

August 15, 2023

Administration on Aging
Administration for Community Living
Department of Health and Human Services
Attention: ACL-AA17-P
330 C Street SW
Washington, DC 20201
Submitted via <http://www.regulations.gov>.

To Whom It May Concern,

We are grateful for the opportunity to provide comments to the Administration for Community Living (the “Administration”) regarding proposed changes to the regulations issued to implement certain provisions of the Older Americans Act of 1965, as amended (the “OAA”). See 88 Fed. Reg. 39,568 (June 16, 2023), RIN Number 0985-AA17.

The undersigned are scholars affiliated with the Williams Institute at the UCLA School of Law. The Williams Institute is dedicated to conducting rigorous and independent research on sexual orientation and gender identity (“SOGI”), including on disparities and discrimination experienced by lesbian, gay, bisexual, and transgender (“LGBT”) people. The Williams Institute collects and analyzes original data, as well as analyzes governmental and private data, and has long worked with federal agencies to improve data collection on the U.S. population. These efforts include producing widely cited best practices for the collection of SOGI information on population-based surveys.¹ The Williams Institute has published research on the experiences of older LGBT people specifically,² and scholars with the Williams Institute have previously provided comment to the Administration on the OAA.³

We write in response to the newly proposed regulations promulgated by the Administration. In summary, we commend the Administration’s definition of “greatest social need” to include lesbian, gay, bisexual, queer, intersex, and other sexual and gender minority

¹ See, e.g., GENDER IDENTITY IN U.S. SURVEILLANCE (GENIUSS) GROUP, WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS TO IDENTIFY TRANSGENDER AND OTHER GENDER MINORITY RESPONDENTS ON POPULATION-BASED SURVEYS (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Survey-Measures-Trans-GenIUSS-Sep-2014.pdf>; SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS (2009), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Best-Practices-SO-Surveys-Nov-2009.pdf>.

² See, e.g., LAUREN J.A. BOUTON, AMANDA M. BRUSH & ILAN H. MEYER, THE WILLIAMS INST., LGBT ADULTS AGED 50 AND OLDER IN THE US DURING THE COVID-19 PANDEMIC 1, 11 (2023), <https://williamsinstitute.law.ucla.edu/publications/older-lgbt-adults-us/>; ILAN H. MEYER & SOON KYU CHOI, WILLIAMS INST., VULNERABILITIES TO COVID-19 AMONG OLDER LGBT ADULTS IN CALIFORNIA 1–2 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Older-LGB-COVID-CA-Apr-2020.pdf>; SOON KYU CHOI & ILAN H. MEYER, WILLIAMS INST., LGBT AGING: A REVIEW OF RESEARCH FINDINGS, NEEDS, AND POLICY IMPLICATIONS 2 (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Aging-Aug-2016.pdf>.

³ LUIS VASQUEZ, WILLIAMS INST., OLDER AMERICANS ACT: PUBLIC COMMENT (June 2022), <https://williamsinstitute.law.ucla.edu/publications/older-americans-act-comment/>.

groups (“LGBTQI+”).⁴ However, we recommend the Administration consider taking additional steps to clearly require that states provide services for, and collect and report data on, each subpopulation of greatest social need so as meaningfully engage with each group. We also support the Administration’s efforts to increase data collection on these populations through the regulations. Lastly, we recommend that the Administration reconsider the removal of regulations stating relevant nondiscrimination laws.

I. Demographics of LGBTQI+ Populations

LGBT-identified people comprise approximately 4.5% of the U.S. adult population.⁵ We estimate that approximately 11 million adults in the U.S. identify as LGBT,⁶ including approximately 1.6 million adults who are transgender.⁷ As part of the NHS-funded Generations study, one representative survey of sexual and gender minority people found that approximately 6% of non-transgender people with a minority sexual identity identify as queer.⁸ The best estimate to date is that intersex people comprise approximately 1.7% of the population.⁹ However, a more precise estimate of the number intersex individuals in the United States remains impossible, due to a lack of population-wide measures on federal surveys.

Similar to the country as a whole, the population of LGBT adults in the U.S. is demographically diverse. For example, drawing from Gallup Daily Tracking data collected between 2015 and 2017, we’ve previously estimated that 58% of LGBT adults are female.¹⁰ Similarly, we estimate that 21% of LGBT adults identify as Latino/a or Hispanic, 12% as Black, and 5% as more than one race.¹¹

Estimates of the LGBT older adult population in the U.S. indicate that they are a sizeable minority. We estimate that approximately 7% of LGBT adults in the U.S. are age 65 or older,¹²

⁴ The Administration’s proposed regulations include references to lesbian, gay, bisexual, transgender, queer, intersex, and other members of sexual and gender minority groups under the umbrella term LGBTQI+. To maintain accuracy when reporting research findings, we will defer to using a less broad acronym when appropriate. When discussing the impact of the proposed regulation we will defer to the Administration’s use of LGBTQI+.

⁵ KERITH J. CONRON & SHOSHANA K. GOLDBERG, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES 1 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Jul-2020.pdf>.

⁶ *Id.*

⁷ JODY L. HERMAN, ANDREW R. FLORES & KATHRYN K O’NEILL, THE WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 1 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>.

⁸ Research into queer identity has demonstrated that the term can be used in multiple different ways by people with minority sexual or gender identities. Some evidence suggests that older people are more likely to associate the word “queer” with its historical connotations as a slur. An additional 7% of respondents used a sexual minority identity that is not lesbian, gay, bisexual, or queer. Shoshana K. Goldberg, Esther D. Rothblum, Stephen T. Russell & Ilan H. Meyer, THE WILLIAMS INST., *Exploring the Q in LGBTQ: Demographic Characteristic and Sexuality of Queer People in a U.S. Representative Sample of Sexual Minorities*, 7 PSYCHOLOGY OF SEXUAL ORIENTATION & GENDER DIVERSITY 101-112 (2019), <https://williamsinstitute.law.ucla.edu/publications/exploring-q-in-lgbtq/>.

⁹ Melanie Blackless, Anthony Charuvastra, Amanda Derryk, Anne Fausto-Sterling, Karl Lauzanne & Ellen Lee, *How Sexually Dimorphic Are We? Review and Synthesis*, 12 AM. J. HUM. BIOLOGY 151-66 (2000).

¹⁰ *LGBT Demographic Data Interactive*, WILLIAMS INST. (January 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#demographic>.

¹¹ *Id.*

¹² *Id.*

which means there are about 794,000 LGBT adults over 65,¹³ including approximately 172,000 transgender older adults.¹⁴ Likewise, 7% of LGBT people in a same-sex couple are over the age of 65, or about 45,000 people.¹⁵ We estimate that the population of LGBT people who are aged 65 or older in each state range between 5% (Utah) to 19% (Hawaii) of the state's LGBT population.¹⁶ Researchers estimate that the population of LGBT people over 50 could rise to over 5 million adults by 2030.¹⁷

II. Relevant Laws and Research Support the Administration's Proposal to Define "Greatest Social Need" As Including LGBTQI+ People

The OAA has long maintained provisions requiring that funding be targeted, among other groups, to populations with "greatest social need."¹⁸ Under the OAA, "greatest social need" refers to need caused by "noneconomic factors," including "cultural, social, or geographic isolation . . . that (i) restricts the ability of an individual to perform normal daily tasks; or (ii) threatens the capacity of that individual to live independently."¹⁹ The Administration's proposed regulations would define "noneconomic factors" to include "sexual orientation, gender identity, or sex characteristics."²⁰

The regulations specify that the states seeking a grant to their department of aging under the OAA must include in their state plan a description of how the state defines "greatest social need," how these populations are determined, and how it intends to direct services to the groups designated as such.²¹ However, the regulations also direct the states to categorically designate certain groups as being of "greatest social need."²² Under the proposed regulations, state plans must define "lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons," as a population of "greatest social need."²³ Area agencies are subject to the same obligations under regulations under proposed Subpart C.²⁴

The Administration "welcome[s] comment as to whether this approach sufficiently identifies populations that all states must include as part of their definition of... greatest social need and offers flexibility to states to include additional populations."²⁵ To the extent that the

¹³ 7% of LGBT people are age 65 or older. *Id.* To estimate the number of LGBT people over 65, we applied this percentage to the Williams Institute's overall estimate that there are approximately 11,343,000 LGBT people in the United States. CONRON & GOLDBERG, *supra* note 5.

¹⁴ HERMAN, FLORES & O'NEILL, *supra* note 7 at 9.

¹⁵ *Same-sex Couple Data & Demographics Interactive*, WILLIAMS INST. (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=SS&compare=total#comparison>.

¹⁶ WILLIAMS INST., *supra* note 10.

¹⁷ SOON KYU CHOI & ILAN H. MEYER, WILLIAMS INST., LGBT AGING: A REVIEW OF RESEARCH FINDINGS, NEEDS, AND POLICY IMPLICATIONS 2 (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Aging-Aug-2016.pdf>.

