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Submitted via regulations.gov

RE: Public Comment in Response to 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 [OMB Control No. 0607-0936]

On behalf of the undersigned 107 organizations committed to researching and advancing the rights and well-being of lesbian, gay, bisexual, transgender, queer, intersex, and other sexual and gender minority (LGBTQI+) people in the United States, we write regarding a proposal issued by the U.S. Census Bureau (the “Bureau”) to conduct a test of sexual orientation and gender identity (SOGI) measures on the American Community Survey (the “ACS”).¹ We appreciate the opportunity to comment on the Bureau’s renewed proposal to conduct this methods panel, also known as the “2024 ACS SOGI Test,” beginning this summer, and commend the Bureau for following the established, deliberative process required to add new items like SOGI measures to the ACS.

Our organizations are dedicated to increasing our collective understanding of the disparities long faced by LGBTQI+² people when compared to their non-LGBTQI+ counterparts, and to supporting evidence-based policies that would eliminate those disparities and advance equity for LGBTQI+ and other marginalized populations. Similarly, we also work to support the federal government’s efforts to effectively enforce existing civil rights protections, including those which courts and federal agencies have affirmed protect LGBTQI+ people from discrimination and ensure them equal access to government-funded programs and services. Given the invaluable and unique role that ACS data play in the design and implementation of our nation’s policies, programs, and funding investments, as well as the enforcement of our civil rights laws, enhancing the ACS’s data collection on LGBTQI+ populations is a top priority of our organizations.

¹ 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).

² “LGBTQI+” has become increasingly used by our organizations, the federal government, and other stakeholders to be expressly inclusive of intersex and other sexual and gender diverse people like asexual and pansexual populations. However, data limitations like those we describe throughout these comments have often prevented intersex people, along with other LGBTQI+ subpopulations, from being consistently counted across various collections of data. We therefore will refer to “LGBTQI+” communities throughout the remainder of these comments, outside of where only particular subpopulations are being discussed by our referenced studies, or by the Bureau’s proposal—which does not currently include plans to test measures sufficient to identify intersex people.

We therefore believe it is critical that the federal government’s data collection, including through the ACS, consistently include measures 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. The Bureau’s proposal is consistent with these principles and will have practical utility to assess whether SOGI measures are feasible for inclusion on the ACS. **And so, we write to express our strong support for the Bureau’s plans to conduct the 2024 ACS SOGI Test.**

Below, we explain our support for the 2024 ACS SOGI Test in greater detail, specifically through: (1) a brief review of the ACS’s current capabilities for collecting information on LGBTQI+ people; (2) a brief review of research supporting an expansion of those capabilities; (3) a discussion of how ACS data that is more inclusive of LGBTQI+ people would improve the government’s civil rights and equity initiatives; and (4) a discussion of the Bureau’s proposed testing and research plan, including feedback on future research for the Bureau’s consideration.

I. Background on the ACS and its Current Collection of Data on LGBTQI+ People

The ACS is the premier source of information on the social, economic, housing, and demographic characteristics of people living across the United States. As the Bureau is aware, **ACS data are uniquely valuable**, as “[t]he comprehensive set of ACS questions, coupled with the tabulation and dissemination of data for small geographic areas, does not duplicate any other single information collection.”³ More specifically, we note that the design of the ACS allows for combining years of data to enable studies on smaller populations, in turn empowering the government’s efforts to meaningfully enforce existing federal civil rights laws, including those which protect LGBTQI+ people from discrimination based on their sexual orientation, gender identity, and variations in sex characteristics. 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 for communities at large—and where LGBTQI+ people often report facing additional challenges in their efforts to access services.⁴ Simply put, no other federal survey provides data at low levels of geography or in these particular communities. Finally, ACS data are used to allocate trillions of dollars in public resources and shape evidence-based policymaking on a variety of issues, including efforts that seek to advance equity for marginalized groups like LGBTQI+ people.⁵

³ U.S. Census Bureau, American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test, Supporting Statement A, at 4, <https://www.reginfo.gov/public/do/DownloadDocument?objectID=141982500> [hereinafter Supporting Statement A].

⁴ See generally *Healthcare Equality Index 2024*, HUMAN RIGHTS CAMPAIGN FOUND. (2024), <https://reports.hrc.org/hei-2024>.

⁵ 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>.

Unfortunately, the ACS currently only collects information on same-sex couples who are cohabitating.⁶ In other words, the ACS presently captures comprehensive data on only about one in six of all LGBTQI+ people in the United States,⁷ as single LGBQ people and transgender and intersex people cannot be identified at all through the existing relationship measure. If SOGI measures like those proposed here were added to the ACS, we know that its sample size and collection of other key demographics would allow it 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 the various diverse segments of the LGBTQI+ community.

