

November 28, 2022

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ACF/OPRE Certifying Officer
Office of Planning, Research, and Evaluation
Administration for Children and Families
U.S. Department of Health and Human Services
4th Floor, Mary E. Switzer Building
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Re: Proposed Information Collection Activity; Child Welfare Study to Enhance Equity with Data (New Collection) (September 28, 2022) [87 FR 58798]

Dear ACF/OPRE Certifying Officer Jones,

Thank you for the opportunity to comment on the proposed information collection at 87 FR 58798 on the *Child Welfare Study to Enhance Equity with Data (CW-SEED)*. Family Equality is a nonprofit organization committed to advancing lived and legal equality for lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) children, youth, and families in the child welfare system.

The primary goal of the child welfare system is to ensure the best interests of children are met through promoting their well-being, safety, and permanency. Data collection is an essential step to achieving that goal as it provides an understanding to the needs of all children, youth, and families in care. To fully understand how and to what extent data are used to explore equity in child welfare services, the CW-SEED project must include an assessment of sexual orientation and gender identity (SOGI) data collection, including evaluating promising practices for collection and potential challenges in implementation. Collection of SOGI data can provide a better understanding of the experiences of LGBTQI+ youth and families in the foster care system and allow for the development of service planning and case review processes to improve outcomes in care. We write to address the first question in the proposed information collection: ***Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.*** For the reasons set out more fully below, we agree that the proposed information collection is necessary for the proper performance of ACF and argue that in order to fully understand how data is used to develop more equitable child welfare services, the CW-SEED project must examine SOGI data collection practices to truly improve outcomes for LGBTQI+ children, youth, and families.

A. Advancing equity in service delivery and child and family outcomes requires reliable information about the population and experiences of children, youth, and families in care.

Our current understanding of the experiences and outcomes of LGBTQI+ children, families of origin, foster and adoptive parents, and kin in the child welfare system is best understood through data from limited, point in time studies. Available data shows that LGBTQI+ youth are disproportionately

represented in the foster care system making up one in three youth in care, and that LGBTQI+ prospective foster and adoptive families, and LGBTQI+ families of origin face inequitable barriers in child welfare services.¹ While these localized studies provide valuable insight into the experiences of LGBTQI+ individuals, they are not effective substitutes for nationally representative, annual SOGI data collection in child welfare. The CW-SEED project represents an opportunity to assess how and to what extent agencies might be implementing SOGI data collection, how data is being used to reduce barriers to care, and to create more equitable child welfare services across the country. As set forth below, there is an overwhelming consensus that LGBTQI+ children, youth, prospective foster and adoptive parents, and families of origin need to be better served by the child welfare system and information about a given population is necessary to effectively serve it.

The Need for Data Collection on LGBTQI+ Youth in Child Welfare

Available data shows that LGBTQI+ youth in foster care experience mistreatment and poor outcomes at much higher rates than their non-LGBTQI+ counterparts - including higher rates of mistreatment by caregivers, longer stays in residential care than in family-like settings, greater rates of multiple placements, criminal justice involvement, and exiting foster care into homelessness.² Additionally, LGBTQI+ youth have reported being segregated, stigmatized, isolated, and institutionalized based on their gender expression and sexuality.³ LGBTQI+ youth in care also suffer from worse health outcomes, including disproportionately high levels of suicide attempts. A report by the Trevor Project found that LGBTQ foster youth were three times more likely to have attempted suicide in the past year than LGBTQ youth who were never in foster care.⁴ Improving care for LGBTQI+ youth in the foster care system could not only improve health outcomes but also could save lives. The CW-SEED project can analyze SOGI data collection practices and how agencies use, or fail to use, the data to create targeted interventions and develop programs and practices to address specific problems and avoid or mitigate harms for LGBTQI+ youth across the country.

The Need for Data Collection on LGBTQI+ Prospective and Current Foster and Adoptive Parents

Research has found that same-sex couples are seven times more likely to foster and adopt than their different-sex counterparts, meaning members of the LGBTQI+ community represent a large pool of

¹ Laura Baams, Bianca D.M. Wilson, & Stephen T. Russell, LGBTQ Youth in Unstable Housing and Foster Care, 143(3): e20174211 Pediatrics (2019), available at: <https://pediatrics.aappublications.org/content/pediatrics/early/2019/02/07/peds.2017-4211.full.pdf>; Megan Martin, Leann Down, & Rosalynd Erney, Out of the Shadows: Supporting LGBTQ youth in Child Welfare Through Cross-System Collaboration, Center for the Study of Social Policy (2016), available at: <https://cssp.org/resource/out-of-the-shadows/>; Theo G. M. Sandfort, Experiences and Well-Being of Sexual and Gender Diverse Youth in Foster Care in New York City : Disproportionality and Disparities, Administration for Children's Services (2020), available at: <https://www1.nyc.gov/assets/acs/pdf/about/2020/WellBeingStudyLGBTQ.pdf>; Marlene Matarese, Angela Weeks, Elizabeth Greeno, & Paige Hammond, The Cuyahoga youth Count: A Report on LGBTQ+ Youth Experience in Foster Care, The Institute for Innovation and Implementation (2021), available at: <https://theinstitute.umaryland.edu/institute-news/study-finds-overrepresentation-of-lgbtq-youth-in-midwestfoster-care-system.php>.

