

# The Fiscal Impact of Washington State Initiative Measure 1515



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## Executive Summary

An estimated 1.7% of youth (aged 13-19) and 0.3% of adults in the United States identify as transgender.<sup>1</sup> Applying these percentages to the number of youth and adults living in Washington State indicates that the state is home to approximately 10,500 transgender youth aged 13-19 and 15,900 adults aged 20 and older.<sup>2</sup>

Washington State Initiative Measure 1515<sup>3</sup> ("the initiative") requires public schools to restrict use of restrooms, locker rooms, shower rooms, saunas, and changing areas according to sex, "as determined biologically or genetically at birth."<sup>4</sup> The initiative also prohibits the state and localities from enacting ordinances, rules, or other policies that would allow individuals to use gender-segregated facilities that do not correspond to their biological sex. The initiative also explicitly allows public and private entities to designate and segregate private facilities, such as restrooms and changing areas, by biological sex. These policies are in conflict with several federal laws, and, if enacted, could lead to litigation, administrative enforcement, and other actions that could result in costs and lost revenue to the State of Washington. This memorandum analyzes the potential fiscal impact on Washington State as a result of the conflicts between the initiative and seven federal laws: Title IX of the Education Amendments of 1972, Executive Order 13672, the Workforce Innovation and Opportunities Act, the Violence Against Women Act, the Affordable Care Act, Title VII of the Civil Rights Act of 1964, and the Housing Act of 1949.<sup>5</sup>

The potential fiscal impact of the bill includes:

- Loss of federal educational funding of approximately \$1 billion annually as a result of Title IX violations in K-12 schools;
- Litigation and enforcement costs against K-12 schools both under the initiative's directives as well as resulting from violations of Title IX and Title VII.

The initiative also encourages and could possibly be interpreted to mandate violations of federal law in all other public institutions and spaces. To the extent that other state, local and higher education entities comply with the initiative in violation of federal law, the fiscal impact could include:

- Loss of federal education funding of \$520 million to \$560 million in public post-secondary educational institutions and loss of federal student loan funding of \$2.5 billion to \$2.7 billion as a result of Title IX violations;

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- Loss of federal contracts to public post-secondary educational institutions of an estimated \$60 million to \$90 million annually as a result of Executive Order 13672 violations;
- Loss of federal contracts to state and local entities of an estimated \$20 million to \$40 million annually as a result of Executive Order 13672 violations;
- Loss of federal funding to support the Washington Workforce Training and Education Coordinating Board of up to \$65 million annually as a result of violations of the Workforce Innovation & Opportunity Act;
- Loss of federal grants authorized by the Violence Against Women Act of an estimated \$2.5 million or more annually;
- Loss of federal funding from the U.S. Department of Health and Human Services as a result of Affordable Care Act violations;
- Loss of federal funding from the U.S. Department of Housing and Urban Development as a result of violations of the Housing Act of 1949;
- Costs incurred as a result of litigation and federal administrative enforcement under Title IX, Executive Order 13672, the Workforce Innovation & Opportunity Act, the Affordable Care Act, the Violence Against Women Act, Title VII of the Civil Rights Act of 1964, and the Equal Access Rule promulgated under the Housing Act of 1949.

## **I. Loss of Federal Funding to Washington K-12 Schools**

### ***Title IX & Gender Identity Discrimination***

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in all federally funded education programs and activities.<sup>6</sup> Title IX applies broadly to educational institutions, prohibiting discrimination in all operations by state, local, and private schools that receive federal funding, with a few limited exceptions.<sup>7</sup> Title IX protects students, as well as teachers and staff, from discrimination.<sup>8</sup>

The U.S. Department of Education has interpreted Title IX to prohibit discrimination based on gender identity.<sup>9</sup> Consistent with this interpretation, the U.S. Department of Education's Office for Civil Rights has resolved complaints of gender identity discrimination in favor of transgender individuals.<sup>10</sup> These resolutions have required school districts to allow transgender students to access restrooms and other facilities that correspond to their gender identity.<sup>11</sup> The Office for Civil Rights has explicitly determined that permitting a transgender student to use a separate, gender-neutral facility, such as a single-stall faculty restroom, (a solution suggested by the initiative as an accommodation for transgender students) does not absolve a school district of Title IX liability.<sup>12</sup> Rather, the Office for Civil Rights has interpreted Title IX to require that schools allow students to access shared restrooms and facilities that correspond to their gender identity.<sup>13</sup>

### ***Fiscal Impact of Title IX Violations in K-12 Public Schools***

Washington's K-12 public schools are at risk of losing federal funding under the initiative because it requires public schools to restrict use of restrooms based on biological sex. This policy is in conflict with the Department of Education's interpretation of Title IX to require public schools to allow transgender individuals to access shared restrooms and other facilities consistent with their gender identity. The Department of Education may revoke or withhold funding from educational institutions that violate Title IX and refuse to correct the violation.<sup>14</sup>

Washington elementary and secondary schools receive approximately \$1 billion in federal funding each year from the federal government. From school year 2009-10 to school year 2014-15, federal funding to Washington K-12 public schools has ranged from \$878 million to \$1.3 billion.<sup>15</sup> Federal primary and secondary educational funds make up approximately 9% of all of Washington State's K-12 funding, and 2.5% of the state's total budget.<sup>16</sup> The initiative would put this funding at risk of being revoked or withheld by the Department of Education.

## **II. Costs of Private Litigation Against Washington K-12 Public Schools**

In addition to the costs of potential administrative enforcement and private actions against Washington K-12 public schools for violations of Title IX and Title VII (see section X, *infra*), the initiative directly provides students with a private right of action against schools if they "while accessing a public school student restroom...encounter[] a person of the opposite sex" and the school "gave that person

permission to use facilities of the opposite sex" or "failed to take reasonable steps to prohibit that person from using facilities of the opposite sex."<sup>17</sup> This means that there will be avenues for litigation both for those who comply with the new law created by the initiative and thus violate federal law, and for those who comply with federal law and thus violate the law established by the initiative.

For those people who bring private rights of action against schools for violations of the law proposed by the initiative, the new statute would provide for a right for the student to recover \$2,500 for "each instance in which they encountered a person of the opposite sex while accessing a public school student restroom," as well as monetary damages for "all psychological, emotional, and physical harm suffered," and "reasonable attorneys' fees and costs."<sup>18</sup> Assuming that even just one student brings a private lawsuit for violations of the proposed law that they encountered over one month, litigation costs could add up very quickly. If the complaining student encountered a transgender student in the school restroom just once a day for a month, the complaining student could demand \$50,000 by right under the statute, without any additional demand for damages for psychological, emotional or physical harm.<sup>19</sup> Additionally, attorneys' fees awarded could easily double or triple the overall costs of the lawsuit.<sup>20</sup> Given that there are approximately 10,500 transgender youth aged 13-19 in Washington State,<sup>21</sup> if even 1% of those youth are given permission by their schools to use the restrooms that match their gender identity in order to remain in compliance with federal law, this would still indicate that over 100 transgender students' schools would be vulnerable to private lawsuits from all other students in those schools.

