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Submitted via reginfo.gov

RE: Public Comment in Response to Submission for OMB Review; Pre-testing Administration for Children and Families Data Collection Activities (Office of Management and Budget #: 0970-0355)

On behalf of the undersigned organizations committed to researching and advancing the rights and well-being of lesbian, gay, bisexual, transgender, queer, intersex, and other sexual and gender minority people in the United States, we write in response to the Proposed Revision issued by the Administration for Children and Families (ACF) to the existing overarching generic clearance for Pre-testing of ACF Data Collection.¹

LGBTQ+² youth are overrepresented in the child welfare system, including in foster care, and often face discrimination and mistreatment simply for being who they are.³ All children—including LGBTQ+ youth of all ages—deserve access to safe and affirming homes. Likewise, LGBTQ+ youth deserve to be counted and have their unique needs met through federally-funded programs and services. Our organizations are committed to advancing equity and nondiscrimination protections for LGBTQ+ youth and their families in child welfare, and remain concerned that sexual orientation and gender identity (SOGI) data are not being collected consistently by ACF and its program offices.

We are therefore grateful for this opportunity to offer comment, as we agree with ACF that its “program offices could benefit from use of [the proposed] pretesting generic . . . to inform the development of data collection activities such as grant recipient forms, forms used by programs on ACF's behalf, and other data collection efforts driven by ACF[,]” particularly through the use of this clearance “to pre-test sexual orientation and gender identity questions with youth.” The collection of data on these youths’ SOGI would greatly benefit ACF’s efforts through its program offices to serve youth in the foster care system and ought to be collected consistent with best practices on the collection of that data whenever possible. We support this approval of the proposed clearance, and would strongly encourage that ACF use same to engage in meaningful research and testing on the implementation of SOGI measures within its collections of data.

¹ Submission for OMB Review; Pre-testing Administration for Children and Families Data Collection Activities (Office of Management and Budget #: 0970-0355), 89 Fed. Reg. 68444 (June 20, 2024).

² We limit our discussion within this comment to lesbian, gay, bisexual, transgender, and queer—or LGBTQ+—youth given ACF’s proposal specifically suggesting use of the proposed clearance to collect information on sexual orientation and gender identity, as described further below. However, we continue to encourage that ACF collect data on youth who are intersex as well as on other sexual or gender minority youth alongside its efforts to data on sexual orientation and gender identity to ensure that all youth can be meaningfully counted and supported by the agency and its program offices.

³ See generally HUMAN RIGHTS CAMPAIGN FOUND., CARING FOR LGBTQ CHILDREN & YOUTH: A GUIDE FOR CHILD WELFARE PROVIDERS, https://assets2.hrc.org/files/assets/resources/HRC_Caring_For_LGBTQ_Children_Youth.pdf.

Identifying LGBTQ+ youth through the collection of SOGI data would allow ACF's program offices to implement effective interventions, minimize stays in congregate care, and improve the permanency of placements. However, many of ACF's existing data collection mechanisms, including for example the Adoption and Foster Care Analysis and Reporting System (AFCARS) managed by ACF's Children's Bureau program office, do not collect SOGI information from youth. The collection of these data consistent with best practices would greatly benefit the child welfare system, and we believe the harm of allowing LGBTQ+ youth and their families to remain invisible outweighs any potential burden or risk. ACF must ensure that it and its program officers are equipped with the information necessary to ensure a safe, loving, and affirming placement for every child who is unable to live with their parents, but it cannot do so for LGBTQ+ youth without the collection of SOGI data through collections like AFCARS.

Research on the Experiences of LGBTQ+ Foster Youth

Studies have long shown the prevalence of LGBTQ+ youth within the child welfare system. For example, research drawing from nationally-representative samples has found that when compared to heterosexual youth, sexual minority youth are nearly two and a half times as likely to experience foster care placement and are largely overrepresented in child welfare services and out-of-home placements.⁴ And these experiences are not spread evenly across all LGBTQ+ subpopulations: for example, a 2021 study by the Trevor Project found that transgender and nonbinary youth had greater odds of being in foster care than their cisgender LGBTQ peers.⁵ LGBTQ+ people often report experiences with rejection by their own families due to their sexual orientation or gender identity that can in turn lead them to not only become represented in the child welfare system, but also experience homelessness.⁶ Indeed, the Trevor Project's study found that LGBTQ+ youth who had been in foster care had over three times greater odds of being kicked out, abandoned, or running away due to treatment based on their LGBTQ+ identity compared to those who were never in care (27% vs. 8%); these numbers were even higher for LGBTQ+ youth of color (30%) and highest for transgender and nonbinary youth (40%).⁷