II. Existing Research on LGBTQI+ People Highlights the Need for Improved Measurement of Those Populations through the ACS

Many of the signatories to this comment previously submitted detailed comments to the Bureau in response to its initial notice of the 2024 ACS SOGI Test, issued in September 2023.⁸ One such comment, submitted on behalf of 187 organizations, included a review of existing research on LGBTQI+ populations in the United States, which we incorporate into these comments by reference.⁹ In short, the studies cited in that comment show that **LGBTQI+ people are a growing, diverse population, belonging to communities across all of the United States, and who share common challenges and experiences of social stigma, invisibility, and discrimination rooted in restrictive norms and stereotypes regarding gender and sexuality that the government must work to address.**

As noted in those comments, **LGBTQI+ population estimates have taken years to develop due to data limitations.** For example, privately-collected surveys lack features like the sample size and unique sampling infrastructure of the ACS. Often, we have been required to rely on data collected through such surveys, in turn excluding particular subpopulations from being reflected in our estimates whatsoever. We therefore reiterate to the Bureau that due to its many features, including sample size, the ACS is a unique and critical tool for generating accurate, consistent, and representative data about many diverse populations across the country. Enhancing the ACS's data collection on LGBTQI+ communities through the addition of SOGI measures would help us better understand and respond to the experiences of many subpopulations currently being undercounted by or otherwise outright excluded by existing collections of data.

⁶ Zachary Scherer, *Number of Same-Sex Couple Households Exceeded 1 Million in 2021*, CENSUS.GOV (Nov. 22, 2022), <https://www.census.gov/library/stories/2022/11/same-sex-couple-households-exceeded-one-million.html>.

⁷ 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>.

⁸ Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test, 88 Fed. Reg. 64,404 (Sept. 19, 2023).

⁹ Available via tracking number lp7-ggn5-r2ym, see *Comment on FR Doc # 2023-20256*, REGULATIONS.GOV (Jan. 3, 2024), <https://www.regulations.gov/comment/USBC-2023-0007-0058>.

Existing evidence demonstrates that LGBTQI+ populations experience worse outcomes in health, economic security, housing, and other key areas of life compared to non-LGBTQI+ populations.¹⁰ Studies have long linked these negative outcomes to various factors, including exposure to minority stress due to their disproportionate experiences with stigma, discrimination, and other social determinants of health and well-being.¹¹ Such disparities and experiences with violence, harassment, and discrimination are often heightened for particular subgroups—such as transgender populations—and for those holding multiple marginalized identities like LGBTQI+ people of color, LGBTQI+ people with disabilities, and LGBTQI+ aging adults experiencing the combined brunt of homophobia, transphobia, racism, colorism, misogyny, ableism, and other forms of hate.¹²

As was shared in the aforementioned comment responding to the Bureau’s initial notice on the 2024 ACS SOGI Test, **violence, harassment, and discrimination against LGBTQI+ people is currently on the rise**—a concerning trend being seen both nationwide across the United States¹³ and around the globe.¹⁴ Every corner of the United States has experienced the impact of this unprecedented spike in anti-LGBTQ+ legislative assaults, political extremism, and violent attacks. Particularly notable are the anti-LGBTQ+ initiatives being carried out by state legislators, who introduced a staggering 571 bills in 2023—77 of which became law—intended

¹⁰ See, e.g., 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); 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>; 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>; see also 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>.

¹¹ See 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-sexualorientation>; Amy Rosenwohl-Mack et al., *A National Study on the Physical and Mental Health of Intersex Adults in the U.S.*, 15 PLoS ONE e0240088 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7546494>; Logan S. Casey et al., *Discrimination in the United States: Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Americans*, 54 HEALTH SERVS. RESEARCH 1454 (2019), <https://pubmed.ncbi.nlm.nih.gov/31659745>.

¹² See, e.g., 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>; cf. BIANCA D.M. WILSON ET AL., WILLIAMS INST., *RACIAL DIFFERENCES AMONG LGBT ADULTS IN THE U.S.: LGBT WELL-BEING AT THE INTERSECTION OF RACE* (2022) <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Race-Comparison-Jan-2022.pdf>.

¹³ This led the Human Rights Campaign to declare a national state of emergency for LGBTQ+ people in the U.S. for the first time in its nearly half-century history, see 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>.

¹⁴ See, e.g., Michael K. Lavers, *Global anti-LGBTQ rights backlash overshadows UN General Assembly*, WASH. BLADE (Sept. 19, 2023), <https://www.washingtonblade.com/2023/09/19/global-anti-lgbtq-rights-backlash-overshadows-un-general-assembly>.

to remove LGBTQ+ people and their stories from the public sphere, as well as restrict those communities' rights and access to vital services.¹⁵

Especially concerning is the way in which these legislators' are focused on targeting LGBTQ+ youth, particularly transgender and non-binary youth, including eliminating their access to medically necessary care, preventing them from using restrooms consistent with their gender identity in public spaces, and restricting their ability to update their official documentation to reflect who they are.¹⁶ Available research indicates that transgender populations often face disparities in their health and well-being even when compared to non-transgender LGB people. These bills will likely exacerbate such inequities. The government must be prepared to measure and address these disparities through multiple responses, including comprehensive, responsible data collection and evidence-based policy solutions to advance equity. A recent report on early insights from data collected through the 2022 U.S. Transgender Survey¹⁷ includes findings that 40% of respondents had thought about moving to another area because they experienced discrimination or unequal treatment where they were living, and 10% of respondents reported having actually already moved to another area because of discrimination.¹⁸ These experiences highlight the ongoing need for robust enforcement of existing nondiscrimination laws.