### **III. Loss of Federal Funding in Higher Education and Other Public Educational Institutions in Washington State**

#### ***Fiscal Impact of Title IX Violations in Higher Education and Other Public Educational Institutions***

The initiative only mandates gender-segregated restrooms in "public schools," which appears to refer to only public elementary and secondary schools.<sup>22</sup> However, it also allows for public and private entities to segregate restroom facilities by biological sex and prohibits the state or localities from enacting laws or policies that allow use of such facilities based on gender identity or expression. While the initiative language is not clear, it could possibly be interpreted as a sex segregation mandate in public buildings, which would include Washington institutions of higher education and other public educational institutions. Such a mandate would be a violation of Title IX of the Education Amendments of 1972, as explained above. This could also put higher education and other educational institutions' federal funding at risk of being discontinued.

In fiscal year 2015, Washington received \$520 million in federal funding from the Department of Education for its postsecondary and other educational programs as well as \$2.5 billion in federal student loans.<sup>23</sup> In fiscal year 2016, Washington postsecondary and other educational programs will receive an estimated \$517 million in federal funding and \$2.6 billion in student loans from the Department of Education, and by 2017, the figures are projected to grow to \$561 million and \$2.7 billion, respectively.<sup>24</sup>

## ***Executive Order 13672 & Gender Identity Discrimination***

Executive Order 13672, which amends Executive Order 11246, prohibits federal contractors that receive more than \$10,000 in federal contracts annually from discriminating against employees and job applicants based on gender identity.<sup>25</sup> The Office of Federal Contract Compliance Programs has issued guidance stating that Executive Order 13672 requires contractors to “allow employees and applicants to use restrooms consistent with their gender identity,” and defines gender identity as “one’s internal sense of one’s own gender. It may or may not correspond to the sex assigned to a person at birth, and may or may not be made visible to others.”<sup>26</sup>

### ***Fiscal Impact of Executive Order 13672 Violations in Higher Education and Other Public Educational Institutions***

The initiative would put state and local universities and other public educational institutions at risk of losing federal contracts and being barred from future bidding opportunities if the initiative is interpreted to mandate sex segregation in violation of Executive Order 13672.<sup>27</sup>

In the past three fiscal year periods, public post-secondary educational institutions in Washington have received between \$62.7 million and \$91.6 million in federal contracting dollars annually.

- In fiscal year 2015, public post-secondary educational institutions in Washington received a total of \$65.4 million in federal contracting dollars.<sup>28</sup>
- In fiscal year 2014, public post-secondary educational institutions in Washington received a total of \$91.6 million in federal contracting dollars.<sup>29</sup>
- In fiscal year 2013, public post-secondary educational institutions in Washington received a total of \$62.7 million in federal contracting dollars.<sup>30</sup>
- Educational entities that received contracts during the period from fiscal year 2013 through fiscal year 2015 included the University of Washington, Big Bend Community College, Central Washington University, Clover Park Technical College, Eastern Washington University, Washington State Community College (District 3), Washington State University, Western Washington University, and Yakima Valley Community College.<sup>31</sup>

As a result of the initiative, Washington's state colleges and universities could be at risk of losing up to \$60 million to \$90 million in federal contracts annually, assuming that they continue to receive federal contracting dollars in amounts similar to that received over the past few years. Public post-secondary institutions may also be debarred from bidding on future federal contracting opportunities if they are found in violation of Executive Order 13672.

## **IV. Loss of Federal Contracts to State and Local Governments**

### ***Fiscal Impact of Executive Order 13672 Violations by State and Local Governments***

While the initiative does not directly mandate that state and local governments segregate restrooms by biological sex like they do for public schools, it does prohibit the enactment of state or local laws,

ordinances or policies that permit the use of gender segregated restrooms based on gender identity if it does not match sex assigned at birth. This strongly encourages and could be interpreted to require states and localities to discriminate based on gender identity and expression, in violation of Executive Order 13672. Like institutions of higher education, if state or local governments are required to engage in discrimination based on gender identity, they too, will risk loss of contract funding with any federal contracts receiving \$10,000 or more.

In the past three fiscal year periods, Washington state and local government entities have received between \$17.8 million and \$39.4 million in federal contracting dollars annually.

- In fiscal year 2015, state and local government entities in Washington received a total of \$31.8 million in federal contracting dollars.<sup>32</sup>
- In fiscal year 2014, state and local government entities in Washington received a total of \$17.8 million in federal contracting dollars.<sup>33</sup>
- In fiscal year 2013, state and local government entities in Washington received a total of \$39.4 million in federal contracting dollars.<sup>34</sup>
- Public entities that received contracts during the period from fiscal year 2013 through fiscal year 2015 included the Washington State Department of Agriculture, the City of Seattle Department of Information Technology, the Douglas Grant Lincoln Okanogan Counties Public Hospital District, and the Washington State Department of Employment Security, among others.<sup>35</sup>

As a result of the initiative, Washington's state and local government entities could be at risk of losing up to \$20 million to \$40 million in federal contacts annually, assuming that state and local entities continue to receive federal contracting dollars in amounts similar to that received over the past few years. State and local entities may also be debarred from bidding on future federal contracting opportunities if they are found in violation of Executive Order 13672.

## **V. Loss of Federal Funding to Support the Washington Workforce Training and Education Coordinating Board**

### ***The Workforce Innovation and Opportunity Act & Gender Identity Discrimination***

The Workforce Innovation and Opportunity Act is a federal law that provides financial support to states to "help job seekers access employment, education, training, and support services" and to match employers with skilled employees.<sup>36</sup> In Washington, the program is administered by the Workforce Training and Education Coordinating Board.<sup>37</sup>

The Workforce Innovation and Opportunity Act prohibits funding recipients from discriminating against employees and program participants based on sex.<sup>38</sup> The U.S. Department of Labor has issued a proposed regulation interpreting the sex non-discrimination requirement to prohibit discrimination based on gender identity.<sup>39</sup> The regulation specifically states that recipients of funding under the Workforce Innovation and Opportunity Act are prohibited from "denying individuals access to the bathrooms used by the gender with which they identify."<sup>40</sup>