¹⁸ *See, e.g.*, 42 U.S.C. §§ 3027(a)(4), 3027(a)(16) (2023).

¹⁹ 42 U.S.C. § 3002(24).

²⁰ 88 Fed. Reg. 39,610.

²¹ 898 Fed. Reg. 39,618.

²² *Id.*

²³ *Id.*

²⁴ 88 Fed. Reg. 39,622-4.

²⁵ 88 Fed. Reg. 39,581.

proposed regulations identify the populations who are the primary focus of the Williams Institute’s research, namely LGBTQI+ people, we believe that it does. In particular, we believe the evidence supports the Administration’s designation of LGBTQI+ people as a population of greatest social need. The Administration has previously expressed in guidance its view that LGBT older adults are such a population.²⁶ The body of research described below on disparities and discrimination supports the conclusion that LGBTQI+ (and in particular LGBT) older adults are indeed a population living with greatest social need in all areas of the U.S.

a. The Administration’s Proposed Regulations Concerning LGBTQI+ People Are Supported by Relevant Laws and Policies

The inclusion of LGBTQI+ people as populations of greatest social need aligns with the 2020 Reauthorization of the OAA and recent executive actions. The 2020 Reauthorization of the OAA mandates that state and area agencies conduct data collection on, and outreach to, LGBT people.²⁷ The OAA maintains a requirement that plans report on “data collected to determine the services that are needed by older individuals whose needs were the focus of all centers funded under subchapter IV in fiscal year 2019.”²⁸ The National Resource Center on LGBT Aging, as a National Minority Aging Organizations Technical Assistance Center, was funded by said subchapter in fiscal year 2019,²⁹ as later guidance from the Administration confirmed, affirming that the inclusion of LGBT populations in state and area plans is mandatory as part of the a state plan’s equity discussion.³⁰ However, the text of the OAA as reauthorized and existing regulations do not make any direct reference to LGBT older adults with respect to this requirement. As a result, plans may be unaware that LGBT older adults are indeed such a population from whom data collection is already required. Thus, the proposed regulations are necessary to provide further clarity on the requirements of the OAA as reauthorized.

The Administration is further obligated to consider the unique issues facing LGBTQI+ older Americans under recent executive actions. President Biden issued Executive Order 14,075 on June 15, 2022, directing the Secretary of Health and Human Services (“HHS”) to “address discrimination, social isolation, and health disparities faced by LGBTQI+ older adults.”³¹ President Biden’s Executive Order further stated that the Administration should consider whether to issue a rulemaking “to clarify that LGBTQI+ individuals are included in the definition of ‘greatest social need.’”³² Additionally, under the terms of Executive Order 13,988, the Secretary of the Department of Health and Human Services must review existing regulations, guidance,

²⁶ Letter from Alison Barkoff, Asst. Sec’y for Aging, *State Unit on Aging Directors Letter #01-2021* at 8 (Aug. 5, 2021), https://acl.gov/sites/default/files/about-acl/2021-08/State%20Plan%20Guidance_Plan%20Due%20Oct%202022%20-%20ACL%20SUA%20Directors%20Letter%20%2301-2021.pdf.

²⁷ 42 U.S.C. § 3027(a)(30)(A) (2023). *See also* Letter from Alison Barkoff, *supra* note 26 (explaining that ACL funded via Title IV programs serving LGBT People).

²⁸ 42 U.S.C. §§ 3026(a)(18)(A), 3027(a)(30)(A).

²⁹ CONG. RES. SERV., *OLDER AMERICANS ACT: OVERVIEW AND FUNDING* 7 (2021), <https://crsreports.congress.gov/product/pdf/R/R43414>. *See also* SAGE, *MAKING YOUR STATE PLAN ON AGING LGBTQ+ AND HIV+ INCLUSIVE: NEW OLDER AMERICANS ACT & ACL GUIDELINES* 1 (2022), <https://www.sageusa.org/wp-content/uploads/2022/04/new-older-americans-act-acl-guidelines-2-pager-5.pdf>.

³⁰ Letter from Alison Barkoff, *supra* note 26.

³¹ 87 Fed. Reg. 37,193.

³² *Id.*

and programs to consider their revision if it would ensure compliance with statutes and other authorities prohibiting SOGI discrimination.³³ These executive orders further support the Administration's efforts to include these groups in the definition of "greatest social need" for each state.

Judicial findings also support the inclusion of LGBT people as a population of greatest social need. A number of courts have recognized that LGBT people have faced a long history of discrimination and exclusion. For example, in *Obergefell v. Hodges*, the Supreme Court observed that gay men and lesbians have been "prohibited from most government employment, barred from military service, excluded under immigration laws, targeted by police, and burdened in their rights to associate."³⁴ The Seventh Circuit has similarly explained that "homosexuals are among the most stigmatized, misunderstood, and discriminated-against minorities in the history of the world[.]"³⁵ And with respect to transgender people, the District of Columbia Court of Appeals has observed that "[t]he hostility and discrimination that transgender individuals face in our society today is well-documented."³⁶ The harms identified by courts are further examined by the research presented below.

b. Research Documents that Older LGBT People Experience Widespread Discrimination and Health and Economic Disparities

Williams Institute research has shown that LGBT older adults face unique challenges within the context of aging compared to their cisgender or heterosexual peers, including experiences of discrimination based on SOGI; worse mental and physical health outcomes; and barriers to receiving formal and informal health care and social support.³⁷

While social acceptance³⁸ and the legal rights³⁹ of LGBT people in the United States have generally improved over the past few decades, ample research confirms that anti-LGBT stigma and discrimination remain widespread. Meanwhile, certain economic and health disparities only continue to widen, in particular when factoring in the compounding effects of discrimination

³³ Exec. Order 13988, "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation," 86 Fed. Reg. 7,023 (Jan. 20, 2021).

³⁴ 135 S. Ct. 2584, 2596 (2015).

³⁵ *Baskin v. Bogan*, 766 F.3d 648, 663 (7th Cir. 2014); *see also Windsor v. United States*, 699 F.3d 169, 182 (2d Cir. 2012) ("It is easy to conclude that homosexuals have suffered a history of discrimination."), *aff'd*, 570 U.S. 744 (2013).

³⁶ *Brooksmith v. United States*, 99 A.3d 690, 698 n.8 (D.C. 2014).

³⁷ *Id.* at 0–1.

³⁸ Public support for the rights of LGBT people has increased in the United States over the period from 1977 to 2014. ANDREW R. FLORES, WILLIAMS INST. *National Trends in Public Opinion on LGBT Rights in the United States*, 5 (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Opinion-LGBT-US-Nov-2014.pdf>. Attitudes towards transgender people have since continued to improve over time. *See* Daniel C. Lewis, Andrew R. Flores, Donald P. Haider-Markel, Patrick R. Miller & Jami K. Taylor, *Transitioning Opinion?: Assessing the Dynamics of Public Attitudes Toward Transgender Rights*, 86 PUB. OPINION QUART. 343, 362 (2022). As have attitudes towards LGBT rights generally. *See* Andrew R. Flores, *Attitudes toward LGBT Rights: Political Tolerance and Egalitarian Values in the United States*, <https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1237>.

³⁹ *See, e.g.,* Emma Green, *America Moved On From Its Gay Rights Moment – And Left a Legal Mess Behind*, THE ATLANTIC (Aug. 17, 2019), <https://www.theatlantic.com/politics/archive/2019/08/lgbtq-rights-america-arent-resolved/596287/>.

faced along intersectional dimensions of race, ethnicity, and sex, alongside SOGI. Below, we offer a brief review of existing research on this population, with an emphasis on noting studies specifically on LGBT older adults where possible.

i. Discrimination Experienced by LGBT Older Adults

Research has documented discrimination and harassment against LGBT people of all ages across all aspects of public life,⁴⁰ including in employment,⁴¹ education,⁴² housing,⁴³ financial services,⁴⁴ government programs,⁴⁵ the judicial system,⁴⁶ and public accommodations.⁴⁷ For example, Williams Institute reports on data collected from the NIH-funded Generations (HD078526, concerning three age cohorts of LGB adults 18-60) and TransPop (HD090468, survey of transgender adults of all ages) showed that many LGBTQ people report experiences of

⁴⁰ See, e.g., Letter from Williams Inst. Scholars to Members of the S. Comm. on the Judiciary (Mar. 22, 2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Testimony-Equality-Act-State-Governments-Mar-2021.pdf>.

⁴¹ See, e.g., Letter from M.V. Lee Badgett, Professor of Econ., Univ. of Mass. Amherst, to Members of the S. Comm. on the Judiciary (Mar. 17, 2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Testimony-Equality-Act-LGBT-Employment-Mar-2021.pdf> (discussing employment discrimination experienced by LGB and transgender people).

