

May 30, 2024

Sheleen Dumas, Department PRA Clearance Officer
Office of the Under Secretary for Economic Affairs
Commerce Department
Submitted via *reginfo.gov*

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

OMB Control No. 0607–0936

Dear Officer Dumas,

We are grateful for the opportunity to provide comments to the U.S. Census Bureau (“Bureau”) and the Office of Management and Budget (“OMB”) regarding the above-captioned notice regarding the proposed test of sexual orientation and gender identity measures for inclusion on the American Community Survey (“ACS”). *See* 89 Fed. Reg. 33,315 (April 29, 2024).

The undersigned are scholars affiliated with the Williams Institute at the UCLA School of Law. The Williams Institute is dedicated to conducting rigorous and independent research on sexual orientation and gender identity (“SOGI”), including on the demographics and experiences of lesbian, gay, bisexual, and transgender (“LGBT”) people. The Williams Institute collects and analyzes original data, as well as analyzes governmental and private data, and has long worked with federal agencies to improve data collection on the U.S. population. These efforts include producing widely cited best practices for the collection of SOGI information on population-based surveys and contributing to the 2022 NASEM report, *Measuring Sex, Gender Identity, and Sexual Orientation*.¹ We have also previously commented on the need for SOGI questions on the ACS.²

We submit this brief comment in support of the Bureau’s SOGI test, with comment on the proposed methodology.

¹ *See, e.g.*, GENDER IDENTITY IN U.S. SURVEILLANCE (GENIUSS) 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- GenIUSS-Sep-2014.pdf>; SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS (2009), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Best-Practices-SO-Surveys-Nov-2009.pdf>.

² Luis A. Vasquez and Kerith J. Conron, Williams Inst., American Community Survey/Puerto Rico Community Survey: Public Comment (May 2022), <https://williamsinstitute.law.ucla.edu/publications/acs-prcs-comment/>.

I. We Strongly Support Testing Measures for Inclusion on the ACS

There are approximately 13.9 million LGBT Adults in the United States, age 18 and over.³ We currently rely upon the Centers for Disease Control and Prevention-led Behavioral Risk Factor Surveillance Survey (“BRFSS”) to derive these estimates.⁴ With these data, and the use of statistical models, we can estimate the percentage of LGBT adults by state; however, there are limitations to the characteristics that can be estimated from a health survey like the BRFSS. The ACS is used to generate information about fertility, marriage and divorce rates, household composition, school enrollment, income sources, occupation and industry, and commute times, in addition to nativity and citizenship.⁵ The ACS also provides information about housing type and costs which is not collected on the BRFSS or on most other federal surveys.⁶ To date, the ACS has provided valuable information about people who live in same-sex couple households,⁷ but has produced no information about LGBT people who are not members of same-sex cohabiting couples.

As such, we strongly support the inclusion of sexual orientation and gender identity (SOGI) measures on the ACS. We also strongly support the testing of SOGI measures in Spanish based upon our consultation with experts regarding potential differences in familiarity with concepts and terminology between monolingual English and Spanish speakers.

II. Feedback on Proposed Methodology

The overall strategy proposed by the Bureau for testing SOGI measures, as described in the supporting materials for this public comment opportunity,⁸ is appropriate and well-crafted. We thank the Bureau for their thoughtful attention and preparation for this test, and for the important commitment to ensuring that LGBT people can and will be counted. We offer comments on additional steps the Bureau could take to enhance the impact of the SOGI test.

First, we recommend examining and reporting the accuracy (i.e., sensitivity, specificity) and short-term test-retest reliability of groups classified as transgender or cisgender and as sexual

³ ANDREW R. FLORES AND KERITH J. CONRON, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES (Dec. 2023), <https://williamsinstitute.law.ucla.edu/publications/adult-lgbt-pop-us/>.

⁴ <https://www.cdc.gov/brfss/index.html>

⁵ See generally, *About the ACS*, CENSUS.GOV, <https://www.census.gov/programs-surveys/acs/about.html> (last visited May 29, 2024); *Why We Ask Each Question*, CENSUS.GOV, <https://www.census.gov/acs/www/about/why-we-ask-each-question/> (last visited May 29, 2024).

⁶ See generally, *Why We Ask Questions About...Housing Costs for Owners*, CENSUS.GOV., <https://www.census.gov/acs/www/about/why-we-ask-each-question/housing/> (last visited May 29, 2024.)

⁷ See e.g. LAQUITTA WALKER & DANIELLE TAYLOR, U.S. CENSUS BUREAU, SAME-SEX COUPLE HOUSEHOLDS: 2019 (Feb. 2021), <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acsbr-005.pdf>; SHOSHANA K. GOLDBERG & KERITH J. CONRON, WILLIAMS INST., HOW MANY SAME-SEX COUPLES ARE RAISING CHILDREN? (July 2018), <https://williamsinstitute.law.ucla.edu/publications/same-sex-parents-us/>.

⁸ In particular, we reference *Supporting Statements A and B*, *ICR Documents*, REGINFO.GOV, https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202404-0607-003 (last visited May 21, 2024) and *ACS Methods Panel Test, Attachment M, View Information Collection*, REGINFO.GOV, https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202404-0607-003&icID=190927 (last visited May 21, 2024).

minorities or as straight in addition to evaluations of the validity and reliability of specific items' responses. These broader classifications will allow for within-group inconsistencies between proxy-versus-respondent reporting of identity terms for household members (i.e., transgender and nonbinary; bisexual and pansexual). The use of broader groups will also allow for true change in the underlying construct (shifts in self-identification) among gender minorities and sexual minorities over time.

