

**BEFORE THE UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
ADMINISTRATION FOR COMMUNITY LIVING**

Agency Information Collection Activities;)	OMB Control No.
Submission for OMB Review; Comment)	201802-0985-002;
Request; Redesign of Existing Data Collection;)	FR Docket No. 2018-03390
National Longitudinal Survey of Older)	
Americans Act Participants (NLSOAAP))	

Submitted to OIRA_submission@omb.eop.gov

Attention: OMB Desk Officer for ACL

COMMENTS OF WHITMAN-WALKER HEALTH

Pursuant to the request for comments issued by the Department of Health and Human Services, Administration for Community Living (ACL or the Administration), on February 20, 2018, 83 Fed. Reg. 7,189, Whitman-Walker Clinic, Inc., d/b/a Whitman-Walker Health (WWH or Whitman-Walker), hereby submits the following comments.

Whitman-Walker strongly supports the Administration’s inclusion of questions about sexual orientation in its draft of the 2018 National Survey of Older Americans Act Participants (NSOAAP or National Survey).¹ We strongly oppose, however, the continued omission of any questions on transgender identity.² As we pointed out in our prior comments, submitted on May 12, 2017, in response to the Administration’s initial Comment Request regarding its proposed NSOAAP for 2017,³ without such questions the Administration will be unable to assess the impact of Older Americans Act (OAA)-funded programs on elder transgender

¹ Administration on Community Living, About Community Living, Public Input, Proposed Changes to Survey Instrument: National Survey of Older Americans Act Participants (NSOAAP), “survey instrument” hyperlink (“ACL/AoA National Survey of Older Americans Act Participants, Longitudinal Survey Instrument: Baseline, Draft, Aug. 2, 2017”), <https://www.acl.gov/about-acl/public-input> (last visited Mar. 13, 2018) (retaining question regarding sexual orientation). See § DE(1)(a), p. 102.

² See *id.*, § DE(1), p. 102.

³ 82 Fed. Reg. 13,457 (March 13, 2017).

Americans. Continuing to eliminate such information from the National Survey would impede the efforts of many other federal, state, and local agencies, private nonprofit agencies, and researchers that depend on data collected by the NSOAAP. For the same reasons the Administration has recognized the importance of counting lesbian, gay, and bisexual program participants, it should also recognize the importance of counting transgender individuals. Failing to count older transgender persons would betray the Administration's mandate to protect elder populations that are particularly vulnerable. Transgender older Americans are at the same or even greater risk of isolation, and have the same or even greater need for support, as lesbian, gay, and bisexual elders. We therefore urge the inclusion of questions on transgender identity in the 2018 Survey Instrument.

EXPERTISE AND INTEREST OF WHITMAN-WALKER HEALTH

Whitman-Walker Health is a community-based, nonprofit, Federally Qualified Health Center offering primary medical care and HIV specialty care, mental health and addiction treatment services, dental care, medical adherence case management, and legal services to residents of the greater Washington metropolitan area. WWH has a special mission to the lesbian, gay, bisexual and transgender (LGBT) members of our community, as well as to all Washington-area residents of every gender and sexual orientation who are living with or otherwise affected by HIV.

Whitman-Walker's Legal Services Program was established in 1986 to provide *pro bono* legal assistance to people living with HIV on matters related to their diagnosis. In more recent years our work has expanded to include legal counsel and representation to LGBT individuals and families in the Washington, D.C. metropolitan area. Over the past 30 years, Whitman-

Walker Legal Services has provided *pro bono* assistance to tens of thousands of individuals and families on a wide range of issues including: access to health care; private insurance; public benefits (Social Security disability benefits, Medicaid, Medicare, and DC, Maryland and Virginia programs); discrimination based on HIV status, sexual orientation, or gender identity in health care, employment and public accommodations; immigration matters; wills, advance healthcare directives and powers of attorney; and medical privacy. In 2017, the legal staff and volunteers of our Legal Services Department assisted 3,040 new clients on 5,565 new legal matters. Since 2012, we have operated a legal clinic to assist transgender individuals with name and gender marker changes in their identity documents that has helped hundreds of transgender and gender-nonconforming individuals. In 2013, we launched a new initiative to meet the specific legal needs of older adults who are LGBT or living with HIV.

Whitman-Walker's patient populations, and our legal clients, reflect the diversity of the Washington, D.C. metropolitan area, and our special commitment to the LGBT community. Of the persons receiving health services, approximately one-half identify as gay, lesbian or bisexual; and approximately 8% as transgender. In our Legal Services Department, approximately one-half of our clients in 2017 identified as gay, lesbian or bisexual, and approximately 18% as transgender. Whitman-Walker has extensive experience caring for the health and legal needs of older individuals, including those who identify as LGBT. Approximately 38% of Legal Services clients in 2017 were 50 years of age or older.

