



American Mortgage  
Diversity Council

*Where Diverse Groups Share Common Goals.*

**Pursuing Equality:**  
Homeownership and  
Workplace Issues Faced by  
the LGBTQ Community

## I. INTRODUCTION

*“LGBTQ rights are the latest front in the battle for equitable civil rights for all Americans.”*

- LGBTQ Town Hall Attendee

While the previous decades have yielded progress, there is significant ground yet to be gained in the pursuit of equal rights for LGBTQ individuals. A recent study commissioned by the Gay & Lesbian Alliance Against Defamation (GLAAD) and conducted by The Harris Poll<sup>1xxx</sup> revealed that public discomfort with LGBTQ Americans is increasing, correspondingly increasing the headwinds that they face:

- » Fifty-five percent of the LGBTQ respondents said they experienced anti-LGBTQ discrimination in 2017, compared to 44 percent in 2016.
- » Thirty-one percent of respondents reported being uncomfortable with seeing a same-sex couple holding hands.
- » Thirty-one percent of respondents said that they would be uncomfortable to learn that their Doctor was LGBTQ.
- » Thirty percent of respondents said that they would be uncomfortable to learn that a family member identified as LGBTQ.
- » Fifty-one percent of all respondents reported being uncomfortable with LGBTQ individuals in at least some situations.

The concerns of LGBTQ individuals permeate all facets of society and affect every industry. The mortgage industry is no different, and housing and workplace protections are at this point inadequate to mitigate the risk of discrimination. Because of the lack of embedded civil protections afforded to LGBTQ people, the financial services industry has historically been met with distrust by the community.

Recognizing the need for the mortgage industry to conduct further outreach to the LGBTQ community for the purpose of educating on current opportunities for homeownership and being educated on emerging issues and concerns, the American Mortgage Diversity Council (AMDC) conducted a series of four discussions in strategically selected locations across the country. The “Town Hall” meetings were convened in Dallas, Texas; Chicago, Illinois; Miami, Florida; and Los Angeles, California, between December of 2017 and June of 2018. Each meeting was attended by approximately ten mortgage industry executives and approximately 10 senior leaders from local advocacy organizations provide services for the for the LGBTQ communities within their respective communities. These discussions provided an opportunity for these leaders to have a frank discussion in an open setting regarding issues affecting the LGBTQ community, both from a homeownership and workplace inclusion perspective.

What follows is a discussion of the concerns that were brought to light within the series of meetings and proposed remedial measures addressing the current issues.

<sup>1</sup>GLAAD, *Accelerating Acceptance 2018 Report* (2018); <http://www.glaad.org/files/aa/Accelerating%20Acceptance%202018.pdf>. The survey was conducted online within the United States by The Harris Poll on behalf of GLAAD. The survey was fielded from November 16-20, 2016, among 2,160 adults ages 18 and older; 1,897 of these adults were non-LGBTQ.

## PARTICIPATING ORGANIZATIONS

Below is a list of more than 45 organizations that attended the Town Halls between December 2017 and June of 2018. Disclaimer: The opinions expressed in this white paper are those of the author and do not necessarily reflect the official policy or position of any other organization, employer, or company other than the author.

- » ACCUMATCH
- » AIDS OUTREACH CENTER
- » AIDS SERVICES OF DALLAS
- » ALLIANCE FOR LGBTQ YOUTH
- » ASSOCIATED BANK
- » BANK OF AMERICA
- » BANKUNITED
- » CALIBER HOME LOANS
- » CATHEDRAL OF HOPE CHURCH
- » CHICAGO HOUSE
- » CHICAGO LGBT CHAMBER OF COMMERCE
- » CORPORATION FOR SUPPORTIVE HOUSING
- » COVENANT HOUSE
- » DALLAS HOPE CHARITIES
- » EQUALITY FLORIDA
- » EQUALITY ILLINOIS INSTITUTE
- » FANNIE MAE
- » FEDERAL HOME LOAN BANK OF CHICAGO
- » FIVE STAR INSTITUTE
- » FLAGSTAR BANK
- » FREDDIE MAC
- » LAMBDA LEGAL
- » LANDMARK NETWORK
- » LAUDAN PROPERTIES
- » LEGACY COUNSELING
- » LOS ANGELES LGBT CENTER
- » METROPOLITAN MILWAUKEE FAIR HOUSING COUNCIL
- » MIAMI-DADE LGBT CHAMBER OF COMMERCE
- » MILWAUKEE METROPOLITAN COMMUNITY CHURCH
- » MR. COOPER
- » MSI
- » NATIONAL ASSOCIATION OF GAY AND LESBIAN REALTY PROFESSIONALS (NAGLREP)
- » NATIONAL LGBTQ TASK FORCE
- » NATIONAL TAX SEARCH
- » NORTH TEXAS LGBT CHAMBER OF COMMERCE
- » OUTLAST YOUTH
- » PENNYMAC
- » PRIDELINES
- » PRISM HEALTH SERVICES
- » RESOURCE CENTER OF DALLAS
- » SAVE
- » TRANSGENDER EDUCATION NETWORK OF TEXAS
- » TRANS SOCIAL
- » TREVOR PROJECT
- » U.S. BANK
- » WINTRUST FINANCIAL CORPORATION

