



To: President-Elect Joe Biden and Vice President-Elect Kamala Harris
From: National Women's Law Center
Re: Priorities for a New Administration
Date: November 20, 2020

2020 has exposed and exacerbated the deep inequities that have long pervaded our country. The historic reckoning on racial injustice that we are experiencing comes, not by accident, amid a pandemic that has taken the lives and livelihoods of millions. The many forms of oppression that Black women face, from shockingly low wages and poor working conditions to stunning health outcomes and staggering unemployment, have been revealed—and they are a consequence of ways that racism and sexism together manifest themselves for Black women.

Latinas, Native American women, Asian American and Pacific Islander (AAPI) women, and other women of color, too, are on the front lines of the crisis we're facing today. Many are risking their lives to provide health care, child care, and other services that [long have been and continue to be essential](#), but are also unprotected, undervalued, and underpaid. Many others have lost their jobs; as of October, about [1 in 11 Black women and Latinas remained unemployed](#). In the midst of an unprecedented public health crisis, marginalized women—including Black women, women of color, women with low incomes, transgender women, immigrant women, and women with disabilities—who [already faced barriers to health care](#) are seeing these barriers grow. And, as always, [women are taking on the lion's share of unpaid caregiving](#), which is [forcing millions out of the labor force](#)—while too many of our [children are more disconnected than ever from a school community](#), and our schools lack the resources they need to support students who need it the most.

The challenges facing women and families are not new; the pandemic has simply highlighted and exacerbated inequities and systemic barriers that are the consequence of deeply embedded racism and sexism. But our country can no longer look away as Black women, Latina women, Native women, AAPI women, and other women of color and their families suffer as a result of our inequitable social and economic systems.

2021 presents a critical opportunity. The Biden-Harris administration can—and must—chart a new course toward racial and gender justice by centering the needs of women and girls of color. Centering the needs of women and girls of color is the only way forward to rectify centuries of structural racism, to ensure we can all thrive in a post-COVID reality, and to recover from this economic implosion by building economic and social systems that work for everyone.

Policies that address the needs of women and girls of color are not just necessary, but are also supported by voters. A recent poll by Lake Research Partners shows that a majority of voters across party lines, age, race, and gender identity strongly support a broad array of gender justice policies—including ending sexual harassment, ensuring access to high quality, affordable child care, closing the

gender wage gap, protecting and expanding access to abortion, and providing access to low-cost, accessible health care to all.

This memo identifies **six key areas of critical importance for the Biden-Harris administration to focus on to advance gender and racial justice:**

- COVID Relief
- Budget Priorities
- First Day Executive Action Priorities
- First 100 Days Executive Action Priorities
- Key Administration and Agency Positions
- Judicial Nominations

The Biden-Harris Administration Must Work with Congress to Provide COVID Relief

A top legislative priority of the Biden-Harris administration must be a COVID relief package that puts Black and brown women at the center of our recovery from both the virus and the economic crisis in its wake. The Biden-Harris administration must work with Congress to immediately pass relief that women and girls across the nation need to survive the current pandemic, to rebuild our dramatically weakened societal structures, communities, and economy, and to be able to thrive on the other side. Such a package must include:

- At least \$50 billion in stabilization funding for the child care sector, consistent with the Child Care Is Essential Act which passed the House on a bipartisan basis in July, and an additional \$7 billion in funding through the traditional Child Care and Development Block Grant program, as included in the revised HEROES Act passed by the House of Representatives in October;
- At least \$1 trillion in state and local fiscal relief, specifically providing flexibility in using these funds to address both needs directly related to the coronavirus pandemic and the evolving economic crisis, so that state and local budget crises will not precipitate public program and service cuts and loss of (primarily women's) jobs in education, health care, and other critically important sectors;
- Restoring the expanded Unemployment Insurance benefits that expired at the end of July; ensuring such benefits do not turn off until economic conditions improve;
- Income supports such as the additional Economic Impact Payments and temporary expansions to the Earned Income Tax Credit and Child Tax Credit set forth in the revised HEROES Act;
- Increased housing assistance comprised of \$100 billion in emergency rental assistance, a universal eviction moratorium, \$75 billion in mortgage assistance, and \$11.5 billion in homelessness assistance;
- Increased funding for the Supplemental Nutrition Assistance Program and other nutrition assistance programs, as well as program flexibilities to help families put food on their table during the pandemic;

