

# Congress of the United States

Washington, DC 20515

May 30, 2024

The Honorable Gina Raimondo  
Secretary  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, DC 20230

The Honorable Robert L. Santos  
Director  
U.S. Census Bureau  
4600 Silver Hill Road  
Washington, DC 20233

## **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**

Dear Secretary Raimondo and Director Santos:

We, the undersigned members of the U.S. House of Representatives, write to express our strong support for the Census Bureau's proposal to test measures on sexual orientation and gender identity (SOGI) as part of the 2024 American Community Survey (ACS).

As members of Congress, having comprehensive data on our communities, including LGBTQI+ constituents, is vital for addressing disparities in health, housing, employment, and education. This data is essential for crafting evidence-based legislation and designing programs that positively impact the well-being of LGBTQI+ and other underserved communities. Notably, they are also critical for enforcing civil rights laws<sup>1</sup> that protect LGBTQ+ communities from discrimination and violence, such as under Title VII of the Civil Rights Act of 1964;<sup>2</sup> facilitating grant administration, supporting education efforts, and addressing anti-LGBTQI+ hate crimes. ACS data inform trillions of dollars of federal funding<sup>3</sup> for such programs, and we are pleased by the Census Bureau's proposals to ensure that LGBTQ+ persons are properly counted in the collection of the vital housing and socioeconomic data collected by the ACS.

We support the robust sample size of 480,000 housing unit addresses and 88,000 respondents for content follow-up reinterviews, testing measures that draw on and build upon the established evidence base, and utilizing help text in the electronic questionnaire to explain SOGI-related terminology, why the Census Bureau is collecting the data, and how it will ensure data confidentiality. Given the rising rates of attacks and discrimination against LGBTQI+ individuals across the country, ensuring confidentiality and privacy protections is crucial. We appreciate the Bureau's dedication to preserving the confidentiality of ACS data under Title 13—representing the strongest confidentiality safeguards in federal law—and its commitment to applying additional disclosure avoidance techniques for the SOGI test.<sup>4</sup>

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<sup>1</sup> Kristen Clarke, "Letter to Albert E. Fontenot, Jr. and Victoria Velkoff," Dec. 9, 2022 (on file with author).

<sup>2</sup> The U.S. Supreme Court affirmed in *Bostock v. Clayton County* 590 U.S. 644 (2020), that the prohibition on sex discrimination in Title VII extends to discrimination based on sexual orientation and gender identity. The Biden Administration has made clear that this holding should be applied to all federal laws prohibiting sex discrimination. Exec. Order 13988, 86 Fed. Reg. 7,023–25 (Jan. 20, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>. The Department of Justice has also made clear that this holding "applies with equal force to discrimination against intersex people" based on their sex characteristics. Department of Justice, Title IX Legal Manual (updated Aug. 21, 2021), <https://www.justice.gov/crt/titleix#Bostock>.

<sup>3</sup> Sean Moulton, Dollars and Demographics: How Census Data Shapes Federal Funding Distribution, POGO (Sept. 11, 2023), <https://www.pogo.org/reports/dollars-and-demographics-how-census-data-shapes-federal-funding-distribution#:~:text=As%20POGO%20was%20conducting%20its,federal%20funds%20in%20FY%202021.>

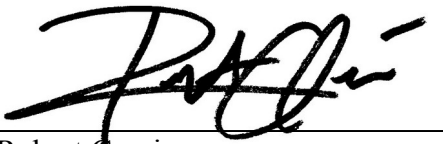
<sup>4</sup> U.S. Census Bureau, U.S. Dep't of Commerce, American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test OMB Control No. 0607-0936 Supporting Statement A at 3.

Further, we are encouraged that the Bureau has committed to paying the total costs associated with conducting this SOGI test. Still, we are concerned about the Bureau's decision to delay the nonresponse follow-up to spring 2025 due in part to budget constraints. We urge the Bureau to prevent any further delays to the test and to ensure that this process is not derailed. We further urge the Bureau to apply the same standards to its research to improve data collection on LGBTQI+ communities as it does to other changes to the ACS and to not subject this research to a higher standard.

Additionally, as part of its efforts to expand LGBTQI+ data collection, we strongly encourage the Census Bureau to work with federal agencies to identify their needs for ACS data on intersex populations in order to proceed with testing and adding a standalone measure about variations in sex characteristics. We are encouraged by the Bureau's commitment to asking about intersex status in cognitive testing and the Bureau's statement that "it will be considered for field testing in the future."<sup>5</sup> This measure is essential to better understand and address health, economic, and other disparities that intersex communities face, often stemming from unnecessary medical interventions and insufficient awareness about intersex issues.

Comprehensive data leads to improved policies and resource allocation, and we appreciate the Census Bureau's commitment to proceeding with the 2024 ACS SOGI test so that we can better understand and represent LGBTQI+ and other underserved communities.

Sincerely,



Robert Garcia  
Member of Congress



Katie Porter  
Member of Congress



Eleanor Holmes Norton  
Member of Congress



Nikema Williams  
Member of Congress

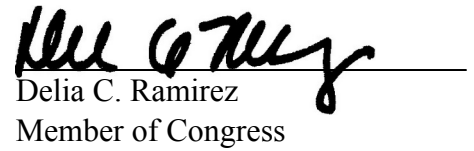
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<sup>5</sup> *Id.* at 12,



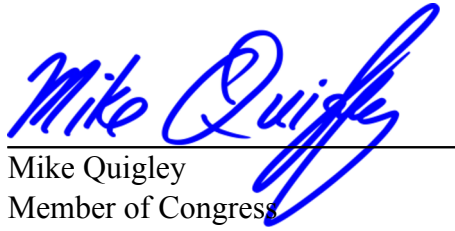
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Sylvia R. Garcia  
Member of Congress



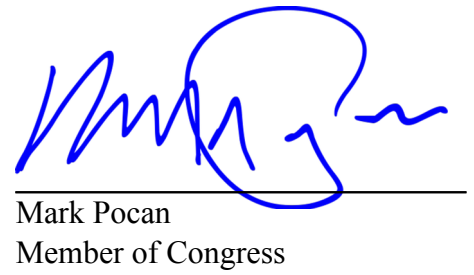
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Delia C. Ramirez  
Member of Congress



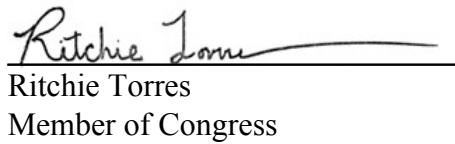
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Mike Quigley  
Member of Congress



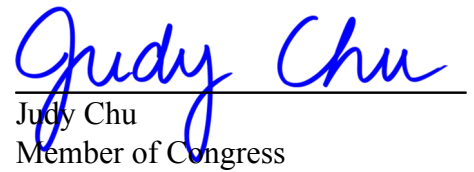
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Mark Pocan  
Member of Congress



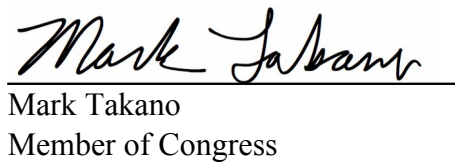
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Ritchie Torres  
Member of Congress



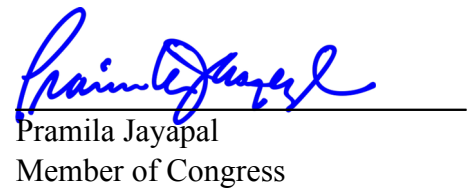
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Judy Chu  
Member of Congress



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Mark Takano  
Member of Congress



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Pramila Jayapal  
Member of Congress