



August 18, 2017

Erin Good
BLS Clearance Officer
Division of Management Systems
Bureau of Labor Statistics
Room 4080
2 Massachusetts Avenue N.E.
Washington, DC 20212
Submitted by fax 202-691-5111 and mail

RE: DEPARTMENT OF LABOR; Bureau of Labor Statistics; Proposed Collection;
Comment Request (**Current Population Survey**) (82 FR 27873)

Dear Ms. Good:

We are grateful for the opportunity to provide the Bureau of Labor Statistics with comments on the Current Population Survey (CPS). We are scholars at the Williams Institute, an academic research center at UCLA School of Law dedicated to conducting rigorous and independent research on sexual orientation and gender identity, including on disparities and discrimination facing lesbian, gay, bisexual, and transgender (LGBT) people. We collect and analyze original data as well as analyze governmental and private data. In addition, Williams Institute scholars have long worked with federal agencies to improve data collection on the U.S. population and have produced widely-cited best practices for the collection of sexual orientation and gender identity information on population-based surveys.¹

Our comments address the importance of including sexual orientation and gender identity measures on the CPS and other government surveys. The CPS is one of our country's most important data collections because it is the principal source of data about employment and unemployment in the United States. Incorporating measures of sexual orientation and gender identity into the CPS would enhance the quality, utility, and clarity of the information collected because it would provide important data about LGBT people's and their families' labor force experiences. Like race, sex, and other personal demographic data already collected on the CPS, data on sexual orientation and gender identity would enhance the ability of the Department, state and local labor agencies, policymakers, employers, workers, and others to address unique employment and unemployment situations facing the LGBT population and subpopulations (such as racial minorities, bisexual women, or transgender individuals). Existing evidence finds

¹ See Sexual Minority Assessment Research Team (SMART), Williams Institute, *Best Practices for Asking Questions about Sexual Orientation on Surveys* (2009), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SMART-FINAL-Nov-2009.pdf>; Gender Identity in U.S. Surveillance (GenIUSS) Group, Williams Institute, *Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys* (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/geniuss-report-sep-2014.pdf>.

that LGBT people face persistent and pervasive employment discrimination, making inclusion of sexual orientation and gender identity measures on the CPS all the more important.

I. Importance of Governmental Data Collection on Sexual Orientation and Gender Identity (SO/GI); SO/GI Data Collection is Becoming Increasingly Common

Federal, state, and local agencies/governments collect a vast array of data on our nation's people through censuses, surveys, and other data collection tools. These data influence public policy as well as directly impact the annual allocation of hundreds of billions of dollars of governmental funds. Many governmental data collection instruments gather respondents' race, ethnicity, sex, age, and other personal demographic information, including the American Community Survey (ACS) and the CPS. Although the trend is changing, the majority of federal data collection instruments (including the ACS and CPS) do not allow respondents to self-disclose their or their household members' sexual orientation or gender identity and, consequently, provide no data with which to examine the demographic, economic, geographic, and other characteristics of the LGBT population (aside from same-sex couples), or to compare these characteristics to those of non-LGBT people. Population-based data on all LGBT Americans and their families are needed and would inform public and private decision-making. Indeed, the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys explained that:

At a time when sexual and gender minority (SGM) populations are becoming more visible in social and political life, there remains a lack of data on the characteristics and well-being of these groups. In order to understand the diverse needs of SGM populations, more representative and better quality data need to be collected.²

Though still relatively rare, data collection on LGBT populations has become increasingly common. A growing number of federal government surveys allow people to voluntarily disclose their sexual orientation and/or gender identity along with other demographic data, such as race, ethnicity, sex, age, marital status, and disability status. Examples of federal government surveys that collect sexual orientation and/or gender identity data include the Department of Labor's Family and Medical Leave Act Survey, the National Crime Victimization Survey, National Health Interview Survey, Behavioral Risk Factor Surveillance System, Youth Risk Behavior Surveillance System, and National Survey for Family Growth, among others.³ Further, several state and local government surveys also collect data on sexual orientation and gender identity, such as the California Health Interview Survey, as do several large surveys administered by private entities, most notably Gallup through its Daily Tracking Survey.

While more and better data are needed, governmental and other data collection that includes measures of sexual orientation and gender identity have allowed researchers to begin to

² Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys, *Current Measures of Sexual Orientation and Gender Identity in Federal Surveys* (2016), https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/WorkingGroupPaper1_CurrentMeasures_08-16.pdf.