- Improving health care access, by the immediate establishment of a marketplace special enrollment period, with \$25 million for marketplace outreach and education activities as called for in the HEROES Act and guaranteeing no cost-sharing for COVID-19 treatment and vaccination for any Medicare, Medicaid, CHIP, TRICARE, and Veterans Affairs beneficiaries diagnosed with or presumed to have COVID-19 during the emergency period;
- Extending the availability of emergency paid sick days and paid family leave, now set to expire at the end of 2020, and expanding these programs to ensure that all working people are included in these protections;
- Extending monthly payment relief for federal student loan borrowers for the duration of this crisis, canceling at least \$30,000 in outstanding student loan debt per borrower—inclusive of borrowers with commercially held federal loans, such as Perkins and FFEL loans, and ensuring that pauses on repayment count towards Public Service Loan Forgiveness and Income-Driven Repayment plans;
- Requiring the Occupational Safety and Health Administration to issue an enforceable standard on infectious diseases to help employers achieve the safest possible conditions for front-line workers.
- Rejecting efforts by anti-abortion legislators in Congress to further restrict abortion access in legislation addressing the pandemic; and
- Rejecting efforts to provide businesses with immunity from coronavirus-related lawsuits – including those based on negligence, failure to comply with workplace health and safety standards, and workplace civil rights violations -- at the expense of working people and the public

Budget Priorities

The president’s budget is an important statement of priorities, signaling to Congress the top issues the administration will pursue. One way the Biden-Harris administration can show its commitment to gender justice is by centering Black and brown women and girls in its budget priorities. This commitment goes beyond the hard numbers in proposed budgets, to eschew a “scarcity narrative” and raise revenues in a progressive way to fund our shared priorities. Specifically, NWLC recommends that the administration lean into a bold vision that invests in women and girls by:

- **Eliminating barriers to reproductive health care.** The budget should strike all harmful riders that currently are used to restrict access to reproductive health care. This includes striking the Hyde and Weldon Amendments and any other similar appropriations restriction.
- **Comprehensively funding health care.** The budget must provide for comprehensive funding for the Affordable Care Act, Medicaid, Title X, and other programs that help people access health care.
- **Including a bold proposal for transforming our child care and early learning system – and the investments to make this vision a reality.** In addition to providing immediate relief to the child care and early learning sector in the first relief package of the Biden-Harris administration, the first (and subsequent budgets) must include a mandatory direct assistance proposal to provide affordable, high-quality child care and early learning *for all*. The President’s Budget should also

include annual increases in discretionary spending for existing programs that lay the foundation for a larger visionary mandatory proposal. In FY 2022, this must include at least \$57 billion for child care to build in and sustain pandemic relief, avoiding severe cliffs in funding and policy changes for families, educators, and states as we recover from this crisis.

- **Addressing the long-term housing crisis.** The administration must significantly increase housing investments in the FY 2022 budget, including funding universal Section 8 housing choice vouchers; increasing funding for public housing to maintain existing units; providing at least \$3.5 billion for the national Housing Trust Fund to increase the stock of affordable and accessible housing; and increasing funding for processing Fair Housing Act (FHA) complaints.
- **Strengthening unemployment protections:** In addition to restoring pandemic unemployment benefits, the administration must take immediate action to strengthen the underlying UI program. This includes setting federal standards for benefit adequacy, eligibility and duration; bolstering the financing mechanisms and triggers for extended benefits, promoting work-sharing, and establishing a Jobseeker’s Allowance for workers who do not have the employment history to qualify for traditional UI.
- **Significantly boosting IRS funding.** The initial year of a multi-year plan to restore and increase IRS funding, within a range of approximately between \$20 and \$100 billion over a 10-year period, should be included in the President's budget proposal.
- **Avoiding unnecessary austerity in discretionary funding.** The President’s Budget should avoid adhering to tight non-defense discretionary budget caps and instead, ensure that discretionary funding proposals based on agency, program, and community need drive the non-defense discretionary total.
- **Significantly increasing funding for civil rights enforcement.** The FY 2022 budget request should include at least \$260 million for the Department of Education Office for Civil Rights—a two-fold increase from what was appropriated in FY 2020, and should double funding for the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs to permit increased enforcement and education efforts.
- **Eliminating federal funding for the Community Oriented Policing Services (COPS) in School Program** in the FY2022 budget request and federal funding for the hiring and retention of school-based law enforcement in school in order to increase federal investments in academic, social, and emotional student supports and divest federally from mechanisms that criminalize students and drives racial and gender inequities in the school-to-prison pipeline and school-to-poverty pathway.
- **Eliminating funding supporting abstinence-only programs in K-12 schools.**

