

May 30, 2024

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U.S. Department of Commerce  
1401 Constitution Ave., NW  
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Submitted via <http://www.regulations.gov>

**Re: Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2024 American Community Survey (ACS) Sexual Orientation and Gender Identity Test**

On behalf of the Leadership Conference on Civil and Human Rights, Whitman-Walker Institute, Movement Advancement Project, National Partnership for Women & Families, Human Rights Campaign and the 148 undersigned organizations, we appreciate this opportunity to provide comments in response to the U.S. Census Bureau's (the "Bureau") recent proposal to conduct a test of sexual orientation and gender identity (SOGI) measures on the American Community Survey (ACS).<sup>1</sup>

It is critical that the federal government's data collection efforts consistently include questions sufficient to identify the needs and experiences of LGBTQI+ communities. Such data should always be gathered in a safe and secure manner, in alignment with best practices and evidence-based research on this subject, and in a way that supports efforts to improve the well-being of LGBTQI+ people across the country. Given the invaluable and unique role that ACS data play in the design and implementation of policies, programs, and funding investments, as well as the enforcement of civil rights laws, enhancing data collection on LGBTQI+ populations on the ACS is a top priority.

**Therefore, we strongly support the Bureau's proposal to conduct the 2024 ACS SOGI Test (the "Test") and urge the Census Bureau to proceed with the Test this summer as planned.** Below we offer several reasons for our support, as well as recommendations for future related research for consideration as you proceed with the Test and, we hope, move towards full implementation.

**1. Improved ACS data collection on LGBTQI+ communities is essential to implement and enforce federal laws and policies, and to advance equity goals and directives**

Existing evidence demonstrates that due to discrimination, stigma, and other social determinants of health and well-being, LGBTQI+ populations experience worse outcomes in health, economic security, housing, and other key areas of life compared to non-LGBTQI+ populations.<sup>2</sup> Such

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<sup>1</sup> Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2024 American Community Survey (ACS) Sexual Orientation and Gender Identity Test, 89 Fed. Reg. 33,314 (Apr. 29, 2024).

<sup>2</sup> See, for example, 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

disparities and experiences of discrimination are often heightened for particular subgroups—such as transgender populations—and for people with multiple marginalized identities, such as LGBTQI+ people of color, LGBTQI+ people with disabilities, and LGBTQI+ older adults.<sup>3</sup> Unfortunately, anti-LGBTQI+ discrimination remains a pervasive problem and, in recent years, we have witnessed a surge in anti-LGBTQ+ legislative assaults, political extremism, and violent attacks nationwide.<sup>4</sup>

The ACS is the premier source of information on the social, economic, housing, and demographic characteristics of communities across the nation. ACS data are uniquely valuable; they are used to allocate trillions of dollars in public resources, shape evidence-based policymaking, and enforce various civil rights laws.<sup>5</sup> The robust sample size and collection of other key demographics in addition to SOGI will yield more accurate population estimates and enable disaggregation by race, ethnicity, disability, age, and other variables to help researchers, advocates, and policymakers better understand the experiences and well-being of diverse segments of the LGBTQI+ community. The ACS is also the only source of reliable socio-economic characteristics data for rural and tribal areas, where access to health care and other vital services is often limited. Adding SOGI measures to the ACS is an unparalleled opportunity to help to ensure the needs of LGBTQI+ populations are better reflected in government policies, programs, funding investments, and enforcement of civil rights laws, including those enacted to protect LGBTQI+ people from discrimination.

We greatly appreciate the established, deliberative process that the Bureau—in consultation with federal agencies that have a statutory need for these data—has followed to add SOGI measures to the ACS. This process was initiated because multiple federal agencies submitted letters to the Census Bureau articulating the statutory and regulatory justifications for collecting data on LGBTQI+ populations and formally requesting measures that account for LGBTQI+ people to be added to the ACS. For example, the Department of Justice asserts that adding these measures to the ACS is necessary to better enforce nondiscrimination protections under Title VII of the Civil Rights Act of 1964 and the Violence Against Women Reauthorization Act, as well as to better address anti-LGBTQI+ hate crimes.<sup>6</sup> We are pleased that, after thorough review, the Bureau determined that the Department of Justice request met the strict requirements for adding new content to the ACS.