⁴² See KERITH J. CONRON ET AL., WILLIAMS INST., EDUCATIONAL EXPERIENCES OF TRANSGENDER PEOPLE (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Higher-Ed-Apr-2022.pdf>; KATHRYN O'NEILL ET AL., WILLIAMS INST., EXPERIENCES OF LGBTQ PEOPLE IN FOUR-YEAR COLLEGES AND GRADUATE PROGRAMS (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-College-Grad-School-May-2022.pdf>; KERITH J. CONRON ET AL., WILLIAMS INST., COMMUNITY COLLEGE AND THE EXPERIENCES OF LGBTQ PEOPLE (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Community-College-May-2022.pdf>

⁴³ See, e.g., DIANE K. LEVY ET AL., URBAN INST., A PAIRED-TESTED PILOT STUDY OF HOUSING DISCRIMINATION AGAINST SAME-SEX COUPLES AND TRANSGENDER INDIVIDUALS xiii (2017), https://www.urban.org/sites/default/files/publication/91486/2017.06.27_hds_lgt_final_report_report_finalized_0.pdf; ADAM P. ROMERO ET AL., WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS 4 (2020), <https://williamsinstitute.law.ucla.edu/publications/lgbt-housing-instability/>; CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST., EVIDENCE OF HOUSING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY 1 (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Discrimination-US-Feb-2016.pdf>; BIANCA D.M. WILSON ET AL., WILLIAMS INST., LGBT RENTERS AND EVICTION RISK 2 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Eviction-Risk-Aug-2021.pdf>.

⁴⁴ See Hua Sun & Lei Gao, *Lending Practices to Same-Sex Borrowers*, 116 PORC. NAT'L ACAD. SCI. U.S.A. 9293, 9293 (2019), <https://www.pnas.org/doi/pdf/10.1073/pnas.1903592116>.

⁴⁵ See, e.g., KERITH J. CONRON & BIANCA D.M. WILSON, WILLIAMS INST., LGBT YOUTH OF COLOR IMPACTED BY THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEMS 4-5 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-YOC-Social-Services-Jul-2019>.

⁴⁶ See, e.g., Letter from Todd Brower, Jud. Educ. Dir., Williams Inst., to Members of the S. Comm. on the Judiciary (Mar. 17, 2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Testimony-Equality-Act-Judicial-System-Mar-2021.pdf>.

⁴⁷ See CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST., EVIDENCE OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY 1 (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Public-Accomm-Discrimination-Feb-2016.pdf>; LINDSAY MAHOWALD ET AL., CTR. FOR AM. PROGRESS, THE STATE OF THE LGBTQ COMMUNITY IN 2020 4 (2020), <https://www.americanprogress.org/wp-content/uploads/2020/10/LGBTQpoll-report.pdf>.

everyday discrimination, and are more likely to report adverse employment and housing experiences.⁴⁸

Research on LGBTQ older adults in particular has demonstrated higher rates of victimization and discrimination in employment, housing, and healthcare.⁴⁹ A 2016 Williams Institute literature review on LGBT aging gathered a number of studies on the experiences of older LGBT people and concluded that LGBT older adults experienced high rates of lifetime discrimination and verbal abuse.⁵⁰ For example, a Williams Institute analysis of Generations data found that 61% of lesbian, bisexual, or queer (LBQ) women aged 50 or older reported experiencing an everyday discriminatory event in the past year.⁵¹ Additionally, LGBT older adults may face discrimination in networks of care and functional support. Experiences of discrimination and victimization, for both younger and older LGBTQ people, are linked to health disparities between LGBTQ and non-LGBTQ populations, as articulated in the minority stress research literature.⁵²

Victimization

The LGBT Aging literature review by the Williams Institute included findings from a national community-based sample of LGB older adults in which 63% of respondents reported experiencing verbal abuse at some point in their life due to their sexual orientation, with 30% reporting a threat of violence.⁵³ In a separate study of LGB adults aged 60-91, these “experiences of victimization” were identified as an important risk factor for poor mental health.⁵⁴ Another

⁴⁸ ILAN H. MEYER, BIANCA D.M. WILSON & KATHRYN O’NEILL, WILLIAMS INST., LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES 3 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf>. “Everyday discrimination” is defined as experiences representing “brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative ... slights and insults.” Sometimes referred to as “microaggressions” See *Id.* at 20, quoting Derald Wing Sue, et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 J. OF AM. PSYCHOLOGY 271-86 (2007).

⁴⁹ MOVEMENT ADVANCEMENT PROJ. & SAGE, UNDERSTANDING ISSUES FACING LGBT OLDER ADULTS (2017), <https://www.lgbtmap.org/file/understanding-issues-facing-lgbt-older-adults.pdf>.

⁵⁰ CHOI & MEYER, *supra* note 17.

⁵¹ BIANCA D.M. WILSON, ALLEGRA R. GORDON, CHRISTY MALLORY, SOON KYU CHOI & M.V. LEE BADGETT, THE WILLIAMS INST., HEALTH AND SOCIOECONOMIC WELL-BEING OF LBQ WOMEN IN THE US 24 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LBQ-Women-Mar-2021.pdf>.

⁵² See, e.g., Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. HEALTH & SOC. BEHAV. 38, 38 (1995), <https://www.jstor.org/stable/2137286>; cf. Ilan H. Meyer, Sharon Schwartz & David M. Frost, *Social Patterning of Stress and Coping: Does Disadvantaged Social Statuses Confer More Stress and Fewer Coping Resources?* 67 SOC. SCI. & MED. 368, 371 (2008), <https://pubmed.ncbi.nlm.nih.gov/18433961/> (examining “social stress theory”).

⁵³ CHOI & MEYER, *supra* note 17 at 13, citing Anthony D’Augelli & Arnold H. Grossman, *Disclosure of Sexual Orientation, Victimization, and Mental health Among Lesbian, Gay, and Bisexual Older Adults*, 16 J. OF INTERPERSONAL VIOLENCE 1008, 1008-1027 (2001).

⁵⁴ CHOI & MEYER, *supra* note 17 at 13 citing Arnold H. Grossman, Anthony R. D’augelli, Timothy S. O’Connell, *Being Lesbian, Gay, Bisexual, and 60 or Older in North America*, 13 J. OF GAY & LESBIAN SOCIAL SERVS. 15, 15-38 (2002).

study included in the review found that transgender older adults reported an average of 11 lifetime incidents of victimization and discrimination, compared to 6 in cisgender LGB people.⁵⁵

Employment Discrimination

Williams Institute research indicates that LGBTQ employees continue to face challenges in the workplace, despite nationwide protections from employment discrimination. Older LGBT individuals experienced a lack of these protections for much of their working life, creating “serious ramifications in older age.”⁵⁶ A 2021 nationally representative survey conducted by the Williams Institute found that 46% of LGBT workers experienced employment discrimination or harassment because of their sexual orientation or gender identity at some point in their lives.⁵⁷ The study also found that about one-third (31.1%) of LGBT respondents reported experiencing discrimination or harassment based on their sexual orientation or gender identity in the workplace within the past five years.⁵⁸ About one in ten (9%) LGBT employees reported that they had experienced employment discrimination (fired or not hired) because of their sexual orientation or gender identity within the prior year.⁵⁹ LGBT employees of color and transgender employees reported higher rates of several forms of discrimination and harassment than white LGBT and cisgender employees.⁶⁰

Data from the Generations study showed that LGB people were more likely to report adverse employment experiences over their lifetime: 60% of LGB people reported ever having been fired from or denied a job compared to 40% of non-LGBT people.⁶¹ While the Generations findings are limited to adults under the age of 60, the findings suggest that older LGBT adults have likewise experienced higher rates of adverse employment outcomes than their non-LGBT counterparts.

Housing Discrimination

Research on discrimination against LGBTQ people in access to housing or housing-related services demonstrates that discrimination continues to impact gender and sexual minority people.⁶² For example, a Williams Institute analysis of Household Pulse Survey data found that LGBT people are more likely to rent and less likely to own a home, either free from or with a mortgage or loan, when compared to non-LGBT people.⁶³ Other Williams Institute publications reached similar conclusions, finding that 49.8% of LGBT adults own their home, compared to

⁵⁵ CHOI & MEYER, *supra* note 17 at 14, citing Karen I Fredriksen-Goldsen et al., *Physical and Mental Health of Transgender Older Adults: An At-Risk and Underserved Population*, 54 GERONTOLOGIST 488, 488-500 (2013).

⁵⁶ See CHOI & MEYER, *supra* note 17 at 9.

⁵⁷ BRAD SEARS ET AL., WILLIAMS INST., LGBT PEOPLE’S EXPERIENCES OF WORKPLACE HARASSMENT AND DISCRIMINATION 1 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 2-3.

⁶¹ ILAN H. MEYER, WILLIAMS INST., EXPERIENCES OF DISCRIMINATION AMONG LESBIAN, GAY, AND BISEXUAL PEOPLE IN THE US 1 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Experience-Discrimination-Apr-2019.pdf>.

⁶² See, e.g., *Id.*, (“New findings... provides [*sic*] evidence of continued exposure to discrimination”).

⁶³ WILSON ET AL., *supra* note 43 at 2.