Notably, much of the existing evidence base discussed here relies on data gathered through community or non-federal statistics or data collection. **The current dearth of consistent, large-scale data collection on LGBTQI+ people by the federal government poses a barrier to our being able to better comprehend and address disparities that only continue to worsen among some LGBTQI+ people.**¹⁹ Fully integrating LGBTQI+ demographic data collection into the ACS would enable an effective, deeper examination of the experiences of this population and its various subpopulations in ways that other surveys already collecting such data simply cannot illuminate.

III. Measuring SOGI Through the ACS Would Empower Government Efforts to Fight Discrimination and Advance Equity

We believe that **the Bureau's 2024 ACS SOGI Test will have practical utility, as it will generate research to inform recommendations for potential ACS implementation that would aid in federal agencies' legally mandated civil rights enforcement and equity advancement efforts.** For example, federal agencies are charged with enforcing a variety of landmark civil rights statutes, including but not limited to Title VII of the Civil Rights Act of 1964 ("Title VII"), Title IX of the Education Amendments of 1972, Section 1557 of the

¹⁵ *2023 State Equality Index*, HUMAN RIGHTS CAMPAIGN FOUND. (2024), <https://reports.hrc.org/2023-state-equality-index>.

¹⁶ See, e.g., *Freedom Under Fire: the Far Right's Battle to Control America*, MOVEMENT ADVANCEMENT PROJECT (Mar. 2024), <https://www.mapresearch.org/2024-freedom-under-fire-report>.

¹⁷ As of this writing, this is the largest and most comprehensive survey on the experiences of binary and nonbinary transgender people living in the United States.

¹⁸ SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUALITY, *EARLY INSIGHTS: A REPORT OF THE 2022 U.S. TRANSGENDER SURVEY 23* (2024), https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf.

¹⁹ NAT'L SCIENCE & TECHNOLOGY COUNCIL, *FEDERAL EVIDENCE AGENDA ON LGBTQI+ EQUITY 11* (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>.

Affordable Care, and the Fair Housing Act. Many of these federal agencies rely on ACS data to successfully engage in that work due to the ACS's unique reach and the Bureau's ability to combine ACS data based on multiple demographic variables and years to create sufficiently large sample sizes for smaller populations that may otherwise be unable to be counted safely and accurately. We therefore **greatly appreciate the established, deliberative process that the Bureau—in consultation with the federal agencies that have a statutory need for these data—has followed to add SOGI measures to the ACS.**

As the Bureau is aware, this process was initiated because multiple federal agencies submitted letters formally requesting SOGI measures be added to the ACS and articulating the statutory and regulatory justifications for collecting data on LGBTQI+ populations. For example, the U.S. Department of Justice (the "DOJ") stated in its letter that adding these measures to the ACS is necessary to better enforce nondiscrimination protections in employment under Title VII and for lending under the Equal Credit Opportunity Act, improve enforcement of the Violence Against Women Reauthorization Act, and better address anti-LGBTQI+ hate crimes.²⁰ We are pleased that, after its thorough review, the Bureau determined that the DOJ's request met the strict requirements for it to be able to move forward with adding new content to the ACS and thus commenced planning for the 2024 ACS SOGI Test. **We wholeheartedly agree with that conclusion ourselves.** We likewise agree with and thank the Bureau for its plans to proceed with intersex-inclusive cognitive testing, given existing protections for intersex people that are encompassed by the laws cited within the DOJ's request.

While LGBTQI+ communities in the United States have long faced discrimination, hate-fueled rhetoric, and even violence, it has been escalating across the country since 2020 and informs the increased urgency behind our ongoing needs for data on this population. We must have enough quality data on LGBTQI+ people to allow for a meaningful response to these challenges by government agencies like the DOJ, as well as our organizations and other stakeholders. Notably, this recent slate of anti-LGBTQ+ efforts began as a reaction to and in anticipation of the U.S. Supreme Court's pro marriage-equality decision in *Obergefell v. Hodges*, and has accelerated following other cases like *Bostock v. Clayton County*. In *Bostock*, the Court held that the sex discrimination prohibition in Title VII prohibits discrimination based on sexual orientation and gender identity.²¹ *Bostock* was decided using generally applicable principles of statutory interpretation that can and have been extended to other laws long read to be consistent with that statute,²² including the aforementioned civil rights laws.²³

²⁰ 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>.

²¹ 140 S. Ct. 1731 (2020).

²² *See id.* at 1738 (finding that Title VII's bar on discrimination "because of . . . sex," when interpreted "in accord with the ordinary public meaning of its terms at the time of its enactment[,]," encompasses sexual orientation and gender identity discrimination).

²³ CHRISTINE J. BACK & JARED P. COLE, CONG. RES. SERV., POTENTIAL APPLICATION OF *BOSTOCK V. CLAYTON COUNTY* TO OTHER CIVIL RIGHTS STATUTES (2021), <https://crsreports.congress.gov/product/pdf/R/R46832>; CHRISTY MALLORY ET AL., WILLIAMS INST., LEGAL PROTECTIONS FOR LGBT PEOPLE AFTER *BOSTOCK V. CLAYTON COUNTY* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bostock-State-Laws-Jul-2020.pdf>. Following *Bostock*, federal agencies have also been subject to Executive Order 13988, which mandates the express inclusion of a bar on discrimination based on sexual orientation and gender identity within their regulations implementing