## II. LGBTQ HOMEOWNERSHIP

### A. The State of Fair Housing

In April of 2018, our nation commemorated 50 years since the passage of the Fair Housing Act of 1968.<sup>2</sup> The legislation, passed just one week following the assassination of Dr. Martin Luther King Jr., was produced to answer the call of its time, preventing discrimination and ensuring equal access in the sale or rental of housing nationwide. Though the struggle was long, and many battles were yet to be fought in the name of equal rights, for the first time in human history, the Fair Housing Act represented a nation's government affirmatively declaring that access to housing is a basic human right, applicable regardless of race, sex, or national origin.

Now our nation must rise to confront a new challenge: the lack of protection against housing discrimination for members of the LGBTQ community. Federal fair housing laws prohibit housing discrimination based on race, color, religion, national origin, sex, familial status, and disability. The Fair Housing Act, however, does not include sexual orientation or gender identity as protected classes. The lack of enumerated protection is problematic considering the documented empirical evidence indicating widespread housing practices that are at worst discriminatory in their intent or at best disparate in their outcome.

The problem is exacerbated by a varying interpretation as to the applicability of federal fair housing laws to the LGBTQ community by government officials and the courts. Further, state-level and municipal protections, though well intended, are an inadequate strategic remedy for protecting the LGBTQ population considering that their existence is largely a product of the political climate in each respective state. The reality is harsh: whether an LGBTQ individual will be protected from housing discrimination in the United States of America is currently determined, not by the execution of their rights under the 14th Amendment of the U.S. Constitution, but rather by whether they live in a geographic area that has enacted subordinate protections.

Consider the following:

- » Same-sex couples are more likely to experience discrimination in the rental housing market, relative to heterosexual couples.<sup>3</sup>
- » Gay men and transgender individuals are less likely to be presented with a full slate of options when seeking rental housing.<sup>4</sup>
- » For LGBTQ individuals who apply for a mortgage, the average approval rate for is approximately three to eight percent lower in contrast to otherwise comparable loan applicants.<sup>5</sup>
- » Financing cost for LGBTQ homeowners is about 0.02 percent to 0.2 percent higher when juxtaposed against otherwise comparable applicants. The difference is equivalent to an annual total of between \$8.6 million and \$86 million in additional interest/fees paid by same-sex borrowers nationwide.<sup>6</sup>

<sup>2</sup> 42 U.S. Code § 3604

<sup>3</sup> Samantha Friedman et.al., *An Estimate of Housing Discrimination Against Same Sex Couples* (2013). [https://www.huduser.gov/portal/publications/fairhsg/discrim\\_samesex.html](https://www.huduser.gov/portal/publications/fairhsg/discrim_samesex.html). This study was prepared for the U.S. Department of Housing and Urban Development and represents the first large-scale, paired-testing study to assess housing discrimination against same-sex couples in metropolitan rental markets via advertisements on the Internet. The research was based on 6,833 email correspondence tests conducted in 50 metropolitan markets across the United States from June through October 2011.

<sup>4</sup> Dianne K. Levy et.al., *A Paired-Testing Pilot Study of Housing Discrimination against Same-Sex Couples and Transgender Individuals*, The Urban Institute (2017) [https://www.urban.org/research/publication/paired-testing-pilot-study-housing-discrimination-against-same-sex-couples-and-transgender-individuals/view/full\\_report](https://www.urban.org/research/publication/paired-testing-pilot-study-housing-discrimination-against-same-sex-couples-and-transgender-individuals/view/full_report).

<sup>5</sup> Lei Gao and Hua Sun, *The Rainbow of Credit: Same-sex Mortgage Discrimination and Two-sided Spillover Effect* (2017), <https://pdfs.semanticscholar.org/6a19/720aa1b8319f87d3084989f2b706cd3f3f85.pdf>

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

- » A prominent United States Congressman went on record as interpreting the Fair Housing Act to mean that it was acceptable for people to refuse to sell their homes to gay men and lesbians if “they don’t agree with their lifestyle,” prioritizing the freedom of contract over freedom from discrimination.<sup>7</sup>
- » Only 41 percent of the LGBTQ population lives in a state with local legislation that prohibits housing discrimination based on sexual orientation and gender identity.<sup>8</sup>
- » An aggregation of state-level data reveals that approximately three complaints of sexual orientation and gender identity-based housing discrimination are filed for every 100,000 LGBTQ adults each year. The number of complaints is approximately in line with the number of racial discrimination complaints filed in those states respectively (5 complaints per 100,000 adults).<sup>9</sup>

The foregoing facts paint a picture of a housing system in need of reform to ensure that the fundamental right to the pursuit of the American dream is available to all individuals regardless of their sexual orientation, gender identity, or expression of gender identity. There are those that argue that housing equity can only be achieved through lengthy court battles fought district by district and circuit by circuit. We reject this notion because it subjects the rights of the citizenry to the whims of an unelected judicial branch and presents the possibility of disparate administration of justice determined solely by geography. To the contrary, if real and lasting change is to be achieved, it should be done through legislation originating in the U.S. congress and signed by the president.

