



## Prohibit Discrimination of GLBT People in Obtaining Federal Housing Assistance

### Issue

Executive Order 11,063, which prohibits discrimination in the provision of federal housing assistance, does not prohibit discrimination on the basis of sexual orientation or gender identity. As a result, gay, lesbian, bisexual, and transgender (“GLBT”) people and families are at risk of discrimination on the basis of actual or perceived gender identity and sexual orientation, and same-sex partners and their children are not protected by the prohibition of discrimination on the basis of familial status.

### Short Answer

Executive Order 11,063 should be amended to include sexual orientation and gender identity as prohibited bases of discrimination.

### Background

Shortly after President Kennedy promulgated Executive Order 11,063 in 1962,<sup>1</sup> Congress passed the Civil Rights Act of 1964<sup>2</sup> and the Fair Housing Act.<sup>3</sup> Executive Order 11063 originally prohibited discrimination on the bases of race, religion (creed), and national origin in federal housing assistance. It was amended in 1980 to include discrimination on the basis of sex,<sup>4</sup> and in 1994 to include discrimination on the bases of disability and familial status.<sup>5</sup> Discrimination on the basis of sexual orientation and gender identity are not currently prohibited in federal housing assistance.

Millions of low-income families receive crucial housing assistance from the federal government every year which comes in the form of public housing, project-based rental assistance, or tenant-based assistance (Section 8 certificates and vouchers).<sup>6</sup> As housing projects have been gradually replaced with mixed income developments, the total pool of public and publicly assisted housing has dwindled. Because nearly 80% of the housing problem in the United States stems from affordability rather than inadequacy or overcrowding, access to Section 8 housing is critical for many families in poverty.<sup>7</sup> These families already have limited options and further discrimination adds to their

<sup>1</sup> See 3 C.F.R. 652 (1959–1963), *reprinted as amended in* 42 U.S.C. § 1982 app. at 6-8 (1982).

<sup>2</sup> 42 U.S.C. § 2000d *et seq.* (2000).

<sup>3</sup> 42 U.S.C. § 3601 *et seq.* (2000).

<sup>4</sup> Exec. Order No. 12,259, 3 C.F.R. 307 (1981), *reprinted as amended in* 42 U.S.C.S. § 3608 (revoked by Exec. Order No. 12,892, 3 C.F.R. 849, *reprinted in* 42 U.S.C.S. § 3608 (1988)).

<sup>5</sup> Exec. Order No. 12,892, 3 C.F.R. 849, *reprinted in* 42 U.S.C.S. § 3608 (2000).

<sup>6</sup> Approximately 1.2 million families live in public housing units. U.S. Dep’t of Housing and Urban Development, “HUD’s Public Housing Program. <http://www.hud.gov/renting/phprog.cfm> (last accessed August 15, 2008). An additional 2 million families receive subsidies from tenant-based rental assistance programs. U.S. Dep’t of Housing and Urban Development, Congressional Justifications for 2008, Public and Indian Housing, page 2, *available at* <http://www.hud.gov/offices/cfo/reports/2008/cjs/part1/pih/tbdassistance.pdf> (last accessed Aug 14, 2008). Also, 1.3 million families obtain help from project-based rental assistance. U.S. Dep’t of Housing and Urban Development, *available at* <http://www.hud.gov/offices/cfo/reports/2009/cjs/hsg1.pdf> (last accessed Aug 14, 2008).

<sup>7</sup> See THE URBAN INSTITUTE, HOUSING AMERICA’S LOW-INCOME FAMILIES, <http://www.urban.org/toolkit/issues/housing.cfm>.



already dire situations. Recognizing this, previous administrations have prohibited discrimination in federal housing assistance, beginning with race, religion, and national origin and later expanding protection on the basis of sex, disability, and familial status. Without protection on the basis of sexual orientation and gender identity, the most vulnerable people are more vulnerable to discrimination because of actual or perceived characteristics.

Those who live at the intersection of protected and unprotected characteristics, such as GLBT people of color, may find themselves victims of discrimination with no recourse. A landlord or administrator may claim that the discrimination is on the basis of sexual orientation, when in fact it may stem from racial bias. Bias may even come from the specific intersection of both characteristics, but will remain permissible unless a specifically prohibited bias may be proven.

### Recommendation

The President should issue a new executive order, amending Executive Order 11,063 to prohibit discrimination on the basis of sexual orientation and gender identity.

### Authority

The president has the authority to issue executive orders, to direct the administration of the offices of the executive branch. This power comes from the Constitution, which grants “executive Power” to the President and directs him to “take Care that the Laws be faithfully executed.”<sup>8</sup> Moreover, the Fair Housing Act also expresses the policy of the United States as “to provide, within constitutional limitations, for fair housing throughout the United States.”<sup>9</sup> Amendment to Executive Order 11063 would not be unprecedented because it has been amended twice previously. It was amended in 1980 to include sex as a protected class and in 1994 to protect against discrimination on the bases of disability and familial status.

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<sup>8</sup> U.S. CONST. art. II, §§ 1, 3.

<sup>9</sup> 42 U.S.C. § 3601 *et seq.*