enforcement operations together in the same office.

## Recommendations

We urge USDA to delay implementation of any OASCR reorganization at least until an Assistant Secretary for Civil Rights has been put in place and that individual has had time to assess the Department's civil rights enforcement needs and challenges. We also request that no reorganization occur before a new Assistant Secretary for Civil Rights holds meetings with stakeholders so that any restructuring, if it occurs, is informed by community input.

Please do not hesitate to reach out to Julie Gonen, Policy Director at the National Center for Lesbian Rights ([jgonen@nclrights.org](mailto:jgonen@nclrights.org) or 202-734-3547), should you have any questions or wish to discuss these comments.

Sincerely,

Center for American Progress  
CenterLink: The Community of LGBT Centers  
Equality California  
Equality North Carolina  
FORGE, Inc.  
GLMA: Health Professionals Advancing LGBT Equality  
Human Rights Campaign  
Jacobs Institute of Women's Health  
Lambda Legal  
Mazzoni Center  
Movement Advancement Project  
National Black Justice Coalition  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Equality Action Team (NEAT)  
National LGBTQ Task Force  
National Women's Law Center  
People For the American Way  
PFLAG National  
Pride at Work  
Sexuality Information and Education Council of the United States (SIECUS)  
Unite for Reproductive & Gender Equity