

February 12, 2018

Jennifer Jessup  
Departmental Paperwork Clearance Officer  
Department of Commerce  
*Submitted via regulations.gov*

RE: DEPARTMENT OF COMMERCE; Census Bureau; Proposed Information  
Collection; Comment Request; The American Community Survey (USBC-2017-0005)

Dear Ms. Jessup:

We write in support of the revisions to the Relationship question of the 2019 American Community Survey (ACS). We are scholars affiliated with the Williams Institute, an academic research center at UCLA School of Law dedicated to conducting rigorous and independent research on sexual orientation and gender identity, including on the demographic and socio-economic profile of same-sex couples in the United States. We collect and analyze original data as well as analyze private and governmental data, including ACS and Decennial Census data. One of the undersigned (Gary Gates) has served on the Census Bureau's Scientific Advisory Committee and produced the first estimates of cohabiting same-sex couples based on the 1990 Decennial Census. Since then, Gates and other Williams Institute scholars have regularly analyzed same-sex-couples data generated by the ACS and Decennial Census. Williams Institute scholars have long worked with federal agencies to improve data collection on the U.S. population (including same-sex couples) and have produced widely-cited best practices for the collection of sexual orientation and gender identity information on population-based surveys.<sup>1</sup>

Existing ACS data on same-sex couples have proven invaluable to not only describing the geographic and socio-economic characteristics of this population nationally and subnationally,<sup>2</sup> but also to the development of law and policy affecting same-sex couples and their families. For example, the U.S. Supreme Court and other courts expressly relied on Gates's analyses of ACS data on same-sex couples raising children in holding that the Constitution guarantees same-sex couples the right to marry. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015) (citing Brief of Gary J. Gates as *Amicus Curiae*); *Baskin v. Bogan*, 766 F.3d 648, 663 (7th Cir. 2014) (citing studies by Gates regarding same-sex couples and their children); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 763-64 (E.D. Mich. 2014).

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

<sup>2</sup> See, e.g., Angeliki Kastanis & Bianca D.M. Wilson, Williams Institute, *Race/Ethnicity, Gender and Socioeconomic Wellbeing of Individuals in Same-sex Couples* (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census-Compare-Feb-2014.pdf>.

Researchers analyzing same-sex couple data from the ACS and the Decennial Census have identified difficulties associated with accurate measurement, particularly of married same-sex couples. As Gates has explained, “these difficulties occur when very small portions of surveys from different-sex couple households include miscodes in the sex of the spouses or partners such that they appear to be a same-sex couple. Even small numbers of such miscodes among different-sex couples mean that a relatively large portion of the same-sex couple sample includes miscoded different-sex couples.”<sup>3</sup> Gates’s analyses make several adjustments to the data to improve the likelihood that observed same-sex couples, particularly married same-sex couples, are not different-sex couples who have been miscoded.<sup>4</sup> Likewise, as the Federal Register notice explains, “the Census Bureau discovered a statistical error in the 2010 Census data that resulted from opposite-sex couples mismarking their sex. This error has the potential to inflate the estimates of same-sex, married-couple households from the 2010 Census. The Census Bureau released a set of modified state-level, same-sex household estimates from the 2010 Census because of this error, and also began new research efforts to improve the Relationship question.”

We agree with the revisions to the Relationship question being implemented by the Census Bureau in order to improve measurement of same-sex couples, and relationship status more generally. The more specific responses (“Opposite-sex husband/wife/spouse,” “Opposite-sex unmarried partner,” “Same-sex husband/wife/spouse,” and “Same-sex unmarried partner”); the re-ordering of the responses; and the automatic consistency check will all reduce the likelihood of miscodes. We thank the Census Bureau for its efforts to improve accuracy of same-sex couple data on the ACS, and look forward to working with the Census Bureau to expand and improve data collection on the LGBT population more broadly.

Respectfully Submitted,

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Williams Distinguished Scholar  
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Kerith J. Conron  
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<sup>3</sup> Gary J. Gates, Williams Institute, *Demographics of Married and Unmarried Same-sex Couples: Analyses of the 2013 American Community Survey* (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-Same-Sex-Couples-ACS2013-March-2015.pdf>.

<sup>4</sup> *Id.* 2 (describing adjustment procedure).

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