Improving data collection on LGBTQI+ communities through the ACS would also align with the federal government’s nondiscrimination and equity goals as established by various executive orders and the recent Federal Evidence Agenda on LGBTQI+ Equity. Such executive orders include Executive Order 13985²⁴ and most notably Executive Order 14075,²⁵ which directs certain agencies to “strengthen non-discrimination protections on the basis of sex, including sexual orientation, gender identity, and sex characteristics” and initiated a cross-government effort to advance responsible, effective, and inclusive data collection on SOGI, as well as variations in sex characteristics. Likewise, Executive Order 14091 recognizes recent steps taken toward “prohibiting discrimination based on sexual orientation, gender identity, and sex characteristics across Federal programs,” and directs agencies to take further, comprehensive actions to advance civil rights, including for “LGBTQI+ persons.”²⁶

Various federal agencies have undertaken rulemakings pursuant to these executive orders and the reasoning in *Bostock* to fully implement such protections against sexual orientation, gender identity, and sex characteristics discrimination, and federal courts have likewise interpreted civil rights statutes beyond Title VII in line with *Bostock* to find that they prohibit discrimination on the basis of sexual orientation, gender identity, and sex characteristics. In January 2023, the Subcommittee on Sexual Orientation, Gender Identity, and Variations in Sex Characteristics published its Federal Evidence Agenda on LGBTQI+ Equity with the intention that it serve as a roadmap for federal agencies working to build evidence and leverage SOGI (and intersex-related) data to advance equity for LGBTQI+ people in various ways.²⁷ That agenda specifically recognized that data play an important role in the government’s civil rights enforcement efforts, and emphasized that agencies would benefit from ensuring they have sufficient data on LGBTQI+ people in contexts in which they have a legally mandated responsibility to implement or enforce civil rights protections.²⁸ Such civil rights protections cover a broad range of contexts where discrimination impacting LGBTQI+ people can occur, and which a survey like the ACS is particularly well equipped to generate information on.

Finally, the benefits of this proposed collection (and the future implementation of SOGI and related measures on the ACS) would outweigh any potential increased burden on respondents and other relevant entities. Given our existing knowledge base on LGBTQI+ people, their ongoing experiences with discrimination, violence, and exclusion, and the costs of such experiences, as well as on the gaps in our understanding that persist because of current data collection limitations, adding SOGI measures to the ACS would significantly increase the ability of enforcement agencies to address these experiences. Indeed, as noted by the Bureau in its supporting documents accompanying this proposal, failure to proceed with the 2024 ACS SOGI Test would mean that the information needed by federal agencies to inform their enforcement of

statutes that are read consistent with Title VII. Exec. Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, 86 Fed. Reg. 7023 (Jan. 20, 2021).

²⁴ Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Exec. Order 13985, 88 Fed. Reg. 7009 (Jan. 20, 2021).

²⁵ Exec. Order 14075, Further Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, 87 Fed. Reg. 37,189 (June 15, 2022).

²⁶ Exec. Order 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 88 Fed. Reg. 10,825 (Feb. 16, 2023).

²⁷ NAT’L SCIENCE & TECHNOLOGY COUNCIL, *supra* note 19, at 14.

²⁸ *Id.*

federal statutes that require these data on LGBTQI+ people would go “unprovided,” hindering their ability to carry out key responsibilities and duties.²⁹ These government efforts that are informed by ACS data are of continually increasing importance for LGBTQI+ people in United States, as vitriolic rhetoric about LGBTQI+ communities is currently on the rise and is contributing to a dramatic increase in policies, practices, and laws that curtail the fundamental rights of LGBTQI+ people in violation of federal law. We believe that the Bureau’s proposal for the 2024 ACS SOGI Test should therefore move forward as planned.

IV. The Bureau’s Proposal Reflects Scientific Rigor and Best Practices, and Will Contribute to Our Understanding of SOGI Measurement on the ACS And Beyond

We strongly support the Bureau proceeding with its proposal for the 2024 ACS SOGI Test, as described in detail in its supplementary materials. Specifically, we write to offer our support for and feedback on the following key aspects of the proposed test methodology:

- (1) Testing of measures that are rooted in and build upon evidence-based research;
- (2) Question wording, including testing of write-in and multiple response options;
- (3) Use of proven strategies around self-responses and qualitative follow-up questions;
- (4) Plans for conducting content follow-up interviews;
- (5) Robust sample size and utilization of sound sampling methods;
- (6) Inclusion of diverse populations and future research on additional language access;
- (7) Plans for including help text with information on the questions and their purpose; and
- (8) Steps being taken to ensure data confidentiality.

As proposed, the 2024 ACS SOGI Test will yield invaluable evidence to inform and refine the Bureau’s question wording and formatting, response options, proxy reporting, and work on various other important research topics for the ACS. The results will also have far-reaching implications for other government surveys and data collection work more broadly—another important reason the test should move forward as planned.

a. The Bureau’s Proposal is Rooted in and Builds on Existing Research on Best Practices for SOGI Measurement

The Bureau’s proposal reflects its commitment to conducting the kind of high-quality, rigorous research that is imperative when considering impactful changes to our premier survey about the American population. For decades, government agencies, as well as other researchers, have studied best practices for collecting data on LGBTQI+ people, including through measurement of SOGI. Successful efforts to measure SOGI include work by the Bureau itself, which continues to collect information on respondents’ SOGI through its Household Pulse Survey,³⁰ which measures the impact of the COVID-19 pandemic, and the American Housing

²⁹ Supporting Statement A, *supra* note 3, at 5.