## ***Fiscal Impact of Workforce Innovation and Opportunity Act Violations***

The initiative could put at risk funding received by Washington under the Workforce Innovation and Opportunity Act. Under a more stringent interpretation of the initiative, all Workforce Training and Education Coordinating Board facilities and centers could be required to prohibit transgender employees and program participants from using restrooms that correspond to their gender identity. This practice would violate the express terms of the Department of Labor’s proposed regulation prohibiting gender identity discrimination, and could result in suspension or termination of funding.<sup>41</sup>

Loss of funding under the Workforce Innovation and Opportunity Act could be up to tens of millions of dollars each year. In 2015, Washington received over \$64 million dollars in federal funding to support WIOA programs under The Washington Workforce Training and Education Coordinating Board.<sup>42</sup>

## **VI. Loss of Federal Funding under the Violence Against Women Act**

### ***The Violence Against Women Act & Gender Identity Discrimination***

The Violence Against Women Act authorizes 24 grant programs “designed to help the nation’s capacity to reduce domestic violence, dating violence, sexual assault, and stalking by strengthening services to victims and holding offenders accountable.”<sup>43</sup> The Act prohibits discrimination based on gender identity by grant recipients.<sup>44</sup> Under guidance issued by the Office of Justice Programs in the U.S. Department of Justice, sex-specific programs or services should be made accessible based on an individual’s self-identified gender.<sup>45</sup>

The non-discrimination requirement applies to all operations of grant recipients (not only the operations funded by the grant), and protects grant beneficiaries as well as employees of grant recipients.<sup>46</sup> States and local governments that receive or administer grant funding under the Act must comply with the non-discrimination requirements.<sup>47</sup>

### ***Fiscal Impact of Violence Against Women Act Violations***

The initiative would put at risk grants made to state and local entities under the Violence Against Women Act. Under the initiative, state and local grant recipients could be required to prohibit transgender individuals from using restrooms that correspond to their gender identity in public buildings as well as in program-related housing. This policy would violate the Violence Against Women Act’s non-discrimination requirement and implementing guidance issued by the Office of Justice Programs, and could result in suspension or termination of funds.<sup>48</sup>

In the past three fiscal year periods, state and local entities in Washington have received \$2.6 to \$4.1 million in grants authorized by the Violence Against Women Act.

- In fiscal year 2015, state and local entities in Washington received \$3,951,576 in grants under the Violence Against Women Act. Those funds were distributed to Edmonds Community College, Pierce County and the Washington Department of Commerce.<sup>49</sup>

- In fiscal year 2014, state and local entities in Washington received \$4,082,873 in grants under the Violence Against Women Act. Those funds were distributed to the City of Vancouver, Thurston County, the Washington Department of Commerce and Washington State University.<sup>50</sup>
- In fiscal year 2013, state and local entities in Washington received \$2,607,132 in grants under the Violence Against Women Act. Those funds were distributed to the cities of Bellingham and Seattle, Pierce and Spokane Counties, and the Washington Department of Commerce, and the Washington State Administrative Office of the Courts.<sup>51</sup>

As a result of the initiative, Washington's state and local government entities could be at risk of losing an estimated \$2.6 million to \$4.1 million in grant funding annually, assuming that state and local entities continue to receive Violence Against Women Act grants in amounts similar to that received over the past several years.

## **VII. Loss of Federal Funding under Other Grant Programs**

Guidance issued by the Office of Justice Programs states that the gender identity non-discrimination requirement that applies to grants authorized by the Violence Against Women Act may also apply to one or more other grant programs administered by the Office of Justice Programs.<sup>52</sup> The guidance does not specify which grant programs these may be, but states that the Office of Justice Programs will notify grant applicants and recipients that these non-discrimination requirements apply during the grant-making process.

If state or local entities in Washington receive additional grants administered by the Office of Justice Programs, they may also be at risk of having the funds suspended or terminated for not complying with the Violence Against Women Act's gender identity non-discrimination requirement.

## **VIII. Loss of Federal Funding under the Affordable Care Act**

### ***The Affordable Care Act & Gender Identity Discrimination***

The Affordable Care Act prohibits discrimination based on gender identity in health care programs or activities.<sup>53</sup> A proposed regulation issued by the U.S. Department of Health and Human Services (HHS) incorporated Title IX regulations to prohibit discrimination based on sex using the same language that the Department of Education and the Department of Justice have interpreted to mean that discrimination based on sex includes requiring access to shared restrooms based on gender identity.<sup>54</sup> The comments on the proposed regulations also indicated that HHS intended to promulgate regulations that are "consistent with the principle that discrimination on the basis of sex includes discrimination on the basis of gender identity... consistent with recent guidance issued and enforcement actions taken by the U.S. Department of Education, the U.S. Department of Justice, and the Equal Employment Opportunity Commission," and cited to recent enforcement actions that included holding that prohibiting access to shared restrooms based on gender identity is discrimination based on sex.<sup>55</sup>

The non-discrimination requirement applies to all operations of funding recipients (not only the federally funded operations).<sup>56</sup> State and local governments that receive such funding must comply with the non-discrimination requirements.<sup>57</sup>

### ***Fiscal Impact of Affordable Care Act Violations***

The initiative could put at risk federal Affordable Care Act funding issued to state and local entities by HHS. Under the initiative, state and local HHS funding recipients could be required to prohibit transgender individuals from using restrooms that correspond to their gender identity in public buildings. This policy could violate HHS' proposed regulations that seek to prohibit discrimination based on gender identity in the same way that Title IX does, and could result in suspension or termination of funding.<sup>58</sup>

Given available data sources, it is not possible to track the amount of HHS funding issued to state and local government entities in Washington under the Affordable Care Act. Nonetheless, available data show that the state, in general, receives a significant amount of funding for Department of Health and Human Services programs, such as Medicaid and CHIP. Washington received an estimated \$5.3 billion in Medicaid funding in fiscal year 2015,<sup>59</sup> and will receive an estimated \$215 million in CHIP funding in fiscal year 2016.<sup>60</sup> Some portion of this funding would likely go to state and local government entities that administer Affordable Care Act programs.

## **IX. Loss of Federal Funding under Department of Housing and Urban Development Programs**

### ***The Department Housing and Urban Development & Gender Identity Discrimination***

The Housing Act of 1949 charged the Department of Housing and Urban Development (HUD) with accomplishing "the goal of a decent home and a suitable living environment for every American family."<sup>61</sup> HUD has used this charge as well as its authority to "make such rules and regulations as may be necessary to carry out [HUD's] functions, powers, and duties"<sup>62</sup> to promulgate rules, regulations, and guidance that ensure non-discrimination in HUD programs.

