



January 16, 2018

Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce, Room 6616
14th and Constitution Avenue NW
Washington, DC 20230
Submitted via regulations.gov

RE: DEPARTMENT OF COMMERCE; Census Bureau; Proposed Information Collection; Comment Request; American Community Survey Methods Panel Tests (82 FR 54317, 54318, 54319, 54320) (Docket # USBC-2017-0006)

Dear Ms. Jessup:

The Williams Institute is grateful for the opportunity to provide the Census Bureau with comments on the American Community Survey (ACS) Methods Panel. The Williams Institute is 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, geographic, and socioeconomic characteristics of lesbian, gay, bisexual, and transgender (LGBT) people. Our scholars collect and analyze original data as well as analyze private and governmental data, including ACS data. In addition, Williams Institute scholars have long worked with federal agencies to improve data collection on the U.S. population and have produced widely-cited best practices for the collection of sexual orientation and gender identity information on population-based surveys.¹

We applaud the Census Bureau for its continued research, testing, and evaluations aimed at improving the ACS. We urge the Census Bureau to utilize the ACS Methods Panel to conduct any additional research or testing necessary to accomplish the goal of including sexual orientation and gender identity measures on the ACS. Adding sexual orientation and gender identity measures to the ACS is crucial in order to provide a fuller and more nuanced picture of our nation's people, which will improve policymaking, funding determinations at all levels of government, enforcement of civil rights laws, and other important decisions that rely on ACS data. Indeed, several federal agencies have urged the Census Bureau to add sexual orientation and gender identity measures to the ACS, including the Department of Justice on November 4, 2016. Likewise, the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys has explained that:

¹ 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>.

At a time when sexual and gender minority (SGM) populations are becoming more visible in social and political life, there remains a lack of data on the characteristics and well-being of these groups. In order to understand the diverse needs of SGM populations, more representative and better quality data need to be collected.²

Though still relatively rare, a growing number of federal surveys allow people to disclose voluntarily their sexual orientation and/or gender identity along with other demographic data. Examples of federal surveys that collect sexual orientation and/or gender identity data include the National Crime Victimization Survey, National Health Interview Survey, National Survey of Older American Act Participants, Behavioral Risk Factor Surveillance System, Youth Risk Behavior Surveillance System, and National Survey for Family Growth, among others.³ Further, several state and local government surveys allow respondents to self-disclose their sexual orientation and gender identity, such as the California Health Interview Survey, as do various large surveys administered by private entities, such as the Gallup Daily Tracking Survey. These surveys provide a wealth of important and enlightening data about LGBT people, and allow researchers and policymakers to compare their experiences to non-LGBT people in order to identify and address disparities and vulnerabilities.

Similarly, incorporating measures of sexual orientation and gender identity into the ACS would enhance the quality, utility, and clarity of the information collected. Like race, sex, and other personal demographic data already collected on the ACS, data on sexual orientation and gender identity would enhance the ability federal, state, and local governments, and others, to identify and address disparities and vulnerabilities facing the LGBT population (and subpopulations) nationally and sub-nationally. Existing evidence finds that LGBT people face persistent and pervasive discrimination in employment,⁴ education,⁵ housing,⁶ and public accommodations,⁷ as well as widespread stigma, prejudice, and violence, making inclusion of

² Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys, *Current Measures of Sexual Orientation and Gender Identity in Federal Surveys* (2016), https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/WorkingGroupPaper1_CurrentMeasures_08-16.pdf.

³ See, e.g., *id.*

⁴ See, e.g., Pizer et al., *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People*, 45 Loy. L.A. L. Rev. 715, 721-728 (2012); Tilcsik, *Pride and Prejudice: Employment Discrimination Against Openly Gay Men in the United States*, 117 Am. J. Sociology 586, 586-626 (2011).

⁵ See, e.g., Kosciw et al., GLSEN, *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* (2016); Wolff et al., *Sexual Minority Students in Non-Affirming Religious Higher Education: Mental Health, Outness, and Identity*, 3 Psychol. Sexual Orientation & Gender Diversity 201 (2016).

⁶ See, e.g., Levy et al., Urban Institute, *A Paired-Tested Pilot Study of Housing Discrimination Against Same-Sex Couples and Transgender Individuals* (2017).

⁷ See, e.g., Badgett et al., Williams Institute, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination* 19-20 (2007); Mallory et al., Williams Institute, *The Impact of Stigma and Discrimination against LGBT People in Florida* 30-32 (2017); Mallory et al., Williams Institute, *The Impact of Stigma and Discrimination Against LGBT People in Georgia* 27-28 (2017); Mallory et al., Williams Institute, *The Impact of Stigma and Discrimination Against LGBT People in Texas* 29-31(2017); Mallory & Sears, Williams

sexual orientation and gender identity measures on the ACS all the more important.

Currently, ACS data do allow for identification and analysis of cohabiting same-sex couples. These data have proven invaluable in a wide variety of contexts. For example, in *Obergefell v. Hodges*, the U.S. Supreme Court cited Williams Institute analyses of ACS data on the hundreds of thousands of children that same-sex couples are raising across the nation, in ruling that the Constitution guarantees same-sex couples the right to marry.⁸ However, cohabiting same-sex couples is one particular subgroup of the LGBT population and its characteristics do not reflect the broader LGBT community. Therefore, adding sexual orientation and gender identity measures on the ACS would also enhance the clarity of existing data.

We recognize that the ACS uses proxy methodology, which would be a new setting for the administration of sexual orientation and gender identity measures on a population-based survey. Recent studies from Census Bureau and Bureau of Labor Statistics researchers promisingly (and unsurprisingly) indicate that proxies generally are able to reliably report the sexual orientation and gender identity of their household members, proxies are comfortable answering such questions, and such questions have lower non-response rates and less survey break-off than other measures on the ACS, such as income. To the extent that research or testing remains to be done to confirm that sexual orientation and gender identity measures on the ACS would produce reliable data, the Methods Panel appears to be an appropriate vehicle for such research or testing. Ultimately, we urge the Bureau to continue taking the steps necessary for inclusion of sexual orientation and gender identity measures on the ACS.

Respectfully Submitted,

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Institute, *Evidence of Discrimination in Public Accommodations Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies*, 2008-2014 (2016).

⁸ See *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015) (citing *Brief for Gary Gates as Amicus Curiae*).