³⁰ Thom File & Jason-Harold Lee, *Phase 3.2 of Census Bureau Survey Questions Now Include SOGI, Child Tax Credit, COVID Vaccination of Children*, CENSUS.GOV (Aug. 05, 2021), <https://www.census.gov/library/stories/2021/08/household-pulse-survey-updates-sex-question-now-asks-sexual-orientation-and-gender-identity.html>.

Survey.³¹ Evidence demonstrates that, on general population surveys such as the ACS, it is possible to measure these concepts well and obtain high-quality data; these concepts are not considered especially difficult or sensitive for respondents to report; and people comprehend the questions and are willing to answer them.³²

Importantly, the Bureau’s proposal here reflects years of evidence-based research. In fact, in a recent report on the collection of SOGI information in the survey context, the Office of Management and Budget (OMB) highlighted guiding principles that have emerged out of that collective work to support additional government data collections, including that collected data should have utility, be in support of an agency’s mission, and be completed with an emphasis on protecting respondent confidentiality.³³ **We commend the Bureau for its proposal, which is consistent with those principles articulated by OMB and with SOGI measures recommended by a National Academies of Sciences, Engineering, and Medicine panel on SOGI measurement in federal surveys and other instruments (the “NASEM Panel”).**³⁴

As the NASEM Panel noted in its consensus report cited above, the terms used to describe sexual orientation in the Bureau’s proposed measure “have remained popular for decades.”³⁵ While the gender identity measures included in the NASEM Panel’s recommendations have not been in use as long as some of that sexual orientation-related terminology, the “two-step” approach recommended in their consensus report—and in turn being proposed for the 2024 ACS SOGI Test—has been in use for many years and has been an effective approach for identifying people of both cisgender and transgender experience among U.S. adults.³⁶

Additionally, **we applaud the Bureau for ensuring the 2024 ACS SOGI Test not only draws on existing research on SOGI measurement, such as the NASEM Panel’s consensus report, but also builds on that knowledge base.** For example, we support the Bureau testing more inclusive wording, questions, and response options that could one day allow even more LGBTQI+ people to self-identify within the ACS and other surveys as exactly who they are. In particular, we commend the Bureau for following the NASEM panel’s recommendations to test write-in options for both the sexual orientation and gender identity measures, as well as a nonbinary current gender response option. We are also pleased that the Bureau will test a mark-all-that-apply feature for the current gender measure, a confirmation question for all respondents, and the adoption of gender-neutral language for references to relationships and other concepts in the ACS. These features may empower respondents to see themselves in the test measures and in turn provide responses that they feel best present who they are.

³¹ George R. Carter III, *The History of the AHS – 1973 - 2023*, HUD USER (July 11, 2023), <https://www.huduser.gov/portal/pdredge/pdr-edge-pdrat50-071123.html>.

³² See generally NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 11, at 52–55, 67.

³³ OMB, RECOMMENDATIONS ON THE BEST PRACTICES FOR THE COLLECTION OF SEXUAL ORIENTATION AND GENDER IDENTITY DATA ON FEDERAL STATISTICAL SURVEYS at 3 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/SOGI-Best-Practices.pdf>.

³⁴ NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 11.

³⁵ *Id.* at 76.

³⁶ *Id.* at 106.

We similarly appreciate the Bureau acknowledging in its notice of this testing that “ACS questions undergo periodic and testing of updated constructs and wording to reflect societal and technological changes.”³⁷ Although research demonstrates the longevity of terms employed within the SOGI measures being proposed now, the inclusion of write-in options will allow researchers to monitor and analyze the use of terminology over time, in turn providing valuable information to shape decision-making about adding new questions and response options in the future. **We always encourage the Bureau to plan to analyze any data it collects, and to continue exploring improvements to its collection of data on LGBTQI+ people in the future,** given recommendations and research agendas outlined by entities like the NASEM Panel regarding SOGI and related measures and response options beyond what has been previously tested that would allow even more individuals to be represented in collected data exactly as they identify.³⁸

b. The Bureau’s Proposal Remains Consistent with Its Past Practices and Can Drive Needed Future Research

We appreciate and support the Bureau utilizing the well-researched and proven self-response strategy for the 2024 ACS SOGI Test that mirrors the same one used in the ACS, which in 2022 had a final weighted response rate of 84 percent.

Notably, **the Bureau’s proposal also calls for qualitative follow-up questions** within the internet version of the test instruments to better understand respondents’ behavior when interacting with the test SOGI measures. **We support the Bureau including these questions within its testing plan,** as they will provide respondents with the opportunity to share more information about why and how they answered the tested SOGI measures. Additionally, they will offer the opportunity for valuable qualitative insights that will complement the Bureau’s quantitative research and ongoing cognitive testing.

Further, **we support the Bureau conducting content follow-up reinterviews with a sample of 88,000 respondents via telephone and internet modes to measure response bias and the reliability of the tested measures. This research—and the size of the sample—is especially important to assess the accuracy of proxy responses,** which occur when someone answers survey questions for other individuals in their household, and is an area of research that has been identified as a top priority in recent years, including within the Federal Evidence Agenda on LGBTQI+ Equity.³⁹ For some LGBTQI+ people, including those who may not be open about their SOGI even to people close to them or be fully accepted by members of their household,⁴⁰ proxy reporting may potentially lead to challenges with inaccuracies or undercounting. While potential undercounting can be (and, indeed, has been) a legitimate concern—including for

³⁷ Supporting Statement A, *supra* note 3, at 3.