² Bianca D.M. Wilson, Khush Cooper, Angeliki Kastanis, & Sheila Nezhad, *Sexual and Gender Minority Youth in Foster care: Assessing Disproportionality and Disparities in Los Angeles*, The Williams Institute (2014), available at: <https://williamsinstitute.law.ucla.edu/publications/sgm-youth-la-foster-care/>

³ Brandon Andrew Robinson, Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality, 96 CHILD WELFARE 2, at 34 (2018).

⁴ The Trevor Project, "The Trevor Project Research Brief: LGBTQ Youth with a History of Foster Care." (May 2021) available at https://www.thetrevorproject.org/wpcontent/uploads/2021/05/LGBTQ-Youth-with-a-History-of-Foster-Care_-May-2021.pdf.

prospective foster and adoptive parents.⁵ Collecting data on prospective and current LGBTQI+ foster and adoptive parents can assist agencies in determining a baseline number of LGBTQI+ prospective parents and allow for development of more robust and targeted recruitment to tap into these resource families. Given that available data has found LGBTQI+ individuals are more likely to foster and adopt harder-to-place children (including older children, those with disabilities, and large sibling groups), these data collection efforts could result in a larger, more diverse pool of parents to meet the needs of children in foster care and provide permanency to some of the most vulnerable youth in care.⁶ The CW-SEED project should analyze the potential to use SOGI data to identify LGBTQI+ prospective foster and adoptive parents which could maximize the number of available and affirming placements for youth in care.

The Need for Data Collection on Families of Origin

Research has found that discrimination places LGBTQI+ families of origin, in particular, Black and American Indian/Alaska Native (“AIAN”) families, and other families of color at greater risk of involvement with the child welfare system. To be sure, a 2016 study showed that lesbian and bisexual mothers are four times more likely to have lost their children to the state in child welfare proceedings than their non-LGB counterparts; for Black, AIAN, and other families of color, this compounds the disproportionality they already face in removals.⁷ The CW-SEED project should analyze how and to what extent agencies are collecting and using SOGI data on families of origin to reduce discrimination and inequity in removals from LGTBQI+ individuals with an intersectional focus to understand how LGBTQI+ identity intersects with race, ability status, and/or income level.

B. SOGI data collection is essential to the proper performance of ACF.

On March 2, 2022, ACF released an information memorandum on supporting LGBTQI+ youth in care which stated that “affirming LGBTQI+ children and youth in foster care is an overarching equity issue for each title IV-B and IV-E agency and for the Children’s Bureau...”⁸ The information memorandum tasks child welfare agencies with considering and addressing the needs of children and youth in their care. Further, on June 15, 2022, President Biden issued an Executive Order on Advancing LGBTQI+ Equality

⁵ Danielle Taylor, *Same-Sex Couples are More Likely to Adopt or Foster Children*, United States Census Bureau (2020), available at: <https://www.census.gov/library/stories/2020/09/fifteen-percent-of-same-sex-couples-have-children-in-their-household.html>. (last visited Dec 10, 2020).; Shoshana K. Goldberg & Kerith J. Conron, *How Many Same-Sex Couples in the U.S. Are Raising Children?*, The Williams Institute (July 2018), available at: <https://williamsinstitute.law.ucla.edu/publications/same-sex-parents-us/>; *Expanding Resources For Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care*, Evan B. Donaldson Adoption Institute at 12 (Sept. 2008) (“Donaldson Report”), available at: <https://docplayer.net/63117222Policy-practice-perspective.html>.

⁶ *Expanding Resources For Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care*, Evan B. Donaldson Adoption Institute at 12 (Sept. 2008) (“Donaldson Report”), available at: <https://docplayer.net/63117222-Policy-practice-perspective.html>

⁷ See, *Disproportionality and Race Equity in Child Welfare*, NATIONAL CONFERENCE OF STATE LEGISLATURES (2021), available at: <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx>; *Disproportionality in Child Welfare Fact Sheet*, NATIONAL INDIAN CHILD WELFARE ASSOCIATION, available at: <https://www.nicwa.org/wp-content/uploads/2019/10/2019-AIAN-Disproportionality-in-Child-Welfare-FINAL.pdf>; Alicia Summers, *Disproportionality Rates for Children of Color in Foster Care*, National Council of Juvenile and Family Court Judges (2019), available at: <https://www.falmouthinstitute.com/files/LW060/NCJFCJ%202014%20Disproportionality%20TAB%20Final.pdf>; Rowena Fong, Georgina Petronella, *Underrepresented Populations in the Child Welfare System: Asian American and Native Hawaiian Islander Populations*, Child Maltreatment (Contemporary Issues in Research and Policy), vol 11 (2021), available at: https://link.springer.com/chapter/10.1007/978-3-030-54314-3_73-030-54314-3_7

