

November 15, 2022

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Program Analyst
Policy Coordination Office, U.S. Census Bureau
U.S. Department of Commerce

RE: Soliciting Input or Suggestions on 2030 Census Preliminary Research, FR Doc. 2022-17647

Dear Shannon:

Thank you for the invitation to share input and ideas as you prepare for the 2030 Census. The 25 organizations, and one individual, signed onto this letter are excited for the 2030 Census to count every person in the United States, including people who are lesbian, gay, bisexual, transgender, queer, intersex, and other sexual and gender minorities (LGBTQI+). We recognize the research and testing for the 2030 Census is starting, and we're committed to supporting the full inclusion—and explicit enumeration—of LGBTQI+ people in the 2030 Census.

In response to the Census Bureau's request for comment (87 FR 50599), we recommend that the Bureau 1) **reach and motivate everyone** to ensure LGBTQI+ people are counted accurately by including questions to measure sexual orientation, gender identity, and variations in sex characteristics (SOGI-SC) on the 2030 Census and 2) **support the public** by directly participating in educational outreach and community engagement to encourage responses by LGBTQI+ people, reduce distrust, and improve population coverage.

In previous comments submitted to the Census Bureau and other federal agencies, we have summarized the demographic research to date about LGBTQI+ people and why LGBTQI+ data inclusion is so critical for addressing known disparities, increasing our understanding of key challenges, and informing policy efforts.¹ The 2022 National Academies of Science, Engineering, and Medicine (NASEM) report also provides a comprehensive summary of those findings.² Rather than repeat them here, our new recommendations focus on key areas for improvement, research, and testing in preparation for the inclusion of LGBTQI+ people on the 2030 Census.

¹ For example, "[Request for Information: Federal Evidence Agenda on LGBTQI plus Equity](#)" (OSTP-2022-0015-001); "[Nondiscrimination in Health Programs and Activities](#)" (HHS-OS-2022-0012); "[Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#)" (ED-2021-OCR-0166); "[Agency Information Collection Activities: Comment Request; Integrated Postsecondary Education Data System \(IPEDS\) 2022-23 Through 2024-25](#)" (ED-2022-SCC-0026-001); "[State Small Business Credit Initiative: Demographics-Related Reporting Requirements](#)" (TREAS-DO-2022-0005); "[Small Business Lending Data Collection under the Equal Credit Opportunity Act](#)" (CFPB-2021-0015-0002); "[Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government](#)," (OMB-2021-005-001); "CPS Basic Demo 60-day FRN" (USBC-2020-0031); "[Medicare Current Beneficiary Survey \(MCBS\) \(CMS-P-0015A\)](#)" (CMS-2022-0022-001).

² National Academies of Sciences, Engineering, and Medicine, "Measuring Sex, Gender Identity, and Sexual Orientation" (Washington: The National Academies Press, 2022), available at <https://www.nap.edu/catalog/26424/measuring-sex-gender-identity-and-sexual-orientation>

Reaching & Motivating Everyone: Research & Testing for the 2030 Census Must Include SOGI-SC Measures

Federal Law—and the Ability of Agencies to Enforce Civil Rights Laws—Demands SOGI-SC Measures on the 2030 Census

In 2016, the U.S. Department of Justice (DOJ) submitted a letter to the U.S. Census Bureau formally requesting that SOGI questions be included on the American Community Survey for the 2020 Census, thereby formally initiating the process of adding new questions.³ In particular, the DOJ's November 4, 2016 letter presented the agency-specific legal and programmatic justifications for adding such measures to the ACS, including for the purpose of managing violence prevention funding and enforcing a range of nondiscrimination protections.⁴ Unfortunately, the goal of adding SOGI questions was not completed.⁵

Since 2016, the legal need for SOGI-SC data inclusion has only become stronger. Federal civil rights laws prohibit discrimination based on sex in key areas including employment, housing, health programs, education, and in many other social institutions. As confirmed by the U.S. Supreme Court in June 2020 in the *Bostock* decision,⁶ discrimination based on sexual orientation and gender identity are forms of illegal sex discrimination under federal law. Last year, DOJ recognized that the reasoning of *Bostock* “applies with equal force to discrimination against intersex people” based on their sex characteristics.⁷