In 2012, HUD established the Equal Access Rule, a regulation which required that HUD-funded housing be made equally accessible regardless of gender identity and prohibited inquiries into a person's gender identity in the provision of housing that receives HUD funding, but did "not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided...is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms."<sup>63</sup>

After monitoring the results of that exception, HUD determined that further guidance and regulations were needed to explicitly require that individuals be given access to sex-segregated spaces in accordance with their gender identity.<sup>64</sup> The proposed regulations remove the previous exception allowing inquiries into gender identity and require that "[p]lacement and accommodation of individuals in shelters and other buildings and facilities with...shared sleeping quarters or shared bathing facilities

shall be made in accordance with the individual's gender identity," except "[u]nder narrow circumstances...[when] necessary to ensure health and safety."<sup>65</sup>

The proposed regulations would apply to recipients and sub-recipients of assistance under the Housing Opportunities for Persons with AIDS (HOPWA) program, Emergency Solutions Grants (ESG) program, and the Continuum of Care (CoC) program, among others.<sup>66</sup> Under the HOPWA Program, HUD provides grants for projects that benefit the housing needs of low-income people living with HIV/AIDS and their families.<sup>67</sup> The Emergency Solutions Grant Program provides federal funding to support the provision and operation of emergency shelters and programs that prevent homelessness.<sup>68</sup> The Continuum of Care (CoC) Program provides funding to rehouse homeless individuals and families and promote the use of mainstream programs by homeless individuals and families.<sup>69</sup>

Under previously issued guidance by HUD and the new proposed regulations, HOPWA, ESG and CoC programs providers are expected to place individuals in single sex shelters with shared sleeping areas and restrooms based on a person's gender identity unless health or safety concerns dictate otherwise.<sup>70</sup> States and local governments that receive or administer grant funding under the Act must comply with the non-discrimination requirements. Entities that violate the Equal Access Rule "will be subject to all sanctions and penalties for violation of program requirements, as provided for under the applicable program, including the withholding of HUD assistance."<sup>71</sup>

### ***Fiscal Impact of HUD Violations in HOPWA, ESG, and CoC Programs***

The initiative could put at risk federal HOPWA, ESG, or CoC funding issued to state and local entities by HUD. Under the initiative, state and local funding recipients could be required to prohibit transgender individuals from using restrooms that correspond to their gender identity in single-sex shelters. This policy would violate HUD's guidance that requires placement in single-sex facilities based on gender identity, and could result in suspension or termination of funding.

Based on available data sources, it is not possible to distinguish HUD funding that went to state or local entities from that which was awarded to private organizations. However, in the last three years, HOPWA, ESG and CoC funding together were approximately \$50 million to \$55 million in Washington State.

- In 2015, HOPWA funding totaled \$2,504,925, ESG funding totaled \$4,535,583, and data were unavailable on CoC funding.<sup>72</sup>
- In 2014, HOPWA funding totaled \$3,236,966, ESG funding totaled \$4,195,289, and CoC funding totaled \$48,190,412.<sup>73</sup>
- In 2013, HOPWA funding totaled \$3,033,880, ESG funding totaled \$3,562,355, and CoC funding totaled \$42,851,467.<sup>74</sup>

Some portion of this funding would likely go to state and local government entities that administer HUD programs under these grants.

## **X. Litigation and Enforcement Actions**

Washington's state and local governments will also incur the costs of litigation and administrative enforcement actions under Title IX, Executive Order 13672, the Workforce Innovation and Opportunity Act, the Violence Against Women Act, the Affordable Care Act, the Equal Access Rule, and Title VII as a result of the initiative.

All seven of these federal laws allow individuals to file administrative complaints of discrimination.<sup>75</sup> Under Title IX, any individual is permitted to file a complaint alleging that a school policy violates the law; the person need not have experienced discrimination under the policy.<sup>76</sup> Similarly, any individual may file a complaint under the Workforce Innovation and Opportunity Act if he or she believes that any specific class of individuals has been subjected to discrimination.<sup>77</sup> Complaints filed under the laws trigger administrative enforcement procedures, such as investigations and compliance reviews.<sup>78</sup> These procedures may be burdensome to state and local entities, particularly those that are under-resourced and understaffed.

State and local entities in Washington could also face litigation costs as a result of the law. All seven federal laws discussed in this memo allow the Department of Justice (or another federal agency) to bring suit against entities that fail to comply with the laws.<sup>79</sup>

In addition, three of these laws, Title IX, Title VII, and the Affordable Care Act, provide a private right of action, allowing individuals who have been discriminated against to file lawsuits alleging discrimination directly in court.<sup>80</sup> State and local government entities are not immune from suits brought under Title IX and Title VII, as the U.S. Supreme Court has held that Congress validly abrogated states' Eleventh Amendment sovereign immunity under both laws.<sup>81</sup> The same would likely be true for suits brought under the Affordable Care Act, since the statute expressly incorporates the scope and enforcement of Title IX protections.<sup>82</sup>

A case recently filed under Title IX in Virginia demonstrates that parents and legal organizations are willing to take schools to court for not allowing transgender students to use the restroom consistent with their gender identity.<sup>83</sup> In addition, employees may file lawsuits under Title VII if their employers refuse to allow them to use the restroom consistent with their gender identity. Several federal courts and the U.S. Equal Employment Opportunity Commission have held that gender identity discrimination is a form of sex discrimination prohibited by Title VII.<sup>84</sup> The Equal Employment Opportunity Commission and the Department of Justice have specifically interpreted Title VII to require employers to provide employees access to workplace restrooms and changing facilities consistent with their gender identity.<sup>85</sup>

With thousands of transgender youth and adults in Washington, the costs and burden associated with litigation and administrative enforcement could be significant.

## **XI. Conclusion**

Washington State Initiative Measure 1515 conflicts with the gender identity non-discrimination requirements of federal laws including Title IX, Executive Order 13672, the Workforce Innovation and Opportunity Act, the Violence Against Women Act, the Affordable Care Act, the Equal Access Rule under the Housing Act of 1949, and Title VII by restricting restroom access to individuals based on the biological sex. As a result, state and local government entities in Washington are at risk of losing up to \$1 billion in federal funding for K-12 education, \$520 million to \$560 million in federal funding to public post-secondary educational institutions, \$2.5 billion to \$2.7 billion in student loan funding, \$80 million to \$130 million in federal contracts, \$65 million in federal funding to support the Washington Workforce Training and Education Coordinating Board, \$2.5 million to \$4 million in grants authorized by the Violence Against Women Act, and Affordable Care Act, HOPWA, ESG, and CoC funding to state and local entities from the Department of Health and Human Services.. In addition, the initiative would likely give rise to litigation and administrative enforcement actions that impose burdens and costs on the state.