Executive Priorities

Now is the time for the Biden-Harris administration to advance a bold vision of a society, government, and economy that works for all women and girls. There are several critical steps the administration can and should take on its own, without need for Congressional action, to advance gender and racial justice.

The list below is organized by priorities the administration should take up in the first day and first 100 days.

First Day

- **Issue an executive order to agencies on child care and early learning:** The White House should issue an EO on child care and early learning to task agencies to identify administrative changes or new administrative actions within 90 days of the EO's announcement that will signal a commitment to stabilizing child care programs, improving job quality for educators, and supporting families' diverse child care and early learning needs -- while simultaneously working to secure funding through Congress to achieve the transformative and structural change needed. Agencies should propose concrete administrative actions and changes in response to this EO that advance gender and racial equity, provide meaningful engagement and consultation of people directly impacted, prioritize the needs of historically marginalized and under-resourced communities, and help build the research base and identify best practices for states.
- **Amend Executive Order 13658 to raise the minimum wage for all workers on federal construction and service contracts** to at least \$15 per hour and require federal contractors to pay tipped workers the same minimum wage as any other worker, before tips. This increased wage rate should be implemented in the subsequent round of contracts, and it should thereafter be indexed to median wage growth and increased accordingly on an annual basis. The minimum wage for federal contract workers should always be at least 10% more than the federal minimum wage.
- **Withdraw the Department of Labor's proposed but not yet finalized rule establishing a new test for determining independent contractor status under the Fair Labor Standards Act (FLSA)**, which contravenes decades of precedent and would particularly harm people working in low-paid jobs—disproportionately women and people of color—by making it easier for employers to deny them FLSA protections.
- **Announce new White House initiatives to promote equal pay and to close gender and racial wage gaps**, including by issuing an executive order prohibiting federal contractors from relying on job applicants' salary history to set pay and requiring federal contractors to include salary ranges in job announcements.
- **Announce an initiative to restore and strengthen civil rights protections enforced by the Department of Education, including initiating a remand of the DeVos Title IX sexual harassment rule to the Department of Education for reconsideration and suspending enforcement of the rule.** Because the rule has been challenged in court, the Department of Justice (DOJ) should advise on the best course to permit agency reconsideration. As part of this initiative to restore and strengthen civil rights protections, the White House should announce an extensive stakeholder engagement plan to hear from students and their families and stepped up efforts to provide technical assistance and guidance on sexual harassment responses and other civil rights matters, including religious

exemptions, LGBTQ protections, dress and grooming codes, and lactation accommodations, pending rulemaking on these topics.