70.1% of non-LGBT adults.⁶⁴ These disparities were especially prominent in LGBT people of color.⁶⁵ In addition, analyses of Generations and TransPop data found that 17% of transgender people, 8% of LBQ cisgender women, and 7% of GBQ cisgender men were prevented from moving into or buying a house by a landlord or real estate agent at some point in their lives, according to data from the Generations and TransPop studies.⁶⁶

Two literature reviews conducted by the Williams Institute, the LGBT Aging literature review and a review of research on homelessness and housing, provided additional focus on experiences of housing discrimination in the older LGBT community.⁶⁷ One nationwide matched-pair study included in the aging literature review, in which an LGB senior and a heterosexual older person contacted the same senior housing community, found that 48% of tests showed that the LGB person experienced unfavorable treatment.⁶⁸ A survey from the AARP on LGBTQ people over the age of 45 found that 41% of respondents were worried about future instances of discrimination in seeking housing as they age.⁶⁹ The same survey found that 46% of transgender and nonbinary respondents feared discrimination in seeking a rental, and 47% in the home buying process.⁷⁰ Another community-based survey of LGBT seniors living in care facilities found that about a quarter of respondents experiences verbal or physical harassment from other residents and 6% were denied or refused medical services from staff.⁷¹ Research has also shown that, where it is available, LGB-friendly housing is primarily available to upper-income LGB older adults.⁷²

Healthcare Discrimination

Healthcare discrimination experienced by LGBT older adults may include incidents of overt homophobia or transphobia by health care providers, leading some to delay or avoid obtaining care, or otherwise conceal their SOGI from providers.⁷³ One survey of 2,376 people ages 45-75 estimated that 40% of cisgender LGB and 46% of transgender older adults do not disclose their sexual orientation and gender identity to physicians because of prejudice and discrimination over their lifetime and fears that disclosure will compromise their level and quality of care.⁷⁴ This is consistent with findings about the experiences of LGBT people

⁶⁴ ROMERO ET AL., *supra* note 43 at 3.

⁶⁵ *Id.*; WILSON ET AL., *supra* note 43 at 2.

⁶⁶ MEYER, WILSON & O'NEILL, *supra* note 48 at 19 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf>.

⁶⁷ ROMERO ET AL., *supra* note 43 at 14.

⁶⁸ CHOI & MEYER, *supra* note 17 at 10.

⁶⁹ CASSANDRA CANTAVE, AARP, DIGNITY 2022: THE EXPERIENCE OF LGBTQ OLDER ADULTS (June 2022), <https://doi.org/10.26419/res.00549.001>.

⁷⁰ *Id.*

⁷¹ *Id.* at 20, *citing* NAT'L SENIOR CITIZENS L. CTR, NAT'L GAY & LESBIAN TASK FORCE, SAGE, LAMBDA LEGAL, NAT'L CTR. FOR LESBIAN RIGHTS, & NAT'L CTR. FOR TRANSGENDER EQUALITY, *LGBT Older Adults in Long-Term Care Facilities* (2010), https://www.lgbtagingcenter.org/resources/pdfs/NSCLC_LGBT_report.pdf.

⁷² CHOI & MEYER, *supra* note 17 at 11.

⁷³ *Id.* at 7.

⁷⁴ LAUREN J.A. BOUTON, AMANDA M. BRUSH & ILAN H. MEYER, THE WILLIAMS INST., LGBT ADULTS AGED 50 AND OLDER IN THE US DURING THE COVID-19 PANDEMIC I, 11 (2023), <https://williamsinstitute.law.ucla.edu/publications/older-lgbt-adults-us/> (*citing* ROBERT ESPINOZA, SAGE, OUT & VISIBLE, <https://www.sageusa.org/wp-content/uploads/2018/05/sageusa-out-visible-lgbt-market-research-full-report.pdf>).

generally. For example, among respondents to the Generations and TransPop studies, respectively, one-third of sexual minorities and almost two-thirds of transgender people reported worrying about being negatively judged in interactions with a health care provider.⁷⁵ These findings are consistent with research on LGBT adults' health more broadly.⁷⁶ Additionally, numerous studies have found that transgender older adults face a near-absence of gender-affirming care and interactions with discriminatory medical providers throughout their lifetimes.⁷⁷

ii. Health Disparities Among LGBTQI+ Older Adults

LGBT older adults report worse health outcomes than non-LGBT older adults. For example, a recent study by Williams Institute scholars using data from the U.S. Census Household Pulse Survey (HPS) found that LGBT older people were more likely than their straight or cisgender peers to report having anxiety and depression symptoms.⁷⁸ Research has also shown that LGBT older adults are more likely than their straight and cisgender counterparts to be living with chronic health conditions, thus needing more age-related support.⁷⁹

The Williams Institute literature review on LGBT aging summarized many examples of health disparities faced by LGBT older adults. In general, the report found that research showed that sexual and gender minority older adults have worse mental and physical health when compared to heterosexual older adults with similar demographic characteristics.⁸⁰ Poor health outcomes were associated with victimization, discrimination, lack of support, and health-related behaviors for both sexual and gender minority groups.⁸¹ One study that utilized both BRFSS data from Washington state and a national cross-sectional survey of 2,560 LGBT adults over 50 found that thirty-one percent of LGBT older adults reported depressive symptoms, with transgender people reporting the highest proportion of depressive symptoms.⁸² The same study, included in the Williams Institute literature review on aging, found that 39% of LGBT older adults seriously considered taking their own life at some point.⁸³ Further, about half of the report's survey respondents reported a disability.⁸⁴ LGB older adults had higher rates of disability compared to heterosexual adults, with older lesbian or bisexual women 1.32 times more likely to experience a

⁷⁵ MEYER, WILSON, & O'NEILL, *supra* note 48 at 27.

⁷⁶ Williams Institute Scholars, Comment Letter on Review of the National Health Interview Survey (June 15, 2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Comment-NHIS-Jun-2020.pdf>. A table documenting many of these studies is included as an appendix to *id.*

⁷⁷ Xiang Cai, Jaclyn M.W. Hughto, Sari L. Reisner, John E. Pachankis & Becca R. Levy, *Benefit of Gender-Affirming Medical Treatment for Transgender Elders: Later-Life Alignment of Mind and Body* 6 LGBT HEALTH 34, 34-9 (2019), <https://doi.10.1089/lgbt.2017.0262>; Charles P. Hoy-Ellis, Karen I. Fredriksen-Goldsen & Hyun-Jun Kim, *Utilization of Recommended Preventive Health Screenings Between Transgender and Cisgender Older Adults in Sexual and Gender Minority Communities*, 34 J. OF AGING & HEALTH 1, 1-14 (2022).

⁷⁸ BOUTON, BRUSH & MEYER, *supra* note 74 at 6.

⁷⁹ *Id.* at 10; Mark Brennan-Ing, Liz Seidel, Britta Larson & Stephen E. Karpiak, *Social Care Networks and Older LGBT Adults: Challenges for the Future*, 61 J. OF HOMOSEXUALITY 21, 21-52 (2013).

⁸⁰ CHOI & MEYER, *supra* note 17 at 24.

⁸¹ See discussion in *Id.* at 24-7.

⁸² *Id.* at 25, citing Karen I. Fredriksen-Goldsen *et al.*, *The Aging and Health Report: Disparities and Resilience among Lesbian, Gay, Bisexual, and Transgender Older Adults*, <https://depts.washington.edu/agepride/wordpress/wp-content/uploads/2012/10/Full-report10-25-12.pdf>. (2011).

⁸³ *Id.*

⁸⁴ *Id.*

physical disability than heterosexual women.⁸⁵ A separate report highlighting health vulnerabilities among LGBT older adults in California found that a significant number of LGBT people in the state age 65 and older—an estimated 53,100 LGB and 3,000 transgender people at the time—had fair or poor health, and many suffered from asthma, heart disease, and diabetes.⁸⁶

Existing research suggests that the health disparities observed when comparing LGBT older adults to their non-LGBT counterparts are particularly pronounced for those who are transgender. These findings include higher rates of internalized stigma and suicidal ideation among transgender people, even when compared to their cisgender LGB peers.⁸⁷ Transgender older adults also often encounter unique challenges related to health care access beyond those reported by cisgender LGB older adults, as their population “may seek more frequent and intimate health care due to age related physical conditions and disabilities.”⁸⁸

Further, LGBT older adults of color face a lifetime of overlapping cumulative effects of systemic racism and homophobia and/or transphobia.⁸⁹ For example, research on older Black lesbians has found that compounding effects of oppressive systems results in a lack of access to gerontological healthcare and exasperates health challenges.⁹⁰ Similarly, several studies have found that older Black gay men experience significant disparities, including being more likely to be living with HIV for multiple decades while receiving subpar care, and facing worse economic conditions compared to White gay men.⁹¹ Furthermore, a 2020 study uncovered notably increased rates of psychological distress in Latinx LGB older adults in California compared to Latinx non-LGB people.⁹² The same study determined that being Latinx was more influential

⁸⁵ CHOI & MEYER, *supra* note 17 at 26, citing Steven P Wallace et al., *The Health of Aging Lesbian, Gay and Bisexual Adults in California*, UCLA CENTER FOR HEALTH POL’Y RESEARCH (2011).