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## About the Williams Institute

The Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law advances law and public policy through rigorous, independent research and scholarship, and disseminates its work through a variety of education programs and media to judges, legislators, lawyers, other policymakers and the public. These studies can be accessed at the Williams Institute website.

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## Endnotes

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<sup>1</sup> JODY L. HERMAN, CHRISTY MALLORY & BIANCA D.M. WILSON, THE WILLIAMS INSTITUTE, ESTIMATES OF TRANSGENDER POPULATIONS IN STATES WITH LEGISLATION IMPACTING TRANSGENDER PEOPLE 1 (2016), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Estimates-of-Transgender-Populations.pdf>.

<sup>2</sup> *Id.* at 8.

<sup>3</sup> Student Privacy and Locker Room Safety Act, Init. 1515 (Wash. 2016).

<sup>4</sup> *Id.* at 5.

<sup>5</sup> Other federal funding laws that prohibit discrimination based on sex may also be interpreted to prohibit discrimination based on gender identity. To the extent that those laws are implicated by the initiative, the funding Washington receives under the laws may also be at risk.

<sup>6</sup> 20 U.S.C. § 1681 (2015).

<sup>7</sup> *Id.* § 1681(c); U.S. Dep't of Justice, Title IX Legal Manual at C.1, <https://www.justice.gov/crt/title-ix/#B.%C2%A0%20Recipient> (last visited Mar. 30, 2016).

<sup>8</sup> See, e.g., *North Haven v. Bell*, 456 U.S. 515, 537 (1982).

<sup>9</sup> OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE (2014), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

<sup>10</sup> Finding Letter from Timothy C.J. Blanchard, Office for Civil Rights, U.S. Dep't of Educ., to Stephen M. Tomlinson, Superintendent, Broadalbin-Perth Central School Dist., Re: Case No. 02-13-1220 (Dec. 22, 2015), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02131220-a.pdf> (finding that school district violated Title IX when it refused to allow transgender student to access restroom consistent with the student's gender identity, even when it provided a single-stall, gender-neutral facility for the student's use); Finding Letter from Adele Rapport, Office for Civil Rights, U.S. Dep't of Educ., to Daniel E. Cates, Superintendent, Township High School District 211, Re: OCR Case No. 05-14-1055 (Dec. 3, 2015), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05141055-a.pdf> (finding that school district violated Title IX when it prohibited a transgender student from accessing a shared locker room consistent with her gender identity); Finding Letter from Kay Bhagat, Office for Civil Rights, U.S. Dep't of Educ., to Tony Zeiss, President, Central Piedmont Community College, Re: OCR Complaint No. 11-14-2265 (Aug. 14, 2015), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11142265-a.pdf> (finding that college violated Title IX when it refused to allow transgender student to access restroom consistent with her gender identity).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., CASE PROCESSING MANUAL 18, 28 (2015), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>. To date, the Office for Civil Rights has been able to reach resolution agreements with educational institutions in all but one case of gender identity discrimination. Resolution Agreement, Broadalbin-Perth Central School District, OCR Case No. 02-13-1220, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02131220-b.pdf> (last visited Mar. 30, 2016); Agreement to Resolve, Between Township High School District 211 and the U.S. Dep't of Educ., Office for Civil Rights, OCR Case No. 05-14-1055, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05141055-b.pdf> (last visited Mar. 30, 2016); Voluntary Resolution Agreement, Central Piedmont Community College, OCR Complaint No. 11-14-2265, <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11142265-b.pdf> (last visited Mar. 30, 2016). In all of these resolution agreements, educational institutions have voluntarily agreed to provide transgender

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students access to shared restrooms and facilities that correspond with their gender identity. *Id.* In the final case, where a resolution has not been reached, the Office for Civil Rights' investigation is ongoing, and the student's mother filed a case in federal court on behalf of the student. *G.G. v. Gloucester County School*, ACLU.org, Nov. 23, 2015, <https://www.aclu.org/cases/gg-v-gloucester-county-school-board>; Complaint, *G.G. v. Gloucester County Sch. Bd.*, No. 5:15cv54 (E.D. Va. June 11, 2015). In that case, a Virginia district court found in favor of the school district, and on appeal, the Fourth Circuit ruled that the trial court improperly denied deference to the Department of Education's interpretation of Title IX that requires transgender students be given permission to use shared restrooms in conformity with their gender identity. The case has been remanded to the trial court to be reviewed under the Department of Education's interpretation of Title IX. *G.G. v. Gloucester County Sch. Bd.*, No. 15-2056 (4<sup>th</sup> Cir. Apr. 19, 2016), *available at* <http://www.ca4.uscourts.gov/Opinions/Published/152056.P.pdf>.

<sup>15</sup> *K-12 Finance Data*, WASH. STATE FISCAL INFORMATION, <http://fiscal.wa.gov/K12.aspx> (last visited Apr. 13, 2016).

<sup>16</sup> *See id.*; A CITIZEN'S GUIDE TO WASHINGTON STATE K-12 FINANCE, SENATE WAYS & MEANS COMM. 32 (2015) [http://leg.wa.gov/Senate/Committees/WM/Documents/K-12%20Booklet\\_2015%202-10-15.pdf](http://leg.wa.gov/Senate/Committees/WM/Documents/K-12%20Booklet_2015%202-10-15.pdf); A CITIZEN'S GUIDE TO THE WASHINGTON STATE BUDGET, SENATE WAYS & MEANS COMM. 2 (2015) [http://leg.wa.gov/Senate/Committees/WM/Documents/Publications/2016/2016%20CGTB\\_Final\\_website.pdf](http://leg.wa.gov/Senate/Committees/WM/Documents/Publications/2016/2016%20CGTB_Final_website.pdf).

<sup>17</sup> The initiative, *supra* note 3 at 6-7.

<sup>18</sup> *Id.* at 7.

<sup>19</sup> This number was calculated by multiplying 20 schooldays in a month by the \$2,500 per instance award set out by the initiative.

<sup>20</sup> In litigation *against* discrimination based on gender identity, a 2002 case against Toys R Us brought by three transgender women who were harassed in a store granted the plaintiffs only one dollar in nominal damages, but granted \$193,551 in attorney fees, which were upheld on appeal. *McGrath v. Toys "R" Us, Inc.*, 409 F.3d 513 (2d Cir. 2005).

<sup>21</sup> Based on existing research, population estimates for youth under 13 who identify as transgender are not currently available.

<sup>22</sup> In the chapter that the initiative seeks to amend, "public schools" are defined as, "the common schools as referred to in Article IX of the state Constitution, including charter schools...and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense." WASH. REV. CODE § 28A.150.010 (2012). Article IX of the State Constitution defines the public school system to "include common schools, and such high schools, normal schools, and technical schools as may hereafter be established." WASH. CONST. art. IX, § 2.

