



March 17, 2023

Administration for Children and Families
U. S. Department of Health and Human Services
Submitted via email to OPREinfocollection@acf.hhs.gov

RE: Public Comment in Response to Proposed Information Collection Activity; 2024 National Survey of Early Care and Education (OMB No. 0970-0391)

To Whom It May Concern,

On behalf of the Human Rights Campaign's more than three million members and supporters nationwide, we write in response to the above-captioned information collection proposed by the Administration for Children and Families (ACF), consisting of four nationally-representative surveys collectively known as the National Survey of Early Care and Education (NSECE).¹

The Human Rights Campaign (HRC) is America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBTQ+ citizens and realize a nation that achieves fundamental fairness and equality for all. As an advocate for LGBTQ+ individuals, HRC believes that all people—including LGBTQ+ people and their families—deserve access to quality early care and education services, and to be counted and have their lived experiences meaningfully considered as part of the federal government's data collection efforts. We therefore write in support of this proposal and to offer additional recommendations so that ACF can be better equipped to ensure the equitable provision of these services.

The NSECE is administered by ACF to document the nation's use and availability of early care and education services, including specifically to gather information on key factors affecting households' need for and access to these services. ACF has proposed implementing the 2024 NSECE through four surveys, intended for households with at least one resident child under the age of 13; providers based at homes and within non-residential settings; and for individuals working with children age 5 and under at center-based programs. As part of its proposal, ACF has included demographic items within the household and workforce surveys, specifically questions collecting information on adult respondents' sex assigned at birth and gender identity.

LGBTQ+ people are a growing population in the United States, living in every state and county and reflecting the breadth of diversity and lived experiences of the communities in which they live. Using data collected through the U.S. Census Bureau's Household Pulse Survey, we

¹ Proposed Information Collection Activity; 2024 National Survey of Early Care and Education, 88 Fed. Reg. 2626 (Jan. 17, 2023).

recently estimated that at least 20 million adults in the U.S. identify as LGBTQ+. ² Consistent with others' research, we have also found evidence that younger people are more likely to identify as LGBTQ+. ³ LGBTQ+ people are also a demographically diverse population. ⁴ Many LGBTQ+ people successfully parent children, with data collected as part of the first LGBTQ population-based national dataset in the U.S. being used by the Williams Institute to estimate that 16.7% of LGBTQ adults are parents. ⁵ Looking more closely within the community, transgender adults (18.8%) and LBQ cisgender women (23.2%) are the most likely to report being parents, including to children under 18 still living at home (8.0% and 15.7%, respectively). ⁶

Federal agencies have long been researching and collecting information on LGBTQ+ people. ⁷ For decades, government and other researchers have studied sexual orientation and gender identity (SOGI) and found that it is more than possible to measure these concepts and obtain quality data; and likewise that respondents largely do not find this information to be so sensitive that they would not provide it. ⁸ In a recent report on the collection of SOGI information in the survey context, the Office of Management and Budget (OMB) highlighted guiding principles that have emerged out of that 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 done with emphasis on protecting respondents' confidentiality. ⁹

ACF's proposal to collect additional information related to sex and gender, including whether households accessing early care and education services and the staff of certain center-based

² HUMAN RIGHTS CAMPAIGN FOUND., WE ARE HERE: UNDERSTANDING THE SIZE OF THE LGBTQ+ COMMUNITY (2021), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/We-Are-Here-120821.pdf>.

³ SHOSHANA K. GOLDBERG ET AL., HUMAN RIGHTS CAMPAIGN & BOWLING GREEN STATE UNIV., EQUALITY ELECTORATE: THE PROJECTED GROWTH OF THE LGBTQ+ VOTING BLOC IN COMING YEARS (2022), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/LGBTQ-VEP-Oct-2022.pdf>. The Williams Institute has previously estimated that at least 2 million youth ages 13–17 identify as LGBT in the U.S., including approximately 300,000 youth who are transgender. JODY L. HERMAN ET AL., WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/TransPop-Update-Jun-2022.pdf>; KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

⁴ *LGBT Demographic Data Interactive*, WILLIAMS INST. (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#demographic>.

