

January 28, 2025

**Via email (OILPPRAComments@acl.hhs.gov)**

Peter Nye  
Program Officer  
Administration for Community Living  
Department of Health and Human Services  
330 C St SW  
Washington, DC 20201

**Re: HHS Notice, “Agency Information Collection Activities; Proposed Collection; Public Comment Request; Centers for Independent Living Program Performance Report (0985–0061)”**

Dear Program Officer Nye:

We are scholars at the Ethics and Public Policy Center (EPPC) and we write to offer public comment regarding the Department of Health and Human Services’ (HHS) notice, “Agency Information Collection Activities; Proposed Collection; Public Comment Request; Centers for Independent Living Program Performance Report (0985–0061)” (Notice).<sup>1</sup>

Eric Kniffin is an EPPC fellow, a member of EPPC’s Administrative State Accountability Project (ASAP), and a former attorney in the U.S. Department of Justice’s Civil Rights Division. Jamie Bryan Hall is the Director of Data Analysis and a Fellow in EPPC’s Life and Family Initiative. He has more than two decades of experience performing quantitative analysis in the federal government, at think tanks, and for private businesses.

Pursuant to its obligations under Section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)), the Administration for Community Living (ACL) in this Notice announces a “proposed extension of an existing collection of information.”<sup>2</sup> Specifically,

This revision adds the collection of sexual-orientation and gender-identity (SOGI) data elements consistent with Executive Orders: 13985 *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*; 13988 *Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation* and 14075 *Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals*.<sup>3</sup>

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<sup>1</sup> 89 Fed. Reg. 94732 (Nov. 29, 2024), <https://www.federalregister.gov/documents/2024/11/29/2024-28052/agency-information-collection-activities-proposed-collection-public-comment-request-centers-for->

<sup>2</sup> *Id.* at 94733.

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

These three executive orders were issued by President Biden. The first two were issued on January 20, 2021, and the third was issued on June 15, 2022.

The Notice estimates that its “new measures added” would require each of 351 Centers for Independent Living to expend 36 hours collecting and reporting data, for a total new burden of 12,636 hours *per year*. The Notice seeks public comment “on our burden estimates or any other aspect of this collection of information, including . . . whether the proposed collection of information is necessary for the proper performance of ACL’s functions.”<sup>4</sup>

At the outset, it is important that HHS recognize that all three of the Executive Orders cited in support of this revision have now been revoked. On January 20, 2025, President Trump issued Executive Order 14148, Initial Rescission of Harmful Executive Orders and Actions.<sup>5</sup> That Executive Order begins as follows:

**Section 1. Purpose and Policy.** The previous administration has embedded deeply unpopular, inflationary, illegal, and radical practices within every agency and office of the Federal Government. The injection of “diversity, equity, and inclusion” (DEI) into our institutions has corrupted them by replacing hard work, merit, and equality with a divisive and dangerous preferential hierarchy. Orders to open the borders have endangered the American people and dissolved Federal, State, and local resources that should be used to benefit the American people. Climate extremism has exploded inflation and overburdened businesses with regulation.

To commence the policies that will make our Nation united, fair, safe, and prosperous again, it is the policy of the United States to restore common sense to the Federal Government and unleash the potential of the American citizen. The revocations within this order will be the first of many steps the United States Federal Government will take to repair our institutions and our economy.

Pursuant to this Purpose and Policy, the Executive Order revokes a number of executive orders, including all three of those cited in the Notice: Executive Orders 13985, 13988, and 14075.

Not only has President Trump eliminated the Executive Orders that serve the basis for HHS’s Notice, he has also issued two Executive Orders that seem particularly relevant to the Notice. First, on January 20, 2025, President Trump issued an Executive Order titled, “Ending Radical and Wasteful Government DEI Programs and Preferencing.”<sup>6</sup> This Executive Order builds on the aforementioned revocation of Executive Order 13985 and specifically renounces the “illegal and immoral discrimination programs” that President Biden’s Executive Order mandated:

**Section 1. Purpose and Policy.** The Biden Administration forced illegal and immoral discrimination programs, going by the name “diversity, equity, and inclusion” (DEI), into virtually all aspects of the Federal Government, in areas ranging from airline safety to the military. This was a concerted effort stemming from President Biden’s first day in office,

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<sup>4</sup> *Id.*

<sup>5</sup> 90 Fed. Reg. 8237 (Jan. 28, 2025), <https://www.federalregister.gov/documents/2025/01/28/2025-01901/initial-rescissions-of-harmful-executive-orders-and-actions>.

