

April 19, 2023

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RE: Public Comment in Response to Agency Information Collection Activities: 2024 and 2025 Survey of Earned Doctorates

To Whom It May Concern,

On behalf of the undersigned five organizations committed to advancing the rights and wellbeing of lesbian, gay, bisexual, transgender, queer, and other sexual and gender minority (LGBTQ+) people, we write in response to the above-captioned revised information collection proposed by the National Science Foundation (NSF) regarding its 2024 and 2025 Survey of Earned Doctorates (SED).¹

As advocates for and researchers on LGBTQ+ individuals, we believe that all people—including LGBTQ+ people—deserve to be counted and have their lived experiences meaningfully considered as part of the federal government’s data collection efforts. We therefore write in support of the implementation of sexual orientation and gender identity (SOGI) measures within the SED survey, and with recommendations on how NSF should amend its proposal to reflect existing research on this subject.

Background on the Proposed Revised Collection

NSF has long administered the SED to generate data on all individuals receiving a research doctorate from an accredited U.S. academic institution, including on their educational history, demographic characteristics, and postgraduation plans. The SED is conducted both through a survey—of an estimated 57,000 to 58,000 students for these next two cycles—and via the collection of administrative data from participating institutions. The SED survey has previously asked respondents to provide information on their age, sex, race, ethnicity, citizenship status, and disability, but not their SOGI. NSF’s proposal here would call for SOGI measures to be pilot tested as part of the 2024 and 2025 SED, through twenty unique combinations of SOGI questions to be asked of all respondents.

Research on LGBTQ+ People and Their Experiences in Education

LGBTQ+ people are a growing population in the United States, living in every state and county and reflecting the breadth of diversity and lived experiences of the communities in which they live. Using data collected through the U.S. Census Bureau’s Household Pulse Survey, the

¹ Agency Information Collection Activities: 2024 and 2025 Survey of Earned Doctorates, 88 Fed. Reg. 16,672 (Mar. 20, 2023).

Human Rights Campaign Foundation recently estimated that at least 20 million adults in the U.S. identify as LGBTQ+.² Various researchers have also found evidence that younger people are more likely to identify as LGBTQ+.³ LGBTQ+ people are a demographically diverse population, with the Williams Institute using Gallup Daily Tracking survey data from 2012–2017 to estimate that 58% of LGBT adults identify as female and that 42% identify among communities of color, including 1% of LGBT adults that identify as American Indian and Alaska Native.⁴ The Williams Institute also recently reported on evidence that individuals belonging to certain communities of color appear more likely than their White counterparts to identify as transgender.⁵ And, data from the Behavioral Risk Factor Surveillance System indicate that LGBTQ+ adults, and transgender adults in particular, are significantly more likely than non-LGBTQ+ adults to self-report having at least one disability.⁶

Limited data exist on LGBTQ+ people and their rates of attending and experiences in doctoral programs. However, the Williams Institute recently analyzed data from a nationally representative sample of U.S. adults ages 18–40 and found that 58.3% of LGBTQ respondents ages 18–40 reported attending a four-year college at some point in their lives: a rate higher than what was reported by non-LGBTQ respondents (49.0%).⁷ Likewise, they also found that 32.7% of LGBTQ people ages 18–40 attended community college at some point in their lives.⁸

Despite longstanding protections under the law, Americans from all walks of life continue to experience discrimination. LGBTQ+ people uniquely experience harassment and discrimination based on their sexual orientation and gender identity, which research demonstrates has often led to disparate experiences with discrimination when compared to their non-LGBTQ+ counterparts across every aspect of public life.⁹ And sadly, transgender communities often report

² HUMAN RIGHTS CAMPAIGN FOUND., WE ARE HERE: UNDERSTANDING THE SIZE OF THE LGBTQ+ COMMUNITY (2021), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/We-Are-Here-120821.pdf>.

³ SHOSHANA K. GOLDBERG ET AL., HUMAN RIGHTS CAMPAIGN & BOWLING GREEN STATE UNIV., EQUALITY ELECTORATE: THE PROJECTED GROWTH OF THE LGBTQ+ VOTING BLOC IN COMING YEARS (2022), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/LGBTQ-VEP-Oct-2022.pdf>. The Williams Institute has previously estimated that at least 2 million youth ages 13–17 identify as LGBT in the U.S., including approximately 300,000 youth who are transgender. JODY L. HERMAN ET AL., WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>; KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

⁴ *LGBT Demographic Data Interactive*, WILLIAMS INST. (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#demographic>.