⁸⁶ ILAN H. MEYER & SOON KYU CHOI, WILLIAMS INST., VULNERABILITIES TO COVID-19 AMONG OLDER LGBT ADULTS IN CALIFORNIA 1–2 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Older-LGB-COVID-CA-Apr-2020.pdf>.

⁸⁷ CHOI & MEYER, *supra* note 17 at 3.

⁸⁸ *Id.* at 8, citing Loree Cook-Daniels, *Trans Aging*, DOUGLAS KIMMEL, TARA ROSE, & STEVEN DAVID (EDS.) *LESBIAN, GAY, BISEXUAL AND TRANSGENDER AGING: RESEARCH AND CLINICAL PERSPECTIVES* (2016).

⁸⁹ See discussion in BOUTON, BUSH & MEYER, *supra* note 74 at 12. See also Andrew P. Barnett, et al., *Content Analysis of Psychological Research With Lesbian, Gay, Bisexual, and Transgender People of Color in the United States: 1969-2018*, 74 AM. PSYCHOLOGIST 898, 898-911 (2019); Seon Kum, *Gay, Gray, Black, and Blue: An Examination of Some of the Challenges Faced by Older LGBTQ People of Color*, 21 J. OF GAY & LESBIAN MENTAL HEALTH 228, 228-239 (2017).

⁹⁰ Kristie L. Seelman, Mary Anne Adams, & Tonia Poteat, *Interventions for Healthy Aging Among Mature Black Lesbians: Recommendations Gathered Through Community-Based Research*, 29 J. OF WOMEN & AGING 530, 531 (2016) (Mixed methods study analyzing transcripts of focus groups consisting of lesbian, same-gender-loving, or gay women over 40 identifying as Black or of African descent); Imani Woody, *Lift Every Voice: Voices of African-American Lesbian Elders*, 19 J. OF LESBIAN STUDIES 50, 50-8 (2015) (Qualitative study of interviews with Black lesbian women aged 57-72).

⁹¹ BOUTON, BUSH & MEYER, *supra* note 74 at 12, citing Kathrine B. Grill, et al., *What Do Adults With HIV Want? End-of-Life Care Goals, Values and Beliefs by Gender, Race, Sexual Orientation*, 38 AM. J. OF HOSPICE & PALLIATIVE MEDICINE 610, 610-617 (2021); Rahwa Haile, Mark B. Padilla & Edith A. Parker, ‘*Stuck in the Quagmire of an HIV Ghetto*’: *The Meaning of Stigma in the Lives of Older Black Gay and Bisexual Men Living with HIV in New York City*, 13 CULTURE, HEALTH & SEXUALITY 429, 429-442 (2011).

⁹² Soon Kyu Choi, Krystal Kittle & Ilan H. Meyer, *Health Disparities of Older Adults in California: The Role of Sexual Identity and Latinx Ethnicity*, 61 GERONTOLOGIST 851 (2021).

than LGB identity (or the intersection of the identities) when measuring health disparities among older adults in California.⁹³

Additionally, the HIV epidemic has had a disproportionate impact on LGBT people. The CDC has estimated that in 2019, which is the most recent year that that reliable data are available, among the 34,800 new HIV infections in the U.S., 70% (24,500) were among gay and bisexual men.⁹⁴ Likewise, the CDC estimates that 2% of new HIV infections in 2019 were among transgender people.⁹⁵ While there are no national HIV prevalence data for LGBT older adults, a 2011 study found that 9% of a nationally surveyed non-probability sample of LGBT older adults was living with HIV.⁹⁶ The population of people living with HIV in the U.S. is aging due to the availability of antiretroviral therapy, with individuals aged 50 and over comprising almost half (46.8%) of the clients served by the Ryan White HIV/AIDS Program.⁹⁷ The Center for Disease Control reported that 407,100 of the 1,189,700 teenagers and adults living with HIV in 2019 were aged 55 or older.⁹⁸

Very limited research exists on the health outcomes of intersex people, but evidence suggests that intersex people have poorer health compared to people without intersex traits. Research indicates that intersex people may also be more likely to report a lower overall sense of well-being, regardless of whether they have undergone surgical intervention. A non-probability sample of intersex people recruited by researchers at the University of California, San Francisco showed participants were more likely to rate their physical health as fair or poor compared to a BRFSS national sample of adults.⁹⁹ The study also found that intersex people may experience higher levels of depression than non-intersex people.¹⁰⁰ There is no nationally representative sample within the U.S. with which to compare these study results, but they are consistent with international research studies.¹⁰¹ A literature review of 68 publications relevant to older intersex people analyzed outcomes across four topic areas: health and social care, psychosocial aspects, socio-cultural issues, and structural dynamics.¹⁰² The authors found that older intersex people may experience increased rates of isolation, loneliness, self-harming behavior, and attempted

⁹³ *Id.*

⁹⁴ The CDC has data available on HIV diagnoses from 2020, but cautions against interpreting the data due to impacts from the COVID-19 pandemic. *HIV and Gay and Bisexual Men: HIV Incidence*, CDC.GOV (July 19, 2023), <https://www.cdc.gov/hiv/group/msm/msm-content/incidence.html>.

⁹⁵ *HIV and Transgender People: HIV Diagnoses*, CDC.GOV (July 19, 2023), <https://www.cdc.gov/hiv/group/gender/transgender/hiv-diagnoses.html>.

⁹⁶ Karen I. Fredriksen-Goldsen et al., *supra* note 82.

⁹⁷ *Aging With HIV*, HIV.GOV (May 17, 2021), <https://www.hiv.gov/hiv-basics/living-well-with-hiv/taking-care-of-yourself/aging-with-hiv>.

⁹⁸ CTRS. FOR DISEASE CONTROL & PREVENTION, 26 *Estimated HIV Incidence and Prevalence in the United States, 2015–2019: HIV Surveillance Supplemental Report 2021* 1 at 39, <https://www.cdc.gov/hiv/pdf/library/reports/surveillance/cdc-hiv-surveillance-supplemental-report-vol-26-1.pdf>

⁹⁹ Amy Rosenwohl-Mack et al., *A National Study on the Physical and Mental Health of Intersex Adults in the U.S.*, 15 PLOS ONE 10 (2020).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Adeline W. Berry & Surya Monro, *Ageing in Obscurity: A Critical Literature Review Regarding Older Intersex People*, 30 SEXUAL & REPRODUCTIVE HEALTH MATTERS 44, 45 (2022).

suicide.¹⁰³ Further, higher rates of disability, likely connected to medical intervention early in life, have been reported amongst older intersex people.¹⁰⁴

iii. Economic Disparities Faced by LGBTQI+ Older Adults

Poorer health outcomes among LGBT populations are likely influenced in part by experiences with economic insecurity. LGBT people report higher poverty rates across the life course as compared to non-LGBT people.¹⁰⁵ Similarly, Williams Institute research has noted high rates of food insecurity among all LGBT people,¹⁰⁶ including evidence of particular vulnerabilities for LGBT older adults.¹⁰⁷

The LGBT Aging literature review found additional economic disparities prevalent in the older population. Overall, many LGBT older adults expressed worry about financial stability as they age.¹⁰⁸ The studies summarized in that report included findings that same-sex older couples were “disadvantaged in retirement assets, retirement savings, and the ability to pass on wealth.”¹⁰⁹ LGB older adults were also more likely to face financial barrier to healthcare compared to heterosexual people.¹¹⁰

Williams Institute research suggests that among LGBT people, transgender people are disproportionately likely to experience forms of economic insecurity, similar to their experiences

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 46.

¹⁰⁵ BIANCA D.M. WILSON, LAUREN J.A. BOUTON, M.V. LEE BADGETT & MORIAH L. MACKLIN, WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES: TRENDS AT THE ONSET OF COVID-19, 4 (2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Poverty-COVID-Feb-2023.pdf>. A previous study found that poverty rates were higher for LGBT people when compared to non-LGBT people across every age group including those over age 65, the observed differences were only statistically significant among people aged 18 to 44 years old. 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, 14-15 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>.

¹⁰⁶ KERITH J. CONRON, RUBEEN GUARDADO, KATHRYN K. O’NEILL & BIANCA D.M. WILSON, WILLIAMS INST., FOOD INSUFFICIENCY AMONG LGBT ADULTS DURING THE COVID-19 PANDEMIC (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Food-Insufficiency-Apr-2022.pdf>; KERITH J. CONRON & KATHRYN K. O’NEILL, WILLIAMS INST., FOOD INSUFFICIENCY AMONG TRANSGENDER ADULTS DURING THE COVID-19 PANDEMIC, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Food-Insufficiency-Update-Apr-2022.pdf>; BIANCA D.M. WILSON & KERITH J. CONRON, WILLIAMS INST., NATIONAL ESTIMATES OF FOOD INSECURITY: LGBT PEOPLE AND COVID-19 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-COVID19-Apr-2020.pdf>; TAYLOR N.T. BROWN ET AL., WILLIAMS INST., FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-SNAP-July-2016.pdf>.