³⁸ See, e.g., NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 11, at 132–33 (recommending assessment of nonbinary response options and other possible improvements to gender identity measures).

³⁹ NAT’L SCIENCE & TECHNOLOGY COUNCIL, *supra* note 19, at 41.

⁴⁰ See, e.g., Patti Neighmond, *Home But Not Safe: Some LGBTQ Young People Face Rejection From Families in Lockdown*, NPR (May 17, 2020), <https://www.npr.org/sections/health-shots/2020/05/17/856090474/home-but-not-safe-some-lgbtq-young-people-face-rejection-from-families-in-lockdo>; see also Sabra L. Katz-Wise et al., *Lesbian, Gay, Bisexual, and Transgender Youth Family Acceptance*, 63 PED. CLIN. N. AM. 1011 (2016), <http://dx.doi.org/10.1016/j.pcl.2016.07.005>.

populations such as racial and ethnic groups, very young children, people living in group quarters, and others—we believe that the Bureau’s testing plan is well-equipped to provide greater clarity on whether that will be an issue for LGBTQI+ populations being measured through the ACS. **We therefore believe that the potential issue of undercounting should not prevent the Bureau from proceeding with the 2024 ACS SOGI Test, and we look forward to working with the Bureau to engage in education and community-based outreach to address response concerns, if any, that its research here may illuminate.**

Importantly, several existing studies have already considered issues around proxy reporting and undercounting among LGBTQI+ people, and found that SOGI measures were understood by proxy reporters; that most did not find them difficult to complete; and that inaccuracy of responses was low.⁴¹ **We encourage the Bureau to continue building off of that existing research on proxy reporting as it proceeds with the 2024 ACS SOGI Test. We likewise encourage the Bureau to adopt best practices and lessons learned from its ongoing work to evaluate SOGI measure proxy responses as part of the American Housing Survey.** We are heartened to see the Bureau’s commitment to and strong emphasis on testing proxy response within the 2024 ACS SOGI Test; we look forward to reviewing those results and sharing more external research in this area with the Bureau in the future.

Next, we note our support for the Bureau’s decision to split the reinterview sample in half as part of its planned content follow-ups, with one half reinterviewing the same respondents as the original interview and the other half reinterviewing another adult member of the household. This design will allow the Bureau to compare response reliability between proxy responses and self-responses, and to assess item nonresponse, in the context of a household survey with proxy reporting, thus generating more useful information on how best to collect these data through the ACS and other surveys.

The Bureau’s proposed measures build upon and adapt the NASEM Panel’s recommended wording for SOGI measures to fit the unique nature of the ACS and its methodology. For example, the NASEM Panel recommends providing an “I don’t know” response option to SOGI measures that is not present in the Bureau’s proposal, but which is a reflection of the fact that the ACS does not allow that response option for any other demographic items. We commend the Bureau for proposing to test measures and means of administration that allow individual respondents to skip these questions—just as they are permitted to skip any other question on the ACS. We likewise appreciate that the Proposed Test relies on methodology that has been utilized in other surveys, including having response cards for in-person interviews to help ensure the safety and privacy of respondents in light of the perceived sensitive nature of these questions for some people. Those participating in the 2024 ACS SOGI Test should be informed of the value the Bureau places on self-identification and of their right to decline to answer individual questions on the ACS. Doing so is important to avoid confusion, given the mandatory nature of the ACS itself and to advance the Bureau’s goals for respondent participation in the ACS, both of which we strongly support.

⁴¹ Jessica Holzberg et al., *Can They and Will They? Exploring Proxy Response of Sexual Orientation and Gender Identity in the Current Population Survey*, 35 J. OFF. STAT. 885 (2019), <https://doi.org/10.2478/jos-2019-0037>.

Next, we applaud the Bureau’s plan to survey a robust sample of housing units for the 2024 ACS SOGI Test. Beginning with more than 480,000 housing units will increase the ability of the test to produce an accurate demographic snapshot through surveying a representative sample of the population with enough respondents to allow for subgroup analysis, which is vital to answering the key research questions outlined in the test. Researchers have observed a correlation between the residential location of same-sex couples and LGBT people more generally, supporting the Bureau’s decision to generate this sample based on population density—and mirroring what organizations dedicated to studying LGBTQI+ populations have done for their own studies in the past.⁴² **Likewise, we support the Bureau’s sound approach to sampling for the 2024 ACS SOGI Test,** as that will increase the number of participating households with LGBTQ+ people, while simultaneously ensuring adequate representation of rural households. Relying on the underlying ACS sampling design will similarly ensure racial, ethnic, and income diversity in the sample. Such practices are critical to allowing the Bureau to effectively evaluate how the tested measures and various proposed treatments perform, especially among LGBTQI+ subpopulations and people living at the intersection of multiple marginalized identities.