⁸ U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Guidance for Title IV-B and IV-E Agencies When Serving LGBTQI+ Children and Youth* (ACYF-CB-IM-22-01) (2022), available at: <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2201.pdf>

(E.O.) charging the Department of Health and Human Services (HHS) with “asses[ing] and improv[ing] the responsible collection and use of data on sexual orientation and gender identity in the child welfare system to measure and address inequities faced by LGBTQI+ children, parents, and caregivers...”⁹ The CW-SEED project provides an opportunity to uphold the commitments in the information memorandum and in the E.O. by assessing SOGI data collection methods and using them to develop more equitable data collection methods across child welfare agencies and to identify and address the mistreatment and poor outcomes that are disproportionately experienced by LGBTQI+ youth and families in child welfare.

C. Sexual Orientation and Gender Identity Data is Critical to Reducing Harm and Improving Outcomes.

Comprehensive SOGI data collection has very real applications that can be used to develop evidence-based, equitable solutions to improve well-being and reduce trauma and harm for LGBTQI+ children, youth, and families in child welfare. More specifically, SOGI data can help agencies: (1) better understand a child’s identity, characteristics, and experiences, and can allow agency staff to identify gaps in case plans and provide needed, targeted services to improve outcomes; (2) identify potentially affirming families and expand the network of available homes; and (3) provide targeted interventions ahead of removals and allow children to safely remain at home, and reduce the rate of potential bias in removals by child protective investigators. Data can also be used to provide agencies with a better understanding on the experiences of the LGBTQI+ youth they are serving and may highlight a need for LGBTQI+ specific training and service provisions for child welfare agency staff and prospective foster and adoptive families. The CW-SEED project is a unique opportunity to evaluate agencies that are effectively collecting and using SOGI data and in what areas agencies can use additional improvement.

One of the data sets most vital to understanding and improving outcomes for LGBTQI+ youth and families in child welfare is the Adoption and Foster Care Analysis and Reporting System (AFCARS). AFCARS data has allowed researchers to see widespread trends, as well as to formulate more specific research study options and targeted interventions. AFCARS currently does not have a SOGI data requirement but, given that ACF has publicly committed to promulgating new rulemaking for AFCARS, the CW-SEED project is an opportunity to analyze successful SOGI data collection methods, successful efforts to train agencies on implementation, and how the information is used to improve care.¹⁰ This

⁹ Exec. Order No. 14075, 87 FR 37189 (2022), available at: <https://www.govinfo.gov/app/details/FR-2022-06-21/2022-13391/summary>

¹⁰ The 2016 AFCARS Rule took an important step towards one day having nationwide SOGI data by requiring state child welfare agencies to collect sexual orientation information for youth 14 and over, and for foster and adoptive parents and guardians. Adoption and Foster Care Analysis and Reporting System, 81 Fed. Reg. 90,524 (Dec. 14, 2016), available at: <https://www.federalregister.gov/d/2016-29366>. Also, agencies were required to capture whether conflict at the time of removal was related to the child’s sexual orientation, gender identity, or gender expression. Unfortunately, in 2020, the Department of Health and Human Services (HHS) and the Administration for Children and Families (ACF), published a new rule stripping the requirement to report sexual orientation information. Adoption and Foster Care Analysis and Reporting System, 85 Fed. Reg. 28,410 (May 12, 2020), available at: <https://www.federalregister.gov/d/2020-09817>. The 2020 Rule is subject to a legal challenge. *California Tribal Families Coalition v. Azar*, No. 3:20-cv-06018-MMC (N. D. Cal. 2021), available at: <https://www.lambdalegal.org/in-court/cases/california-tribal-families-coalition-v-azar>. In the context of that challenge HHS and ACF stated they intend to promulgate a new rule to reinstate sexual orientation data elements, but they have yet to do so. A new rule should also include a requirement for gender identity data elements for youth, parents (families of origin), and foster and adoptive parents and guardians.

information could be vital to the federal government's ability to roll out national SOGI data collection in child welfare.¹¹

Conclusion

The collection and use of SOGI data is an essential component to addressing disparities and improving outcomes for LGBTQI+ youth and families in foster care. What isn't counted doesn't count and the CW-SEED information collection activity provides an opportunity to assess SOGI data collection and efforts to prioritize the unique needs of LGBTQI+ youth and families. The information from this study can be used to create equity in service delivery and reduce barriers for LGBTQI+ individuals across the continuum of care - contributing to ACF's ability to meet performance requirements tasked to them by President Biden and through their own public statements. Prioritizing SOGI data collection in the CW-SEED information collection activity would further the commitments made by the White House and by ACF to ensure safety, permanency, and well-being for all youth in care.

Respectfully,



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¹¹ Other helpful guidelines for SOGI data collection can be found by: Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), available at: <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>.