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Submitted via regulations.gov

Dr. Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Kun Mullan
PRA Coordinator
Office of Planning, Evaluation, and Policy Development
400 Maryland Avenue SW
Washington, DC 20202

RE: Docket ID ED–2023–SCC–0053, Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2024-2025 Free Application for Federal Student Aid (FAFSA)

Dear Secretary Cardona and Coordinator Mullan:

GLSEN and the National Women’s Law Center, along with the undersigned LGBTQI+ rights organizations, appreciate this additional opportunity to comment on the U.S. Department of Education’s (“the Department”) FAFSA Form Demographic Survey (“the Form”).¹ We urge the Department to implement further revisions that meet the dual goals of safeguarding the privacy of LGBTQI+ students while working to obtain accurate and inclusive data on LGBTQI+ students applying for federal financial aid.

More accurate data on sexual orientation, gender identity, and sex characteristics (SOGI-SC) can inform effective policy interventions that address disparities in educational outcomes and long-term economic security for LGBTQI+ people and their families. Clearer data and more inclusive survey instruments would provide further context for the lower rates of enrollment by LGBTQI+ youth in post-secondary education² and higher rates of student loan debt assumed by LGBTQI+ students.³ As we cautioned in our August 2022 letter,⁴ however, the Department must carefully balance the research benefits of more

¹ Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2024-2025 Free Application for Federal Student Aid (FAFSA), 88 Fed. Reg. 63558 (Sept. 15, 2023),

<https://www.federalregister.gov/documents/2023/09/15/2023-20000/agency-information-collection-activities-submission-to-the-office-of-management-and-budget-for>.

² Joseph G. Kosciw, Caitlin M. Clark, Nhan L. Truong, and Adrian D. Zongrone, *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools* (New York: GLSEN, 2020), 46-54, <https://www.glsen.org/research/2019-national-school-climate-survey>.

³ Over half of transgender adults, almost half of LGB cisgender women, and over a quarter of LGB cisgender men have federal student loans. See the Williams Institute, *Federal Student Loan Debt Among LGBTQ People* (July 2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Student-Debt-Jul-2021.pdf>. See also Nat’l Ctr. for Transgender Equality, *National Transgender Discrimination Survey* 40 (2017), https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf; Andrew Pentis, *LGBTQ Student Loan Borrowers Face Rough Road*, Student Loan Hero (June 24, 2019), <https://www.lendingtree.com/student/lgbtq-student-loan-borrowers-survey/>.

⁴ Comment of Nat’l Women’s Law Ctr., Docket ID ED-2022-SCC-0082, Agency Information Collection Activities; Comment Request; FAFSA Form Demographic Survey by the U.S. Department of Education, Federal Student Aid

accurate data with the safety concerns faced by LGBTQI+ students, many of whom are minors and some of whom may be harmed by the disclosure of their LGBTQI+ identity to a parent or caregiver or who may intentionally misidentify themselves to avoid harm.

The safety concerns for LGBTQI+ students are even more salient today, as students are facing evolving state and local policies that undermine the confidentiality of their student records and even forcibly out students to their parents and classmates.⁵ We urgently underscore the seriousness of these safety concerns: inappropriate disclosure to a student’s family or community could result in adverse outcomes that impact a student’s mental health and well-being, including parental rejection, harassment, abuse, homelessness, depression, and suicidal ideation. Especially as parents may play a “large role” in filling out the FAFSA Form,⁶ the Department must go beyond its proposed form to, as the FAFSA Simplification Act of 2021 requires, “mitigate unintended consequences”⁷ associated with SOGI-SC data collection and adequately safeguard demographic data.

To meet the dual goals of collecting SOGI-SC data while protecting the privacy of LGBTQI+ students, the Department should survey applicants with separate questions measuring their gender identity and transgender status as part of a voluntary, supplemental survey instrument. In its current form, the Department’s proposed Form does not meet these goals. Instead, it includes a single gender identity question as part of an administrative form that can be accessed by parents,⁸ higher education officials,⁹ and—upon execution of a data-sharing agreement—even officials (such as school counselors) at the student’s K-12 school.¹⁰ Transgender students, in particular, are encouraged to select the gender with which they identify, without any proximate notification that such information could be shared with parents or others. The Department’s approach is inconsistent with reasoning presented by the White House’s Federal Evidence Agenda on LGBTQI+ Equity, which cautioned that administrative forms may lack sufficient data protection policies and practices but noted that surveys will generally receive responses to SOGI questions at similar rates to other demographic questions.¹¹

The current proposal to incorporate the Form as part of the FAFSA application fails to achieve the Department’s goal to capture more accurate and inclusive data. Parental access to the administrative Form will chill accurate completion and could deter concerned students, particularly transgender students, from

(Aug. 12, 2022),

https://nwlc.org/wp-content/uploads/2022/08/NWLC-Comment_FAFSA-Form-Demographic-Survey.pdf.

