

November 20, 2023



Ms. Sheleen Dumas
Department PRA Clearance Officer
Office of the Under Secretary for Economic Affairs
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Submitted via <http://www.regulations.gov>

Re: Public comment in response to U.S. Census Bureau submission to OMB for review and approval the American Community Survey Methods Panel: Sexual Orientation and Gender Identity Test (Docket No. USCB-2023-0007)

Dear Ms. Dumas:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the civil and human rights of all persons in the United States, and the undersigned organizations, we appreciate this opportunity to provide comments in response to the Census Bureau's request for review and approval for a test of sexual orientation and gender identity (SOGI) questions in the American Community Survey (ACS) in 2024. We strongly support this proposed test and believe that the federal government should consistently include measures in data collection activities that would allow policymakers to identify the unique needs and experiences of LGBTQI+ people.

The Leadership Conference is the nation's oldest, largest, and most diverse civil and human rights coalition and provides a powerful unified voice for the many constituencies we represent. Our coalition views the collection of useful, objective data about our nation's people, housing, economy, and communities to be among the most important civil rights issues of our day. Our longstanding role as a Census Information Center has allowed us to lift up within our broad civil rights coalition the fundamental importance of comprehensive, high-quality data about our population, communities, and economy.

Data are an essential tool for advancing equity for all — a goal of the Biden administration under Executive Order 13985.¹ That's why it is essential that all population subgroups are seen in the portraits of Americans and U.S. communities our federal statistical system creates. The ACS is the nation's largest household survey, adding richness and currency through vital annual socio-economic and demographic characteristics to the foundational data collected in the decennial census. Beyond recognition of a significant population group, data on the LGBTQI+ population are necessary to identify and quantify

¹ Exec. Order 13985. "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." 86 Fed. Reg. 7009. Jan. 20, 2021. <https://www.federalregister.gov/d/2021-01753/page-7009>.

inequities in access, opportunities, incidence, and outcomes across social and economic institutions, and to pursue policies to remedy them.

Using existing datasets, researchers have illuminated disparities faced by LGBTQI+ people when compared to non-LGBTQI+ populations. LGBTQI+ people are significantly more likely to be living in poverty² and face worse physical and mental health outcomes.³ Yet, most major surveys administered by the government still do not collect information on SOGI. As the LGBTQIA+ Primary Care Alliance put it, this “perpetuates the invisibility of sexual and gender diverse people and further stigmatizes them as unworthy of notice.”⁴ Some federal surveys ask questions that are partial proxies for SOGI; for instance, the census and the ACS ask about “same-sex” spouses or partners in the household relationship question. However, given that many LGBTQI+ people do not live with a spouse or partner, these questions do not produce data on the number of LGBTQI+ people — and they do not ask about gender identity at all.

Currently, through the household relationship question, the ACS collects data on same-sex couples who live in the same household, whether married or unmarried. Unfortunately, this measure only captures about one in six LGBTQI+ people in the U.S.,⁵ leaving LGBQ, transgender, and intersex people with no avenue for self-identification and rendering them invisible. The proposed test, as described in the *Federal Register* Notice, could lead to the inclusion of SOGI measures on the ACS, an important step towards creating an accurate, comprehensive portrait of our population.

LGBTQI+ people are a growing and demographically diverse population within the U.S. The population’s various subgroups often have different lived experiences, making it vital to capture that diversity in federal surveys and other data collection activities, similar to the collection of granular data through the Census Bureau’s race and ethnicity questions in the ACS and census. Improving ACS data collection on LGBTQI+ communities would yield more accurate population estimates and enable data disaggregation by race, ethnicity, disability, age, and other variables to help policymakers and researchers better understand the experiences and socio-economic well-being of diverse segments of the LGBTQI+ community.

² 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 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>; see also BIANCA D.M. WILSON ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES (2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Poverty-COVID-Feb-2023.pdf> (using data from the Behavioral Risk Factor Surveillance System and the Bureau’s Household Pulse Survey to analyze poverty rates during the early days of the COVID-19 pandemic).

³ See, e.g., Kellan E. Baker, *Findings From the Behavioral Risk Factor Surveillance System on Health-Related Quality of Life Among US Transgender Adults, 2014-2017*, 179 JAMA INTERNAL MEDICINE 1141 (2019), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2730765>; Gilbert Gonzales & Carrie Henning-Smith, *Health Disparities by Sexual Orientation: Results and Implications from the Behavioral Risk Factor Surveillance System*, 42 J. COMMUNITY HEALTH 1163 (2017), <https://pubmed.ncbi.nlm.nih.gov/28466199/>.