We also support the Bureau cognitively testing the proposed SOGI measures in English and Spanish with participants of diverse backgrounds, including various countries of origin for Spanish-speakers, to help meet existing needs for research on how to survey LGBTQI+ people in different languages. We agree with prioritizing these languages as part of the 2024 ACS SOGI Test, as the ACS questionnaire and survey instruments are only available in those two specific languages. **However, we strongly encourage the Bureau to engage in additional research around language access in the future,** including cognitive testing that includes additional languages and explores how we can ensure that respondents who need assistance in another language will be able to answer SOGI and other ACS questions.

Similarly, **we commend the Bureau for working to ensure that the sample for this (and any other future) test is diverse in terms of other demographic characteristics beyond SOGI,** such as race and ethnicity. Ensuring that both LGBTQI+ and non-LGBTQI+ respondents of various backgrounds understand the SOGI measures and the purpose for collecting these demographic data is important to reduce measurement error and produce high-quality data. As such, **we also support the Bureau including “Why We Ask” and “Help” text explaining the concepts being measured, why these questions are being asked, and how these data will be protected and used by the government, including for the specific purposes of protecting people from discrimination.** While many of the examples provided in the help text are useful, **we urge the Bureau to remove its note that “another term that may be used for gay or lesbian is homosexual,” which is unnecessary given the other examples provided and may further stigmatize respondents, deterring them from answering.** We appreciate that the Bureau will ensure that ACS interviewers providing telephone questionnaire assistance to respondents will be able to refer to this help text and guidance, a critical step toward ensuring that respondents can make an informed decision about sharing this information.

⁴² However, we note that this approach may not mitigate possible challenges in ensuring adequate representation of transgender and other gender diverse people within the test sample, as the limited data based on housing units that is currently available does not allow those individuals to be identified unlike how some sexual minority people can be identified through the existing relationship measure.

Finally, we wish to highlight that the Bureau has not proposed measures to be tested through the 2024 ACS SOGI Test that would allow intersex people to be identified. Notably, the NASEM Panel’s consensus report, the Federal Evidence Agenda on LGBTQI+ Equity, and OMB report all urge the importance of advancing research, and specifically data collection, on variations in sex characteristics.⁴³ **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.** We remain hopeful that the Bureau will maintain its stated commitment to furthering research on this population, and that it will one day engage in a test similar to this proposal on relevant measures for intersex people.

c. The Bureau’s Proposal Properly Centers Confidentiality, Privacy, and Safety

Government agencies, including and especially the Census Bureau, should ensure that they include measures sufficient to identify LGBTQI+ respondents whenever they are collecting other demographic information through surveys. However, **such practices must always be paired with robust privacy and confidentiality protections that will ensure the safety and privacy of all respondents and help safeguard personal information some may find sensitive or otherwise feel uneasy sharing.** Fortunately, the ACS joins the decennial census in being subject to the strongest data confidentiality safeguards in federal law, as established under Title 13 of the U.S. Code—which would allow data on the demographics of LGBTQI+ and other marginalized communities to be collected safely and with robust protections against potential disclosure or misuse in both the 2024 ACS SOGI Test and via a possible future implementation on the ACS itself.

Ensuring the privacy and confidentiality of all responses to the ACS is of paramount importance. And indeed, we appreciate that the Bureau already collects voluntary statistical data in the ACS on other marginalized groups experiencing well-documented discrimination. In accordance with Title 13, each household responding to the ACS is assured of the confidentiality of the answers for each household member and the household as a whole. Likewise, we support the Bureau’s proposal to conduct in-person, interviewer-administered interviews using numbered response categories to protect confidentiality of individual respondents who may be providing their SOGI information while in the presence of household members with whom they do not wish to share such information.⁴⁴ **However, we also appreciate the Bureau adopting and implementing additional disclosure avoidance procedures and other measures to assure all respondents of data confidentiality and security.** The Bureau’s plans to do so will be critical to building community trust among LGBTQI+ respondents in particular, given current efforts across the states to weaponize administrative data collection practices as a means of enforcing new restrictions on their ability to access care.⁴⁵ Since 1954, federal law has prohibited the Bureau

⁴³ See, e.g., NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 11, at 145.

⁴⁴ We also appreciate that this practice will help generate useful data on proxy reporting, and look forward to review of the Bureau’s results once available.

⁴⁵ See, e.g., Megan Henry, *Thousands submit comments on revised proposed Ohio administrative rules for transgender health care*, OHIO CAPITAL J. (Mar. 5, 2024), <https://ohiocapitaljournal.com/2024/03/05/thousands-submit-comments-on-revised-proposed-ohio-administrative-rules-for-transgender-health-care>.

and its employees from using data it collects for any reason other than for anonymous statistical purposes, or from sharing an individual's responses with other federal, state, or local agencies, private companies, or any other entity for *any* reason. Respondents participating in the 2024 ACS SOGI Test and the ACS itself should be provided with all necessary information and assurances to ensure they can avail themselves of these protections if ever necessary.

d. Funding for and Timing of the 2024 ACS SOGI Test

Finally, **we note our support for the Bureau confirming it 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 in the current strained fiscal environment, the Bureau has decided to delay the 2024 ACS SOGI Test's nonresponse follow-up activities until "no earlier than the spring of 2025."⁴⁶ Again, we appreciate that the testing needed to include new measures on the ACS is rigorous, and that this process takes sufficient resources and time to complete and then implement. That being said, the length of time this plan would create between original household contact and in-person follow-up activities could introduce recall bias into responses, thereby potentially diminishing the reliability of data collected in that phase of the testing. **We therefore strongly urge the Bureau to ensure that the timeline for the nonresponse follow-up portion of the 2024 ACS SOGI Test does not slip any further, and that this process is completed as soon as practicable.**