<sup>23</sup> U.S. DEP'T OF EDUC., FUNDS FOR STATE FORMULA-ALLOCATED AND SELECTED STUDENT AID PROGRAMS 111-12 <http://www2.ed.gov/about/overview/budget/statetables/17stbystate.pdf> (last visited Apr. 7, 2016). We include student loans in our calculations, because the Supreme Court ruled that "Title IX coverage is not foreclosed merely because federal funds are granted to the students rather than to the College's educational programs," and a violation of Title IX "warrants the Department's termination of federal assistance to the student financial aid program." *Grove City Coll. v. Bell*, 465 U.S. 555, 556 (1984) (superseded by statute on other grounds).

<sup>24</sup> U.S. DEP'T OF EDUC., FUNDS FOR STATE FORMULA-ALLOCATED AND SELECTED STUDENT AID PROGRAMS 111-12 <http://www2.ed.gov/about/overview/budget/statetables/17stbystate.pdf> (last visited Apr. 7, 2016).

<sup>25</sup> Exec. Order No. 13,672, 79 Fed. Reg. 42,971 (July 23, 2014); 41 C.F.R. § 60-1.5 (2015).

<sup>26</sup> *See* Office of Federal Contract Compliance Programs, *Frequently Asked Questions EO 13672 Final Rule*, U.S. DEP'T OF LABOR, [http://www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html) (last visited Mar. 28, 2016).

<sup>27</sup> The executive order and its implementing regulations provide for several enforcement mechanisms. A contractor that has violated EO 13672 may have its name published for failing to comply; may have its contracts canceled, terminated, or suspended; and may be prohibited from receiving future contracts for a period of at least

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six months. Office of Fed. Contractor Compliance Programs, *OFCCP Debarred Companies*, U.S. DEP'T OF LABOR, <http://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm> (last visited Mar. 30, 2016). Debarred entities are available at System for Award Management, <https://www.sam.gov/portal/SAM/##11> (search Classification: All, State/Province: All, Country: All, Agency: United States Department of Labor, Exclusion Status: Active, Exclusion Program: Procurement).

According to the federal government's System for Award Management database, 29 entities are currently barred from bidding on federal procurement contracts because they violated contracting laws enforced by the Department of Labor. Office of Fed. Contractor Compliance Programs, *OFCCP Debarred Companies*, U.S. DEP'T OF LABOR, <http://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm> (last visited Mar. 30, 2016). Debarred entities are available at System for Award Management, <https://www.sam.gov/portal/SAM/##11> (search Classification: All, State/Province: All, Country: All, Agency: United States Department of Labor, Exclusion Status: Active, Exclusion Program: Procurement).

<sup>28</sup> Advanced Data Search, [usaspending.gov](https://www.usaspending.gov), <https://www.usaspending.gov/Pages/AdvancedSearch.aspx> (last visited Apr. 12, 2016) (select Fiscal Year: FY-2015, select Recipient State: Washington, select Place of Performance State: Washington, select Contractor Type: Educational Institution). The data that resulted from this search were downloaded and contracts to private educational institutions were removed. Contracts to public postsecondary institutions that were included in the state and local governments search and not included in this advanced search (see search parameters, *infra* note 32) were added to the contracts found through the educational institutions advanced search. Additionally, contracts to entities that received less than \$10,000 in contracting dollars during the year were removed because the executive order does not apply to such contractors. The remaining contract amounts were summed.

<sup>29</sup> Advanced Data Search, [usaspending.gov](https://www.usaspending.gov), <https://www.usaspending.gov/Pages/AdvancedSearch.aspx> (last visited Apr. 12, 2016) (select Fiscal Year: FY-2014, select Recipient State: Washington, select Place of Performance State: Washington, select Contractor Type: Educational Institution). The data that resulted from this search were downloaded and contracts to private institutions were removed. Contracts to public postsecondary institutions that were included in the state and local governments search and not included in this advanced search (see search parameters, *infra* note 33) were added to the contracts found through the educational institutions advanced search. Additionally, contracts to entities that received less than \$10,000 in contracting dollars during the year were removed because the executive order does not apply to such contractors. The remaining contract amounts were summed.

<sup>30</sup> Advanced Data Search, [usaspending.gov](https://www.usaspending.gov), <https://www.usaspending.gov/Pages/AdvancedSearch.aspx> (last visited Apr. 12, 2016) (select Fiscal Year: FY-2013, select Recipient State: Washington, select Place of Performance State: Washington, select Contractor Type: Educational Institution). The data that resulted from this search were downloaded and contracts to private institutions were removed. Contracts to public postsecondary institutions that were included in the state and local governments search and not included in this advanced search (see search parameters, *infra* note 31) were added to the contracts found through the educational institutions advanced search. Additionally, contracts to entities that received less than \$10,000 in contracting dollars during the year were removed because the executive order does not apply to such contractors. The remaining contract amounts were summed.

<sup>31</sup> See contractor lists generated using methodology in notes 28-30, *supra*.

<sup>32</sup> Advanced Data Search, [usaspending.gov](https://www.usaspending.gov), <https://www.usaspending.gov/Pages/AdvancedSearch.aspx> (last visited Apr. 12, 2016) (select Fiscal Year: FY-2015, select Recipient State: Washington, select Place of Performance State: Washington, select Contractor Type: Local Government, State Government). The data that resulted from this search were downloaded and contracts to private institutions were removed. Contracts to public postsecondary institutions were removed and placed in the count of postsecondary contracts if they had not been found through the previous advanced search (*supra* note 28). Additionally, contracts to entities that received less than \$10,000 in contracting dollars during the year were removed because the executive order does not apply to such contractors. The remaining contract amounts were summed.

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<sup>33</sup> Advanced Data Search, [usaspending.gov](https://www.usaspending.gov), <https://www.usaspending.gov/Pages/AdvancedSearch.aspx> (last visited Apr. 12, 2016) (select Fiscal Year: FY-2014, select Recipient State: Washington, select Place of Performance State: Washington, select Contractor Type: Local Government, State Government). The data that resulted from this search were downloaded and contracts to private institutions were removed. Contracts to public postsecondary institutions were removed and placed in the count of postsecondary contracts if they had not been found through the previous advanced search (*supra* note 29). Additionally, contracts to entities that received less than \$10,000 in contracting dollars during the year were removed because the executive order does not apply to such contractors. The remaining contract amounts were summed.