¹⁰⁷ See, e.g., BIANCA D.M. WILSON ET AL., WILLIAMS INST., “WE’RE STILL HUNGRY” LIVED EXPERIENCES WITH FOOD INSECURITY AND FOOD PROGRAMS AMONG LGBTQ PEOPLE 18 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Food-Bank-Jun-2020.pdf> (noting the majority of discussions on the use of food banks to manage food insecurity were among respondents age 50 and older).

¹⁰⁸ CHOI & MEYER, *supra* note 17 at 8.

¹⁰⁹ *Id.* at 10, citing Naomi G. Goldberg, *The Impact of Inequality for Same-Sex Partners in Employer-Sponsored Retirement Plans* 2 (Oct. 2009), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-SS-Partners-Retire-Plan-Oct-2009.pdf>.

¹¹⁰ CHOI & MEYER, *supra* note 17 at 25, citing Karen I. Fredricksen-Goldsen, et al., *The Physical and Mental Health of Lesbian, Gay Male, and Bisexual (LGB) Older Adults: The Role of Key Health Indicators and Risk and Protective Factors*, 53 GERONTOLOGIST 664, 668-9 (2012).

with certain negative health outcomes. For example, data collected between 2016 and 2019 show that 8% of transgender people experienced homelessness within the prior year, compared to 3% of cisgender LGB people and 1% of non-LGBT people.¹¹¹ One cross-sectional survey of LGB adults aged 50 and older showed that 47% of bisexual men and 48% of bisexual women aged 65 and older live at or below 200% of the federal poverty level.¹¹² Similarly, a 2019 Williams Institute study found that poverty rates among transgender people were higher than those reported by cisgender heterosexual men in every age group, and were significantly higher than those reported by cisgender heterosexual women for the 35–44 (42.5% v. 21.6%) and 55–64 (25.1% v. 12.5%) age groups.¹¹³ In accordance with these findings, in a recent study on California, we found that transgender adults were significantly more likely than cisgender adults to report being covered by Medi-Cal or other public health insurance.¹¹⁴

Williams Institute research on the impact of the COVID-19 pandemic on U.S. adults also suggests that LGBT adults, particularly LGBT people of color and gender minority people, disproportionately experienced its negative economic effects,¹¹⁵ which in turn may be impacting their health outcomes. A survey using data from the U.S. Census Household Pulse Survey (HPS) demonstrated that one in five LGBT adults as aged 50 or older experienced poverty during the COVID-19 pandemic.¹¹⁶ Another study on people ages 45 and older found that LGBT respondents—particularly LGBT respondents of color—were more likely to report job loss, problems affording basic household goods, and other negative economic impacts related to COVID-19 than older non-LGBT respondents.¹¹⁷ While the study found that a greater percentage of older LGBT people of color had tested positive for COVID-19 when compared to older White LGBT people, these differences were not statistically significant.¹¹⁸

Research also provides evidence that economic disparities are pronounced among LGBT people of color. Across a series of reports using data from the Gallup Survey (2012-2017) and the Generations and TransPop surveys, we found that more LGBT adults of color reported

¹¹¹ BIANCA D.M. WILSON ET AL., WILLIAMS INST., HOMELESSNESS AMONG LGBT ADULTS IN THE US 1 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf>.

¹¹² Karen I. Fredricksen-Goldsen, et al., *supra* note 110.

¹¹³ 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 14–15 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>.

¹¹⁴ SUSAN H. BABEY, JOELLE WOLSTEIN, JODY L. HERMAN & BIANCA D.M. WILSON, UCLA CTR. FOR HEALTH POL’Y RES. & WILLIAMS INST., GAPS IN HEALTH CARE ACCESS AND HEALTH INSURANCE AMONG LGBT POPULATIONS IN CALIFORNIA 5 (2022), <https://williamsinstitute.law.ucla.edu/publications/gaps-health-care-lgbt-ca>.

¹¹⁵ See also Thom File & Joey Marshall, *Household Pulse Survey Shows LGBT Adults More Likely to Report Living in Households With Food and Economic Insecurity Than Non-LGBT Respondents*, U.S. CENSUS BUREAU, <https://www.census.gov/library/stories/2021/08/lgbt-community-harder-hit-by-economic-impact-of-pandemic.html> (noting the U.S. Census Bureau’s similar findings, based on data collected during the first waves of the Household Pulse Survey that included SOGI measures).

¹¹⁶ BOUTON, BUSH & MEYER, *supra* note 74 at 17.

¹¹⁷ CHRISTY MALLORY, BRAD SEARS & ANDREW R. FLORES, WILLIAMS INST., COVID-19 AND LGBT ADULTS AGES 45 AND OLDER IN THE US 2–3 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/COVID-LGBT-45-May-2021.pdf>.

¹¹⁸ *Id.* at 10 (noting that among those reporting being tested “12.8% of older LGBT people of color and 5.5% of older white LGBT people tested positive. . . Older non-LGBT people of color (9.4%) and older white non-LGBT people (6.5%) tested positive at similar rates.”).

greater economic instability compared to white LGBT adults across many indicators.¹¹⁹ Williams Institute research on experiences during the COVID-19 pandemic also found disparities based on race and SOGI: 29% of LGBT people of color reported having less ability to pay for household goods and 26% percent reported being unable to pay their rent or mortgage compared to 14% and 9% of non LGBT white respondents, respectively.¹²⁰ We have also found that Black LGBT people experience higher rates of housing instability,¹²¹ and that LGBT people of color experience greater rates of food insufficiency compared to cisgender heterosexual people of color and all White people.¹²²

iv. Social Isolation, Caregiving, And Lack of Access to Supportive Services

Faced with greater health and economic disparities as they age, LGBT older people also experience discrimination from many benefits and services designed for retirement and elder care and have less social support. The Williams Institute's LGBT Aging literature review identified areas of discrimination in the programs and services that are critical for older people including in federal benefits programs such as social security, retirement plans, or retiree health insurance plans. These benefits were inaccessible to same-sex couples, even if their marriage was recognized at the state-level prior to federal marriage equality for same-sex couples.¹²³ Healthcare providers have also recognized that many LGBT older adults lack LGBT-friendly senior services or other social resources, creating a social care deficit.¹²⁴ Research has linked such experiences of discrimination with a "compression of morbidity," or in other words, the earlier onset of functional limitations.¹²⁵

LGBT older also people face particularly disparate rates of social isolation, as referenced in the preamble to the proposed regulations.¹²⁶ LGBT older adults are less likely to be married and more likely to live alone and report social isolation compared to straight and cisgender adults.¹²⁷ Williams Institute analysis of data from the U.S. Census Household Pulse Survey found that 25% of LGBT adults aged 65 or older lived alone, compared to 15% of their straight or

¹¹⁹ BIANCA D.M. WILSON, LAUREN BOUTON & CHRISTY MALLORY, WILLIAMS INST., RACIAL DIFFERENCES AMONG LGBT ADULTS IN THE U.S.: LGBT ADULTS AT THE INTERSECTION OF RACE 1 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Race-Comparison-Jan-2022.pdf>.

¹²⁰ BRAD SEARS, KERITH J. CONRON & ANDREW R. FLORES, WILLIAMS INST., THE IMPACT OF THE FALL 2020 COVID-19 SURGE ON LGBT PEOPLE IN THE US 8–9 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/COVID-LGBT-Fall-Surge-Feb-2021.pdf>.

¹²¹ BIANCA D.M. WILSON ET AL., *supra* note 111.

¹²² CONRON, GUARDADO, O'NEILL & WILSON, *supra* note 106.

¹²³ CHOI & MEYER, *supra* note 17 at 8-9.

¹²⁴ Nina Barrett & Dorothy Wholian, *Providing Palliative Care to LGBTQ Patients*, 51 NURSING CLINICS OF NORTH AMERICA 501, 503 (2016).

¹²⁵ Karen I. Fredriksen-Goldsen & Hyun-Jun Kim, *The Science of Conducting Research With LGBT Older Adults- An Introduction to Aging with Pride: National Health, Aging, and Sexuality/Gender Study (NHAS)*, 57 THE GERONTOLOGIST S1, S4 (2017); BOUTON, BRUSH & MEYER, *supra* note 74 at 9-10.

¹²⁶ 88 Fed. Reg. 39,573.

