Dear Director Hurwitz:

On behalf of our organizations dedicated to improving the behavioral health of our nation, we are writing to express our concerns about recent revisions to the Transgender Offender Manual of the Federal Bureau of Prisons (BoP). Specifically, we are troubled by the removal of specific language stating that “The Transgender Executive Council will recommend housing by gender identity when appropriate,” with the new guidelines now specifying that the Transgender Executive Council will use undefined “biological sex” (which presumably refers to sex assigned at birth) to determine inmate housing, with gender identity utilized to determine housing only “in rare cases.”

We understand the need to maintain safety and security in federal prisons and appreciate that BoP must balance the needs of transgender inmates with other priorities. Furthermore, we are grateful that some transgender people under BoP supervision may still in certain cases be assigned to a facility based on their self-identified gender.

However, the updated guidance moves in the wrong direction. Overreliance on the undefined term "biological sex" is problematic because it ignores the complexity of the medical spectrum of sex, including the natural variation in gender identity. Hence, it is contradictory to the scientific and clinical literature to categorize people based solely on their “biological sex” without consideration of their gender identity. Moreover, ignoring gender identity - so profound to a person’s sense of self – is a discriminatory and harmful act that brands an already vulnerable group with stigma and makes them a target for abuse.

We understand that BoP must manage the safety and security of all individuals in their custody. The fear of housing transgender women with cisgender women may stem in part from rumors that transgender women are likely to commit violence against cisgender women (similar to the argument against gender-appropriate bathroom access). But this is an unfortunate myth. Rather, transgender people are at higher risk for being the target of prejudice, discrimination, and violence themselves, which has significant negative implications for their physical, mental, and social well-being. Furthermore, experiences detrimental to their well-being are heightened in correctional facilities, where, compared to approximately 2% of the overall prison population, 24% of transgender people have reported sexual victimization, due in part to being housed in gender-inappropriate facilities. Making it harder for individuals to be housed in facilities that correspond with their gender identity will make it more likely that they will suffer further discrimination and violence.

Based on these findings, we are concerned that this new policy will risk placing BoP out of compliance with the Prison Rape Elimination Act. This law makes assigning a transgender prisoner to housing,
programs, or other services based solely on sex assigned at birth, without serious consideration of likelihood of harm to individuals, a violation of federal law.

We strongly encourage BoP to more seriously consider gender identity when making housing decisions and revert to the previous language in the Transgender Offender Manual. Please contact Gabriel Twose, Ph.D., in the Public Interest Directorate of the American Psychological Association (gtwose@apa.org) if we can provide further information to guide your important work.

Sincerely,

American Art Therapy Association
American Association for Marriage and Family Therapy
American Association for Psychoanalysis in Clinical Social Work
American Foundation for Suicide Prevention
American Group Psychotherapy Association
American Psychiatric Association
American Psychological Association
Association for Ambulatory Behavioral Healthcare
Campaign for Trauma-Informed Policy and Practice
Clinical Social Work Association
Council on Social Work Education
Desert AIDS Project
Drug Policy Alliance
Eating Disorders Coalition
Global Alliance for Behavioral Health and Social Justice
Mental Health America
NAADAC, the Association for Addiction Professionals
National Alliance to Advance Adolescent Health
National Association of County Behavioral Health & Developmental Disability Directors
National Association for Rural Mental Health
National Association of Social Workers
National Health Care for the Homeless Council
National Register of Health Service Psychologists
Legal Action Center
Project Inform
Treatment Communities of America