

July 6, 2021

Submitted via www.regulations.gov

Ms. Shalanda Young, Acting Director
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20504

Re: Request for Information Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government; [Docket Number: OMB-2021-0005, 86 FR 24029]

Dear Acting Director Young:

Thank you for the opportunity to comment on the Office of Management and Budget's (OMB) Request for Information (RFI) entitled "Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government". The National Disability Rights Network (NDRN) and the 57 Protection and Advocacy (P&A) agencies and Client Assistance Programs (CAP) we represent believe that this is an excellent opportunity to assess whether agency policies and actions equitably serve all eligible individuals and communities, particularly those that are currently and historically underserved which includes people with disabilities.

NDRN is the non-profit membership association of P&A agencies and CAPs that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A/CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally-based advocacy services for persons with disabilities.

Comments: *Area 1 on equity assessments and strategies*

How might agencies collect data and build evidence in appropriate and protected ways to reflect underserved individuals and communities and support greater attention to equity in future policymaking?

Annually, P&A agencies are required to produce a Program Performance Report (PPR) for the programs administered by P&A agencies. These PPRs contain a wealth of information, including an evaluation of whether the program has met the goals and priorities developed for the year with input from the community and the individuals that the P&A agency serves. However, the data requested in each report is not standardized, which requires the P&A agencies to spend a large amount of time drafting and creating the PPRs, draining time and resources from serving clients and conducting systemic advocacy. Given the limited resources that the P&A agencies have, it would directly benefit people with disabilities if the reports could be standardized so that these resources could instead be used to provide direct services to people with disabilities.

NDRN and the P&As worked over the last few years with the Administration on Disability (AOD) to streamline the Protection and Advocacy for Individuals with Developmental Disabilities (PADD), Protection and Advocacy for Voter Access (PAVA), Protection and Advocacy for Individuals with Traumatic Brain Injury (PATBI), and Protection and Advocacy for Assistive Technology (PAAT) PPR reporting processes. Our goal was to produce one PPR that effectively and efficiently documents the work of a particular P&A agency while providing AOD and Congress the information they need to properly evaluate these four P&A programs. This work led to the creation of the One PPR that demonstrates the outcomes of the P&A agencies and gives AOD and Congress the information they need to properly evaluate each individual program. The One PPR itself was designed with the idea that all P&A programs can use this concept to ultimately streamline the existing reports. We encourage OMB to further standardize the remaining PPRs so that PPR reporting can be streamlined.

Affirmatively advancing equity within the Federal Government should include using the most inclusive language possible. Not only is this a matter of equity, but by collecting data in an inclusive manner, the Federal Government will be better equipped to develop policies that serve all people. On all of the current PPRs, we do not believe the choices for the sex demographic question, nor the two answers, appropriately capture all identities. It is not uncommon for P&A board or advisory council members, or staff, to feel constrained by the traditional definitions of female and male. Additionally, the use of the term “sex” connotes a biological definition and does not always accurately identify a person. We recommend changing the term “Sex” to “Gender” in all PPRs. We also recommend that the choices to answer the question should be the following: Male, Female, Non-binary, and Chose Not To Answer. Additionally, the “Race” category in the PPRs is not consistent. We recommend adding “Native Hawaiian/Pacific Islander” and “Unknown” to the list of Races and adding “Unknown” to the list of options in response to ethnicity. Addressing these issues is an equity issue, but also better allows comparison of data between programs to ensure that all programs are serving all the different communities within the greater disability community.

What are some of the barriers or factors that challenge underserved communities' interactions with Federal agencies and programs?

The nationwide network of P&A agencies also oversees the Protection and Advocacy for Beneficiaries of Social Security (PABSS) program. The intent of the PABSS program is to provide advocacy services, including legal representation, to Social Security beneficiaries who face barriers in returning to work. This program is crucially important to many people with disabilities as the unemployment rate among people with disabilities remains high, while labor force participation remains low when compared to those without disabilities. The Social Security Administration Office of Employment Support (SSA) has imposed a new requirement that any and all staff who charge time to the PABSS program must have a Tier Two suitability clearance. NDRN and the P&A system strenuously object to this proposed requirement and have communicated our objections to SSA. We once again reiterate our opposition to this requirement in the context of this RFI as the requirement imposes an undue burden on P&A staff and created barriers that make it challenging for the P&As to properly serve beneficiaries. We strongly urge OMB to work with SSA to withdraw this requirement on the following bases:

1. In the context of the PABSS program, any information which is characterized as Personally Identifiable Information (PII) by the SSA is provided by the voluntary authorization of the beneficiary and/or his or her guardian or conservator to allow the PABSS staff person to provide advocacy services. At no time does the P&A access any information under the PABSS program through either physical or electronic access to any Social Security facility, site, information system, or other programmatic access. Any and all information that may be characterized as PII, is provided to the P&A solely by the PABSS-eligible client in the course of a recognized attorney-client relationship.
2. P&A agencies are civil legal service programs which provide advocacy and legal representation exclusively to people with disabilities to protect and enforce their legal, civil, and human rights. P&A systems are congressionally mandated to pursue legal, administrative, and other advocacy strategies on behalf of its clients. P&A systems are structured, organized, and operate as civil legal service programs, including the hiring of attorneys, paralegals, and advocates. The work of the P&A is under the supervision and management of licensed attorneys. The requirement for Suitability clearance constricts advocates/attorneys with experience from assisting clients as the cases are assigned to staff with clearance rather than staff with knowledge and experience to properly assist the client.
3. P&A systems and P&A staff are governed by both federal and state laws with established rubrics and a broad ethical duty and legal responsibility to any client to protect all information from unauthorized disclosure. All P&A staff must understand and abide by existing federal and state ethical obligations to protect client information

pursuant to the P&A enabling statutes and the rules of professional conduct.

4. All P&A systems have intake and case-handling protocols. PABSS-eligible clients contact the P&A on their own volition, and under existing P&A case handling protocols P&As document the client objectives and outcomes of representation through a written retainer, letter of engagement, or similar document. Critically, P&As obtain informed consent from the client before seeking records and information and prior to the release of records and information. No action is taken on behalf of the PABSS-eligible client without their informed consent.

5. As civil legal service programs P&A system lawyers and advocates must not be singled out for such an onerous, expensive, and ultimately unnecessary suitability clearance. PABSS lawyers and advocates must not be subject to any requirement that is different from those imposed upon the thousands of other lawyers and legal practitioners who practice on behalf of Social Security claimants and beneficiaries, including private bar attorneys, attorneys and legal practitioners at LSC-funded legal services programs, and other nonprofit law firms. SSA has never, in the over 20 years the program has existed, required security clearance of staff working under the PABSS program.

We believe the recommendations above are concrete actions OMB can implement to collect data in an equitable manner to reflect underserved individuals and communities and reduce barriers or factors that challenge underserved communities' interactions with Federal agencies and programs. These recommendations support greater attention to equity in future policymaking. Please contact Cyrus Huncharek, Senior Public Policy Analyst, at cyrus.huncharek@ndrn.org should you have any questions or concerns with these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Curtis L. Decker", is positioned above the printed name.

Curtis L. Decker
Executive Director