<sup>6</sup> <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/>.

when he issued Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”

Pursuant to Executive Order 13985 and follow-on orders, nearly every Federal agency and entity submitted “Equity Action Plans” to detail the ways that they have furthered DEIs infiltration of the Federal Government. **The public release of these plans demonstrated immense public waste and shameful discrimination. That ends today. Americans deserve a government committed to serving every person with equal dignity and respect, and to expending precious taxpayer resources only on making America great.**<sup>7</sup>

We also specifically direct HHS to the following relevant provisions in this Executive Order:

- Section 2(a) states that “[f]ederal employment practices, including Federal employee performance reviews, shall reward individual initiative, skills, performance, and hard work and shall not under any circumstances consider DEI or DEIA factors, goals, policies, mandates, or requirements.”
- Section 2(b) orders each “agency, department, or commission head” to take certain actions “within sixty days of th[is] order,” including:
  - (i) terminate, to the maximum extent allowed by law, all DEI, DEIA, and “environmental justice” offices and positions (including but not limited to “Chief Diversity Officer” positions); all “equity action plans,” “equity” actions, initiatives, or programs, “equity-related” grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees.

Second, on January 20, 2025, President Trump issued an Executive Order titled, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”<sup>8</sup> We specifically direct you to the following relevant aspects of this Order:

- Section 2(f) recognizes that “Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.”
- Section 2(g) recognizes that “‘Gender identity’ reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.”
- Section 3(a) instructs the Secretary of HHS to “provide to the U.S. Government, external partners, and the public clear guidance expanding on the sex-based definitions set forth in this order.”
- Section 3(b) states that federal agencies “shall enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes.”

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<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

- Section 3(c) states that, “[w]hen administering or enforcing sex-based distinctions,” federal agencies “shall use the term ‘sex’ and not ‘gender’ in all applicable Federal policies and documents.”
- Section 3(f) instructs the Attorney General to “immediately issue guidance to agencies to correct the misapplication of the Supreme Court’s decision in *Bostock v. Clayton County* (2020) to sex-based distinctions in agency activities.

To our knowledge, neither the HHS guidance described in Section 3(a) nor the DOJ guidance described in Section 3(f) have yet been issued. HHS should not finalize this Notice until those guidance documents are issued and until HHS has the opportunity to take this guidance into account.

More broadly, we encourage HHS to review the identified provisions of the President’s Executive Order on Gender Ideology into account, along with any guidance or other relevant documents issued pursuant to the President’s Executive Order, as it considers the necessity and new burdens that would be created by this Notice.

Finally, we question the reasonableness of the Notice’s Estimated Program Burden. On the one hand, the estimate seems too low. The Notice estimates that the “burden for new measures added” would be 12,636 hours per year for all 351 CIL together. But this is only counting the burden on the CILs themselves. It would seem that HHS should also account for the burden the Notice would place on the consumer respondents that would have to answer these questions at least annually in order for the CIL to collect this SOGI data. Furthermore, it is not clear that the Notice adequately reflects the complexity of collecting SOGI data. As President Trump’s aforementioned Executive Order on Gender Identity notes, this ideology claims that a person’s gender identity “reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum.” As such, it “does not provide a meaningful basis for identification.” It is unclear how many categories HHS or CILs would have to establish or how often data would have to be collected in order to accurately collect SOGI data.

But the good news is that, in the end, the Notice’s Estimated Program Burden is actually *far too high* given changes in executive policy since the Notice was released in November. As noted above, the Executive Orders that HHS relied on in November when it issued this Notice at the end of November has since been revoked. It does not appear that there is any remaining justification for the proposed collection of SOGI data. To answer the question posed in the Notice, this information is not “necessary for the proper performance of ACL’s functions.”<sup>9</sup> HHS should accordingly abandon this proposal and thus save the American people the expense that this new collection mandate would have imposed, thus advancing another of President Trump’s priorities: to reduce unnecessary federal spending.<sup>10</sup>

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<sup>9</sup> 90 Fed. Reg. at 94733.

<sup>10</sup> See Exec. Order, “Establishing and Implementing the President’s ‘Department of Government Efficiency’” (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/establishing-and-implementing-the-presidents-department-of-government-efficiency/>.

## **Conclusion**

For the reasons stated above, we urge HHS and ACL to carefully examine the necessity of this Notice, the legal basis for the Notice, and the estimated program burdens associated with this Notice in light of the three January 20, 2025, Executive Orders identified above. We hope this public comment helps you better carry out your important responsibilities and ensure that the regulations and information collection requirements finalized by HHS reflect the President's priorities and directives.

Sincerely,

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