Studies have found that foster care placements have a disproportionate impact on Black and indigenous children and youth, who often stay in care longer and have poorer permanency outcomes than white children.⁸ Indeed, the Department of Health and Human Services has previously explained that, “[h]istorically, the public child welfare system has struggled to provide equitable services to marginalized groups[,]” such as for indigenous and Black families for whom rates of removal are disproportionately high—and for LGBTQ+ youth who receive

⁴ Jessica N. Fish et al., *Are Sexual Minority Youth Overrepresented in Foster Care, Child Welfare, and Out-of-Home Placement? Findings from Nationally Representative Data*, 89 CHILD ABUSE & NEGLECT 203 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7306404/pdf/nihms-1594127.pdf>.

⁵ LGBTQ YOUTH WITH A HISTORY OF FOSTER CARE, THE TREVOR PROJECT (2021), <https://www.thetrevorproject.org/research-briefs/lgbtq-youth-with-a-history-of-foster-care-2/>.

⁶ See, e.g., Sabra L. Katz-Wise et al., *Lesbian, Gay, Bisexual, and Transgender Youth Family Acceptance*, 63 Ped. Clin. N. Am. 1011 (2016), <http://dx.doi.org/10.1016/j.pcl.2016.07.005>.

⁷ *Id.*

⁸ See U.S. COMM'N ON CIVIL RIGHTS, THE MULTIETHNIC PLACEMENT ACT: MINORITIES IN FOSTER CARE AND ADOPTION (2010), https://www.usccr.gov/files/pubs/docs/MEPABriefingFinal_07-01-10.pdf.

“disparate treatment . . . and unfavorable outcomes[.]”⁹ Research has found that these outcomes for LGBTQ+ youth can include poorer functioning in school, higher rates of substance use, and increased rates of psychological distress when compared to their non-LGBTQ+ peers.¹⁰ Research shows that acknowledging and affirming an LGBTQ+ youth’s sexual orientation, gender identity, and expression is critically important to their health and well-being, as well as their success in the future—including both their safety and success in foster homes.¹¹

Importance of Collecting SOGI Data from Foster Youth

The collection of SOGI information by ACF would allow it and its program offices to develop and implement programs, interventions, and other services to understand and meet the specific needs of these youth. In particular, we highlight that these data could be particularly useful in ensuring agencies across the country comply with their obligations to provide LGBTQ+ youth with “‘safe and proper’ care and [] a case plan that addresses the specific needs of the child while in foster care to support their health and wellbeing” as outlined in a recent rulemaking by ACF.¹² Comprehensive and consistent SOGI data collection by ACF and its program offices would provide an opportunity for foster youth to voluntarily identify themselves as LGBTQ+ and maximize ACF’s ability to create evidence-informed best practices that can be used to improve their individual outcomes in care despite the challenges they often face when compared to their non-LGBTQ+ peers. Indeed, in January 2023 the Subcommittee on Sexual Orientation, Gender Identity, and Variations in Sex Characteristics—now part of the Subcommittee on Equitable Data of the National Science and Technology Council—published that Federal Evidence Agenda on LGBTQI+ Equity, which serves as a roadmap for federal agencies working to build evidence and leverage SOGI data to advance equity for LGBTQI+ people.¹³ As summarized in that agenda, the executive order “recognizes that in order to advance equity for LGBTQI+ people, the Federal Government must continue to gather the evidence needed to understand the LGBTQI+ community, the barriers they face, and the policy changes the Federal Government can make to enable their health and well-being.”¹⁴

Safe and confidential SOGI data collection is more critical now than ever, given growing hostility nationwide against LGBTQ+ people, especially transgender and nonbinary youth.¹⁵ We appreciate and understand past concerns that have been raised regarding the possible use of SOGI data collected through mechanisms like AFCARS to perpetuate further discrimination and harm by anti-LGBTQ+ state actors or agencies. While we share the underlying concern

⁹ See, e.g., *Gateway, Disproportionality Data*, U.S. DEP’T OF HEALTH & HUMAN SERVS., <https://www.childwelfare.gov/topics/systemwide/cultural/disproportionality/data/> (last visited Nov. 22, 2023).

¹⁰ See, e.g., Laura Baams et al., *LGBTQ Youth in Unstable Housing and Foster Care*, 143 PEDIATRICS e20174211 (2019), <https://doi.org/10.1542/peds.2017-4211>.