- **Issue an executive order that prohibits the use of federal funds to hire or retain law enforcement officers in schools**, limits Section 287(g) agreements to foreclose immigration raids in schools, and directs the Department of Education and DOJ to collect and release data on the prevalence of school-based law enforcement and school-level complaints against school-based police.
- **Revoke Executive Order 13958: Establishing the President’s Advisory 1776 Commission**, which illegally directs several federal agencies, including the Department of Education, to impose a curriculum that promotes white nationalism on state and local educational agencies.
- **Issue a strong executive order on reproductive freedom and create an interagency task force on reproductive health care**. Timed with the *Roe v. Wade* anniversary on January 22, the president should issue an Executive Order that makes a strong and unequivocal commitment to protecting and expanding reproductive rights and access to reproductive health care, especially abortion. In addition to immediately undoing certain barriers to care, the EO also should direct every agency to consider regulatory and administrative measures to undo harmful policies, with a particular focus on the Trump administration’s actions. The EO should also direct agencies to consider new regulations, guidance, or policies that will advance access to reproductive health care. The Biden-Harris administration should also create an Interagency Task Force on Reproductive Health Care staffed by high level designees from a range of federal agencies to respond to the urgent crisis in access to reproductive health care, and to prepare a coordinated federal response and action plan.
- **Rescind the Trump administration’s refusal of care rule**. Issue a presidential memorandum directing the Secretary of Health and Human Services to rescind the Trump administration’s refusal of care rule. This rule allows virtually any individual or entity involved in patient care—including a receptionist, elevator operator, or ambulance driver—to refuse to do their job and to deny patients care and information. Because the rule has been challenged, is blocked by federal courts, and is currently under consideration by two circuit courts of appeals, DOJ should consider what action may be necessary to permit agency reconsideration of this rule.
- **Roll back regulations that restrict access to nutrition assistance, fair housing, and disability benefits**, including by instructing the U.S. Department of Agriculture (USDA) to withdraw the SNAP broad-based categorical eligibility and standard utility allowances proposed rules, as well as to decline an appeal of the district court decision in *District of Columbia v. United States Department of Agriculture* blocking the final SNAP time limit rule; instructing the U.S. Department of Housing and Urban Development (HUD) and USDA to withdraw their proposed rules to separate or evict mixed-status families and increase paperwork and documentation requirements; instructing HUD to withdraw the proposed rule rolling back the existing Equal Access Rule and to restore the 2013 disparate impact and 2015 Affirmatively Furthering Fair Housing rules; and instructing the Social Security Administration (SSA) to withdraw harmful rulemakings that would make it harder to apply for and continue receiving disability benefits.
- **Take steps to strengthen unemployment protections**, including by directing Department of Labor to take steps such as: allocating technical resources to the Employment and Training Administration (ETA) to provide hands on support to immediately fix issues such as bad fraud flagging; encouraging short-term compensation (work-sharing), including by providing technical assistance, guidance, and

using the bully pulpit to underscore the benefits of work-sharing; helping states update their technology to effectively administer UI, including by strengthening procurement standards; and prioritize data collection by race and ethnicity on UI receipt to inform a greater focus on equity.

- **Remove harmful and discriminatory barriers to support that can help immigrant families meet basic needs, including by directing the Department of Homeland Security to take steps to: restore** the longstanding regulatory interpretation of the public charge rule; roll back asylum restrictions; reduce costs of applying for immigration benefits under the U.S. Citizenship and Immigration Services fee schedule, including making it free to apply for asylum; and reinstate the Deferred Action for Childhood Arrivals program.
- **Instruct DOJ to begin coordinating full implementation of LGBTQ rights under federal civil rights laws in line with *Bostock v. Clayton County*.** The Supreme Court’s holding in *Bostock*, that sex discrimination under Title VII includes discrimination based on sexual orientation and gender identity based on a textual analysis, applies to protections against sex discrimination contained within all federal civil rights statutory and regulatory provisions. Consequently, DOJ should fulfill its historical rule to [coordinate implementation across agencies](#), including agencies with responsibility over Title IX, Title X, the Fair Housing Act, the Equal Credit Opportunity Act, and the Fair Labor Standards Act.

First 100 Days Priorities

Provide the robust, sustained support that women and families will need to weather the COVID-19 crisis and thrive as we recover.

- By executive order, direct agencies to identify regulatory, policy, and process changes as well as best practices for outreach, community partnerships, and public awareness campaigns to ensure that individuals and communities who are eligible for particular public benefits but have low uptake are able to access public benefits. The agency process should include consultation with a grassroots advisory body of people who receive or have received public benefits.
- Issue an EO directing agencies to identify administrative changes or new administrative actions within 90 days of the EO’s announcement that strengthen access to and eligibility criteria for basic needs programs, including SNAP, housing assistance, child care assistance, medical assistance, SSI, and SSDI. Such actions could include easing gross income tests and asset limits, encouraging states to waive work requirements, and expanding hardship exemption provisions—so that families with low incomes are not penalized for having high child care or medical expenses, losing their jobs during the recession, or saving for emergencies.
- Revoke EO 13828: Reducing Poverty in America by Promoting Opportunity and Economic Mobility, and withdraw the nine proposed rules that would give more rights to faith-based organizations than people seeking food, housing, health care, education, and other basic needs.
- Take steps to strengthen unemployment protections, including by directing Department of Labor to: take all steps possible to ensure all eligible unemployed and underemployed workers can receive unemployment benefits; prioritize use of oversight resources to minimize erroneous denials of UI; reduce administrative burdens associated with potential PUA overpayments by declining to enforce the look-back weekly certification of COVID related cause for past weeks of recertification, and

