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Submitted via regulations.gov

RE: Public Comment in Response to 60-Day Notice of Proposed Information Collection: Family Report, MTW Family Report, MTW Expansion Family Report; OMB Control No. 2577-0083

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 revised information collection proposed by the Department of Housing and Urban Development (HUD).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—deserve access to assisted housing 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 changes being considered by HUD through this proposal, and to offer additional recommendations so that HUD can be better equipped to ensure its assisted housing programs are equitably serving the needs of LGBTQ+ people.

Background on the Proposed Revised Collection

HUD has proposed amending its Form HUD-50058, Form HUD-50058 MTW, and Form HUD-50058 (collectively, the "Family Reports"), which are used to help it monitor and evaluate its Public Housing, Section 8 Housing Choice Voucher, Section 8 Project-Based Vouchers, and Section 8 Moderate Rehabilitation assisted housing programs. We understand that tenants living in covered forms of assisted housing fill out applicable Family Reports annually to supply information on their demographics, family profile, income, and housing, doing so with the help of representatives from Public Housing Agencies (PHAs) that receive HUD funding to facilitate

¹ 60-Day Notice of Proposed Information Collection: Family Report, MTW Family Report, MTW Expansion Family Report; OMB Control No. 2577-0083, 88 Fed. Reg. 8301 (Feb. 08, 2023).

access to such housing. As noted in its proposal, here HUD is considering updating the existing demographic field for “sex” to instead collect information on respondents’ “gender” and with additional response options more inclusive of LGBTQ+ identities, as well as a potential new question measuring respondents’ sexual orientation.

Research on LGBTQ+ People and Housing

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 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 a demographically diverse population, with the Williams Institute using Gallup Daily Tracking survey data from 2012–2017 to estimate that 58% of LGBT adults identify as female and that 42% identify among communities of color, including 1% of LGBT adults that identify as American Indian and Alaska Native.⁴ The Williams Institute also recently reported on evidence that individuals belonging to certain communities of color appear more likely than their White counterparts to identify as transgender.⁵ And, data from the Behavioral Risk Factor Surveillance System indicate that LGBTQ+ adults, and transgender adults in particular, are significantly more likely than non-LGBTQ+ adults to self-report having at least one disability.⁶

A longstanding body of research indicates that LGBTQ+ people are significantly more likely to be living in poverty than their straight and cisgender counterparts,⁷ impacting their ability to access housing and therefore their need for assisted housing. And indeed, LGBTQ+ people report being significantly overrepresented among those experiencing homelessness or housing

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/Trans-Pop-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 HERMAN ET AL., *supra* note 3, at 6.

⁶ Human Rights Campaign Found., *Understanding Disability in the LGBTQ+ Community*, HUMAN RIGHTS CAMPAIGN (Aug. 12, 2022), <https://www.hrc.org/resources/understanding-disabled-lgbtq-people>.

⁷ M. V. LEE BADGETT ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>; *see also* BIANCA D.M. WILSON ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES (2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Poverty-COVID-Feb-2023.pdf> (using data from the Behavioral Risk Factor Surveillance System and the Census Bureau’s Household Pulse Survey to analyze poverty rates during the early days of the COVID-19 pandemic).

instability.⁸ Data collected through studies funded by HUD and its own administrative counts indicate that LGBTQ+ youth and transgender and gender non-conforming people are particularly disproportionately represented among those experiencing unsheltered homelessness.⁹ Additionally, while Americans from all walks of life continue to experience discrimination across a variety of contexts, LGBTQ+ people uniquely experience harassment and discrimination based on their sexual orientation and gender identity, which research demonstrates has often led to disparities in negative outcomes when compared to their non-LGBTQ+ counterparts,¹⁰ including when they are seeking housing and emergency shelter.¹¹

Research on LGBTQ+-Related Data Collection

LGBTQ+ people are likely in particular need of the various types of assisted housing provided by HUD that are evaluated using data collected through the Family Reports. HUD should therefore ensure that those Family Reports include measures sufficient to identify whether eligible LGBTQ+ people are indeed able to access those programs, and the extent to which additional improvements to those programs are necessary to advance equity for LGBTQ+ tenants. Fortunately, HUD has experience in collecting such data, with its existing data collections supporting much of our knowledge on LGBTQ+ people and their experiences with housing, housing instability, and homelessness.¹² For example, HUD's Homeless Management Information System and Point-in-Time Counts are already inclusive of response options allowing people to identify themselves as transgender.¹³