The Fair Housing Act (more properly described as Title VIII of the Civil Rights Act of 1968) was initially intended to protect solely based on race, color, religion, and national origin. Sex discrimination protection was added in 1974 via the amendment process. The act was amended once again in 1988 to also prohibit discrimination based on disability or familial status (the presence of children in the home). Throughout its history, now spanning more than 50 years, the act has been amended to reflect the priorities and context of the time in which it is enforced. There is now a compelling case that the act should be supplemented once again.

<sup>7</sup> U.S. Rep. Dana Rohrabacher told the Orange County Register that “We’ve drawn a line on racism, but I don’t think we should extend that line. A homeowner should not be required to be in business with someone they think is doing something that is immoral.” In 2018, Rohrabacher lost his bid for reelection to the seat that he had held for 30 years. <https://www.ocregister.com/2018/05/24/dana-rohrbacher-says-its-ok-to-not-sell-homes-to-gays-loses-support-of-realtors/>

<sup>8</sup> Movement Advancement Project, [http://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](http://www.lgbtmap.org/equality-maps/non_discrimination_laws)

<sup>9</sup> Christy Mallory and Brad Sears, *Evidence of Housing Discrimination based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies, 2008-2014*, The Williams Institute (2016). <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Housing-Discrimination-Complaints-2008-2014.pdf>

According to GLAAD's Accelerating Acceptance Report<sup>10</sup> released in 2018, 79 percent of non-LGBTQ Americans affirm their support of equal rights for the LGBTQ community. This level of support demonstrated by the positive public reaction to the decision in *Obergefell v. Hodges*<sup>11</sup>, which ruled that the fundamental right to marry is guaranteed to same-sex couples by virtue of both the Due Process and Equal Protection Clauses of the U.S. Constitution. An evolving public perception of the legitimacy of same sex relationships and their need to be protected yields the inference that amending the Fair Housing Act to include protections for sexual orientation and gender identity would reflect the demonstrated will of the American public.

**THE AMDC PROPOSES THAT THE FAIR HOUSING ACT OF 1968 BE AMENDED TO PROVIDED SPECIFIC, ENUMERATED PROTECTIONS AGAINST DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND/OR GENDER IDENTITY.<sup>12</sup>**

## **B. Litigation Developments In Fair Housing**

Although legislative action is the most sure and comprehensive way toward ensuring all LGBTQ individuals are afforded fair housing protections, it is important to recognize the progress that has come through litigating the matter in the federal court system. Specifically, the advancement that has come via two recent court decisions coming from the United States Court of Appeals for the Seventh Circuit.

*In Hively v. Ivy Tech Community College*<sup>13</sup>, the Seventh Circuit considered the case of Kimberly Hively, a part-time, adjunct professor at Ivy Tech Community College, who alleged that because of her status as a lesbian, she was repeatedly denied consideration for full-time teaching positions. Eventually her part-time contract was not renewed following 14 years of service. Hively told media outlets that she believed that her troubles started in 2009 when she gave her girlfriend a goodbye kiss as she went in to work.<sup>14</sup> Subsequently, Hively sued under Title VII of the Civil Rights Act of 1964.<sup>15</sup> Similarly, the Fair Housing Act, Title VII protects employees against discrimination based on certain specified characteristics: race, color, national origin, sex, and religion. Under Title VII, an employer may not discriminate with regard to any term, condition, or privilege of employment. Areas that may give rise to violations include recruiting, hiring, promoting, transferring, training, disciplining, discharging, assigning work, measuring performance, or providing benefits.

In the landmark decision, the Seventh Circuit the court reasoned that the “The logic of the Supreme Court’s decisions, as well as the common-sense reality that **it is actually impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex**, persuade us that the time has come to overrule our previous cases that have endeavored to find and observe that line.”<sup>16</sup>

<sup>10</sup> GLAAD, *Accelerating Acceptance 2018 Report* (2018); <http://www.glaad.org/files/aa/Accelerating%20Acceptance%202018.pdf>.

<sup>11</sup> *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015).

<sup>12</sup> Please reference Appendix A for proposed language. The AMDC recognizes that previous work has been done on this issue and seeks to partner with likeminded individuals and organizations to make this proposed legislative change a reality. We are also aware that there are differing opinions as to whether proposed legislation should also include other protections not contemplated within this proposal. We respect the point of view that other types of discrimination protections should be included in proposed language and agree that more work is to be done toward the goal of achieving a just and equitable society. We do not include further protections in this work because we believe that the changes contemplated in this proposal have the potential to form the basis of a bipartisan coalition which in turn increases the likelihood of passage and ultimately signature by the President.

<sup>13</sup> *Hively v. Ivy Tech Community College*, 853 F.3d 339 (7th Cir. 2017).