strictly enforcing the 21 day document requirements; and reopen the Trump drug-testing rule. More broadly, while the status of relief legislation is unknown, for any extended UI that is included, DOL should issue guidance that broadens the availability of Pandemic Unemployment Assistance (PUA). That should include better Suitable Work Guidance so that workers don't have to choose between their health and safety and a job, and also better guidance on how workers who need to leave a job due to child care or distance learning challenges can access UI.

Take administrative actions that, in tandem with the budget and legislative investments outlined above, will help build an equitable, effective child care system.

- Robustly staff key agencies and structures. The administration should prioritize robustly staffing the offices of Child Care (OCC) and Head Start (OHS) at HHS, and rebuild the Office of Early Childhood Development (OECD) at HHS to coordinate across OHS, OCC, and with other Departments, such as the Department of Education and USDA on early childhood issues.
- Create a new grassroots advisory council on child care and early learning. The administration should create a new child care and early learning grassroots advisory body within OECD co-chaired by the OECD Deputy Assistant Secretary, or their designee, and a grassroots leader. The OECD, OCC, and OHS should consult with this new body as they develop and revise policies, regulations, monitoring, issue guidance, and work with regional offices and states on implementation. The newly created advisory body should include representation from a diverse range of families, providers, educators, and other stakeholders who are directly impacted by the child care and early learning system.

Rebuild an economy that values women's work and shifts power to working people.

- To ensure that employers who receive public dollars are working to rebuild good jobs, the administration should:
 - Issue an executive order to promote fair work schedules—in which working people have input, predictability, and access to adequate hours—for the federal contract workforce;
 - Implement new strategies to ensure that employers who have a record of noncompliance with labor and/or employment laws do not receive federal contracts.
- Take additional steps to combat wage theft and secure [fair wages for tipped workers—who are largely women, disproportionately women of color](#), and have been extraordinarily hard hit by the pandemic, by suspending action on the Department of Labor's (DOL) rulemaking on tip regulations under the Fair Labor Standards Act and restoring the "80/20 rule" that ensures employers cannot take a tip credit when tipped workers perform significant non-tipped work, and increasing enforcement dedicated to ending wage and tip theft in the restaurant industry.
- Support caregivers by expanding access to paid family & medical leave and paid sick days. In addition to expanding the emergency measures under the FFCRA, the administration can lay the groundwork to transition emergency programs into permanent protections by expanding and increasing funding to the Department of Labor for education, outreach, and enforcement of the FFCRA leave to create an infrastructure that will support permanent programs. DOL should expand coverage under Executive Order 13706 to provide more federal contract employees with paid sick days.
- Promulgate new DOL regulations to raise the overtime salary threshold for the executive, administrative, and professional (EAP) exemption under the Fair Labor Standards Act to \$82,732 by

2026—a level that restores its effectiveness and ensures workers whose positions are not highly compensated enough to indicate bona fide EAP status are not deprived of overtime pay. New regulations should phase in the increase to allow employers time to adjust and include an indexing mechanism to ensure that the threshold keeps pace with rising wages over time.

- Restore joint employment tests under the purview of the National Labor Relations Board and DOL that recognize the realities of the fissured workplace and ensure that employers cannot evade accountability for workplace violations by hiding behind a subcontract.

Ensure that everyone can work with safety, equality, and dignity—free from harassment and discrimination.