⁴ LGBTQIA+ Primary Care Alliance. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 2. <https://www.regulations.gov/comment/OMB-2021-0005-0493>.

⁵ Caroline Medina & Lindsay Mahowald, *Collecting Data About LGBTQI+ and Other Sexual and Gender-Diverse Communities*, CTR. FOR AM. PROGRESS (May 24, 2022), <https://www.americanprogress.org/article/collecting-data-about-lgbtqi-and-other-sexual-and-gender-diverse-communities/>.

We also want to express our dismay at recent suggestions that gender identity is “unscientific” and a “false concept” grounded only in “subjective beliefs” and “social ideas.”⁶ and should therefore not be included in the Census Bureau’s research. LGBTQI+ people have always existed, and their historical invisibility has been the result of discrimination, stigma, and legal inequality. As reviewed in the 2022 Consensus Study Report of the National Academies of Sciences, Engineering, and Medicine (NASSEM) report, measurement of sexual orientation and gender identity has a long history, grounded in thorough and apolitical methodologies designed to better illuminate the demographics of our country. Efforts to politicize these questions and cast them as part of a social agenda are an unconscionable intrusion of politics into science and violate the thorough, deliberative process required by the Census Bureau for adding questions to one of our country's most important surveys. Such research is vital to facilitating the collection of data on an often-invisible segment of our population, in order to implement and enforce federal policies and programs that help ensure equitable treatment and outcomes for all Americans.

We are mindful that, while it is important for all respondents to “see” themselves in the ACS population questions, OMB and Census Bureau policy appropriately require all questions on the nation’s largest survey to collect data mandated by federal law or that are required for implementation or enforcement of a federal statute(s) or federal court order(s), in order to reduce respondent burden. Accordingly, each decade, the Census Bureau asks all federal agencies to confirm existing needs for data at the smallest levels of geography the ACS produces (census tracts and block groups) or to justify requests for new data sets, in order to implement, monitor, and/or enforce federal programs and policies tied to statutes.

Unfortunately, violence, harassment, and discrimination against LGBTQI+ people are on the rise across many of societal sectors, including in schools and the workplace, on public transportation, and when seeking housing or emergency shelter and medical care. This year, state legislators introduced a record number of bills that roll back safeguards against discrimination and harassment and enact bans on the ability of LGBTQI+ people to access lifesaving medical care.⁷ The Federal Bureau of Investigation recently released its annual crime report for 2022, finding that anti-LGBTQ+ hate crimes increased sharply from the prior year—with a 13.8 percent increase in reports based on sexual orientation and a 32.9 percent jump in reported hate crimes based on gender identity.⁸

But the lack of accurate, comprehensive data on LGBTQI+ communities makes it difficult to monitor, implement, and enforce civil rights laws — especially Title VII of the Civil Rights Act of 1964 — that prohibit discrimination on the basis of sex, including sexual orientation and gender identity. Data collected through the ACS are needed by federal agencies to advance their efforts to identify and combat patterns and practices of discrimination against LGBTQI+ people. For example, the Department of Justice

⁶ Letter to Census Director Robert Santos from U.S. Senators Marco Rubio and JD Vance (11/2/23), <https://mail.google.com/mail/u/0/#inbox/FMfcgzGwHVQcpPgVzMTpjDMQbvbVpxGW>

⁷ Human Rights Campaign, LGBTQ+ Americans Under Attack: A Report and Reflection On The 2023 State Legislative Session (2023), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Anti-LGBTQ-Legislation-Impact-Report.pdf>.

⁸ FBI National Press Office, *FBI Releases 2022 Crime in the Nation Statistics*, FBI.GOV (Oct. 16, 2023), <https://www.fbi.gov/news/press-releases/fbi-releases-2022-crime-in-the-nation-statistics>.

has expressed interest in and identified statutory and regulatory needs for SOGI content on the ACS. Specifically, the data would allow the Department of Justice to better coordinate and enforce federal laws that cover anti-LGBTQI+ hate crimes and strengthen its ability to enforce civil rights laws, including those that protect LGBTQI+ people from discrimination. Other landmark civil rights laws that prohibit discrimination on the basis of sexual orientation and gender identity include the Affordable Care Act, the Fair Housing Act, and Title IX of the Education Amendments of 1972. Clearly, adding SOGI questions to the ACS would meet the standards for data collection set forth in federal statistical policy.