<sup>34</sup> Advanced Data Search, [usaspending.gov](https://www.usaspending.gov), <https://www.usaspending.gov/Pages/AdvancedSearch.aspx> (last visited Apr. 12, 2016) (select Fiscal Year: FY-2013, select Recipient State: Washington, select Place of Performance State: Washington, select Contractor Type: Local Government, State Government). The data that resulted from this search were downloaded and contracts to private institutions were removed. Contracts to public postsecondary institutions were removed and placed in the count of postsecondary contracts if they had not been found through the previous advanced search (*supra* note 30). Additionally, contracts to entities that received less than \$10,000 in contracting dollars during the year were removed because the executive order does not apply to such contractors. The remaining contract amounts were summed.

<sup>35</sup> See contractor lists generated using methodology in notes 32-34, *supra*.

<sup>36</sup> *WIOA Overview*, U.S. DEP'T OF LABOR, <https://www.doleta.gov/WIOA/Overview.cfm> (last visited Apr. 8, 2016).

<sup>37</sup> *Workforce Innovation & Opportunity Act*, WORKFORCE TRAINING & EDUC. COORDINATING BD., <http://wtb.wa.gov/WIOA.asp> (last visited Apr. 12, 2016).

<sup>38</sup> 29 U.S.C. § 3248(a)(2).

<sup>39</sup> 81 Fed. Reg. 4494, 4550 (Jan. 26, 2016). The comment period for the proposed rule has closed, and the agency is in the process of developing the final rule.

<sup>40</sup> *Id.* at 4508.

<sup>41</sup> *Id.* at 4571.

<sup>42</sup> *Youth Activities State Allotments: Comparison of PY 2016 Allotments vs PY 2015 Allotments*, U.S. DEP'T OF LABOR, [https://www.doleta.gov/budget/docs/16you\\$.pdf](https://www.doleta.gov/budget/docs/16you$.pdf) (last visited Apr. 12, 2016); *Adult Activities State Allotments: Comparison of PY 2016 Allotments vs PY 2015 Allotments*, U.S. DEP'T OF LABOR, [https://www.doleta.gov/budget/docs/16adu\\$.pdf](https://www.doleta.gov/budget/docs/16adu$.pdf) (last visited Apr. 12, 2016); *Dislocated Worker Activities State Allotments: Comparison of PY 2016 Allotments vs PY 2015 Allotments*, U.S. DEP'T OF LABOR, [https://www.doleta.gov/budget/docs/16dw\\$.pdf](https://www.doleta.gov/budget/docs/16dw$.pdf) (last visited Apr. 12, 2016); *Employment Service (Wagner-Peyser): Comparison of PY 2016 Allotments vs PY 2015 Allotments*, U.S. DEP'T OF LABOR, [https://www.doleta.gov/budget/docs/16es\\$.pdf](https://www.doleta.gov/budget/docs/16es$.pdf) (last visited Apr. 12, 2016).

<sup>43</sup> *Grant Programs*, U.S. DEP'T OF JUSTICE, Sept 9, 2015, <https://www.justice.gov/ovw/grant-programs#cgpa>.

<sup>44</sup> 42 U.S.C. § 13925(b)(13)(A).

<sup>45</sup> Office of Justice Programs Office for Civil Rights, *Frequently Asked Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013*, U.S. DEP'T OF JUSTICE 8-9 (Apr. 9, 2014), <https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>.

<sup>46</sup> *Id.* at 4.

<sup>47</sup> *Id.* at 5.

<sup>48</sup> 42 U.S.C. §§ 13925(b)(13)(c); 3789d(c)(2)(B)-(D)

<sup>49</sup> *FY 2015 OVW Grant Awards by State*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/ovw/awards/fy-2015-ovw-grant-awards-by-state#WA> (last visited Apr. 12, 2016).

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<sup>50</sup> *FY 2014 OVW Grant Awards by State*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/ovw/awards/fy-2014-ovw-grant-awards-by-state#WA> (last visited Apr. 9, 2016).

<sup>51</sup> *FY 2013 OVW Grant Awards by State*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/ovw/awards/fy-2013-ovw-grant-awards-by-state#wa>.

<sup>52</sup> Office of Justice Programs Office for Civil Rights, *supra* note 45 at 3.

<sup>53</sup> 42 U.S.C. § 18116; 80 Fed. Reg. 54172, 54216 (Sept. 8, 2015). The comment period for the proposed rule has closed, and the agency is in the process of developing the final rule.

<sup>54</sup> The proposed regulations explicitly define "on the basis of sex" to include on the basis of gender identity. 80 Fed. Reg. 54172, 54216 (Sept. 8, 2015). Additionally, they incorporate Title IX implementing regulations at 45 C.F.R. § 86.31(b)(1) through (8), which use the exact same language as 34 C.F.R. § 106.31(b)(1) through (7). This language was used to explain that prohibiting transgender students from using shared restrooms that conform with their gender identity is a violation of Title IX: "[T]he District excluded the Student, on the basis of sex, from participation in and denied the Student the benefits of its education program; provided different benefits or benefits in a different manner; subjected the Student to different rules of behavior; and to different treatment, in violation of the regulation implementing Title IX, at 34 C.F.R. § 106.31." Finding Letter from Timothy C.J. Blanchard, Office for Civil Rights, U.S. Dep't of Educ., *supra* note 10 at 5.

<sup>55</sup> 80 Fed. Reg. 54172, 54188, citing Resolution Agreement Between the Arcadia Unified School District, the U.S. Dep't of Educ., Office for Civil Rights, and the U.S. Dep't of Justice, Civil Rights Division, OCR Case Number 09-12-1020, *available at* <https://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

<sup>56</sup> *Id.* at 54173.

<sup>57</sup> *Id.* at 54194-54195.

<sup>58</sup> The Affordable Care Act states that "[t]he enforcement mechanisms provided for and available under such title VI, title IX, section 794, or such Age Discrimination Act shall apply for purposes of violations of [the non-discrimination requirement]." 42 U.S.C. § 18116. The enforcement mechanisms provided for in these other laws include suspension or termination of funding if a recipient is in violation of the law's non-discrimination requirements. See 80 Fed. Reg. 54192 (Sept. 8, 2015).

<sup>59</sup> NATIONAL ASSOC. OF STATE BUDGET OFFICES, STATE EXPENDITURE REPORT 48 (2015), *available at* <http://www.nasbo.org/sites/default/files/State%20Expenditure%20Report%20%28Fiscal%202013-2015%29S.pdf>.

<sup>60</sup> Medicaid and CHIP Payment and Access Comm., Exhibit 33. Federal CHIP Allotments, FY 2016, millions <https://www.macpac.gov/wp-content/uploads/2015/01/EXHIBIT-33.-Federal-CHIP-Allotments-FY-2016-millions-1.pdf> (last visited Apr. 14, 2016).

<sup>61</sup> 42 U.S.C. §1441.