⁵ HERMAN ET AL., *supra* note 3, at 6.

⁶ Human Rights Campaign Found., *Understanding Disability in the LGBTQ+ Community*, HUMAN RIGHTS CAMPAIGN (Aug. 12, 2022), <https://www.hrc.org/resources/understanding-disabled-lgbtq-people>.

⁷ KATHRYN O'NEILL ET AL., WILLIAMS INST., EXPERIENCES OF LGBTQ PEOPLE IN FOUR-YEAR COLLEGES AND GRADUATE PROGRAMS 11 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-College-Grad-School-May-2022.pdf>.

⁸ KERITH J. CONRON ET AL., WILLIAMS INST., COMMUNITY COLLEGE AND THE EXPERIENCES OF LGBTQ PEOPLE 7 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Community-College-May-2022.pdf>.

⁹ See generally NPR, ROBERT WOOD JOHNSON FOUND. & HARVARD T.H. CHAN SCH. OF PUB. HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF LGBTQ AMERICANS (2017), <https://legacy.npr.org/documents/2017/nov/npr-discrimination-lgbtq-final.pdf> (experiences across a variety of contexts).

significantly higher rates of discrimination and harassment,¹⁰ even when compared to their cisgender LGB counterparts.¹¹ Discrimination against LGBTQ+ communities takes many forms, and can become insidiously commonplace for those holding multiple marginalized identities experiencing the combined brunt of ableism, racism, colorism, misogyny, and other forms of hate. A wealth of evidence exists indicating the prevalence of anti-LGBTQ+ discrimination in specific areas like education, including both in K–12 schools¹² and of course institutions of higher education.¹³ And despite much needed progress on issues related to LGBTQ+ equality in recent years, these trends continue.

Additionally, research has long shown that LGBTQ+ people are significantly more likely to be living in poverty than their straight and cisgender counterparts,¹⁴ which is in turn likely impacting their ability to access postsecondary education alongside their experiences with discrimination and stigma. And indeed, among respondents to the Williams Institute’s nationally representative survey discussed above, 60.3% of LGBTQ people reported having their four-year-college educational expenses covered by financial aid they needed to repay, compared to only 51.3% of non-LGBTQ people.¹⁵ Likewise, over half of the transgender people (51.0%) in that sample reported being more likely than their cisgender LGBQ (33.1%) and non-LGBQ counterparts (23.2%) to have taken out federal student loans.¹⁶

Research on LGBTQ+-Related Data Collection

Federal agencies have long been collecting information on LGBTQ+ people.¹⁷ For decades, government and other researchers have studied SOGI and found that it is more than possible to measure these concepts and obtain quality data; and likewise that respondents largely do not find this information to be so sensitive that they would not provide it.¹⁸ In a recent report on the

¹⁰ See generally SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY (2016), <https://transequality.org/sites/default/files/docs/USTS-Full-Report-Dec17.pdf> (results of the largest sample of transgender adults in the U.S. to date).

¹¹ See, e.g., BRAD SEARS ET AL., WILLIAMS INST., LGBT PEOPLE’S EXPERIENCES OF WORKPLACE DISCRIMINATION AND HARASSMENT 2 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf> (noting that “over twice as many transgender employees reported not being hired (43.9%) because of their LGBT status compared to LGB employees (21.5%).”).

¹² See, e.g., JOSEPH G. KOSCIW ET AL., GLSEN, THE 2021 NATIONAL SCHOOL CLIMATE SURVEY (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>.

¹³ See, e.g., KATHRYN K. O’NEILL ET AL., WILLIAMS INST., EXPERIENCES OF LGBTQ PEOPLE IN FOUR-YEAR COLLEGES AND GRADUATE PROGRAMS (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-College-Grad-School-May-2022.pdf>.

¹⁴ 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 Census Bureau’s Household Pulse Survey to analyze poverty rates during the early days of the COVID-19 pandemic).

¹⁵ O’NEILL ET AL., *supra* note 7, at 51.

¹⁶ KERITH J. CONRON ET AL., WILLIAMS INST., EDUCATIONAL EXPERIENCES OF TRANSGENDER PEOPLE 5 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Higher-Ed-Apr-2022.pdf>.

¹⁷ See generally NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., MEASURING SEX, GENDER IDENTITY, AND SEXUAL ORIENTATION (2022), <https://nap.nationalacademies.org/catalog/26424/measuring-sex-gender-identity-and-sexual-orientation>.