- As part of the White House equal pay efforts, require employers to collect and report compensation data by race, ethnicity and gender to EEOC and OFCCP; require federal contractors to disclose their gender and race wage gaps on publicly accessible websites; and seek funding to create new surge capacity within EEOC and DOL to analyze this pay data, publish analyses of wage and wage gap information by industry and locality, and use the data to identify and root out pay discrimination.
- Through executive order, strengthen protections against workplace discrimination by federal contractors by requiring all federal contractors to refrain from using forced arbitration for employment and labor law violations, to refrain from using confidentiality clauses that prevent workers from speaking out about employment and labor law violations, and to make regular, public reports of numbers and types of complaints of violations of employment and labor law received.
- Issue updated EEOC enforcement guidance on harassment that, among other things, clarifies that harassment based on sexual orientation and gender identity is a form of sex harassment, and that the “severe or pervasive” standard is meant to prohibit a broad spectrum of harassment and take into account the impact of harassment on its target.
- Ensure that pregnant workers are not forced to choose between their jobs and the health of their pregnancies by prioritizing accommodations for pregnant workers who might be exposed to COVID-19 in the course of their job duties, including by ensuring that federal agencies immediately address federal employees’ pregnancy accommodation needs and that EEOC promptly provides emergency guidance on pregnancy accommodations and COVID-19 for all employers.
- Update EEOC enforcement guidance on discrimination on the basis of caregiver status, with particular attention to issues arising as a result of the COVID-19 pandemic; establish that certain abusive work scheduling practices unsupported by business necessity can constitute unlawful discrimination on the basis of sex because of their disparate impact on women; and prioritize enforcement actions against such discrimination.
- Issue or update EEOC guidance to address the impact of *Bostock*, including on claims involving the intersection of sex and other protected characteristics such as race; and increase employer and worker outreach and education efforts regarding the decision.
- Rescind/withdraw the near-final OFCCP rule expanding religious exemptions from discrimination protections, which would allow federal contractors to use their religious beliefs to discriminate and engage in otherwise unlawful behavior, and the draft EEOC guidance on religious discrimination that

would permit employers to use their religious beliefs to discriminate. Withdraw the Attorney General's October 6, 2017 Memorandum on Federal Law Protections for Religious Liberty, which sets out baseless legal interpretations that enable discrimination, including workplace discrimination, in the name of religion.

- Rescind/withdraw the pending EEOC rule regarding the conciliation process that would harm working people and undermine EEOC enforcement efforts.

Transform schools into places where every student feels safe, valued, and included—no matter their race, national origin (or immigration status), religion, disability, or sex (including sexual orientation, gender identity, pregnancy and related conditions, and parental status).

- Initiate rulemaking on comprehensive Title IX regulations to address sexual harassment in schools; religious exemptions; protections for LGBTQ students; lactation, pregnancy, and reproductive health accommodations; and dress and grooming policies. Pending rulemaking, conduct listening tours with students and stakeholders across the country to understand how a new Title IX rule addressing sexual harassment in schools could best take into account their needs and experiences and immediately reissue 2016 Title IX transgender discrimination guidance pending revision to reflect Supreme Court's decision in *Bostock* and other legal developments.
- Update and restore key Title VI guidance rescinded by the Department of Education under the Trump administration regarding racially discriminatory discipline, and affirmative action and race-conscious admissions. Specifically, the Department should:
 - Update discipline guidance to highlight how actions of school-based police may violate Title VI under a disparate impact theory and how concentration of school-based police in schools with higher populations of students of color may be a Title VI violation;
 - Release guidance outlining Title VI and Title IX protections against intersectional race- and gender-based discrimination claims;
 - Restore guidance on race-conscious admissions under Title VI (i.e., reinstate guidance re: Supreme Court *Fisher & Schuette* decisions; 2011 Dear Colleague Letters);
 - Initiate rulemaking to update the Title VI disparate impact rule to include discriminatory discipline and distribution of educational resources.
- Establish a new White House Task Force on Building a Culture of Consent & Mutual Respect in School, which would take a gender justice approach to make students in school feel safe and respected and prevent school pushout from harassment, including sexual assault, dating violence, and stalking, and including an explicit focus on race, gender, LGBTQ status, disability, national origin and the intersections between these identities. The task force should center the needs of girls of color and LGBTQ students by:
 - Developing resources to support greater training and education on understanding, responding to, and preventing gender-based discrimination, including harassment, in schools.
 - Highlighting the value of culturally responsive curricula for girls, students of color, and LGBTQ individuals, while teaching civic engagement and bodily autonomy. This includes revising eligibility requirements of the Teen Pregnancy Prevention Program to encourage and award more funds to LGBTQ-serving organizations; and promoting LGBTQ-inclusive and affirming sex education (including teaching consent).
 - Developing resources to support the use of restorative justice practices in school, with specific recommendations regarding peer-to-peer conflict (including sexual harassment) and educator-to-peer conflict (e.g., perceptions of disrespect and other subjective behavior).