On the first day of his presidency, President Biden signed EO 13988, directing all federal agencies that enforce federal laws prohibiting sex discrimination to also prohibit discrimination based on SOGI and to take actions necessary to fully implement the *Bostock* decision.⁸ The same day, President Biden signed EO 13985, directing federal agencies to promote equity for LGBTQ⁹ Most recently, President Biden signed an executive order on “Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals,” which charges agencies with identifying ways to strengthen federal data collection on SOGI-SC to advance equity for LGBTQI+ communities.¹⁰ One way to realize the aims of all these executive orders is to expand data collection on SOGI-SC through the 2030 Census.

³ See Senator Tom Carper and Senator Kamala D. Harris, “Letter to John H. Thompson, Director, United States Census Bureau,” May 22, 2017, available at <https://www.carper.senate.gov/public/cache/files/de7e0915-ea9f-4c51-a2d5-f3ee4abe0bf3/2017-05-22-carper-harris-letter-to-census-bureau-re-new-subjects-press-.pdf>

⁴ See Senator Tom Carper and Senator Kamala D. Harris, “Letter to John H. Thompson, Director, United States Census Bureau,” May 22, 2017, available at <https://www.carper.senate.gov/public/cache/files/de7e0915-ea9f-4c51-a2d5-f3ee4abe0bf3/2017-05-22-carper-harris-letter-to-census-bureau-re-new-subjects-press-.pdf>

⁵ Hansi Lo Wang, “Trump Officials 'Did Not Want' Census Survey To Ask About Sexual Orientation,” *NPR*, September 20, 2018, available at <https://www.npr.org/2018/09/20/649752485/trump-officials-did-not-want-census-survey-to-ask-about-sexual-orientation> and Hansi Lo Wang, “Biden Wants Census To See ‘Invisible’ Groups: LGBTQ, Middle Eastern, North African” *NPR*, November 14, 2020, available at <https://www.npr.org/2020/11/14/932594879/biden-wants-census-to-see-invisible-groups-lgbtq-middle-eastern-north-african>

⁶ *Bostock v. Clayton County*, 590 U.S. ____ (June 15, 2020), p. 1, available at https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

⁷ Department of Justice, Title IX Legal Manual (updated Aug. 12, 2021), available at <https://www.justice.gov/crt/title-ix#Bostock>.

⁸ Executive Office of the President, “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,” *Federal Register* 86 (14) (2021): 7023–7025, available at <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>

⁹ Executive Office of the President, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” *Federal Register* 86 (14) (2021): 7009-7013, available at <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>

¹⁰ The White House, “Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals,” June 15, 2022, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/15/executive-order-on-advancing-equality-for-lesbian-gay-bisexual-transgender-queer-and-intersex-individuals/>

The enforcement of such civil rights protections is critical for LGBTQI+ communities. According to the Center for American Progress’s nationally representative survey conducted in 2020, more than 1 in 3 LGBTQI+ adults, more than 2 in 5 LGBTQI+ people of color and more than 3 in 5 transgender individuals reported experiencing some form of discrimination in the year prior.¹¹

Thus, there are statutory and civil rights enforcement requirements for the collection of data about LGBTQI+ people, so that federal agencies and civil rights offices, in particular, can enforce the law. The 2030 Census is one such vehicle for these data to be collected. It is imperative that the Census Bureau revitalize efforts to research, test, and propose the addition of SOGI-SC measures for the 2030 Census (including working quickly with other federal agencies as needed to clarify or update outstanding content requests in light of subsequent scientific and legal developments).