¹⁸ *Id.* at 52–55, 67.

collection of SOGI information in the survey context, the Office of Management and Budget (OMB) highlighted guiding principles that have emerged out of that work to support the ongoing collection of SOGI information, including that collected data should have utility, be in support of an agency’s mission, and done with emphasis on protecting respondents’ confidentiality.¹⁹ Recent recommendations issued by a panel formed by the National Academies of Sciences, Engineering, and Medicine on SOGI measurement in federal surveys and other instruments (the “NASEM Panel”) include well-tested measures for both sexual orientation and gender identity and echo OMB’s recommendations.²⁰ In general, we recommend following the guidance laid out in their consensus report²¹ across all government-administered surveys already collecting other demographic information.

Support and Recommendations for SOGI Measures on the SED

Given our knowledge of the challenges likely faced by LGBTQ+ students nationwide, and lack of knowledge on their experiences in doctoral programs specifically, NSF should ensure the SED includes measures sufficient to identify whether LGBTQ+ people are indeed accessing and graduating from these programs. Such measures should be implemented in a way that would ensure collected data can be disaggregated to allow for analyses of the experiences of particular LGBTQ+ subpopulations—including on the intersectional experiences of groups like LGBTQ+ people of color and others historically experiencing the brunt of marginalization and exclusion. Below, we offer specific recommendations on how this can be done considering NSF’s proposed SOGI measures for the 2024 and 2025 SED pilot. We would also encourage NSF to consider the comments of SOGI measurement researchers, which we understand are being filed concurrent with our own, that provide further explanation of and solutions for specific methodological concerns posed by the current proposal.

Measuring LGBTQ+ Status

For two of the proposed experiment paths (1 and 2), NSF has proposed that respondents be asked about their sex assigned at birth and whether they “consider [themselves] to be LGBTQ+”—without additional questions allowing for clarity as to exactly how these individuals identify along lines of both sexual orientation and gender identity. To the extent this question could one day serve as NSF’s implementation of a SED measure capturing SOGI *demographic* information, we strongly advise against this approach. While some agencies have indeed previously worked to implement measures in their data collections capturing information on individuals’ LGBTQ+ status, in our experience these are provided in addition to, rather than in lieu of, actual demographic items capturing detail on individuals’ specific identities. As discussed above, experiences within LGBTQ+ communities can vary greatly based on sexual orientation and gender identity alone, with transgender people often reporting significant disparities when compared to their cisgender LGBQ+ counterparts that this approach would undoubtedly obscure by collapsing these varying populations into one group.

¹⁹ OMB, RECOMMENDATIONS ON THE BEST PRACTICES FOR THE COLLECTION OF SEXUAL ORIENTATION AND GENDER IDENTITY DATA ON FEDERAL STATISTICAL SURVEYS 3 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/SOGI-Best-Practices.pdf>.

²⁰ NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 17.

²¹ *Id.*

Measuring Sex Assigned at Birth and Gender Identity

The NASEM Panel recommends that agencies shift away from collecting information on sex unless information on that construct as a biological variable is necessary.²² When that type of collection is indeed necessary, the NASEM Panel recommends that such collection “be accompanied by collection of data on gender,”²³ echoing OMB’s recommendation that “respondents should not be asked to provide their sex assigned at birth unless they are also given the opportunity to provide their current gender identity.”²⁴ These recommendations are consistent with longstanding best practices for identifying transgender and other gender minority respondents on surveys, via what is known as the two-step method.²⁵ Some of NSF’s proposed experiment paths (1 and 2) would not allow respondents to provide information on their specific gender identity after providing information on their sex assigned at birth: the proposal should be revised to allow them to do so.

Additionally, we note that the proposed question on sex assigned at birth providing a fill-in response option allowing respondents to indicate a sex other than male or female is unlikely to generate any useful data for NSF. Currently, no jurisdiction in the U.S. allows newborns to be noted as something other than male or female at birth. While jurisdictions are increasingly allowing individuals to amend their birth certificates to note being neither male nor female (e.g., via an “X” marker), the proposed question may generate confusion and therefore bad data given it specifically asks for individuals’ marker assigned *at birth* rather than what their birth certificate indicates at the time of the survey.