³ See, e.g., *id.*

describe the size of the LGBT population and LGBT people's demographics; employment, housing, and family circumstances; health and well-being; and the discrimination and disparities they face. These data are vital to policy debates and other conversations in order to ensure that stereotypes and myths are not driving policies that impact LGBT people, and so that programs and services are appropriately targeted at vulnerable LGBT populations. For example, we now know that there are an estimated 10.7 million LGBT individuals living in the United States.⁴ We also know from the data that the LGBT population is remarkably diverse and that the experiences of LGBT people are not uniform but, rather, are shaped by factors such as race, ethnicity, socioeconomic status, geographical location, primary language, education, disability, religion, family composition, and age.⁵ We've also learned that some LGBT people are more likely to be in poverty than similar non-LGBT people,⁶ contrary to the popular stereotype of LGBT affluence, and that LGBT people face persistent and pervasive discrimination in employment, housing, and other important settings.⁷ We also know that the LGBT population faces numerous health disparities compared to the general population.⁸

II. Including Sexual Orientation and Gender Identity Measures in the CPS Would Enhance the Quality, Utility, and Clarity of the Information Being Collected

The CPS is a crucial data collection because it is the primary source of labor force statistics in the United States, including information about employment and unemployment; emerging trends in employment status, wages, and earnings; and factors affecting labor force participation. CPS data may be classified by sex, age, race, ethnicity, marital status, family composition, educational level, certification and licensing status, disability status, and other characteristics. Therefore, CPS data provide crucial insight on a wide range of topics relevant to racial and ethnic minorities, women, older and younger people, and other subpopulations in the United States. As the Federal Register notice correctly observes, “[i]nformation of this type can be obtained only through demographically oriented surveys such as the CPS.” 82 FR 27873. Moreover, “the basic CPS data also are used as an important platform on which to base the data derived from the various supplemental questions that are administered in conjunction with the survey. By coupling the basic data from the monthly survey with the special data from the

⁴ Adam P. Romero, Williams Institute, *1.1 Million LGBT Adults Are Married to Someone of the Same Sex at the Two-Year Anniversary of Obergefell v. Hodges* (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Obergefell-2-Year-Marriages.pdf>.

⁵ Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (2011), <http://www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx>.

⁶ M.V. Lee Badgett et al., Williams Institute, *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community* (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

⁷ See, e.g., Jenny Pizer et al., *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People*, 45 Loy. L.A. L. Rev 715 (2012); Sandy James et al., Nat'l Ctr. for Transgender Equality, *Report of the 2015 U.S. Transgender Survey* 44-45 (2016), <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

⁸ See, e.g., Institute of Medicine, *supra*.

supplements, one can get valuable insights on the behavior of American workers and on the social and economic health of their families.” *Id.* 27874.

Without direct measures of sexual orientation and gender identity on the CPS, however, CPS and supplemental data cannot be analyzed to examine the experiences of LGBT individuals and their families, or to compare those experiences to non-LGBT people to identify, for example, obstacles to employment and disparities in wages and earnings. The pervasive and persistent history of employment discrimination against – and the more general economic and social vulnerabilities facing – LGBT people in the United States make the CPS a critical survey for understanding the employment and unemployment experiences and socioeconomic profile of the LGBT population. Thus, adding sexual orientation and gender identity measures to the CPS would enhance the quality and utility of CPS data. CPS data do allow for identification and analysis of cohabiting same-sex couples; however, cohabiting same-sex couples is only one particular subgroup of the LGBT population and its characteristics do not reflect the broader LGBT community. Therefore, adding sexual orientation and gender identity measures on the CPS would also enhance the clarity of existing data.

We recognize that the CPS uses proxy methodology, which would be a new setting for the administration of sexual orientation and gender identity measures on a population-based survey. Recent studies from BLS and Census Bureau researchers promisingly (and unsurprisingly) indicate that proxies are able to reliably report the sexual orientation and gender identity of their household members, proxies are comfortable answering such questions, and such questions have lower non-response rates and less survey break-off than other measures on the CPS, such as income. These findings reflect that survey respondents are willing to answer questions about their own LGBT status, as demonstrated by the surveys noted above on page 2. Therefore, at a minimum, BLS should continue pursuing necessary research to confirm that sexual orientation and gender identity measures on the CPS will provide reliable data.

III. Conclusion

Including sexual orientation and gender identity measures on the CPS would provide useful information about LGBT employment and unemployment, information that would enhance the ability of the Department to achieve its mission of fostering, promoting, and developing the welfare of the wage earners, job seekers, and retirees of the United States; improving working conditions; advancing opportunities for profitable employment; and assuring work-related benefits and rights. Thank you for your consideration. Please direct any correspondence to romero@law.ucla.edu.

Respectfully Submitted,

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