- Support young parents in school by issuing Department of Education guidance to ensure that the educational careers of student parents are not irreparably harmed by the COVID-19 pandemic, including issuing federal guidance relaxing standards that establish Satisfactory Academic Progress for financial aid eligibility, encouraging remote options for federal work-study program, ensuring that student parents have financial assistance and technology supports for remote learning regardless of their documented status; and encouraging schools to adopt penalty-free leave policies for students with caregiving responsibilities.
- Establish an additional White House/Interagency Task Force to Combat the Criminalization and Deportation of Black, Indigenous and Undocumented Students, which would focus on creating anti-racist schools and dismantling practices that push historically marginalized students out of school.
- Prioritize the needs of marginalized students in COVID-19 response, including LGBTQ+ students, student survivors of sexual violence, students of color, and students with disabilities. Specifically, the Department of Education should include goals for supporting these students and educators in federal plans, guidance, and resources for continued response to the coronavirus pandemic, with special emphasis on those facing multiple forms of marginalization. This includes providing updated guidance on how schools should protect students' civil rights that considers the unique circumstances of remote learning.

Ensure that everyone has access to the health coverage and care they need, including abortion and birth control, without financial difficulty, stigma, discrimination, or barriers.¹

- Expand access to abortion and birth control.
 - HHS must rescind the Trump administration's December 2019 rule on Section 1303 of the Affordable Care Act (ACA) that imposes onerous accounting requirements on plans that cover abortion in the ACA marketplaces. That rule radically restructures implementation of Section 1303 and was meant to mislead consumers and force plans to drop abortion coverage. Because the rule has been blocked by courts, DOJ should reconsider its proper course of action. The Biden-Harris Administration should consider additional steps to ease burdens on issuers offering abortion coverage in the marketplaces, oppose any proposed restrictions on abortion coverage in Congress, and support congressional efforts to eliminate abortion coverage restrictions.
 - HHS, DOL, and the Department of the Treasury must rescind the Trump administration's November 2018 final rules creating sweeping exemptions to the ACA's birth control coverage requirement, and initiate rulemaking and concurrent guidance that improves upon Obama-Biden administration regulations, to ensure everyone has seamless access to contraceptive coverage as guaranteed by the ACA. DOJ should consider what action may be necessary in ongoing litigation, and investigate settlement agreements stemming from litigation against the Obama-Biden administration regulations.
- Protect individuals from discrimination in health care.
 - HHS should initiate rulemaking to rescind the Trump administration's June 2020 final rule undermining the non-discrimination protections of section 1557 of the ACA, restore the

¹ NWLC is one of the 90 organizations that developed and endorses the First Priorities as comprehensively outlined in the [Blueprint](#) for Sexual and Reproductive Health, Rights, and Justice. In this memo, we are narrowing our focus to those recommendations for which NWLC has particular expertise.

protections of the 2016 Obama-Biden Administration rule, and address new developments to ensure full protection against discrimination in health care. HHS should issue guidance on the impact of the *Bostock* decision to ensure definitions of sex discrimination are consistent across agencies. HHS should prioritize robust oversight and enforcement of Section 1557. DOJ should reconsider its role in ongoing litigation to allow for rulemaking.