¹¹ *Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth*, SAMHSA (Mar. 2023), <https://store.samhsa.gov/product/moving-beyond-change-efforts/pep22-03-12-001>.

¹² Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children, 89 Fed. Reg. 34818 (Apr. 30, 2024).

¹³ NAT’L SCIENCE & TECHNOLOGY COUNCIL, FEDERAL EVIDENCE AGENDA ON LGBTQI+ EQUITY 14 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>.

¹⁴ *Id.* at 3.

¹⁵ See, e.g., HUMAN RIGHTS CAMPAIGN, LGBTQ+ AMERICANS UNDER ATTACK: A REPORT AND REFLECTION ON THE 2023 STATE LEGISLATIVE SESSION (2023), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Anti-LGBTQ-Legislation-Impact-Report.pdf>.

regarding discrimination and stigma experienced LGBTQ+ youth, the reality is that agencies and states already identify and target LGBTQ+ youth and families without these data. To be clear, keeping LGBTQ+ foster youth will not protect them, but rather will perpetuate further harm by hindering the federal government's ability to protect and address the disparate outcomes of LGBTQ+ youth in the child welfare system, including through recent state government efforts. ACF should therefore move forward with its suggestion that this clearance be used to research and test SOGI measures for implementation throughout its data collection mechanisms.

Existing Research and Best Practices for SOGI Data Collection

Like with other demographic items, we encourage ACF to pursue the collection of SOGI information consistent with best practices on the collection of that data, including and particularly those that center youths' rights to privacy and confidentiality.¹⁶ For decades, government and other researchers have studied SOGI and found that it is possible to measure these concepts well and obtain high-quality data, including from youth. Likewise, research shows that respondents largely do not find this information to be so sensitive that they would not provide it.¹⁷ In a recent report on the collection of SOGI information in the context of federally supported surveys, the Office of Management and Budget highlighted guiding principles that have emerged out of these years of work to support the ongoing collection of SOGI information, including that collected data should have utility, be in support of an agency's mission, and be done with an emphasis on protecting respondents' confidentiality.¹⁸ Various studies have also shown us the importance of evolving SOGI measures that reflect new categories of self-identification alongside best practices for data collection involving youth.¹⁹ ACF should draw from this research when moving forward on any implementation of SOGI measures within its own collections, and additionally should use the proposed clearance to build on that research through its own testing.

Conclusion

LGBTQ+ children are among the most vulnerable populations that ACF serves. By researching and implementing well-tested SOGI measures to its existing data collection efforts like

¹⁶ See generally NAT'L ACADEMIES OF SCIENCES, ENGINEERING, & MED., MEASURING SEX, GENDER IDENTITY, AND SEXUAL ORIENTATION (2022), <https://nap.nationalacademies.org/catalog/26424/measuring-sex-gender-identity-and-sexualorientation> (outlining the results of a Consensus Study Committee at the National Academies of Sciences, Engineering, and Medicine tasked with developing recommendations for the measurement of sex, gender identity, and sexual orientation through the federal government's population-based surveys, as well as in clinical and administrative settings, and which provides guiding principles for that work like inclusiveness, precision, respecting autonomy, collecting only necessary data, and a dedication to confidentiality).

¹⁷ *Id.* at 52–55, 67.

¹⁸ OMB, RECOMMENDATIONS ON THE BEST PRACTICES FOR THE COLLECTION OF SEXUAL ORIENTATION AND GENDER IDENTITY DATA ON FEDERAL STATISTICAL SURVEYS 3 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/SOGI-Best-Practices.pdf>.

¹⁹ For example, in 2022 the Journal of the American Medical Informatics Association published a study that examined methods that pediatric primary care practices could use to collect and document SOGI information with children and adolescents in certain settings where ACF is already requiring the collection of demographic data. Hilary Goldhammer, et al., *Pediatric sexual orientation and gender identity data collection in the electronic health record*, 29 J. AM. MED. INFORMATICS ASSOC. 1303 (2022), <https://academic.oup.com/jamia/article-abstract/29/7/1303/6565894?redirectedFrom=fulltext>.

AFCARS, ACF would be better equipped to ensure that all LGBTQ+ youth served by its programs feel safe, affirmed, and loved. We therefore urge ACF to proceed with its proposed clearance and with our recommendations here on using same to test how it might best measure youths' SOGI through its existing data collections.

Please do not hesitate to contact us at luis.vasquez@hrc.org if you would like to discuss these comments further. Thank you for this opportunity to provide our feedback in support of LGBTQ+ foster youth.