As a result, the Bureau has initiated cognitive testing on sexual orientation, gender identity, and variations in sex characteristics and has commenced planning for the 2024 ACS SOGI Test, which we strongly support. Although the Test does not include measures to allow for intersex people to identify

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the early days of the COVID-19 pandemic); LAUREN J.A. BOUTON ET AL., WILLIAMS INST., LGBT ADULTS AGED 50 AND OLDER IN THE US DURING THE COVID-19 PANDEMIC (2023), <https://williamsinstitute.law.ucla.edu/publications/older-lgbt-adults-us/>; 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>; Caroline Medina & Lindsay Mahowald, *Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022*, CTR. FOR AM. PROGRESS (Jan. 12, 2023), <https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/>; NAT'L ACADEMIES OF SCIENCES, ENGINEERING, & MED., UNDERSTANDING THE WELL-BEING OF LGBTQI+ POPULATIONS (2020) <https://nap.nationalacademies.org/catalog/25877/understanding-the-well-being-of-lgbtqi-populations>

<sup>3</sup> Caroline Medina, Mia Ives-Ruble, Lindsay Mahowald, Thee Santos *The United States Must Advance Economic Security for Disabled LGBTQI+ Workers* CTR. FOR AM. PROGRESS (November 3, 2021), <https://www.americanprogress.org/article/united-states-must-advance-economic-security-disabled-lgbtqi-workers/>; Lindsay Mahowald *LGBTQ People of Color Encounter Heightened Discrimination* CTR. FOR AM. PROGRESS (June 24, 2021), <https://www.americanprogress.org/article/lgbtqi-people-color-encounter-heightened-discrimination/>; Movement Advancement Project and SAGE. May 2017. "Understanding Issues Facing LGBT Older Adults." <https://www.lgbtmap.org/policy-and-issue-analysis/understanding-issues-facing-lgbt-older-adults> (May 13, 2024).

<sup>4</sup> 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>.

<sup>5</sup> See MOVEMENT ADVANCEMENT PROJECT ET AL., HOW THE AMERICAN COMMUNITY SURVEY IMPACTS LGBTQI+ COMMUNITIES (2023), <https://www.mapresearch.org/file/Fact-Sheet-ACS-Impacts-LGBTQI-Communities.pdf>.

<sup>6</sup> DOJ, Letter to Census Bureau Requesting SOGI Questions on the American Community Survey (Dec 9, 2022), <https://www.documentcloud.org/documents/23891611-dec-9-2022-letter-from-doj-to-census-bureau-requesting-sexual-orientation-and-gender-identity-questions-on-the-american-community-survey>.

themselves, we encourage the Bureau to continue working with federal agencies to have them articulate their needs for ACS-derived estimates on the prevalence of people with intersex traits in the United States, and ask that the Bureau continue its preliminary cognitive testing research on the measurement of variations in sex characteristics to help prepare for a subsequent field test in the meantime.

Efforts to improve data collection on LGBTQI+ communities through the ACS align with the equity goals of Executive Order 13985<sup>7</sup>, Executive Order 14091<sup>8</sup>, Executive Order 14075<sup>9</sup> (EO14075), and similar directives designed to promote equity for underserved communities. For example, EO14075 initiated a cross-government effort to advance responsible, effective, and inclusive data collection on sexual orientation, gender identity, and variations in sex characteristics. In January 2023, as a result of EO14075, the Subcommittee on Sexual Orientation, Gender Identity, and Variations in Sex Characteristics published a Federal Evidence Agenda on LGBTQI+ Equity (“the Evidence Agenda”), which serves as a roadmap for federal agencies working to build evidence and leverage SOGI and intersex data to advance equity for LGBTQI+ people.<sup>10</sup> Improving data collection on LGBTQI+ communities through the ACS is vitally important to support implementation of EO14075 and to assess how the federal government is progressing in its mission to advance equity.

## **2. The 2024 ACS SOGI Test demonstrates the high-quality, rigorous research needed to evaluate the best methods for measuring SOGI in this seminal, unique nationwide survey**

The Bureau’s Test proposal reflects its commitment to conducting the kind of high-quality, rigorous research that is imperative when considering impactful changes to our nation’s premier survey about the U.S. population. The Test will provide evidence to inform and refine recommendations related to question wording, response options, proxy reporting, and other important research topics.