Question format, terminology, and wording

Our coalition includes groups with significant knowledge of issues related to question format, terminology, and wording, who are submitting their own comments in response to the Notice. Those advocates include the Whitman-Walker Institute, Human Rights Campaign, Williams Institute, and Movement Advancement Project (MAP). We urge the Census Bureau to fully consider the comments and recommendations for further research of these organizations with respect to question wording, terminology, format, and other technical aspects of collecting accurate data on the LGBTQI+ population, and we endorse the comments they have submitted in response to this Notice.

We know that collecting data about SOGI is supported by the 2020 NASEM report, which recommends that government entities and other stakeholders should consider adding those measures “to all data collection efforts and instruments.” Studies by the OMB’s Federal Interagency Working Group on Measuring Sexual Orientation and Gender Identity show that SOGI questions can readily be used on surveys and provide a roadmap to when to include those questions. Research also shows that these questions are not especially difficult or sensitive, and securing responses does not require a higher level of effort. We also note the Census Bureau’s Household Pulse Survey (HPS), instituted during the COVID pandemic to provide timely information on emerging issues related to the implications of the global health crisis on U.S. households, includes SOGI questions, although we recognize that response to the HPS is voluntary.

Preserving data confidentiality and privacy

While we are aware of the current political and legal environment in which LGBTQI+ people are living, we do not believe these challenges should prevent the Bureau from moving forward with a test of SOGI questions and with adding such questions to the ACS in the future if test results support that step.

Fortunately, the Census Act includes the strongest confidentiality safeguards in federal law (13 U.S.C. §8, §9, and §214) which should provide robust protection against misuses of data collected in the ACS and published for many geographic areas. The Census Bureau must remain vigilant about protecting the privacy of individuals when collecting data in the ACS and decennial census and must uphold the strong confidentiality protections for personally identifiable data set forth in the Census Act. It will be important for the Bureau to convey information about privacy and confidentiality safeguards to ACS respondents. The Bureau should consult frequently with LGBTQI+ stakeholders and advocates to determine the best messaging in this regard and should include in its evaluation of test results an assessment of the

effectiveness and accessibility of these messages on response to the SOGI questions and to the test survey overall.

In summary, we strongly support the long-overdue proposed test of SOGI questions on the ACS and are hopeful that the findings will support the inclusion of these questions in the most effective formats on this seminal survey in the near future.

Thank you for your consideration of our concerns and views. Please direct any questions about these comments to Meeta Anand, senior program director, Census and Data Equity at The Leadership Conference (anand@civilrights.org).

Sincerely,

The Leadership Conference on Civil and Human Rights

A Better Balance

ACLU

American Atheists

Arab American Institute

Asian & Pacific Islander American Health Forum (APIAHF)

Asian Americans Advancing Justice - AAJC

Asian and Pacific Islander American Vote (APIAVote)

Census Quality Reinforcement (CQR) Task Force

Center for Law and Social Policy (CLASP)

Citizens for Responsibility and Ethics in Washington (CREW)

Clearinghouse on Women's Issues

Coalition on Human Needs

Defending Rights & Dissent

Disability Rights Education and Defense Fund (DREDF)

Economic Policy Institute

Empowering Pacific Islander Communities

End Citizens United/Let America Vote Action Fund

Feminist Majority Foundation

FFRF Action Fund

Human Rights Campaign

Human Rights First

Impact Fund

Japanese American Citizens League (JACL)
Justice in Aging
Labor Council for Latin American Advancement
League of Women Voters of the United States
MACS 2030 - Minnesotans for the American Community Survey and 2030 Census
MALDEF (Mexican American Legal Defense and Educational Fund)
NALEO Educational Fund
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Council of Asian Pacific Americans (NCAPA)
National Disability Rights Network (NDRN)
National Hispanic Media Coalition
National Homelessness Law Center
National Network for Arab American Communities
National Partnership for Women & Families
National Urban League
National Women's Law Center
NC Counts Coalition
Nebraska Civic Engagement Table
NETWORK Lobby for Catholic Social Justice
Oklahoma Institute for Child Advocacy
PFLAG National
Philanthropic Initiative for Racial Equity (PRE)
Prison Policy Initiative
Prosperity Now
SAGE (Advocacy and Services for LGBTQ+ Elders)
SHK Global Health
Sikh American Legal Defense and Education Fund (SALDEF)
Southeast Asia Resource Action Center (SEARAC)
Storied Analytics, LLC
The Arc of the United States
The Trevor Project