<sup>14</sup> Darran Simon, *Lesbian Plaintiff in Work Discrimination Suit Sticking to Fight* (2017) <https://www.cnn.com/2017/04/05/us/lgbt-employees-appeals-court-plaintiff/index.html>

<sup>15</sup> 42 U.S.C. § 2000e.

<sup>16</sup> *Hively v. Ivy Tech Community College*, 853 F.3d 339, 351 [Emphasis Added]

Last year also saw a major victory for the LGBTQ community as the court extended its reasoning in *Hively* to the housing context. In *Wetzel v. Glen St. Andrew Living Community*<sup>17</sup> the Seventh Circuit ruled that a landlord may be held liable under the Fair Housing Act for failing to protect a tenant from known, discriminatory harassment at the hands of other tenants.

Considering the court's ruling in *Hively* holding that discrimination based on sexual orientation qualifies as discrimination based on sex as contemplated by Title VII of the Civil Rights Act, the defendant agreed without argument that the court's reasoning applied with equal force under the Fair Housing Act.

In the case, *Wetzel* alleged that, when she complained to her retirement home's administration about the homophobic slurs and physical attacks on her at the assisted living facility where she lived, the administration didn't make any meaningful attempts to stop these and instead retaliated against her. In its ruling, the three-member panel of judges said that not only did the Fair Housing Act create liability when a landlord intentionally discriminated against a tenant based on a protected characteristic, but "it also creates liability against a landlord that has actual notice of tenant-on-tenant harassment based on a protected status, yet chooses not to take any reasonable steps within its control to stop that harassment."

Also, in 2018, the Second Circuit Court of Appeals issued *Zarda v. Altitude Express, Inc.*,<sup>18</sup> to overrule prior precedent and agree with the reasoning in *Hively*. Specifically, the court held that "the most natural reading of the statute's prohibition on discrimination 'because of . . . sex' is that it extends to sexual orientation discrimination because sex is necessarily a factor in sexual orientation."<sup>19</sup>

Recent successes in the Second and Seventh Circuits, stand in contrast to the Eleventh Circuit Court's ruling in *Evans v. Georgia Regional Hospital*,<sup>20</sup> which adhered to prior precedent established in 1979 by affirming the dismissal of the plaintiff's claim of discharge based on sexual orientation. Although the U.S. Supreme court denied the plaintiff's petition to hear the case, the subsequent rulings in the Second and Seventh Circuits have created a split among the circuits that could cause the court to reconsider taking up the issue in a future term. However, as of this writing *Wetzel* is the only case that has applied the Seventh Circuit's reasoning in *Hively* to the interpretation of "sex" under the Fair Housing Act. It remains to be seen whether, even if they agree to resolve the split, the Supreme Court will be inclined to apply its rationale for statutory interpretation to other portions of the Civil Rights Act or limit their analysis to the employment context.

<sup>17</sup> *Wetzel v. Glen St. Andrew Living Community, LLC*, 2017 WL 201376 (N.D. Ill.).

<sup>18</sup> *Zarda v. Altitude Express, Inc.*, No. 15-3775, 2018 U.S. App. LEXIS 4608 (2d Cir. Feb. 26, 2018) (en banc).

<sup>19</sup> *Id.*

<sup>20</sup> *Evans v. Georgia Regional Hospital*, 850 F.3d 1238 (2017), cert. denied, 138 S. Ct. 557 (2017).

### C. Transgender-Specific Homeownership Issues

*“In many ways, trans is the new gay. All of the challenges that the gay community has overcome in the past are now being endured by our community.”*

- AMDC LGBTQ Town Hall Attendee

Transgender Americans are faced with a set of specific challenges that stem from the fact that the American public is still coming to terms with social acceptance of their growing prominence in public life. The consequence is a vast economic disparity between the transgender population and the general American public. Nearly one-third (29 percent) of respondents were living in poverty, compared to 12 percent in the U.S. population, a poverty gap sustained by a nearly 15 percent unemployment rate.<sup>21</sup> Further, transgender individuals are also far less likely to own a home, with only 16 percent of respondents reporting homeownership, compared to 63 percent of the U.S. population.<sup>22</sup> Faced with living in extreme poverty and homelessness, transgender individuals are more susceptible to turn to “survival crimes” (up to and including sex work) to make it through. The untenable choice often results in increased occurrences of credit and employment issues later in life for transgender individuals due to records of arrest.

The natural outflow of these economic conditions is that a significant portion of the transgender population lacks the available resources and educational opportunities to make sound financial decisions, perpetuating the cycle and diminishing the chance for homeownership. There is an opportunity for the mortgage industry to cultivate new customers through offering financial literacy and job training to at-risk transgender individuals.

Transgender Americans that do desire homeownership and were able to avoid the pitfalls described above still face hurdles in realizing the American dream—namely, the fact that many have assumed new names and identities from the ones that they were assigned at birth. Consequently, the expression of their true selves has the potential to cause unnecessary complications because their original documents may display their former identities. In this case, they are left with an unsavory choice: enter into a legal agreement under an identity that they no longer consider their own or forgo homeownership altogether. A potential solution for this issue is the creation of an identification paper trail through the establishment of a working credit repository that would make note of variances between legacy reporting and current identification of the applicant.