A Clear Direction for 2030 Census Research for SOGI-SC Measures Exists

There is clear evidence, including from Census Bureau surveys and research, that SOGI questions can be included on large, national surveys, that people will answer them, and that they will yield important and accurate data.¹² As we look to the 2030 Census, we ask that the Census Bureau use existing research and evidence on best practices to inform its work to test and develop SOGI-SC measures for inclusion on the Census that will be fielded in 2030.

For example, the Federal Interagency Working Group on Measuring Sexual Orientation and Gender Identity was convened by the Office of Management and Budget. This Working Group published four groundbreaking reports on improving measurement of sexual orientation and gender identity in federal surveys. These resources, in addition to other critical studies—such as the Sexual Minority Assessment Research Team [SMART] 2009 report¹³ and the Gender Identity in U.S. Surveillance [GenIUSS] Group report¹⁴ of 2014—demonstrate that SOGI and variations in sex characteristics questions can be readily used on federally funded and other surveys. These resources also provide a valuable roadmap for the Census Bureau to follow when including such vital questions. Most recently, the 2022 NASEM report provides a rigorous, comprehensive review of the current research, methodological evidence, and best practices for collecting SOGI-SC data and recommends testing priorities to continue to improve these measures.

¹¹ Sharita Gruberg, Lindsay Mahowald, and John Halpin, “The State of the LGBTQ Community in 2020: A National Public Opinion Study” (Washington: Center for American Progress, 2020), available at <https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/10/06/491052/state-lgbtq-community-2020/>

¹² For example: Jessica Holzberg, Renee Ellis, Robin Kaplan, Matt Virgile, and Jennifer Edgar, “Can They and Will They? Exploring Proxy Reporting of Sexual Orientation and Gender Identity in the Current Population Survey,” *Journal of Official Statistics*, December 2019, available at <https://sciencemag.org/article/10.2478/jos-2019-0037>; Renee Ellis, Matthew Virgile, Jessica L. Holzberg, Dawn V. Nelson, Jennifer Edgar, Polly Phipps, and Robin Kaplan, “Assessing the Feasibility of Asking About Sexual Orientation and Gender Identity in the Current Population Survey: Results from Cognitive Interviews,” Center for Survey Measurement, U.S. Census Bureau, April 2, 2018, available at <https://www.census.gov/content/dam/Census/library/working-papers/2018/adrm/rsm2018-06.pdf>; Jennifer M. Ortman, Nancy Bates, Anna Brown, and R. Chase Sawyer, “Optimizing Self and Proxy Response to Survey Questions on Sexual Orientation and Gender Identity,” presented at the Annual Meeting of the Population Association of America, April 27-29, 2017; Jessica Holzberg, Renee Ellis, Matt Virgile, Dawn Nelson, Jennifer Edgar, Polly A. Phipps, and Robin L. Kaplan, “Assessing the Feasibility of Asking About Gender Identity in the Current Population Survey: Results From Focus Groups With Members of the Transgender Population,” Office of Survey Methods Research, U.S. Bureau of Labor Statistics, 2017, available at <https://www.bls.gov/osmr/research-papers/2017/html/st170200.htm>

¹³ Sexual Minority Assessment Research Team, “Best Practices for Asking Questions about Sexual Orientation on Surveys (SMART)” (Los Angeles: Williams Institute, 2009), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/SMART-FINAL-Nov-2009.pdf>

¹⁴ M.V. Lee Badgett and others, “Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys (GenIUSS)” (Los Angeles: Williams Institute, 2014), available at <https://williamsinstitute.law.ucla.edu/publications/geniuss-trans-pop-based-survey/>

Of course, the Census Bureau itself has been utilizing questions similar to those recommended by the NASEM report in its Household Pulse Survey. This survey is still being fielded and has already yielded important findings about LGBT people during the pandemic and is offering real-time data about how the questions perform on a national survey.¹⁵ In light of existing evidence of economic and health disparities,¹⁶ the 2022 NASEM report affirms the need for standalone measures that can identify intersex populations and recommends a measure for federal agencies to test and adopt.