⁵ ILAN H. MEYER ET AL., WILLIAMS INST., LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES 15 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf>. Using data collected through the American Community Survey between 2014 and 2016, the Williams Institute previously similarly found that 16.2% of all same-sex couples in the U.S. are raising children, with same-sex couples being seven times more likely than different-sex couples to be raising an adopted or foster child. SHOSHANA K. GOLDBERG & KERITH J. CONRON, WILLIAMS INST., HOW MANY SAME-SEX COUPLES IN THE US ARE RAISING CHILDREN? (2018), <https://williamsinstitute.law.ucla.edu/publications/same-sex-parents-us/>.

⁶ MEYER ET AL., *supra* note 5; see also Nicola Carone et al., *Demographics and Health Outcomes in a U.S. Probability Sample of Transgender Parents*, 35 J. FAMILY PSYCHOLOGY 57 (2021), <https://pubmed.ncbi.nlm.nih.gov/33001675/>.

⁷ 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>.

⁸ *Id.* at 52–55, 67.

⁹ 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>.

programs include adults who are transgender, align with OMB’s recommendations and these longstanding agency practices. This information would serve to advance equity for LGBTQ+ people by ensuring necessary evidence can be collected to allow for assessment of their inclusion in early care and education services supported by ACF. However, the proposal does not appear to include any measures on respondents’ sexual orientation, leaving a critical gap in data.

Recent recommendations issued by a panel formed by the National Academies of Sciences, Engineering, and Medicine on SOGI measurement in federal surveys and other instruments (the “NASEM Panel”) include well-tested measures for both sexual orientation and gender identity.¹⁰ ACF should amend its proposal to better align with the NASEM Panel by implementing both forms of measures, given that its proposed response options for sex and gender already appear to be an implementation of the NASEM Panel’s recommendations. It is our opinion that the benefits of this proposed collection, even following additional amendment to include sexual orientation measures, would outweigh any potential increased burden on respondents and other relevant entities, given ACF’s implementation of well-tested measures. While it is not the case that only certain populations require access to early care and education services, data on whether and how individuals belonging to specific communities can access (or are employed by) those services—including on the intersectional experiences of groups like LGBTQ+ people of color and others historically experiencing the brunt of marginalization and exclusion from government programs—would be necessary to ensure ACF can properly monitor, fund, and revise any relevant programs to equitably meet any existing and future needs.

Finally, we would also highlight that recent efforts to provide recommendations for the measurement of SOGI across federal government surveys have also included recommendations for future research on measures that would allow for the identification of intersex people.¹¹ Intersex people with innate variations in their physical sex characteristics are estimated to make up as many as 1.7% of the global population.¹² Intersex and LGBTQ+ people more broadly share common, underserved needs, as well as common challenges and experiences of social stigma, invisibility, and discrimination, that are rooted in restrictive norms and stereotypes regarding gender and sexual orientation. Intersex people also considerably overlap with other LGBTQI+ subpopulations, though they are distinct.¹³ For example, intersex people are distinct from transgender and nonbinary people, but overall are more likely to be transgender or nonbinary. Given this context, we recommend that ACF also evaluate and as appropriate add such standalone measures that can identify intersex populations for these and other surveys to ensure our knowledge on intersex populations can continue to develop. We would likewise also encourage ACF to continue exploring improvements to its collection of SOGI data in the future, given known recommendations on needed research on measures and response options that would allow even more individuals to be counted in collected data exactly as they identify.¹⁴

¹⁰ NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 7.

¹¹ *See id.* at 145.

¹² Melanie Blackless et al., *How Sexually Dimorphic Are We? Review And Synthesis*, 12 AM. J. HUMAN BIOLOGY 151 (2000).

¹³ NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., UNDERSTANDING THE WELL-BEING OF LGBTQI+ POPULATIONS 26–28 (2020), <https://doi.org/10.17226/25877>.

¹⁴ *See, e.g.*, NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 7, at 132–33 (recommending assessment of nonbinary response options and other possible improvements to gender identity measures).

Thank you for the opportunity to submit comments in favor of this critical step toward ensuring LGBTQ+ people are consistently and safely included in the government's data collection efforts.