¹²⁷ Karen I. Fredriksen-Goldsen, *Resilience and Disparities Among Lesbian, Gay, Bisexual, and Transgender Older Adults*, 21 PUBLIC POL'Y AND AGING REPORT 3, 4 (2011).

cisgender peers.¹²⁸ Another study found that almost a quarter of LGBT older adults report that they have no one to call in an emergency.¹²⁹

Lacking support of spouses, partners, and children, many LGBT elders rely upon each other. But even then, they face challenges. An analysis of BRFSS data affirmed prior findings that LGBT adults are overrepresented as caregivers.¹³⁰ However, institutional regulations can fail to recognize non-biologic caregiving relationships – such as “chosen families” that LGBT older adults can rely on in place of their families of origin.¹³¹ The lack of official recognition of families of choice can create challenges for both the caregiver and recipient of care.¹³² One study analyzing 2015 and 2016 BRFSS data showed that the population of older LGBT people who act as caregivers experience disproportionately high levels of physical and mental health stress compared to straight and cisgender older caregivers.¹³³

LGBTQI+ people, and in particular older adults, experience victimization, discrimination, and health and economic disparities. Research demonstrating these disparities and instances of discrimination supports the Administration’s proposed regulations that include LGBTQI+ people as populations of greatest social need for each state and area plan.

c. The Administration Should Consider Additional Guidance or Clarity Around the Engagement of State Plans with LGBTQI+ Older Americans

Despite the explicit requirement to address the needs of LGBT older Americans in the 2020 Reauthorization of the OAA, subsequent state plans vary in their engagement. In the current proposed regulations, the Administration cites to the California, Ohio, and New York state plans as examples for states engaging with LGBTQI+ older adults.¹³⁴ However, other states, such as Mississippi and Indiana, have filed state plans that make only passing reference to these populations despite creating the plans after the 2020 Reauthorization and after additional guidance was issued by the Administration clarifying the requirements.¹³⁵ While the proposed

¹²⁸ BOUTON, BUSH & MEYER, *supra* note 74.

¹²⁹ MOVEMENT ADVANCEMENT PROJECT & SERVICE & ADVOCACY FOR LGBT ELDERS, LGBT OLDER PEOPLE AND COVID-19: ADDRESSING HIGHER RISK, SOCIAL ISOLATION, AND DISCRIMINATION 1 (2020) <https://www.lgbtagingcenter.org/resources/resource.cfm?r=1022>.

¹³⁰ Ulrike Boehmer, Melissa A. Clark, Emily M. Lord & Lisa Fredman, *Caregiving Status and Health of Heterosexual, Sexual Minority, and Transgender Adults: Results From Select U.S. Regions in the Behavioral Risk Factor Surveillance System 2015 and 2016*, 59 THE GERONTOLOGIST 760, 765 (2019).

¹³¹ *Id.* at 503, 508-9; BOUTON, BUSH & MEYER, *supra* note 74 at 10.

¹³² Boehmer, Clark, Lord & Fredman, *supra* note 130; *See also* BOUTON, BUSH & MEYER, *supra* note 74 at 10 for further discussion of related research.

¹³³ Boehmer, Clark, Lord & Fredman, *supra* note 130.

¹³⁴ 88 Fed. Reg. 39,603 at fn. 174, *citing* CAL. STATE PLAN ON AGING: 2017 – 2021, <https://www.aging.ca.gov/download.ashx?IE0rcNUV0zbUy1iwYmWKng%3D%3D>; *State Plan on Aging: 2019 – 2022*, OHIO DEPT. OF AGING, http://www.advancingstates.org/sites/default/files/Ohio_State_Plan_19-22.pdf; N.Y. OFF. FOR THE AGING, *2019 – 2023 New York State Plan on Aging*, https://aging.ny.gov/system/files/documents/2019/10/state_plan_2019-2023_070119_final2com.pdf.

¹³⁵ *See, e.g.*, State Plan on Aging FFF 2022-2026, MISSISSIPPI DEPT. OF HUM. SERVICES DIV. OF AGING & ADULT SERVICES (2022), <https://www.mdhs.ms.gov/wp-content/uploads/2022/05/2022-Aging-State-Plan-Draft-Updated-5.9.22.pdf>. *See also* DRAFT Indiana State Plan on Aging Federal Fiscal Years 2023-2026, FAMILY AND SOCIAL SERVICES ADMIN. DIV. OF AGING (Mar. 2022), <https://www.in.gov/fssa/da/files/2023-2026-State-Plan-March-2022-Draft.pdf>.

regulations clearly state that the state plans must consider LGBTQI+ people in each state's definition of greatest social need, the regulations do not outline to what extent the state plans must discuss these groups. If a state were to avoid or otherwise fail to meaningfully engage with any population of greatest social need, it would undermine the OAA as reauthorized and the proposed regulations.

Thus, the Administration might consider providing further clarity on the content of state plans by expressly stating that the agencies must consider each named subpopulation of "greatest social need" individually. The language in the proposed regulation may be vague enough to allow a state plan to avoid addressing specific subpopulations, such as LGBTQI+ older Americans, and instead group these subpopulations together. We recommend that the Administration clarify in the regulations that state or agency plans must address each subpopulation of greatest social need individually.

The Administration should also consider promulgating new guidance on LGBTQI+ inclusion based on existing state plans, including those that the Administration references in the proposed regulations. Many states may benefit from learning about the work other states have done to meaningfully include LGBTQI+ older adults in their plans. For example, New York's state plan encourages training on cultural competency when working with LGBT older individuals.¹³⁶ California's 2021-2025 OAA State Plan further seeks to "expand the collection and use of data to evaluate whether programs are meeting equity targets," including targets based on SOGI.¹³⁷ The Administration has promulgated Guidance concerning the 2020 Reauthorization¹³⁸ and the equity component of state plans,¹³⁹ both of which reference LGBTQI+ people briefly. Creating a unified resource for how states can engage with LGBTQI+ people as a population of greatest social need may be helpful as states begin to create plans under the proposed regulations.

Additionally, HHS is already under a legal obligation to create a "Bill of Rights for LGBTQI+ Older Adults."¹⁴⁰ We recommend that the Administration issue the Bill of Rights once the final regulations are completed. The Bill of Rights may serve as an additional guidance document from HHS and the Administration for states to reference while developing their state plans.

III. The Proposed Changes to the Regulations Correctly Include Data Collection Standards for LGBTQI+ Older Americans

We support the proposed changes that promote the collection and reporting of data concerning LGBTQI+ people, and encourage the Administration to increase sexual orientation and gender identity data collection through this and other opportunities. While existing research

¹³⁶ N.Y. OFF. FOR THE AGING, *supra* note 134.

¹³⁷ CAL. DEPT. OF AGING, *California Older Americans Act State Plan on Aging 2021 – 2025* (June 30, 2021), <https://aging.ca.gov/download.ashx?IE0rcNUV0zamRRK2e67GGw%3d%3d>.

¹³⁸ Letter from Alison Barkoff, *supra* note 26.

¹³⁹ Letter from Alison Barkoff, Acting Admin./Asst. Sec'y for Aging, *State Unit on Aging Directors Letter #01-2023* (Mar. 31, 2023), [https://acl.gov/sites/default/files/about-acl/2023-04/State Plan Guidance Equity Complement Letter - ACL Administrator ASA - March2023_508.pdf](https://acl.gov/sites/default/files/about-acl/2023-04/State%20Plan%20Guidance%20Equity%20Complement%20Letter%20-%20ACL%20Administrator%20ASA%20-%20March2023_508.pdf).

¹⁴⁰ 87 Fed. Reg. 37,193.

provides valuable insight into the lives and experiences of LGBT older adults, there is a continued need for high-quality, representative data on this population across a range of contexts.¹⁴¹ The 2020 Reauthorization of the OAA required data collection on gender and sexual minority populations from state and area agencies on aging, but this has yet to be fully implemented.¹⁴² The proposed regulations reaffirm this requirement, stating that state agencies “shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations.”¹⁴³

Notably, the OAA as reauthorized contains several provisions calling for the collection and evaluation of data on populations with greatest social need. For example, state and area plans are required to determine the extent of need for specific services by, in part, considering the “number of older individuals who have greatest social need” and “evaluating the effectiveness of the use of resources in meeting such need.”¹⁴⁴ These plans are authorized to enter into agreements “with providers of supportive services, nutrition services, or multipurpose senior centers in such area, for the provision of such services or centers to meet such need.”¹⁴⁵ Similarly, state plans are required to conduct “periodic evaluations” on the effectiveness of services provided to individuals with greatest social need,¹⁴⁶ and must provide assurances that their outreach efforts will be inclusive of such individuals with greatest social need.¹⁴⁷

The proposed regulations take account of the existing obligations for populations of greatest social need and the aforementioned requirement to report on data collected pursuant to the OAA as reauthorized, creating cohesive and clear regulations for the state or agencies subject to the OAA with respect to LGBTQI+ older people. Without collecting information on participants’ SOGI, it is unlikely that participating plans will be able to confirm their compliance with these requirements with respect to LGBT older adults. The proposed regulations thus provide added clarity on the obligations concerning data collection and reporting on LGBTQI+ people arising from OAA as reauthorized.