Therefore, we ask that the Census Bureau use evidence-based findings from the Household Pulse Survey questions and the recommendations made by the 2022 NASEM report to inform their work to research, test, and ultimately propose questions for the 2030 Census. Throughout this process, the Census Bureau should also include in its research agenda priority areas for testing to improve measures, including those recommended by the NASEM report. For example, the Census Bureau should engage in qualitative and quantitative research, testing, and development to:

- Improve gender identity measures to ensure they optimally reflect the identities of transgender people, for example, by allowing participants to select all responses that apply (e.g., “male” and “transgender”) and/or the addition of “nonbinary” as a response option, as well as assessing alternative gender identity measures that do not rely on sex assigned at birth.¹⁷
- Evaluate standalone measures that allow for data collection on people with intersex traits.
- Evaluate measures that incorporate emerging sexual orientation identities.
- Leverage existing research to ascertain the appropriate question placement and formatting of SOGI-SC measures on the online and paper forms.
- Advance understanding about how to translate SOGI-SC measures into the various languages used for promotion, outreach, and response in the 2030 Census. Research conducted by SOGI-SC data experts and professional translation staff should investigate how different populations may understand SOGI-SC measures differently and how best to incorporate culturally appropriate and sensitive language to accurately include these questions in materials in languages other than English.
- Assess the performance of SOGI-SC measures in proxy reporting settings
- Examine and develop strategies to address instances of item non-response and barriers to collecting accurate responses to SOGI-SC questions during in-person interviews and proxy interviews
- Conduct thorough research to develop training for Census staff who engage with the public, including enumerators, telephone operators, and field staff. Topics should include how to make

¹⁵ Caroline Medina, Lindsay Mahowald, Rose Khattar, and Aurelia Glass, “Fact Sheet: LGBT Workers in the Labor Market,” (Washington: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/fact-sheet-lgbt-workers-in-the-labor-market/> and Kerith J. Conron and Kathryn K. O’Neill, “Food Insecurity Among Transgender Adults During the COVID-19 Pandemic,” (Los Angeles, Williams Institute, 2022), available at <https://williamsinstitute.law.ucla.edu/publications/trans-food-insufficiency-covid/>

¹⁶ Rosenwohl-Mack A, et al. (2020) A national study on the physical and mental health of intersex adults in the U.S., 15 *PLoS ONE* e0240088 (2020) (hereinafter Rosenwohl-Mack et al. 2020); Zeeman L, Aranda K., A Systematic Review of the Health and Healthcare Inequalities for People with Intersex Variance, 17 *INT’L J. ENVIR. RES. & PUB.HEALTH* 6533 (2020). See also European Union Fundamental Rights Agency, *EU-LGBTI II: A long way to go for LGBTI equality* (2020).

¹⁷ Research suggests that some transgender and nonbinary people find questions about sex assigned at birth to be invalidating and/or invasive (e.g. Reisner SL, et al. (2014) Monitoring the health of transgender and other gender minority populations: validity of natal sex and gender identity survey items in a US national cohort of young adults. *BMC Public Health* 14:1224). As summarized in the 2022 NASEM report, more testing and research is needed to fully understand the ways to allow respondents to identify as transgender or nonbinary without asking about their sex assigned at birth and how these changes impact accurate data collection.

sure staff understand the purpose of these questions, how to appropriately engage in the collection of these data, and how to address to respondent questions or concerns about these questions.

- Examine how the Census Bureau’s efforts to enhance operational efficiency and data quality by using administrative records would address the availability of SOGI-SC data in administrative data collections which often lack SOGI-SC measures.

We urge the Census Bureau to advance this research agenda in consultation with experts on measuring SOGI-SC data, LGBTQI+ people and community advocates, as well as federal agencies with expertise in surveying LGBTQI+ populations.

Supporting the Public: Necessary Community Education & Engagement to Ensure that LGBTQI+ People and Communities Participate in the 2030 Census

As organizations committed to advancing equity for LGBTQI+ people and their families, we stand ready to support the Census Bureau in the development and implementation of educational outreach and community engagement activities that will be necessary when SOGI-SC questions are included on the 2030 Census.

