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## AN URGENT REFORM AGENDA TO BUILD BACK TOWARDS INCLUSIVE GENDER EQUITY

### **Reversing the Administrative Assault on Women: An Urgent Reform Agenda to Build Back Towards Inclusive Gender Equity**

To ensure that the incoming government starts off on the right course to advance inclusive gender equity, it must begin by dismantling the damaging administrative infrastructure erected under the prior administration. In the following Urgent Reform Agenda, Legal Momentum calls on the Biden-Harris administration to promptly correct a host of administrative actions taken by the executive branch that amounted to a widescale assault on the wellbeing of women and other groups. These actions targeted the most vulnerable, drastically undermining anti-discrimination enforcement, equity in education, economic and workplace equality, access to reproductive health and justice, healthcare access, and immigrant rights. Legal Momentum's agenda—which is not exhaustive—provides a starting point. These are priority recommendations to assist the new administration in swiftly changing course and harnessing the powers of the executive branch to meaningfully advance inclusive gender equity and reverse harm caused.

### **Policy-Setting Power of the Executive Branch**

Among the powers vested in the presidency is the power to issue executive orders and the power to appoint heads of federal agencies, which in turn have administrative rulemaking power. Through these two mechanisms, the executive branch has broad lawmaking power. Executive orders generally have the force of law yet require no action by Congress. There exists little limitation to this power.

While legislation is the main tool Congress utilizes to enact policy, the administrative rulemaking process is an underestimated yet important tool the executive branch uses to shape policy. Once Congress enacts a piece of legislation, the federal agency tasked with enforcement and implementation retains varying degrees of discretion to issue formal regulations (also referred to as rules) and informal guidance to shape and interpret how that statute is implemented and enforced. Regulations, like executive orders, do not require Congressional approval but do have the force of law.

Regulations, guidance, and executive orders therefore play a critical role in defining the scope and nature of legal protections that impact anti-discrimination measures, healthcare, the environment, education, employment, health and safety, economic policy, and access to reproductive rights. The process for establishing these rules is equally important, requiring notice to the public, an opportunity for public comment, and consideration of such comments. Effective and legitimate rulemaking requires agencies to carry out this process by relying on subject-matter expertise, transparent decision-making, and equitable and deliberative processes that take into account broad-based feedback from experts and stakeholders to shape and inform decision-making.

## The Administrative Assault on Women

Over the past four years, the executive branch aggressively used various types of administrative action to dismantle a broad spectrum of fundamental protections, rescinding or revising critical rules, pushing through disturbing regulations on an expedite basis, issuing problematic executive orders, and revising existing guidance with overreaching legal interpretations. As a result, critical federal statutes have been implemented in a way that turned back the clock, undermining the true purpose of those statutes and eroding core protections for the American people.

Not only did substantive changes have a profound negative impact, the administration's process for pushing through its agenda was equally alarming, involving rushed review with truncated notice and comment periods; wasteful re-review of existing processes meant to "save cost"; disregard for existing data and extensive public comment in opposition; and distortion of reliable data, often in favor of the business community.

The end result was an agenda that targeted and effectively undermined the rights of the most vulnerable, disproportionately harming women, people of color, low-income individuals, the LGBTQ+ community, and immigrants. This agenda facilitated unlawful discriminatory conduct, weakened protections against gender-based violence, reduced access to critical public benefits, diminished economic security for families, denied reproductive rights, and reduced healthcare access at a time when it is all the more critical. For women and girls, these actions have had a widespread and profound impact on every aspect of their lives—including on education, employment, economic security, health, and enjoyment of basic legal rights—limiting their ability to protect themselves against sexual violence, seek pay equity, and control their bodies.

The harms imposed on women and other marginalized groups require quick remedial action to stem further harm. Legal Momentum's Urgent Reform Agenda is a roadmap for the new administration to start with a clean slate. The agenda provides a targeted list of recommendations to correct concrete administrative actions taken by the prior administration in the following areas:

### ANTI-DISCRIMINATION ENFORCEMENT:

· Women and other marginalized groups continue to face widespread and systemic discrimination in the workplace, housing, education, and places of public accommodation, and federal enforcement has been inadequate. This section identifies prior administrative actions that further undercut federal anti-discrimination standards and requirements, substantially diminishing the ability of enforcement agencies to effectively tackle discrimination, including gender and racial discrimination. Legal Momentum calls on the new administration to invest in establishing robust and meaningful anti-discrimination enforcement. This section calls on the administration to **eliminate measures** that have weakened this enforcement, including measures to:

- restrict trainings on systemic discrimination;
- weaken equal access to housing and employment discrimination protections for transgender people;
- afford religious employers and employees excessive deference to circumvent longstanding prohibitions against workplace discrimination;
- eliminate safeguards against widespread discriminatory impacts in housing; and
- impose onerous requirements on the EEOC's conciliation process, tipping the balance of power further in favor of powerful employers.