<sup>21</sup> Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016).

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



#### **D. LGBTQ Homelessness Exacerbates the Problem**

Homelessness represents a significant barrier for the LGBTQ community on the journey toward full inclusion. Members of the LGBT community are more likely to become homeless, and once homeless, more likely to endure discrimination and harassment that extends their homelessness.<sup>23</sup> For many, becoming homeless begins a perpetual cycle that, without intervention, limits the probability that the individual to move on to obtain gainful employment, become a homeowner, or otherwise lead a productive life.

Consider the following:

- » Nearly one-third (30 percent) of transgender individuals have experienced homelessness at some point in their lifetime, and 12 percent reported experiencing homelessness in the year prior because they were transgender.<sup>24</sup>
- » Transgender individuals have been turned away from shelters solely due to their gender identity or have been subjected to abuse when forced to stay with members of the sex they were assigned at birth.

There is growing evidence that LGBTQ youth are especially vulnerable.

- » Lesbian, gay, bisexual, and transgender youth have a 120 percent increased risk of experiencing homelessness compared to youth who identified as heterosexual and cisgender.<sup>25</sup>
- » Up to 40 percent of all homeless youth identify as members of the LGBTQ community, and for them, homelessness or the threat of homelessness frequently forces youth into survival behaviors that jeopardize their well-being and safety.<sup>26</sup>
- » LGBTQ youth of color—particularly transgender youth of color—are more likely to experience violent crime, including sexual assault, robbery, and murder. Homelessness makes them even more prone to experiencing these events.<sup>27</sup>

Multiple attendees from the LGBTQ Town Hall meetings identified as having been homeless for some period during their lives or were acquainted with someone in the community who had been. Their stories ranged from sleeping in cars to staying on friends couches to sleeping on the street. Now, many have gone on to become business and community leaders in their respective cities. When asked what the contributing factors were in recovering, a similar theme emerged: support from third parties makes all the difference, and the closer the support can be tailored to the specific needs of the LGBTQ individual, the greater the chance of an expedited recovery.

But despite the disproportionate representation of Homeless LGBTQ youth in the general population, services that are specifically tailored to their set of circumstances are few and far between, forcing the youth into “one size fits all” solutions that are less effective and which expose them to discriminatory activity on the part of fellow shelter residents or staff.

The problem does not appear to be improving at a pace which indicates measurable progress. For example, as of the time of this writing in the city of Dallas, Texas, there are only four beds in the entire city dedicated to LGBTQ youth. When confronted with this fact at the LGBTQ Town Hall meetings, LGBTQ community leaders expressed surprise that the number of beds was as high as it was, each echoing the lament that their own cities did not provide enough dedicated beds to LGBTQ youth. Additional dedicated housing is needed to address the problem.

### **THE AMERICAN MORTGAGE DIVERSITY COUNCIL RECOMMENDS THAT MORTGAGE SERVICING ORGANIZATIONS INCORPORATE LGBTQ DEDICATED HOUSING NEEDS INTO THEIR CORPORATE GIVING PLANS, INCLUDING THE PRESENTATION OF MORTGAGE-FREE HOMES TO ORGANIZATIONS DEDICATED TO ADDRESSING THESE NEEDS.**

<sup>23</sup> HUD Exchange: LGBT Homelessness, <https://www.hudexchange.info/homelessness-assistance/resources-for-lgbt-homelessness/#resources-for-homeless-lgbt-individuals-in-crisis>.

<sup>24</sup> Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016).

<sup>25</sup> Chapin Hall at the University of Chicago, *Missed Opportunities: Youth Homelessness in America* (2017), <http://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>

<sup>26</sup> HUD Exchange: LGBT Homelessness, <https://www.hudexchange.info/homelessness-assistance/resources-for-lgbt-homelessness/#resources-for-homeless-lgbt-individuals-in-crisis>.

<sup>27</sup> National Coalition of Anti-Violence Programs (NCAVP). (2016). *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2016*.

## WORKPLACE ISSUES

### iii. Corporate Commitment To Education And Nondiscrimination Is Improving But Is Not Good Enough

Although progress has been made toward ensuring that the workplace is not oppressive towards LGBTQ employees, there is much work to be done in order to achieve full inclusion. Currently, 48 percent of the LGBTQ population lives in states that do not prohibit employment discrimination based on sexual orientation or gender identity.<sup>28</sup> Although, as discussed above, there are some indications that the courts could move toward interpreting Title VII of the Civil Rights Act to incorporate sexual orientation discrimination as “Sex” discrimination for the purposes of the statute, there are no guarantees when (or if) it will occur. The result is that nearly half of the LGBTQ workforce is currently exposed.