<sup>62</sup> 42 U.S.C. §3535(d).

<sup>63</sup> 24 C.F.R. §5.105(a)(2)(ii).

<sup>64</sup> 80 Fed. Reg. 72642, 72642-43 (Nov. 20, 2015).

<sup>65</sup> *Id.* at 72649. The comment period for the proposed rule has closed, and the agency is in the process of developing the final rule.

<sup>66</sup> *Id.* at 72648.

<sup>67</sup> *Housing Opportunities for People Living With AIDS*, HUD EXCHANGE, <https://www.hudexchange.info/programs/hopwa/> (last visited Apr. 19, 2016).

<sup>68</sup> U.S. DEP'T HOUS. & URBAN DEV. OFFICE OF COMTY. PLANNING & DEV., EMERGENCY SOLUTIONS GRANTS (ESG) PROGRAM FACT SHEET (2014), *available at* <https://www.hudexchange.info/resources/documents/EmergencySolutionsGrantsProgramFactSheet.pdf>.

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<sup>69</sup> *Continuum of Care (CoC) Program*, HUD EXCHANGE, <https://www.hudexchange.info/programs/coc/> (last visited Apr. 19, 2016).

<sup>70</sup> U.S. DEP'T HOUS. & URBAN DEV. OFFICE OF COMTY. PLANNING & DEV., APPROPRIATE PLACEMENT FOR TRANSGENDER PERSONS IN SINGLE-SEX EMERGENCY SHELTERS AND OTHER FACILITIES (Feb. 20, 2015) 3-4, <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>; 80 Fed. Reg. 72642, 72649 (Nov. 20, 2015).

<sup>71</sup> 77 Fed. Reg. 5671 (Feb. 3, 2012).

<sup>72</sup> *CPD Allocations and Awards*, HUD EXCHANGE, <https://www.hudexchange.info/grantees/cpd-allocations-awards/> (last visited Apr. 19, 2016) (select Year: 2015, select State: Washington, select Program: CoC, ESG, HOPWA). The data that resulted from these searches were downloaded and the funding amounts from the three programs were summed.

<sup>73</sup> *CPD Allocations and Awards*, HUD EXCHANGE, <https://www.hudexchange.info/grantees/cpd-allocations-awards/> (last visited Apr. 19, 2016) (select Year: 2014, select State: Washington, select Program: CoC, ESG, HOPWA). The data that resulted from these searches were downloaded and the funding amounts from the three programs were summed.

<sup>74</sup> *CPD Allocations and Awards*, HUD EXCHANGE, <https://www.hudexchange.info/grantees/cpd-allocations-awards/> (last visited Apr. 19, 2016) (select Year: 2013, select State: Washington, select Program: CoC, ESG, HOPWA). The data that resulted from these searches were downloaded and the funding amounts from the three programs were summed.

<sup>75</sup> Office for Civil Rights, *How to File a Discrimination Complaint with the Office for Civil Rights*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html> (last visited Mar. 31, 2016); Office of Federal Contract Compliance Programs, *Executive Order 11246*, U.S. DEP'T OF LABOR, <http://www.dol.gov/ofccp/regs/compliance/fs11246.htm> (last visited Mar. 31, 2016); 29 C.F.R. § 38.70 (2015); U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, FREQUENTLY ASK QUESTIONS: NONDISCRIMINATION GRANT CONDITION IN THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013 9 (2014), <https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>; 42 U.S.C. § 2000e-5(b); Office for Civil Rights, *OCR Enforcement Under Section 1557 of the Affordable Care Act Sex Discrimination Cases*, DEP'T OF HEALTH AND HUMAN SERVICES, <http://www.hhs.gov/civil-rights/for-individuals/section-1557/ocr-enforcement-section-1557-aca-sex-discrimination/index.html> (last visited Apr. 14, 2016); 77 Fed. Reg. 5671 (Feb. 3, 2012); U.S. Dep't of Hous. & Urban Dev., *Filing Your Housing Discrimination Complaint Online*, HUD.gov, [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_discrimination](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination) (last visited May 3, 2016).

<sup>76</sup> Office for Civil Rights, *How to File a Discrimination Complaint with the Office for Civil Rights*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html> (last visited Mar. 31, 2016).

<sup>77</sup> 29 C.F.R. § 38.70 (2015).

<sup>78</sup> OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., CASE PROCESSING MANUAL 17-28 (2015), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>; OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, U.S. DEP'T OF LABOR, FEDERAL CONTRACT COMPLIANCE MANUAL (2014), *available at* [http://www.dol.gov/ofccp/regs/compliance/fccm/FCCM\\_FINAL\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/fccm/FCCM_FINAL_508c.pdf); 29 C.F.R. §§ 38.70-38.101 (2015). U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, FREQUENTLY ASK QUESTIONS: NONDISCRIMINATION GRANT CONDITION IN THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013 9 (2014), <https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>; 42 U.S.C. § 2000e-5(b); 80 Fed. Reg. 54192 (Sept. 8, 2015); 77 Fed. Reg. 5671 (Feb. 3, 2012).

<sup>79</sup> OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., CASE PROCESSING MANUAL 28 (2015), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>; Exec. Order. No. 11,246, § 209(2)-(4), 3 C.F.R. 339 (1964-1965) (as amended); 29 U.S. § 3248(c); 42 U.S.C. §§ 13925(b)(13)(C); 3789d(c)(2)(E); 42 U.S.C. § 2000e-5(f); 80 Fed. Reg. 54,191-54,192 (Sept. 8, 2015); 42 U.S.C. § 5309.

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<sup>80</sup> Cannon v. Univ. of Chicago, 441 U.S. 677 (1979); 80 Fed. Reg. 54,192 (Sept. 8, 2015).

<sup>81</sup> Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60 (1992); Fitzpatrick v. Bitzer, 427 U.S. 445, 456 (1976).

<sup>82</sup> 42 U.S.C. § 18116; 80 Fed. Reg. 54192 (Sept. 8, 2015).

<sup>83</sup> See *supra* note 14.

<sup>84</sup> Glenn v. Brumby, 663 F.3d 1312m 1317 (11th Cir. 2011); Barnes v. City of Cincinnati, 401 F.3d 729, 733 (6th Cir. 2005); City of Salem, 378 F.3d 566 (6th Cir. 2004); Schroer v. Billington, 577 F. Supp. 2d 293, 307-08 (D.D.C. 2008); Macy v. Holder, EEOC App. No. 012012821, 2012 WL 1435995, at \*1 (Apr. 20, 2012).

<sup>85</sup> Attorney General Memorandum, Dec. 15, 2014, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*; Lusardi v. McHugh, EEOC App. No. 0120133395 (Apr. 1, 2015).