It is important that the Administration commit to the inclusion of SOGI data collection in the National Survey of Older Americans Act Participants (NSOAAP). Despite the mandate for SOGI inclusion in the 2020 Reauthorization, the prior Administration removed gender identity questions and nearly removed sexual orientation questions from the survey.¹⁴⁸ In 2021, the Administration sought to remedy this, stating that it was “taking steps to increase data and

¹⁴¹ See ANDREW BURWICK ET AL., MATHEMATICA POLICY RESEARCH, HUMAN SERVICES FOR LOW-INCOME AND AT-RISK LGBT POPULATIONS: AN ASSESSMENT OF THE KNOWLEDGE BASE AND RESEARCH NEEDS 19 (2014) (advising that “data from federal and state surveys with large population-based samples are needed to develop findings that are representative of the LGBT population at the state or national level and to generate sample sizes large enough to explore the characteristics and experiences of LGBT subpopulations defined by sexual orientation, gender identity, race/ethnicity, and other characteristics.”).

¹⁴² Letter from Alison Barkoff, *supra* note 26.

¹⁴³ 88 Fed. Reg. 39,612; 88 Fed. Reg. 39,635.

¹⁴⁴ 42 U.S.C. § 3026(a)(1).

¹⁴⁵ *Id.*

¹⁴⁶ 42 U.S.C. § 3027(a)(4).

¹⁴⁷ 42 U.S.C. § 3027(a)(16)(A)(iii). Area plans are subject to a similar requirement, see 42 U.S.C. § 3026(a)(4)(B)(i)(III).

¹⁴⁸ 82 Fed. Reg. 28,492, <https://www.govinfo.gov/content/pkg/FR-2017-06-22/pdf/2017-13030.pdf>.

research on the unique needs of, and approaches to serving, members of the LGBTQ+ community.”¹⁴⁹ The Administration pointed to a then-forthcoming report from the National Academies of Science, Engineering and Medicine (NASEM) as a critical step toward SOGI data collection for the NSOAAP.¹⁵⁰ Although the NASEM report was issued in March 2022, the 2022 NSOAAP did not collect data on gender identity.¹⁵¹ However, on August 2, 2023, the Administration published a notice in the Federal Register regarding the intended changes to the NSOAAP.¹⁵² The proposed survey instrument for the 17th NSOAAP includes the two-step gender identity question.¹⁵³ Additionally, the Administration has published two additional notices announcing its intent to collect SOGI data on the SHIP-SMP Survey of One-on-One Assistance¹⁵⁴ and SHIP-SMP Survey of Group Outreach and Education Events.¹⁵⁵ These are important steps toward ensuring that meaningful data on LGBTQI+ older adults are collected.

Conversely, the failure to include these populations in data collection would violate not only the 2020 Reauthorization of the OAA, but also Executive Order 14,075. President Biden’s Executive Order explicitly included a provision on improving and increasing data collection on sexual orientation and gender identity of LGBTQI+ older adults.¹⁵⁶ The Executive Order instructed the Secretary of HHS to “consider... providing technical assistance to states on the collection of such data.”¹⁵⁷

As scholars with expertise in measurement development and testing, we would recommend that the Administration offer further guidance for state and area agencies using the existing body of research on approaches to the collection of SOGI information. The Administration has indicated its intent to implement the NASEM report’s recommendations with regard to collecting data on sexual orientation and gender identity for the NSOAAP, and should consider whether and how to recommend an approach for each state or agency plan. The Administration estimates that there will not be increased costs associated with proposed regulations clarifying the data collection obligations for state and area agencies on aging with respect to sexual and gender minorities.¹⁵⁸ The Administration may also consider providing additional resources and guidance for data collection on certain subpopulations included in the

¹⁴⁹ Brian Altman, *ACL: Proud to Serve and Support LGBTQ+ Older Adults*, ADMIN. FOR COMM. LIVING (June 16, 2021), <https://acl.gov/news-and-events/acl-blog/acl-proud-serve-and-support-lgbtq-older-adults>.

¹⁵⁰ *Id.*

¹⁵¹ ADMIN. FOR COMM. LIVING, *16th National Survey of Older Americans Act Participants (NSOAAP) 2022 Telephone Survey English Version* (Nov. 14, 2022), https://agid.acl.gov/docs/16th_NSOAAP_2022_Instrument_11_14_2022-Final.pdf.

¹⁵² 88 Fed. Reg. 50,869.

¹⁵³ ADMIN. ON COMMUNITY LIVING, 17th ACL National Survey of Older Americans Act Participants, <https://acl.gov/sites/default/files/about-acl/2023-07/AllOtherServicesSurvey.pdf> (2023); ADMIN. ON COMMUNITY LIVING, 17th ACL National Survey of Older Americans Act Participants Caregiver Questionnaire, <https://acl.gov/sites/default/files/about-acl/2023-07/CaregiverSurvey.pdf> (2023).

¹⁵⁴ 88 Fed. Reg. 43,357.

¹⁵⁵ 88 Fed. Reg. 42,371.

¹⁵⁶ 87 Fed. Reg. 37,194.

¹⁵⁷ *Id.*

¹⁵⁸ 88 Fed. Reg. 39,603.

proposed regulations, including queer and intersex people.¹⁵⁹ For example, the Administration might consider further research into assessing and comparing the performance of intersex data collection measures for older people, as recommended in the NASEM report.¹⁶⁰

For these reasons, the Administration should prioritize immediate implementation of SOGI data collection as required under the 2020 OAA Reauthorization, the proposed regulations, and the executive orders from the Biden Administration. Additionally, we recommend that the Administration assess the performance of any implemented SOGI measures, and all other data items collected, and revise its measures as needed for future data collection activities.

We also write to emphasize the importance of protection against discrimination related to data collection. The Administration reorganized its regulations under proposed Section 1321.75 to emphasize confidentiality and protection against harmful disclosure of information.¹⁶¹ We note our concern about potential harm to LGBTQI+ program beneficiaries and survey respondents should there be a breach of confidentiality. All entities responsible for data collection must ensure the confidentiality of respondents' demographic information. We agree with the Administration's proposed regulatory language requiring states to ensure that the data contemplated here are collected and reported using all appropriate privacy standards.

IV. The Administration Should Reconsider Removing Regulations on Applicable Nondiscrimination Law

The Administration has proposed the removal of existing 45 C.F.R. § 1321.5.¹⁶² That section currently clarifies that other regulations apply to the activities under the OAA, including multiple nondiscrimination laws.¹⁶³ The Administration justifies the proposed removal by describing the section as “unnecessary” and due to the potential that the regulation could become outdated with future changes in the law.¹⁶⁴ However, eliminating the section referencing other applicable regulations would result in less clarity for recipients of funding through the OAA about their rights and obligations, including the obligation to protect against discrimination. Due to the widespread discrimination experienced by LGBTQI+ people, as described above, and the ongoing failure of many states to meaningfully incorporate these needs into their state plans, removal of this provision could have harmful consequences.

Further, the Secretary of Health and Human Services is obligated to develop and publish guidance on nondiscrimination protections on the basis of sexual orientation, gender identity, and

¹⁵⁹ The Administration's regulations also indicate support for collecting data on intersex people and sex characteristics. For further considerations on intersex data collection, the Administration may wish to consult experts on the subject. See Public Comment from InterAct to OMB, Re: Methods and Leading Practices for Advancing Equity and Support for Underserved Communities through Government; Request for Information (July 6, 2021), <https://www.regulations.gov/comment/OMB-2021-0005-0442>.

¹⁶⁰ NAT'L ACADS. SCIENCES., ENGINEERING, MED., *Issue Brief Measuring Sex, Gender Identity, and Sexual Orientation: Measuring Intersex Status or Differences in Sex Development*, https://nap.nationalacademies.org/resource/26424/Issue_Brief_Intersex_Status.pdf (Sept. 2022).

¹⁶¹ 88 Fed. Reg. 39,585.

¹⁶² 88 Fed. Reg. 39,593.

¹⁶³ 45 C.F.R. § 1321.5.

¹⁶⁴ 88 Fed. Reg. 39,593.

sexual characteristics for older adults in long-term care facilities.¹⁶⁵ Removing the regulation that describes the applicable nondiscrimination laws prior to issuing this guidance may decrease the awareness of protections for LGBTQI+ older adults and undermine the Secretary's ability to meet these obligations.

Rather than removing the existing regulation, the Administration should consider ways to amend or supplement this provision to ensure that participating entities are fully aware of the extent of applicable nondiscrimination requirements, including any protections against discrimination based on SOGI. Likewise, the Administration should, in light of the guidance requirement, consider whether, and if so, how, participating state and area agencies should be required to provide notice to participants of any such nondiscrimination requirements.

V. Conclusion

In conclusion, the undersigned write to provide support for the Administration's efforts to include LGBTQI+ people as a population of "greatest social need" in the proposed regulations. Research from the Williams Institute and additional scholars on the discrimination and disparities faced by LGBTQI+ older adults provide the evidentiary support for this regulatory change. The undersigned further support the Administration's proposed data collection and privacy regulations. Finally, we request the department to reconsider the removal of regulations clarifying the relevant nondiscrimination protections that are currently included in the implementing regulations of the Older Americans Act.

Thank you for your consideration. Please direct any correspondence, including questions, to tentindo@law.ucla.edu.

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¹⁶⁵ 87 Fed. Reg. 37,193.

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