*“In some areas of the country without discrimination protections, there’s a real concern within the community that you’ll get married on Sunday and be fired on Monday.”*

- AMDC LGBTQ Town Hall Attendee

This reality is problematic and the mortgage industry in all states, regardless of protection status afforded to their LGBTQ employees, should adhere to a uniform standard of cultural competency that reflects the value that they place on the LGBTQ population both as a sector of the workforce and as potential customers.

### B. Organizational Cultural Competency

In June of 2018, Human Rights Campaign released a report titled A Workplace Divided: Understanding the Climate for LGBTQ Workers Nationwide.<sup>29</sup> The nationwide survey of 1,615 respondents offered a sobering picture: although substantial progress had been made for LGBTQ employees in the workplace during the past 30 years, that progress appears to have slowed to a crawl within the last decade.

Consider the Following:

- » Forty-six percent of LGBTQ employees said that they are closeted at work, compared to 50 percent in 2008.
- » One in five in 5 LGBTQ workers report having been told or having had coworkers imply, that they should dress in a more feminine or masculine manner.
- » Fifty-three percent of LGBTQ workers reported hearing jokes about lesbian or gay people at least once in a while.
- » The top reason LGBTQ workers do not report negative comments they hear about LGBTQ people to a supervisor or human resources is that they **don’t believe that any steps will be taken to address the issue**. They also recognize that speaking out could potentially damage their relationships with coworkers.
- » Fewer than one in five LGBTQ workers in the U.S. (18 percent) agree with the statement, “This is a workplace entirely free from homophobia.”
- » Eighty percent of the transgender population who were employed in 2015 experienced harassment or mistreatment on the job or took steps to avoid it.<sup>30</sup>

<sup>28</sup> Movement Advancement Project, [http://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](http://www.lgbtmap.org/equality-maps/non_discrimination_laws).

<sup>29</sup> Deena Fidas and Liz Cooper, A Workplace Divided: Understanding the Climate for LGBTQ Workers Nationwide, Human Rights Campaign (2018).

<sup>30</sup> Sandy E. James et al., The Report of the 2015 U.S. Transgender Survey, National Center for Transgender Equality (2016).

Issues related to transgender recruitment and inclusion in the workplace add a layer of complexity and represent an emerging challenge. First and foremost are the barriers that simply being transgender put up in the employee onboarding process. For the reasons described above, many transgender individuals may have adverse information that appears on a standard preemployment screening which has nothing to do with the candidate's ability or likelihood to faithfully administer their duties.

**THE AMERICAN MORTGAGE DIVERSITY COUNCIL RECOMMENDS THAT THE FOLLOWING GUIDELINES BE ADOPTED AS BEST PRACTICES BY THE MORTGAGE INDUSTRY.**

1. New-hire training should clearly state that the organizational non-discrimination policy specifically alludes to sexual orientation and gender identity and should provide definitions or scenarios illustrating the policy for each.
2. Organizations should encourage the development of employee resource groups (ERGs) that support the needs of LGBTQ people and further educate non-LGBTQ allies on the issues associated with LGBTQ employment, offering the opportunity to provide tangible support. Where possible, ERGs should have sponsorship from and regularly meet with senior executives within the organization.
3. Employers should attempt to collect data on a voluntary basis that includes employee race, ethnicity, gender identity, sexual orientation, military, and disability status recorded as part of employee records.
4. LGBTQ diversity tracking metrics should be taken into account when evaluating the performance of senior executives.
5. Organizations should mandate that all supervisors undergo training that includes sexual orientation and gender identity as discrete topics and provides definitions or scenarios illustrating the policy for each.
6. The process of evaluating potential employees should allow for contextualization of adverse information that shows up on background checks, especially information that indicates non-violent offenses associated with previous LGBTQ homelessness. Hiring managers would then be allowed to make an informed decision on the current suitability of a potential LGBTQ employee.
7. Organizations should develop gender-transition guidelines with supportive restroom/facilities, dress code, and documentation guidance provided for employees who elect to undergo the physical process.
8. Organizations should develop a specialized internship program that targets potential transgender employees who show an aptitude and interest in building a career in mortgage banking. The program should provide a pathway to employment with the organization following completion and offer mentorship support post-hire.
9. Organizations should explore the cost feasibility of negotiating and providing at least one transgender-inclusive healthcare coverage plan to employees. The feasibility evaluation exercise should take place on a yearly basis.
10. Organizations should implement executive succession plans that emphasize the development and promotion of LGBTQ executives.
11. Customer-facing employees should be selected in part based on their demonstrated ability to make LGBTQ customers feel comfortable availing themselves of corporate services.

## CONCLUSION

IV. A thoughtful examination of the previous three decades reveals that the LGBTQ community has made great strides in achieving equal access to homeownership and continues to work to achieve full inclusion within the workplace. Despite these gains however, much work remains to be done toward eradicating the vestiges of discrimination from these settings. The mortgage industry has the opportunity to lead on these issues by pushing for more thorough reforms in the public sphere and by promoting cultures that prioritize inclusion within our respective organizations. The result will be a workforce that is buoyed by a stronger talent pool and an increased client base of prospective homeowners who identify as LGBTQ. It is incumbent upon the industry not to let this opportunity pass it by.