We also remain mindful of the growing challenges faced by LGBTQI+ people across the country, and of the powerful role that laws and policies informed by ACS data could play in helping them overcome such challenges. **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 LGBTQI+ communities. Likewise, we feel strongly that 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.**

V. Conclusion

We are grateful for the opportunity to submit comments in favor of fully including LGBTQI+ communities within this seminal survey. ACS data that meaningfully includes LGBTQI+ people will provide invaluable support to others' intersectional research, evidence-based policymaking, enforcement of civil rights laws, and efforts to advance equity for LGBTQI+ communities. Ensuring we reach that point should be a priority for the Bureau.

We therefore strongly support the Bureau conducting the 2024 ACS SOGI Test, as it is poised to generate rigorous, high-quality research and findings that will empower the Bureau's sound decision-making on various long-requested changes to the ACS, as well as other collections of data. We wholeheartedly believe that the outcomes of this test should guide how the Bureau proceeds—and based on its design, we expect that the 2024 ACS SOGI Test will provide the support needed for the Bureau to soon include SOGI measures on the ACS itself.

⁴⁶ Supporting Statement A, *supra* note 3, at 21.

Thank you for your consideration of this feedback and our recommendations. Please do not hesitate to contact Luis A. Vasquez, at luis.vasquez@hrc.org, or Caroline Medina, at cmedina@whitman-walker.org, if you need any additional information.

Sincerely,

Human Rights Campaign
Movement Advancement Project
Whitman-Walker Institute
Abrazar, Inc.
AHRCSV
AIDS Foundation Chicago
ARAY All Rainbow and Allied Youth
Arizona Trans Youth and Parent Organization
Atlanta Pride
Aunt Rita's Foundation
Autistic Self Advocacy Network (ASAN)
Bayard Rustin Center for Social Justice
Bayhealth
Capitol Area Reentry Program (Out of the Box LGBTQ Center)
Caribbean Equality Project
Center for Housing and Health
CenterLink: The Community of LGBTQ Centers
Columbia, SC-NOW (National Organization for Women)
Compass LGBTQ Community Center
Equality California
Equality Federation
Equitas Health
Fair Wisconsin
GenderNexus
Georgetown Center on Poverty and Inequality
Georgia Budget and Policy Institute
GLSEN
Grand Rapids Pride Center
Grand Rapids Trans Foundation
Great Lakes Bay Pride
GRIOT Circle
Hugh Lane Wellness Foundation
I Am Human Foundation
ICPSR, The Data Consortium
interACT: Advocates for Intersex Youth
Jackson Pride Center, dba Jackson Pride
Jacksonville Area Sexual Minority Youth Network (JASMYN)
Lambda Legal
LGBTQ Senior Housing, Inc.
LGBTQ+ Victory Fund

LGBTQ+ Victory Institute
Los Angeles LGBT Center
Loving Beyond Understanding
Massachusetts Transgender Political Coalition
Mayor's Office of LGBTQ+ Advancement, City of Boston
Montgomery Pride United/Bayard Rustin Community Center
Multnomah Education Service District
Muncie OUTreach LGBTQ+ Center
National Black Justice Coalition
National Center for Transgender Equality
National Community Action Partnership
National Council of Jewish Women
National Disability Rights Network (NDRN)
National Health Law Program
National Organization for Women, Columbia Area
National Organization for Women, Missouri
National Queer Asian Pacific Islander Alliance
National Women's Law Center
National Working Positive Coalition
NC Counts Coalition
New Bern Pride
Northwest Arkansas Equality, Inc.
Oasis Legal Services
one-n-ten
Openhouse
Out Boulder County
Out On The Lakeshore
Pennsylvania Equality Project
Plume Clinic
Pride Action Tank
Pride at Work AFL-CIO Rochester Finger Lakes Chapter
Pride Community Center, Inc (Bryan/College Station, Texas)
Pride Foundation
Pride Frisco
Prism Counseling & Community Services
rainbow pride youth alliance
Rainbow Rose Center
Rainbow Seniors ROC, Inc.
Rochester Rainbow Union
SAGE (Advocacy and Services for LGBTQ+ Elders)
San Gabriel Valley LGBTQ Center
Schnell
Sexual Violence Prevention Association (SVPA)
Shari Collins Consulting
Silver State Equality
SMYAL

SOJOURN

Southern Echo Inc.

Stonewall Alliance of Chico

Stonewall Columbus, Inc

Storied Analytics

Sussex Pride

The Frederick Center

The LGBTQ Center (South Bend, IN)

the Montrose Center

The Restaurant Opportunities Centers United (ROC UNITED)

The Trevor Project

Thorne Harbour Health

Transgender Awareness Alliance

Transgender Legal Defense & Education Fund (TLDEF)

Transgender Resource Center of New Mexico

Trillium Health

Ujima, The National Center on Violence Against Women in the Black Community

Washington County Gay Straight Alliance, Inc.

Waves Ahead Puerto Rico Corp

Wellness Services, Inc.

World Professional Association for Transgender Health (WPATH)