For many LGBTQI+ people, the 2030 Census will be the first time they have been asked about their sexual orientation, gender identity, or variations in sex characteristics by the federal government. We expect many people to be excited to be counted and to see their full selves reflected in the count of the nation’s population. At the same time, we know that many LGBTQI+ people live in places that still lack explicit nondiscrimination protections. Worse, some LGBTQI+ people live in places where their ability to access vital medical care, to seek best practice medical care for their children, and to safely attend schools without harassment, bullying, violence, disproportionate discipline, and censorship are under attack. For this reason, it will be essential for the Census Bureau to invest in community education and engagement and to work closely alongside trusted LGBTQI+ organizations and spokespeople.

First, to encourage public response to SOGI-SC questions, and in turn improve population coverage, the Bureau should provide public materials that address frequently asked questions about the use of the data in informing decisions impacting communities, funding allocations, and more. The Bureau should conduct thorough message testing and engage with LGBTQI+ organizations representing variety of locations across the country to develop materials that convey effective messaging through a variety of accepted outlets and platforms. In hiring representatives for partnership and other related staff, the Census Bureau should ensure that the workforce is diverse and inclusive of LGBTQI+ people who can effectively reach these populations.

Second, to reduce distrust, the Bureau will need to make very clear the robust nondiscrimination protections, privacy, security, and confidentiality standards, and restrictions on data sharing that exist particularly for census data. It is crucial that all respondents—including LGBTQI+ respondents—feel confident that their data will be protected and not subject to misuse.

Third, during every phase of analysis and dissemination, SOGI-SC data must be analyzed, maintained, and shared only with rigorous privacy and confidentiality standards in place and upheld. Where these data are collected, agencies should issue guidance and technical assistance outlining how to safeguard privacy and confidentiality, implement best practices of consent for the collection of these data, and adopt appropriate restrictions on their use, sharing, or transfer. As noted above, these privacy and confidentiality policies should be clearly shared in plain language with respondents to promote transparency about the uses and non-uses of these demographic data.

The National Academies report identified five principles for SOGI-SC data, including that data used for analysis and dissemination “must be used, maintained, and shared only under rigorous privacy and confidentiality standards.”² During every phase of collection, tabulation, analysis, and dissemination, the rigorous privacy and confidentiality standards in place under Title 13, U.S.C., §8 and §9, must be upheld with regard to SOGI-SC data.

Conclusion

The information gathered by the 2030 Census shape major policy decisions and allocations of critical resources related to health care, housing, employment, education, and other services and benefits, affecting the everyday lives of LGBTQI+ people, making the need to adopt sexual orientation, gender identity, and intersex status measures even more urgent. Collecting SOGI-SC data will bring visibility to the experiences of LGBTQI+ people and will support intersectional analysis of LGBTQI+ communities of color, older adults, persons with disabilities, rural communities, and other populations. Doing so will support data-driven research and evidence-based policymaking to address existing disparities and discrimination.

The undersigned organizations and individuals are excited about how the 2030 Census can be utilized to address the existing gaps in knowledge about LGBTQI+ people. Please contact Naomi Goldberg (naomi@mapresearch.org) with questions, for more information, or to discuss how we can support your efforts.

Sincerely,

Organizations

Advocates for Youth
Brennan Center for Justice
Campaign for Southern Equality
CenterLink: The Community of LGBT
Centers
COLAGE
Fenway Institute
FORGE, Inc.
Gender Justice
GLMA: Health Professionals Advancing
LGBTQ+ Equality
GLSEN
House of Our Queer
interACT

The Inclusion Playbook
Lambda Legal
LGBT Tech
Los Angeles LGBT Center
Movement Advancement Project
National Black Justice Coalition
National Employment Law Project
National Women’s Law Center
Oasis Legal Services
Prison Policy Initiative
SPLC Action
TransAthlete.com
The Trevor Project

Individuals

danah boyd