## Appendix A

### Equal Housing for All Act of 2019

The residential mortgage industry is committed to ensuring that discrimination has no place within the landscape of American housing. To that end, the American Mortgage Diversity Council (AMDC), a trade association representing every facet of the industry and committed to diversity and inclusion, is working to ensure that members of the community have their concerns heard and that their right to fair housing is preserved. Below you will find statutory language proposed by the AMDC that amends the Fair Housing Act of 1968 and expands its protections to explicitly include sexual orientation as a class of protected citizens. We hope that you will consider sponsoring the bill and look forward to furthering discussions on how we can work together to overcome one of the great challenges of our time.

#### A BILL

To extend the protections of the Fair Housing Act to persons suffering discrimination on the basis of sex or sexual orientation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Equal Housing for All Act of 2019”.

#### SEC. 2. HOUSING.

(a) Fair Housing Act.—The Fair Housing Act (42 U.S.C. 3601 et seq.) is amended—

(1) in section 802, by adding at the end the following:

“(p) ‘Race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orientation’, ‘gender identity’, ‘handicap’, ‘familial status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin, respectively, of the individual.

“(q) ‘Gender identity’ means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, without regard to the individual’s designated sex at birth.

“(r) ‘Sexual orientation’ means homosexuality, heterosexuality, or bisexuality.”;

(2) in section 804, by inserting “sexual orientation, gender identity” after “sex,” each place that term appears;

(3) in section 805, by inserting “sexual orientation, gender identity” after “sex,” each place that term appears;

(4) in section 806, by inserting “sexual orientation, gender identity” after “sex,” each place that term appears;

(5) in section 808(e)(6), by inserting “sexual orientation, gender identity” after “sex,”; and

(6) by adding at the end the following:”.

(b) Prevention Of Intimidation In Fair Housing Cases.—Section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended by inserting “gender identity, sexual orientation (as such term is defined in section 802 of this Act),” after “sex,” each place that term appears.

## Appendix B:

### Glossary of Terms Associated With the LGBTQ Community

An area of feedback from members of the LGBTQ community who attended the series of town hall discussions with mortgage industry executives was the concern that few outside of the community were fully familiar with the terminology associated with their identities. What follows, though not exhaustive, is a beginning glossary<sup>31</sup> designed to introduce unfamiliar readers to concepts that they may not have yet encountered.

**Allosexism:** The pervasive system of discrimination and exclusion that oppresses asexual people.

**Allyship:** The action of working to end oppression through support of, and as an advocate with and for, a group other than one's own.

**Androgyne:** A person with masculine and feminine physical traits.

**Asexual:** A sexual orientation generally characterized by not feeling sexual attraction or a desire for partnered sexuality. Asexuality is distinct from celibacy, which is the deliberate abstention from sexual activity. Some asexual people do have sex. There are many diverse ways of being asexual.

**Bisexual:** A person whose primary sexual and affectional orientation is toward people of the same and other genders, or towards people regardless of their gender.

**Cisgender:** A gender identity, or performance in a gender role, that society deems to match the person's assigned sex at birth. The prefix cis- means "on this side of" or "not across."

**Coming Out:** Describes voluntarily making public one's sexual orientation and/or gender identity. It has also been broadened to include other pieces of potentially stigmatized personal information. Terms also used that correlate with this action are: "Being out" which means not concealing one's sexual orientation or gender identity, and "Outing," a term used for making public the sexual orientation or gender identity of another who would prefer to keep this information secret.

**Cross-Dresser (CD):** A word to describe a person who dresses, at least partially, as a member of a gender other than their assigned sex; carries no implications of sexual orientation. Has replaced "transvestite."

**Demisexual:** Demisexuality is a sexual orientation in which someone feels sexual attraction only to people with whom they have an emotional bond. Most demisexuals feel sexual attraction rarely compared to the general population, and some have little to no interest in sexual activity. Demisexuals are considered to be on the asexual spectrum, meaning they are closely aligned with asexuality.

**Femme:** Historically used in the lesbian community, it is being increasingly used by other LGBTQ people to describe gender expressions that reclaim/claim and/or disrupt traditional constructs of femininity.

**Gay:** A sexual and affectional orientation toward people of the same gender.

**Gender:** A social construct used to classify a person as a man, woman, or some other identity. Fundamentally different from the sex one is assigned at birth.

**Gender Expansive:** An umbrella term used for individuals who broaden their own culture's commonly held definitions of gender, including expectations for its expression, identities, roles, and/or other perceived gender norms. Gender-expansive individuals include those who identify as transgender, as well as anyone else whose gender is in some way seen to be stretching the surrounding society's notion of gender.

**Gender Expression:** How one expresses oneself, in terms of dress and/or behaviors. Society, and the people who make up society, characterize these expressions as "masculine," "feminine," or "androgynous." Individuals may embody their gender in a multitude of ways and have terms beyond these to name their gender expression(s).

**Gender Fluid:** A person whose gender identification and presentation shifts, whether within or outside of societal, gender-based expectations. Being fluid in motion between two or more genders.