⁵ See Movement Advancement Project, LGBTQ Youth: Forced Outing of Transgender Students, <https://www.lgbtmap.org/img/maps/citations-forced-outing.pdf> (last updated Aug. 16, 2023).

⁶ U.S. Department of Education, Federal Student Aid, Understanding the 2023-24 FAFSA Process for Parents, <https://studentaid.gov/articles/parents-understanding-fafsa/> (last accessed Oct. 5, 2023).

⁷ 20 U.S.C. § 1090(a)(4)(A)(ii).

⁸ U.S. Department of Education, Federal Student Aid, Log-in Options, <https://studentaid.gov/help/log-in-options> (last accessed Oct. 5, 2023).

⁹ U.S. Department of Education, Federal Student Aid, Who is My “Parent” When I Fill Out the FAFSA Form? (January 2022), <https://studentaid.gov/sites/default/files/fafsa-parent.pdf>.

¹⁰ Bill DeBaun & Caroline Doglio, *As States Expand FAFSA Data Sharing, More Should Consider What’s Being Shared and How*, National College Attainment Network (Mar. 7, 2023), <https://www.ncan.org/news/634019/As-States-Expand-FAFSA-Data-Sharing-More-Should-Consider-Whats-Being-Shared-and-How.htm>.

¹¹ National Science and Technology Council, Federal Evidence Agenda on LGBTQI+ Equity, 15 (January 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>.

even pursuing financial aid. Shifting demographic questions—including questions beyond gender identity¹²—to a voluntary, supplemental survey will “mitigate unintended consequences”¹³ for LGBTQI+ applicants and provide further opportunities to secure relevant data, provide proximate notification of disclosures, and uncouple demographic data from personally identifiable information.

Our recommendation that demographic information shift to a voluntary, supplemental survey to protect LGBTQI+ applicants’ privacy aligns with the Department’s obligation to collect sex data from applicants under the FAFSA Simplification Act of 2021. It also aligns with providing applicants the option to opt out of providing any demographic information, which the Department has already deemed permissible given its inclusion of a “prefer not to answer” option on the proposed administrative Form.¹⁴ A voluntary, supplemental demographic survey similarly fulfills the Department’s legal obligations under the Act, while providing applicants significantly greater privacy protections against unwanted parental disclosure.

Further, shifting demographic questions to a voluntary supplement to the FAFSA application gives the Department additional opportunities to “mitigate unintended consequences”¹⁵ associated with collecting SOGI-SC data by limiting parental access to demographic data. For example, the Department can equip the voluntary, supplemental survey with privacy settings including: a setting that prevents keystrokes from being captured; a setting that prevents a subsequent user from reloading the previous page to see a prior user’s application; a setting that prevents parents from viewing demographic information when filling out their income information and signing the FAFSA application; and a fast exit button that directs the user to a neutral website, such as a search engine.

Shifting demographic questions to a voluntary, supplemental survey—like the one that the Department piloted in 2022¹⁶—will also remedy the Department’s concerns about our previously recommended approach to asking about transgender status, which is critical for capturing accurate gender identity information, especially for transgender students. In our August 2022 comment, we urged the Department to include one question to ask about self-reported gender and a separate question to ask about transgender status.¹⁷ This approach to collecting sex/gender demographic information will yield the most accurate data by allowing applicants to identify themselves as transgender while ensuring that they are not forced to choose between identifying their transgender status and their gender identity. For example, if a transgender woman is presented with a single gender question that only permits her to choose either “female” or “transgender,” and she selects the “female” option, she will not be counted as transgender,

¹² The Department may wish to consider moving all demographic data measures, including race and ethnicity, to a voluntary supplement to the FAFSA application. We encourage the Department to consult with experts on race and ethnicity data collection, advocates, and community members about the utility of similarly moving race and ethnicity data to the voluntary supplement, as well as the policy reasons for doing so.

¹³ 20 U.S.C. § 1090(a)(4)(A)(ii).

¹⁴ Office of Management and Budget, ICR Documents, Supporting Statement A, 9 (Sept. 12, 2023), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202303-1845-006 (“As required in Section 483(a)(2)(ii) of the HEA, the FAFSA form asks students to provide their sex, race, and ethnicity... Students are provided an opportunity to decline to answer any of the sex, race, or ethnicity questions.”).

¹⁵ 20 U.S.C. § 1090(a)(4)(A)(ii).