In particular, we support the robust sample size, testing of measures that are rooted in and build upon evidence-based research, and use of help text to provide information about the questions, why the Bureau is collecting the data, and how the Bureau is ensuring data confidentiality. We also appreciate the Bureau’s plans to use qualitative questions and follow-up reinterviews to learn more about how respondents view and interact with the questions and to assess the reliability of the measures, including in the case of proxy reporting when one individual answers questions for others in their household, a priority area of research. We also support the Bureau prioritizing cognitive and field testing in English and Spanish, since the ACS questionnaire and survey instruments are available in those languages. In the future, we encourage the Bureau to engage in cognitive research to test additional languages and ensure respondents who need assistance in another language can access that key resource.

Lastly, ensuring the privacy and confidentiality of ACS responses is of paramount importance. Fortunately, the unique statutory protections for decennial census program data (including the ACS) under Title 13 represent the strongest confidentiality safeguards in federal law and provide robust

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<sup>7</sup> Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Exec. Order 13985, 88 Fed. Reg. 7009 (Jan. 20, 2021).

<sup>8</sup> Exec. Order 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 88 Fed. Reg. 10,825 (Feb. 16, 2023).

<sup>9</sup> Exec. Order 14075, Further Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, 87 Fed. Reg. 37,189 (June 15, 2022).

<sup>10</sup> Nat’l Science & Technology Council, Federal Evidence Agenda on LGBTQI+ Equity 14 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>.

protection against misuse of data. In accordance with Title 13, each household in the Test sample is assured of the confidentiality of their answers; however, we appreciate the Bureau adopting and implementing additional disclosure avoidance procedures and other measures to assure respondents of their confidentiality and data security.

### **3. A robust timeline is critical to ensuring sound findings from the Test**

We are pleased that, in this strained fiscal environment, the Bureau will prioritize allocating the total \$10 million cost necessary to conduct a robust 2024 ACS SOGI Test. However, we are concerned that due in part to budgetary and operational constraints, the Bureau plans to delay the Test's nonresponse follow-up activities until spring 2025. The length of time between original household contact and in-person follow-up activities has the potential to introduce recall bias into responses, thereby possibly diminishing the reliability of data collected in that phase of the Test. We strongly urge the Bureau to ensure that the timeline for the nonresponse follow-up portion of the Test does not slip any further than early Spring 2025.

### **4. Conclusion**

We strongly support the Bureau conducting the 2024 ACS SOGI Test, which is critical to produce rigorous, high-quality research to support sound decision-making about changes to this seminal survey. We wholeheartedly believe that the outcomes of this test should guide how the Bureau proceeds—and based on its design, we are hopeful for the inclusion of these measures on the ACS soon. Notably, we feel strongly that the deliberative scientific and consultation process the Bureau is following should not be derailed or unnecessarily delayed as these data are critical to ensuring the health, safety, and well-being of our communities. Additionally, the Bureau's research to improve responsible data collection on LGBTQI+ communities through the ACS should not be held to a different, higher standard than other changes to this important survey.

We appreciate the Bureau's commitment to conducting rigorous research to enhance data collection on LGBTQI+ communities through the ACS, which is essential to support intersectional research, evidence-based policymaking, better enforcement of civil rights laws, and advance equity for LGBTQI+ communities. Thank you for your consideration of our comments. If there is any additional information we can provide, please do not hesitate to contact Caroline Medina, Director of Policy for Whitman-Walker Institute, at [cmedina@whitman-walker.org](mailto:cmedina@whitman-walker.org).

Respectfully,

Human Rights Campaign  
Leadership Conference on Civil and Human Rights  
National Partnership for Women & Families  
Movement Advancement Project  
Whitman-Walker Institute

A Better Balance  
Abrazar, Inc.  
Actionable Intelligence for Social Policy (AISP)  
AEQUA Strategies

