

February 3, 2015

Social Security Administration  
Attn: Faye Lipsky  
Reports Clearance Director  
1905 9th St NE  
Washington, DC 20018

Dear Ms. Lipsky:

**RE: Agency Information Collection Activities: Proposed Request and Comment Request**

On behalf of Family Equality Council, please accept these comments on the Social Security Administration's (SSA) Proposed Information Collection regarding SSA Form 5-BK: Application for Mother's or Father's Insurance Benefits. Family Equality Council is a national organization working to ensure full social and legal equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) parents and their children by providing direct support, educating the American public, and securing inclusion in legislation, policies, and practices impacting families. On behalf of the more than three million LGBTQ parents and their six million children across the United States,<sup>1</sup> Family Equality Council would like to thank the Commissioner, the Board, and the Administration for your work to provide inclusive and comprehensive services to LGBTQ individuals and their families across the United States.

**Parental Designations**

The Social Security Administration administers SSA Form 5-BK,<sup>2</sup> which is used by a surviving spouse to apply for payment of monthly benefits, where that surviving spouse is caring for a child eligible to receive the deceased's social security benefits. Surviving spouses may use this form to apply for benefits including Federal Old-Age, Survivors, and Disability Insurance benefits, as well as survivors' benefits under the Railroad Retirement Act and for other types of death benefits governed by the Veterans Administration. Information regarding the applicant's claim for benefits is gathered on this form with language employing the gendered terms of "Mother" and "Father" to describe the applicant's relationship to the deceased's child.<sup>3</sup>

For LGBTQ-headed families, Form 5-BK's usage of the term "Mother" and "Father" to describe those eligible for benefits may cause needless delay in processing the form and potential denial of benefits because the claimants are of the same gender as their deceased spouse. Using gendered parental terms potentially excludes LGBTQ parents and adds nothing to the information gathered by the form that could not be ascertained through the use of the non-gendered term "Parents." As the intent of this form is to determine whether the claimant stood in the position of a parent to the child of his or her deceased spouse, and is therefore eligible for benefits, using the terms "Mother" and "Father" to describe those eligible serves to confuse potential applicants and SSA staff, and complicate the benefit provision process.

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<sup>1</sup> Movement Advancement Project, Family Equality Council and Center for American Progress, "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families," October 2011, *Issue Brief: Obstacles and Opportunities: Ensuring Health and Wellness for LGBT Families*.

<sup>2</sup> *Application for Mother's or Father's Insurance Benefits*, SSA Form 5-BK, Social Security Administration.

<sup>3</sup> *Id.*

## Recommendations

We recommend changes to SSA Form 5-BK to eliminate all gendered parental language. We suggest the following edits to language on the form (edits in bold and strikethrough).

In the form's title:

“Application for ~~Mother's or Father's~~ **Parent's** Insurance Benefits”

Within the explanation to Question 5:

“You may receive a ~~mother's or a father's~~ **parent's** benefit for any month in which you have in your care the deceased's child or dependent grandchild who is entitled to a child's benefit if the child is:

- under age 16,
- or disabled or handicapped (age 16 or over and disability began before age 22).

If you are filing as a surviving divorced ~~mother or father~~ **parent**, such child must be your son, daughter, or legally adopted child who is entitled to child's benefits on the deceased's earnings record. ~~Mother's or father's~~ **Parent's** benefits are not payable if the only child in your care is a child age 16 or over who is not disabled.”

In the title of Page 8:

“RECEIPT FOR YOUR CLAIM FOR SOCIAL SECURITY ~~MOTHER'S OR FATHER'S~~ **PARENT'S** INSURANCE BENEFITS”

The terms “Mother” and “Father” in the aforementioned sections of Form 5-BK can easily be changed to use non-gendered parent terms without undermining or compromising the information gained from this form. The underlying intent of this form is not to restrict benefits to survivors with different sex spouses, but to ensure recognition of *all* surviving spouses who are also parents. Updating this form to use gender-neutral parental language will facilitate the Department accurately providing these benefits to all eligible surviving beneficiaries.

The suggested changes above do not broaden the pool of qualified claimants as the number of potential beneficiaries is still limited to surviving spouses who are also parents. Making the changes described above will increase the efficiency of the Social Security Administration, allowing the Administration to identify potential beneficiaries more accurately and without risking confusion based on inaccurate forms and incomplete information.

The Commissioner has the authority to change this form under 42 U.S.C. § 902(a) and 42 U.S.C. § 216. While the regulations governing this form<sup>4</sup> do use the terms “mother” and “father,” where this language is used, it is not as part of a definition of “parent,” “claimant,” “beneficiary,” or other relevant terms; nor do

<sup>4</sup> 20 C.F.R. § 404.339-342; 20 C.F.R. § 404.330-349.

the governing statutes and regulations otherwise mandate this or any related form employ gendered parental terms. For this reason, SSA Form 5-BK does not require statutory or regulatory changes in order to be modernized. Ultimately, changing this form to use non-gendered parental language rather than “mother” and “father” will be a cost-neutral change more accurately reflecting the varied composition of today’s families.

We respectfully recommend that the Social Security Administration modernize the gendered parental fields on this and all other forms to employ language inclusive of LGBTQ-headed families, so as to better reflect and serve all American families. We commend the Social Security Administration for its work, and look forward to the final draft of this form.

We are happy to provide your office with any additional information or clarification that you might need. Please contact Michael Porcello ([mporcello@familyequality.org](mailto:mporcello@familyequality.org), 202-607-2140) in our Washington, D.C. office with any questions.

Sincerely,



Gabriel Blau  
Executive Director  
Family Equality Council