⁸ See, e.g., ILAN H. MEYER ET AL., WILLIAMS INST., LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPOP STUDIES 11 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf> (finding that among a nationally-representative sample of LGBTQ adults, 15.2% of all respondents reported moving residences three or more times in a two-year period); BIANCA D.M. WILSON ET AL., WILLIAMS INST., HOMELESSNESS AMONG LGBT ADULTS IN THE US (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf> (providing the first-ever estimates from a nationally-representative sample of homelessness among LGBT adults, including that 16.9% of non-transgender LGB adults reported experiencing homelessness in their lifetimes, or at almost three times the rate of the general population at the time).

⁹ See, e.g., HUD, HUD 2022 CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS HOMELESS POPULATIONS AND SUBPOPULATIONS (2022), https://files.hudexchange.info/reports/published/CoC_PopSub_NatlTerrDC_2022.pdf (recent data noting that more transgender people reported being unsheltered than the combined totals of those living either in an emergency shelter or transitional housing); MATTHEW MORTON ET AL., CHAPIN HALL AT UNIV. OF CHI., VOICES OF YOUTH COUNT COMPREHENSIVE REPORT: YOUTH HOMELESSNESS IN AMERICA (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/Voices-of-Youth-Report.pdf>.

¹⁰ See generally NPR, ROBERT WOOD JOHNSON FOUND. & HARVARD T.H. CHAN SCH. OF PUB. HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF LGBTQ AMERICANS (2017), <https://legacy.npr.org/documents/2017/nov/npr-discrimination-lgbtq-final.pdf> (experiences in variety of contexts).

¹¹ See generally ADAM P. ROMERO ET AL., WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

¹² See, e.g., TANYA DE SOUSA ET AL., HUD, THE 2022 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS – PART 1: POINT-IN-TIME ESTIMATES OF HOMELESSNESS – DECEMBER 2022 at 15 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf> (noting that the number of people who experienced homelessness and identified as transgender increased between 2020 and 2022 among both those in shelters and those left unsheltered).

¹³ 3. *Universal Data Elements (UDE)*, HUD EXCHANGE, https://www.hudexchange.info/programs/hmis/hmis-data-standards/standards/Universal_Data_Elements.htm (last visited Mar. 24, 2023).

Like HUD, other federal agencies have long been researching and collecting information on LGBTQ+ people.¹⁴ 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.¹⁵ 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.¹⁶

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.¹⁷ While administrative data collections like the Family Reports can present additional and specific considerations regarding respondents’ privacy and safety when compared to surveys, we would note that the NASEM Panel considered the needs of agencies collecting SOGI data in the administrative context, and in general we recommend following the guidance laid out in their consensus report here.¹⁸ In many ways, SOGI information is not different from other forms of sensitive information already collected by HUD and PHAs through the existing Family Reports, such as information about respondents’ race and disability.¹⁹

Support and Recommendations for SOGI Measures on the Family Reports

HUD’s proposal here to expand the response options for the renamed “gender” category—specifically, to now include “X-Non-Binary/Transgender” and “NR-No Response/Prefer not to answer”—and to give respondents the option to select more than one response aligns with OMB’s recent recommendations and longstanding agency practices, including its own. Renaming the field to gender is likewise consistent with the NASEM Panel’s recommendation that agencies shift away from collecting information on “sex” unless information on that construct as a biological variable is necessary.²⁰ Implementing these changes is particularly important given HUD’s acknowledgement that “some PHAs have policies that use this field response to determine bedroom sizes and other PHAs have State requirements” that they allow individuals to designate themselves as non-binary or transgender.²¹ Individuals should always be

¹⁴ 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>.

¹⁵ *Id.* at 52–55, 67.

¹⁶ 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>.

¹⁷ NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 14.

¹⁸ *Id.* at 9.

¹⁹ See *id.* at 10 (“We note that sex assigned at birth, gender identity, and sexual orientation are not the only types of potentially sensitive information that need to be collected respectfully and confidentially and used appropriately in administrative settings.”).