- HHS should initiate rulemaking to rescind the Trump Administration refusal of care rule, restoring the 2011 rule issued by the Obama-Biden Administration to reinforce the Office for Civil Rights' jurisdiction to enforce existing laws, but not diverting resources and furthering discrimination based on personal beliefs.
 - HHS must restore the original mission and intent of its Office for Civil Rights through updates to its strategic plan, mission statement, complaint form, and website.
 - HHS must eliminate the Conscience and Religious Freedom Division within the Office for Civil Rights, which was created only to protect those who want to use religion as an excuse to deny patient care.
 - DOJ must rescind Executive Order 13798 and guidance regarding implementation of the Religious Freedom Restoration Act that is designed to undermine existing non-discrimination protections. HHS must rescind actions taken pursuant to this Executive Order and ensure future guidance and regulations prioritize patient access to care, not personal beliefs.
- Advance health equity.
 - HHS must make health equity an explicit goal for new models of delivery and payment by requiring a health equity impact analysis on every HHS care delivery and payment regulation.
 - Robustly fund, defend, and expand health coverage programs and laws requiring health care coverage.
 - CMS must rescind guidance that fundamentally alters the Medicaid program from an entitlement program to a per capita cap or block grant program.
 - CMS must invalidate unlawful Medicaid Section 1115 demonstration projects that do not promote Medicaid's core objectives or are in violation of the Medicaid statute, such as those imposing work requirements, premiums, cost-sharing, or excluding abortion providers from family planning programs.
 - DOJ must defend the ACA against attacks.

Key Administration and Agency Positions

The president will not be able to achieve the policy goals detailed here without committing to nominate diverse, highly qualified individuals who are committed to gender justice to serve in key administration and agency positions and as judges.

Across these goals, the administration's overarching purpose should be to advance equity and close disparities based on race, ethnicity, national origin, sex, gender identity and expression, sexual orientation, disability status, class, and religion and belief system, and any other status on the basis of which people have been marginalized and excluded from shared prosperity. To ensure progress toward this overarching purpose, the Biden-Harris administration should:

- Prioritize the nomination and appointment of individuals who have a demonstrated commitment to gender and racial justice and exhibit views, experiences, and skills that support and advance the agency's core mission and functions.

- Build a robust and robustly resourced White House Council on Gender Equity (“Council”). The Biden-Harris administration must create a dedicated Special Assistant to the President on gender equity, appoint at least three full-time deputy assistants on the Council—including a deputy focused on policies centering women and girls of color, and include all Cabinet members as members of the Council. All cabinet agencies should designate a high-ranking, full time official with advancing gender equity in the agency and will be responsible for participating in the Council. Overall, the Council should center the needs of women and girls living at the intersections of multiple identifies, including race, ethnicity, national origin, sex, gender identity and expression, sexual orientation, disability status, class, and religion and belief system. It should also be staffed with senior-level experts from different issue areas, including on economic security, reproductive rights, childcare, violence prevention, workplace, and education.
- Create and staff a new senior-level position in the White House DPC with full responsibility for child care and early learning issues. This individual would lead the administration’s cross-sector and cross-agency efforts to advance a bold administrative and legislative agenda on child care and early learning.
- Rescind and revoke E.O. 13950, Combating Race and Sex Stereotyping, and replace it with a new executive order charging each executive department and agency to implement programs to recruit, hire, promote, and retain a more diverse workforce, conduct equity analyses, and implement model anti-discrimination and anti-harassment personnel policies.
- Rescind E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," which promotes deregulation in ways that often perpetuate gender and racial inequities, and E.O. 13891 on guidance procedures, which inappropriately restricts agencies’ abilities to regulate and provide guidance essential to achieving their mission, and stay for review agency regulations and processes issued to enact E.O. 13891.

Judicial Nominations

Nomination and confirmation of judges must be a top priority of the administration, and the president must only nominate individuals who have a record that supports key gender and racial justice issues and will affirmatively declare that they will uphold equality, freedom, individual rights, and opportunity for all. These nominees must affirm that they will support equal rights under the law and access to the courts; ensure equal opportunity and protections from discrimination in the workplace and in schools; and protect individual liberty and the right of all people to make personal decisions about their bodies and relationships—including the right to use contraception, to have an abortion, and to love whom they choose. Judicial nominees should also have diverse educational backgrounds and professional experiences including public defenders, legal services attorneys, civil rights attorneys, workers’ rights attorneys, and other public interest attorneys.

Overall, judicial nominees must reflect the diverse identities and experiences of this country, including but not limited to race, ethnicity, national origin, sex, gender identity and expression, sexual orientation, disability status, class, religion and belief system, and many other categories.