¹⁶ Agency Information Collection Activities; Comment Request; FAFSA Form Demographic Survey, 87 Fed. Reg. 35745 (June 13, 2022),

<https://www.federalregister.gov/documents/2022/06/13/2022-12674/agency-information-collection-activities-comment-request-fafsa-form-demographic-survey>

¹⁷ See Comment, *supra* n. 4, at 2–3.

resulting in an undercount of transgender applicants; but, if she chooses “transgender,” then she will not be represented in the count of women applicants, similarly skewing the count of women applicants.¹⁸ If the demographic survey is offered as a separate, voluntary supplement to the FAFSA application along with the additional privacy measures we recommend above, the Department can effectively and safely measure both applicants’ gender identity and transgender status while minimizing the risk of unwanted disclosure of applicants’ transgender status.

Given the sensitive nature of this demographic information, the Department should consider the scale of data that would be useful for its stated research purposes. The Department’s research purposes may be satisfied by state-level aggregate data, without soliciting personally identifiable information through questions in an administrative form. In addition to considering a voluntary, supplemental survey accompanying the FAFSA form, the Department should incorporate questions that measure self-reported gender and transgender status into other existing survey instruments to obtain more robust data about LGBTQI+ high school students. The National Center for Education Statistics (NCES) is well positioned to incorporate SOGI-SC identity measures into national surveys of students, teachers, administrators, and other school staff.¹⁹ The 1st follow-up study of the High School & Beyond (HS&B) survey, which asks respondents if they have applied for financial aid (including specifically by completing the FAFSA), provides high-quality data that illuminates obstacles students face in accessing postsecondary education through a nationally representative sample of 12th-grade students, a population that substantially overlaps with FAFSA applicants. Including a two-step measure of gender identity on this survey, would shed light on disparities impacting transgender and nonbinary youth’s access to federal financial aid.²⁰

Finally, we urge the Department to take steps to collect demographic data about all LGBTQI+ individuals applying for federal financial aid, including refining measures for variations in sex characteristics and sexual orientation, consistent with the recommendations in our August 2022 comment. The Department may also wish to consider other strategies, such as including a measure of sexual orientation on the first follow-up survey of the HS&B,²¹ and collaborating with the Centers for Disease Control and Prevention Division of Adolescent and School Health, the Census Bureau, and other agencies on the testing and development of a measure of variations in sex characteristics for use with youth populations.²² Including

¹⁸ GLSEN has similarly noted that a single-question approach for sex/gender demographic data collection impedes the accuracy of the data collected. *See* GLSEN, Considerations for Measuring Sexual Orientation and Gender Identity in Surveys of Secondary School Students 4 (2022),

https://www.glsen.org/sites/default/files/2022-05/GLSEN_LGBTQ_Data_Inclusion_Research_Brief.pdf.

¹⁹ GLSEN, LGBTQ+ Data Inclusion: Advancing Intersectional Equity in K-12 Education Systems 8–9 (2022), https://www.glsen.org/sites/default/files/2022-05/GLSEN_LGBTQ_Data_Inclusion_Policy_Brief.pdf.

²⁰ We thank the Department for including a measure of gender identity on the National Postsecondary Student Aid Study, Baccalaureate and Beyond Longitudinal Study, and Beginning Postsecondary Students Longitudinal Study. However, such surveys will exclude transgender and nonbinary twelfth grade students who do not pursue postsecondary education and do not shed light on the barriers these students may face around accessing federal student aid.

²¹ Sexual orientation measures have long been included in surveys of high school students through the Youth Risk Behavior Survey and the National Crime Victimization Survey (eligible respondents may complete the School Crime Supplement) and have also been added to the National Postsecondary Student Aid Study, Baccalaureate and Beyond Longitudinal Study, Beginning Postsecondary Students Longitudinal Study.

²² GLSEN, LGBTQ+ Data Inclusion: Advancing Intersectional Equity in K-12 Education Systems, at 8 (2022), https://www.glsen.org/sites/default/files/2022-05/GLSEN_LGBTQ_Data_Inclusion_Policy_Brief.pdf.

these measures is essential to assessing the financial barriers the entire LGBTQI+ community may face to accessing higher education.

Inclusive data collection is the first step towards identifying and breaking down the economic obstacles LGBTQI+ people face to accessing higher education and achieving economic security in adulthood. Thank you for considering our recommendations to maximize the utility and inclusivity of the FAFSA's data collection measures and protect against the inappropriate disclosure of applicants' demographic data. If you have questions about this comment, please contact Brian Dittmeier (brian@glsen.org) or Hunter F. Iannucci (hiannucci@nwlc.org).

Sincerely,

GLSEN and the National Women's Law Center, *joined by*
InterACT: Advocates for Intersex Youth
The Movement Advancement Project
Whitman-Walker Institute