²⁰ *Id.* at 8.

²¹ 88 Fed. Reg. at 8302.

given the ability to identify as and live in housing consistent with their gender identity, particularly to ensure their safety, and so we write in support of this considered proposal.

However, we would recommend that the proposed response option for “X-Non-Binary/Transgender” be split into two options, consistent with our understanding that while some people identify as both transgender and non-binary, these are ultimately distinct identities that some individuals do not hold simultaneously. For example, some individuals identify as transgender women and would not consider themselves non-binary; likewise, some individuals identify as non-binary but not transgender. HUD’s data collection practices should ensure that data on specific subpopulations can be analyzed completely and accurately, in turn allowing it to engage in meaningful responses to inequality and inequities in housing within marginalized groups like LGBTQ+ populations more broadly. In line with this, HUD should ensure that the Family Reports, related documentation, and PHAs properly communicate to respondents that they can and should select all provided options that describe their gender identity.

Additionally, we note that if HUD were to proceed without implementing the measure it is considering on respondents’ sexual orientation, we would be left with a critical gap in data. We therefore write in support of HUD’s considered sexual orientation measure and response options, which are consistent with the recommendations of the NASEM Panel. To the extent that it is feasible, respondents choosing the “Other” response option should be allowed to write in their sexual orientation, which may allow for research by HUD both on the needs of individuals holding specific sexual orientations, and on how to improve these measures in the future with even more inclusive response options. We strongly encourage HUD to continue exploring improvements to its collection of these and related data in the future, given the NASEM Panel and others’ recommendations to engage in research on measures and response options that would allow even more individuals to be counted in collected data exactly as they identify.²²

We understand that the Family Reports are filled out by PHAs with a head-of-household respondent providing their information and that of others living with them, i.e., engaging in proxy reporting. For many LGBTQ+ people, who may not be open about their SOGI even to people they are close with, or fully accepted by members of their household,²³ proxy reporting presents a hypothetical problem of inaccuracy or under-reporting. Several studies have already considered this issue, with many finding that SOGI questions were understood by proxy reporters, most did not find them difficult to complete, and that inaccuracy of responses was

²² See, e.g., NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 14, at 145 (recommending research on measures allowing identification of intersex people). Notably, the NASEM Panel, OMB, and others all urge the importance of advancing research and data collection on intersex people and variations in sex characteristics (also known as intersex traits). To date, there is little if any formal evidence about the housing experiences of intersex people, though evidence exists of their experiencing disparities and discrimination in related areas such as health, education, and employment, and other agencies have recognized that federal statutes that prohibit discrimination because of sex encompass discrimination based on intersex traits. See, e.g., *Title IX Legal Manual*, DOJ.GOV (Aug. 12, 2021), <https://www.justice.gov/crt/title-ix#Bostock>.

²³ See, e.g., Patti Neighmond, *Home But Not Safe: Some LGBTQ Young People Face Rejection From Families in Lockdown*, NPR (May 17, 2020), <https://www.npr.org/sections/health-shots/2020/05/17/856090474/home-but-not-safe-some-lgbtq-young-people-face-rejection-from-families-in-lockdown>; see also 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>.

low.²⁴ HUD identified proxy reporting as an area of focus in its 2022–2026 Learning Agenda, and we understand the agency is engaging in research on this topic including through the American Housing Survey.²⁵ Given the aforementioned programmatic uses for data collected through the proposed “gender” field, we recommend that HUD proceed with having those data collected for all tenants including through proxy reporting. However, because we understand there is no such purpose for data to be collected on sexual orientation, we do not recommend that sexual orientation information be collected beyond that of the head-of-household themselves at this juncture, though we would encourage HUD to continue its research on proxy reporting to one day allow those data to be collected of all respondents.