Measuring Sexual Orientation

NSF’s proposal would allow a very limited number of respondents, across all twenty experiment paths, to indicate their specific sexual orientation. Specifically, heterosexual respondents would be able to indicate identifying as same for two of the three proposed sexual orientation measures, but all other respondents would be required to indicate either being a sexual minority (i.e., “lesbian, gay, bisexual, queer or another orientation”) or that they “prefer not to answer.” For the third proposed sexual orientation measure, respondents will be asked if they consider themselves “to be a sexual minority (e.g., gay, lesbian, bisexual)” —in effect again allowing heterosexual people to note their sexual orientation for NSF, but collapsing all other individuals into one group that could not be disaggregated. We understand that NSF has proposed this approach to maximize the response rates of sexual minority individuals who it believes may otherwise hesitate to provide this information.

However, as described above, SOGI items providing more granular response options (e.g., allowing individuals to say they are either heterosexual, or gay or lesbian, or bisexual) have long been researched and found to be questions that respondents—including LGBTQ+ people—are

²² *Id.* at 8.

²³ *Id.*

²⁴ OMB, *supra* note 19, at 4.

²⁵ GENDER IDENTITY IN U.S. SURVEILLANCE (GENIUS) GROUP, WILLIAMS INST., 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/Survey-Measures-Trans-GenIUS-Sep-2014.pdf>.

more than willing to answer. To the extent that NSF wishes to facilitate responses by individuals who may feel uncomfortable providing information on their sexual orientation identity, it should do so by clearly signaling to those respondents that they may select the “prefer not to answer” response option. Decades of research have made clear that experiences across the life course, including with exclusion and lack of opportunity in education, vary between different sexual minority groups, such as bisexual people often reporting significant disparities when compared to other sexual minorities. It would dilute the value of any collected data to only be able to report on sexual minorities as one group versus being able to disaggregate collected information along the lines of specific identities. NSF should therefore explore modifying its proposal to test a measure of sexual orientation consistent with the NASEM Panel and OMB’s recommendations for doing so, complete with response options allowing individuals to clearly note for NSF how exactly they identify.

Recommendations on Safety and Confidentiality

Finally, we write to recommend that NSF’s implementation of SOGI measures not single out SOGI items as being in need of additional privacy and safety controls, as this could in many ways suggest those data are particularly sensitive even when we know that is not the case. In many ways, SOGI information is not different from other forms of sensitive demographic information already collected by NSF through the existing SED instrument, such as information about respondents’ race, ethnicity, and citizenship status.²⁶ And again, SOGI items have performed well across a range of contexts and over time, with researchers reporting response rates for those measures similar to other demographic items. However, NSF’s proposal would allow individuals who “prefer not to answer” the question on their sexual orientation to respond to a separate question, again about their sexual orientation but now with a guarantee that collected data will not be shared with their academic institution and will instead only be provided to NSF. To the extent that, despite existing authorities providing significant protections against disclosure of collected SED data, NSF feels respondents should be given this option to only provide information to NSF and without allowing disclosure to other entities, such an option should be extended to all demographic items and not merely those on sexual orientation.

Conclusion

We commend NSF for its work to implement SOGI measures on the SED and are hopeful that it will do so consistent with research on this subject and following analysis of the results of its proposed pilot for the 2024 and 2025 surveys. It is our opinion that the benefits of this proposed collection, both to pilot and in the future with the full implementation of well-tested SOGI measures, would outweigh any potential increased burden on respondents and other relevant entities given our knowledge on LGBTQ+ people and their experiences with and needs in education generally. That research base makes clear that collecting SOGI data through the SED is necessary for the proper performance of the functions of this collection and will have practical utility in providing insight on LGBTQ+ populations’ experiences in doctoral programs. Additionally, we strongly encourage NSF to continue exploring improvements to its collection of

²⁶ See NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 17, at 10 (“We note that sex assigned at birth, gender identity, and sexual orientation are not the only types of potentially sensitive information that need to be collected respectfully and confidentially and used appropriately”).

these and related data in the future even beyond the pilot, given the NASEM Panel and others' recommendations to engage in research on measures and response options that would allow even more individuals to be counted in collected data exactly as they identify.²⁷

Thank you for the opportunity to submit comments in favor of this critical step toward ensuring LGBTQ+ people are consistently and safely included in the government's data collection efforts. If you have any questions, please reach out to Luis Vasquez (luis.vasquez@hrc.org).

Sincerely,

Human Rights Campaign
Whitman-Walker Institute
Movement Advancement Project
National LGBT Cancer Network
The Fenway Institute

²⁷ See, e.g., *id.* at 132–33, 145 (recommending assessment of nonbinary response options and other possible improvements to gender identity measures; recommending research on measures allowing identification of intersex people).