## EQUITY in EDUCATION

Women and people of color remain underrepresented and undervalued in numerous areas. Access to education is critical to achieving equality. Several civil rights laws aim to eliminate discriminatory barriers that push women and other marginalized communities out of educational programs. Administrative actions during the prior administration steadily chipped away at protections in place to maintain safe learning environments, remove barriers to accessing education, and eliminate discriminatory conduct that pushes students out of their education. This section calls on the new administration to **eliminate measures** that:

- prevent schools from responding to sexual harassment and violence in a trauma-informed manner and deter victims of sexual violence from seeking safety and accountability within their educational institution;
- allow the treatment of transgender students that does not align with their gender identity; and
- abandon efforts to assist schools in understanding how to comply with their obligations to collect and report data.

## ECONOMIC and WORKPLACE EQUALITY

Due to systemic discrimination, women, particularly women of color, in the United States are more likely than men to work a minimum- or low- wage job, experience economic insecurity, and live in poverty. Administrative actions initiated under the prior administration entrenched these unacceptable disparities. Legal Momentum asks the new administration to take bold and transformative steps that strike at the core of these longstanding inequities and solidify protections for women, people of color, and the LGBTQ+ community. As a starting point, this section calls on the new administration to urgently address numerous administrative actions taken to weaken labor and anti-discrimination protections and chip away at critical benefits that should be expanded. This section therefore calls on the new administration to **eliminate measures** that:

- deter pay data collection based on gender, race, and national origin, which serves to enhance pay transparency and accountability;
- authorize employers to classify more workers as independent contractors evade critical labor protections such as minimum wage and overtime requirements;
- expand the types of workers who can be paid the lower tipped minimum wage, which should be altogether eliminated;
- revisit national poverty measures to narrow rather than expand the number of individuals who qualify for public benefits; and
- further limit eligibility for Supplemental Nutrition Assistance Payments (SNAP) at a time when food insecurity is on the rise.

## ACCESS TO REPRODUCTIVE HEALTH AND JUSTICE:

Access to family planning and reproductive health services is central to women's health and equality. Acting with disregard for women's wellbeing, the prior administration took aggressive steps to eliminate reproductive rights. Legal Momentum calls upon the new administration to reverse this assault by taking equally aggressive steps to safeguard reproductive justice and women's health. This section calls on the new administration to **eliminate measures** that:

- reduce the number of reproductive health providers, specifically those serving low-income communities;
- exclude providers from publicly funded health programs;
- defund Title X providers that provide essential access to contraceptives and reproductive health services;
- and
- authorize employers and universities to deny workers and student contraceptive coverage.

## HEALTHCARE:

With unacceptably high rates of poverty and maternal mortality among women of color, access to high quality and affordable healthcare for women is essential. Such access is all the more essential as a disproportionate number of women of color face unprecedented health risks serving as frontline workers during the COVID-19 pandemic. Legal Momentum calls on the new administration to take concrete steps towards securing high quality and affordable healthcare for all Americans, regardless of their economic circumstances. This section calls on the new administration to **eliminate measures** that:

- limit coverage or applicability of the Affordable Care Act

## IMMIGRANT RIGHTS:

Immigrants and migrant workers make up the heart of our country and our workforce. The previous administration nonetheless unleashed a harmful agenda against immigrant populations in the United States, imposing devastating costs on too many women, children, and families. Legal Momentum calls upon the new administration to acknowledge the invaluable contributions of immigrant women to our economy and society and to restore standards and procedures grounded in dignity, fairness, and in line with our country's legacy as a safe harbor for those seeking refuge. This section calls on the new administration to **eliminate measures** that:

- undermine our process for admitting refugees and asylees;
- penalize individuals applying for admission to the US, including working women and families, for utilizing critical public benefits such as nutrition assistance, housing support and various forms of healthcare; and
- removing procedural and due process safeguards in immigration proceedings.

This *Urgent Reform Agenda*, while not an exhaustive list, provides a crucial starting point to set us on the right course to meaningfully advance inclusive gender equity.