It is our opinion that the benefits of this proposed collection, even following the implementation of SOGI measures and our recommendations here, would outweigh any potential increased burden on respondents and other relevant entities, given our knowledge on LGBTQ+ people and their experiences with and needs for assisted housing. That research base makes clear that collecting SOGI data through the Family Reports is necessary for the proper performance of the functions of HUD and its assisted housing programs and will have practical utility. While it is not the case that only certain populations are impacted by poverty, discrimination, and other factors associated with individuals’ need for housing assistance, data on whether and how individuals belonging to specific communities—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—access assisted housing would be necessary to ensure programs analyzed through the Family Reports fulfill their purposes. Additionally, we note that data on tenants’ SOGI are relevant to the enforcement of federal and state civil rights laws, which are increasingly being interpreted in line with the Supreme Court’s decision in *Bostock v. Clayton County* to encompass both gender identity and sexual orientation discrimination as part of their bars on sex discrimination.²⁶ These laws include federal protections like the Fair Housing Act.²⁷

²⁴ Jessica Holzberg et al., *Can They and Will They? Exploring Proxy Response of Sexual Orientation and Gender Identity in the Current Population Survey*, 35 J. OFF. STAT. 885 (2019), <https://doi.org/10.2478/jos-2019-0037>; Jennifer M. Ortman et al., *Optimizing Self and Proxy Response to Survey Questions on Sexual Orientation and Gender Identity*, Address at the Annual Meeting of the Population Association of America (Apr. 27–29, 2017), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2018/aapor/aapor-presentation-proxy-gender.pdf>.

²⁵ HUD, LEARNING AGENDA: FISCAL YEARS 2022–2026 at 74 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/HUD-Learning-Agenda.pdf>.

²⁶ See 140 S. Ct. 1731 (2020); see also Exec. Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, 86 Fed. Reg. 7023 (Jan. 20, 2021); see also CHRISTINE J. BACK & JARED P. COLE, CONG. RES. SERV., POTENTIAL APPLICATION OF *BOSTOCK V. CLAYTON COUNTY* TO OTHER CIVIL RIGHTS STATUTES (2021), <https://crsreports.congress.gov/Bo/pdf/R/R46832>; CHRISTY MALLORY ET AL., WILLIAMS INST., LEGAL PROTECTIONS FOR LGBT PEOPLE AFTER *BOSTOCK V. CLAYTON COUNTY* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bostock-State-Laws-Jul-2020.pdf>.

²⁷ JEANINE M. WORDEN, ACTING ASSISTANT SEC’Y, HUD, IMPLEMENTATION OF EXECUTIVE ORDER 13988 ON THE ENFORCEMENT OF THE FAIR HOUSING ACT (Feb. 11, 2021), https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf; *Walsh v. Friendship Village of South County*, No. 19-1395 (8th Cir. 2020) (remanding previously dismissed sexual orientation-based discrimination claim under the Fair Housing Act for reconsideration in light of *Bostock*); see also *College of the Ozarks v. Biden*, No. 21-2270 (8th Cir. 2022) (affirming dismissal due to lack of jurisdiction, but noting in dicta that had the subject of plaintiff’s challenge not been in place, HUD would still have been required to “consider the meaning of the Fair Housing Act in light of *Bostock* and its interpretation of similar statutory language.”).

Of course, in addition to modifying the Family Reports themselves, we strongly recommend that HUD modify its manual for PHAs and other guidance and materials so they serve to ensure respondents' safety, privacy, and understanding as to why these data are being collected in the first place. For example, HUD recently proposed amending some of its forms to expressly reference existing protections against SOGI discrimination under the Fair Housing Act;²⁸ the same should be done here, including through the creation of new materials to be given directly to tenants to the extent any existing practices tied to the Family Reports would be insufficient for providing that information. Respondents should be fully informed about the intended uses for data being collected through the Family Reports, and of privacy protections in place to prevent misuse of data they may consider sensitive and therefore increase their comfort in answering these questions. Likewise, we recommend that to the extent the demographic questions on the Family Reports are mandatory, HUD should ensure that both PHAs and respondents clearly understand that they indeed have the option ("No Response/Prefer not to answer") to refuse to respond to questions about their SOGI, consistent with the recommendations of the NASEM Panel and others intended to maximize respondents' willingness to provide that information.

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

²⁸ 30-Day Notice of Proposed Information Collection: Housing Choice Voucher Program and Tribal HUD-VASH, OMB Control No.: 2577-0169, 88 Fed. Reg. 2959 (Jan. 18, 2023).