We recommend two strategies to support the Census Bureau in understanding the validity of transgender and cisgender classifications derived from measures of sex assigned at birth and gender identity. Knowledge of who is transgender and cisgender in a sample is necessary to evaluate the performance of measures intended to classify respondents as such. Responses may vary slightly depending on how gender identity is measured, including by proxy. As such, our specific recommendations are: (1) include multiple measures of gender identity on test survey instruments – including an open-ended question; and (2) test sex assigned at birth and gender identity measures in a sample known to be transgender. This sample could be derived from existing panels.

Additionally, we recommend use of the coding schema below for classifying respondents as transgender and cisgender. This schema allows for some missing data on sex assigned at birth rather than dropping all respondents or relying on imputation for missing data. Descriptive analyses of Household Pulse survey data have identified problems with the imputation of sex assigned at birth data.⁹

Figure 1. Gender Identity Questions (Paper): Version 1 (Left) and Version 2 (Right)

4 What sex was Person 1 assigned at birth?
Mark (X) ONE box.

☐ Male ☐ Female

5 What is Person 1's current gender?
Mark (X) ONE box. If this person is less than 15 years old, SKIP to the next question.

☐ Male
☐ Female
☐ Transgender
☐ Nonbinary
☐ This person uses a different term – Specify

4 What sex was Person 1 assigned at birth?
Mark (X) ONE box.

☐ Male ☐ Female

5 What is Person 1's current gender?
Mark (X) one or more boxes. If this person is less than 15 years old, SKIP to the next question.

☐ Male
☐ Female
☐ Transgender
☐ Nonbinary
☐ This person uses a different term – Specify

⁹ Bill M. Jesdale, *Counting Gender Minority Populations in the Household Pulse Survey (The AGENID=2 Memo)*, NAT'L LGBT CANCER NETWORK (Oct. 2021), <https://cancer-network.org/wp-content/uploads/2021/10/Counting-GM-People-in-Pulse-Data.pdf>.

Classification guidance (check one):

SAB	Gender identity	Transgender status
Male	Male	Cisgender
Female	Male	Transgender
Missing	Male	Missing
Male	Missing	Missing
Female	Female	Cisgender
Male	Female	Transgender
Missing	Female	Missing
Female	Missing	Missing
Male, female, or missing	Transgender	Transgender
Male, female, or missing	Nonbinary	Transgender
Male, female, or missing	Write-in gender minority identity (e.g., trans masculine, genderqueer, stud, fluid, nonconforming).	Transgender
Male	Write-in majority identity (e.g., man, “normal male”). Upcode write-in as male.	Cisgender
Female	Write-in majority identity (e.g., woman, “normal female”). Upcode write-in as female.	Cisgender
Male, female, or missing	Write-in (missing or cannot be classified, e.g., “human”, gay or other sexual identity terms)	Missing

Classification guidance (check all that apply):

Respondents who select more than one close-ended gender identity response should be classified as transgender – regardless of whether SAB is present or missing.

Sample data summary:

	%
Sex assigned at birth	
Male	
Female	
Missing	
Gender identity	
Male	
Female	
Transgender	
Nonbinary	
A different gender minority identity	
Missing (no response or unusable write-in)	

Transgender status

Transgender

Cisgender

Missing

Number of gender identity responses selected

One

More than one

Missing

Gender identity (more than one identity selected)

Male

Female

Transgender

Nonbinary

A different gender minority identity

Missing (unusable write-ins)


Figure 2. Sexual Orientation Question (Paper)

26 Which of the following best represents how this person thinks of themselves?
Mark (X) ONE box.

☐ Gay or lesbian

☐ Straight, that is not gay or lesbian

☐ Bisexual

☐ This person uses a different term – Specify 

Finally, and for the purposes of evaluating concordance between self- and proxy- report and test-retest reliability, we recommend that the Bureau upcode the following specific and types of non-monosexually-oriented responses as bisexual:

- Pansexual
- Heteroflexible, homoflexible, flexible, fluid, bisexually-oriented lesbian, prefer men, but enjoy women, mostly heterosexual, mostly homosexual

In a recent probability sample of 9,000 adults in Los Angeles County in which we coded sexual orientation identity write-ins in this manner, we found that nearly half of respondents who

provided a write-in response identified as pansexual or with other non-monosexual identity terms. This group of upcoded respondents accounted for about 10% of the bisexual group.¹⁰

These recommendations are submitted for the Bureau's consideration and intended to complement an already strong SOGI testing plan. The time to include SOGI measures on the ACS is long overdue and we sincerely appreciate the Bureau's movement forward and commitment to a rigorous measurement testing plan.

III. Conclusion

We strongly support the Bureau's testing SOGI self-report and proxy-report and Spanish language measures for potential inclusion in the American Community Survey. The overall methodology proposed by the Bureau is thoughtful, consistent with best practices for SOGI measurement evaluation, and will support the collection of accurate and reliable data from LGBT residents.

Thank you for your consideration of the information and comments provided herein. Please direct any correspondence to redfield@law.ucla.edu.

Respectfully Submitted,

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¹⁰ Analysis by authors.