AIDS Alabama  
AIDS Foundation Chicago  
AltaMed Health Services Corporation  
American Association of University Women  
American Cancer Society Cancer Action Network  
American Educational Research Association  
Arab American Institute (AAI)  
Arizona Trans Youth and Parent Organization  
Arkansas Advocates for Children and Families  
Asian Americans Advancing Justice - AAJC  
Association of Mexicans in North Carolina, INC.  
Atlanta Pride  
Autistic Self Advocacy Network (ASAN)  
Caring Across Generations  
Census Equity Initiative  
Census Quality Reinforcement Task Force  
Center for American Progress  
Center for Biological Diversity  
Center for Economic and Policy Research  
Center for Housing and Health  
Center for the Study of Social Policy  
CenterLink: The Community of LGBTQ Centers  
Charlotte Trans Health  
Circle Care Center  
Coalition for Asian American Children & Families (CACF)  
COLAGE  
Common Cause North Carolina  
Connecticut Data Collaborative  
Delaware Sexuality & Gender Collective  
Dream Center Charlotte  
EducateUS  
El Refugio, Inc  
Equality California  
Equality Federation  
Equality Illinois  
Fair Wisconsin  
Family Values @ Work  
Fayetteville Alumnae Chapter of Delta Sigma Theta Sorority Inc.  
FL National Organization for Women  
FORGE, Inc.  
Funders for LGBTQ Issues  
Funders' Committee for Civic Participation (FCCP)  
Future Endeavors Life Program  
Georgetown Center on Poverty and Inequality  
GLBTQ Legal Advocates & Defenders  
GLSEN  
Government Information Watch  
Greater Orlando National Organization for Women (Greater Orlando NOW)

GRIOT Circle  
Guttmacher Institute  
HandsOn Northwest North Carolina  
Harriet Hancock Center Foundation  
ICPSR, The Data Consortium  
Impact Fund  
Impetus - Let's Get Started LLC  
Inside Out Youth Services  
Institute for Women's Policy Research  
interACT: Advocates for Intersex Youth  
International Friendship Center  
Jacobs Institute of Women's Health  
Julissa La Terapista, LLC  
Justice for Migrant Women  
Justice in Aging  
Latino Community Foundation  
League of Women Voters of the United States  
Legal Aid at Work  
Legal Momentum  
LGBT Center of Raleigh  
LGBT Community Center of Greater Cleveland  
LGBTQ+ Victory Fund  
LGBTQ+ Victory Institute  
Lionel Lee Jr. Center for Wellness  
Los Angeles LGBT Center  
Making Visions  
MALDEF (Mexican American Legal Defense and Educational Fund)  
Massachusetts Teachers Association  
Mazzoni Center  
Michigan League for Public Policy  
Montgomery Co PA NOW  
NALEO Educational Fund  
National Black Justice Coalition  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Community Action Partnership  
National Council of Jewish Women  
National Disability Rights Network (NDRN)  
National Education Association  
National Employment Law Project  
National Family Planning & Reproductive Health Association  
National Immigration Law Center  
National Latina Institute for Reproductive Justice  
National LGBTQ Task Force Action Fund  
National LGBTQI+ Cancer Network  
National Organization for Women  
National Organization for Women, Columbia Area  
National Organization for Women, Missouri

National Queer Asian Pacific Islander Alliance  
National Urban League  
National Women's Law Center  
NC Budget & Tax Center  
NC FIELD, Inc.  
NETWORK Lobby for Catholic Social Justice  
New Mexico Voices for Children  
North County LGBTQ Resource Center  
Oasis Legal Services  
Omaha ForUs LGBTQ+ Center  
Orgullo Delaware  
Planned Parenthood Federation of America  
Plume Clinic  
Pride Action Tank  
Pride Foundation  
PRISM Florida  
Prison Policy Initiative  
Project on Government Oversight  
Rainbow Rose Center  
Reproductive Freedom for All (formerly NARAL Pro-Choice America)  
Resource Center  
Scotland Youth Development NC  
Service Employees International Union (SEIU)  
Sexual Violence Prevention Association (SVPA)  
SIECUS: Sex Ed for Social Change  
Social Change  
South Carolina Housing Justice Network  
Southeast Asia Resource Action Center (SEARAC)  
State Innovation Exchange (SIX)  
Stop AAPI Hate  
Storied Analytics  
TFBU Foundation  
The Restaurant Opportunities Centers United (ROC UNITED)  
The Wright's Center, Inc./BCVEC  
TransFamily Support Services  
Transgender Law Center  
Transgender Legal Defense & Education Fund (TLDEF)  
Trillium Health  
U2U  
Ujima, The National Center on Violence Against Women in the Black Community  
Waves Ahead Corp  
Wellness Services, Inc.  
Wilder Research  
Will County NOW  
Winners PLUS Inc.  
Women Employed  
Working Partnerships USA  
World Professional Association for Transgender Health (WPATH)