COMMENTS ON THE FEBRUARY 20, 2018 DRAFT OF THE ACL LONGITUDINAL NATIONAL SURVEY OF OLDER AMERICANS ACT PARTICIPANTS FOR 2018

In response to comments on its proposal to eliminate questions about sexual orientation and gender identity from the National Survey of Older Americans Act Participants for 2017, the

Administration published a revised draft of that Survey (the “June 16, 2017 draft”).⁴ In that draft, the “ACL . . . made minor changes to the survey instrument,” including “[r]etaining the primary question regarding sexual orientation,” which had been in the Survey for three years prior. The revised NSOAAP instrument, however, did not, and still does not contain any questions to elicit potential transgender identity of participants.⁵ Continued elimination of any transgender identity questions in the current draft longitudinal NSOAAP for 2018 is arbitrary and unwarranted, and would undermine one of the fundamental purposes of the Older Americans Act: to protect older populations with distinctive, important needs.

As we explained in our prior comments in Docket Nos. 2017-13457 and 2017–15062, transgender older adults are a population of “greatest social need.”⁶ For this reason, Whitman-Walker opposes the Administration’s elimination of questions about transgender identity in the 2018 NSOAAP.

Whitman-Walker health care providers, lawyers, and paralegals repeatedly see evidence of the need for OAA resources for our older transgender clients. For example:

⁴ 82 Fed. Reg. 28,491 (June 22, 2017) (*see* note 1 above).

⁵ *See* § DE(1), p. 102 (“ask *if not obvious*: ‘What is your gender?’,” allowing as an answer only “male,” “female,” “refused,” “don’t know”) (*emphasis added*).

⁶ *See* 42 U.S.C. § 3026(a)(4)(A)(i)(I)(aa) (providing that “[e]ach [state] area agency on aging . . . shall . . . prepare and develop an area plan,” which, among other things, shall “provide assurances that the area agency on aging will . . . set specific objectives, consistent with State policy, for providing services to older individuals with greatest economic need, [and] older individuals with greatest social need”); 42 U.S.C. § 3002(24)(C) (Definitions) (defining “ ‘greatest social need’ ” as “the need caused by [economic as well as] noneconomic factors, which include . . . cultural, social, or geographical isolation, . . . [that] restricts the ability of an individual to perform normal daily tasks; or threatens the capacity of the individual to live independently”); Standard Template, Administration on Aging Program Instruction: Guidance for the Development and Submission of State Plans on Aging, State Plan Amendments and the Intrastate Funding Formula, § III(B)(6), page 5-6, <https://www.acl.gov/sites/default/files/about-acl/2017-05/template-PI.pdf> (last viewed March 15, 2018) (advising States that one of the “[n]umerous factors [that] can contribute to ‘greatest economic and social need’ ” includes “one’s sexual orientation/gender identity (LGBT)”).

- “Maria” is a 63-year-old African American transgender woman (male-to-female) who lives with a significant cognitive disability. Her only source of income is from Social Security in the form of Supplemental Security Income (less than \$750/month). She lives in an apartment subsidized by HUD, and relies on Food Stamps (SNAP). Toward the end of the month, however, she has difficulty getting enough groceries to eat. She would benefit from a congregate meal site funded by the OAA.
- “Rita” is a 66-year-old African American transgender woman who suffers from depression and isolation. Her only income is a small Social Security retirement payment from her work years, and an even smaller payment of Supplemental Security Income (total income less than \$770/month). She rents a room in an apartment from a friend. She is only eligible for approximately \$20 in Food Stamps per month. She too would benefit from a congregate meal site funded by the OAA.
- “Nancy” is a 55-year-old disabled African American/Latina transgender woman. She was working at a shelter for survivors of violence, but the shelter went out of business and she found herself unemployed. It has been difficult for her to get employment, given her transgender identity. Chronic unemployment has led to depression, which in turn has caused her to neglect her chronic health conditions (which include Type I diabetes). She was awarded Social Security Disability Income, and has been in the process of getting a Personal Care Aide through her local Office on Aging, to help her with her activities of daily living and general self-care.
- “Anna” is a 60-year-old transgender woman who is a veteran of the U.S. armed services. She has a service-connected disability from an injury she sustained while on active duty. She has arthritis and chronic pain as a result. She tries to work, but work exacerbates her condition. She needs the support her local Office on Aging can provide.

These and our other similar transgender patients face unique “cultural [and] social ... isolation”

as a result of their transgender identity, and that isolation “restricts the ability of [these]

individual[s] to perform normal daily tasks ... [and] live independently.” 42 U.S.C.

§ 3002(24)(C) (definition of individuals of “greatest social need”). Though they are in greater need of OAA programs, they are less likely to access them because of discrimination and stigma.

The ACL should therefore continue to gather data on how State agencies are succeeding, or not,

in addressing the needs of not only “LGB” but also “T” – transgender and gender-

nonconforming – older adults.

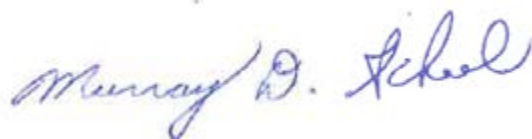
CONCLUSION

For these reasons, Whitman-Walker Health supports the inclusion of questions about sexual orientation in the proposed 2018 Longitudinal NSOAAP Survey Instrument, but urges the inclusion of questions about transgender identity. We appreciate the opportunity to submit these comments. We would be happy to provide any additional information that OMB or the Administration might request.

Respectfully submitted,



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