<sup>31</sup> LGBTQIA Resource Center Glossary, University of California Davis, <https://lgbtqia.ucdavis.edu/educated/glossary>

**Gender Identity:** A sense of one's self as trans\*, genderqueer, woman, man, or some other identity, which may or may not correspond with the sex and gender one is assigned at birth.

**Gender Non-Conforming (GNC):** People who do not subscribe to gender expressions or roles expected of them by society.

**Gender Queer:** A person whose gender identity and/or gender expression falls outside of the dominant societal norm for their assigned sex, is beyond genders, or is some combination of them.

**Heterosexuality:** A sexual orientation in which a person feels physically and emotionally attracted to people of a gender other than their own.

**Homosexual/Homosexuality:** An outdated term to describe a sexual orientation in which a person feels physically and emotionally attracted to people of the same gender. Historically, it was a term used to pathologize gay and lesbian people.

**Intersectionality:** A term coined by law professor Kimberlé Crenshaw in the 1980s to describe the way that multiple systems of oppression interact in the lives of those with multiple marginalized identities. Intersectionality looks at the relationships between multiple marginalized identities and allows us to analyze social problems more fully, shape more effective interventions, and promote more inclusive advocacy amongst communities.

**Intersex:** Adjective used to describe the experience of naturally (that is, without any medical intervention) developing primary or secondary sex characteristics that do not fit neatly into society's definitions of male or female. Intersex is an umbrella term and encompassing 20 variations of intersex.

**Lesbian:** A woman whose primary sexual and affectional orientation is toward people of the same gender.

**LGBTQ Allyship:** The practice of confronting heterosexism, sexism, genderism, allosexism, and monosexism in oneself and others out of self-interest and a concern for the well-being of lesbian, gay, bisexual, transgender, queer, intersex and asexual people.

**Misgendering:** Attributing a gender to someone that is incorrect/does not align with their gender identity. Can occur when using pronouns, gendered language (i.e. "Hello, ladies!" "Hey guys"), or assigning genders to people without knowing how they identify (i.e. "Well, since we're all women in this room, we understand...").

**Neutrois:** A non-binary gender identity that falls under the genderqueer or transgender umbrellas. There is no one definition of Neutrois, since each person that self-identifies as such experiences their gender differently. The most common descriptors are: neutral-gender, null-gender, neither male nor female, genderless and/or agender.

**Non-Binary:** A gender identity and experience that embraces a full universe of expressions and ways of being that resonate for an individual. It may be an active resistance to binary gender expectations and/or an intentional creation of new unbounded ideas of self within the world. For some people who identify as non-binary, there may be overlap with other concepts and identities like gender expansive and gender non-conforming.

**Pronouns:** Linguistic tools used to refer to someone in the third person. Examples are they/them/theirs, ze/hir/hirs, she/her/hers, he/him/his. In English and some other languages, pronouns have been tied to gender and are a common site of misgendering (attributing a gender to someone that is incorrect).

**Queer:** One definition of queer is abnormal or strange. Historically, queer has been used as an epithet/slur against people whose gender, gender expression and/or sexuality do not conform to dominant expectations. Some people have reclaimed the word queer and self-identify as such. For some, this reclamation is a celebration of not fitting into norms/being "abnormal."

**Questioning:** The process of exploring one's own gender identity, gender expression, and/or sexual orientation. Some people may also use this term to name their identity within the LGBTQ community.

**Sexuality:** The components of a person that include their biological sex, sexual orientation, gender identity, sexual practices, etc.

**Transgender:** Adjective used most often as an umbrella term, and frequently abbreviated to “trans.” This adjective describes a wide range of identities and experiences of people whose gender identity and/or expression differs from conventional expectations based on their assigned sex at birth. Not all trans people undergo medical transition (surgery or hormones). Some commonly held definitions:

1. Someone whose determination of their sex and/or gender is not validated by dominant societal expectations; someone whose behavior or expression does not “match” their assigned sex according to society.
2. A gender outside of the man/woman binary.
3. Having no gender or multiple genders.

**Transition:** An individualized process by which transsexual and transgender people “switch” from one gender presentation to another. There are three general aspects to transitioning: social (i.e. name, pronouns, interactions, etc.), medical (i.e. hormones, surgery, etc.), and legal (i.e. gender marker and name change, etc.). A trans individual may transition in any combination, or none, of these aspects.

### **About the American Mortgage Diversity Council**

The American Mortgage Diversity Council (AMDC) promotes diversity and inclusion throughout the mortgage industry. The organization provides a platform for collaboration of mortgage industry leaders for the advancement of diversity and inclusion dialogue. Further, it develops and promotes tools and strategies to create an understanding and appreciation of individual differences in thought, experience, race, ethnicity, culture, religion, style, sexual orientation and gender identity, moving business practices forward to embrace diversity and inclusion as essential to innovation and optimal business results. For more information visit [MortgageDiversityCouncil.com](http://MortgageDiversityCouncil.com) or contact Derek Templeton, Executive Director at 214.525.6757.