

May 13, 2022

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Department PRA Clearance Officer
Office of the Chief Information Officer
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; The American Community Survey and Puerto Rico Community Survey (RIN 2022-08149)

To Whom It May Concern,

We are grateful for the opportunity to provide comments to the U.S. Census Bureau (the “Bureau”) on its above-captioned notice announcing its intent to submit a request for an extension, without change, of currently-approved data collection instruments utilized as part of the American Community Survey (“ACS”) and the Puerto Rico Community Survey (“PRCS”). See 87 Fed. Reg. 22,501 (April 15, 2022).

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.¹

We write in response to the Bureau’s request for comment on these data collections, specifically to recommend the inclusion of SOGI measures on both surveys. Together, the ACS and PRCS are a vital source of information about employment and earnings, housing conditions and expenses, education, citizenship, family composition, veteran status, disability, and insurance coverage among people in the fifty states, the District of Columbia, and Puerto Rico.²

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 *The Importance of the American Community Survey and the Decennial Census*, CENSUS.GOV, <https://www.census.gov/programs-surveys/acs/about/acs-and-census.html> (last accessed May 03, 2022); *About the Puerto Rico Community Survey*, CENSUS.GOV, <https://www.census.gov/programs-surveys/acs/about/puerto-rico-community-survey.html> (last accessed May 03, 2022).

Currently, both surveys collect demographic data about same-sex married and cohabitating couples through a marital status question.³ While helpful in generating knowledge about an estimated 2 million LGBT adults,⁴ relying on these surveys would leave gaps in our knowledge about the experiences of the nearly 11 million LGBT people who are not living in same-sex, cohabitating couple households in the United States.⁵

The Williams Institute has conducted two large LGBTQ-specific population-based national surveys through the NIH-funded Generations (HD078526) and TransPop (HD090468) studies on sexual and gender minority people, respectively.⁶ Data collected across both studies on socioeconomic status and housing indicate disparities among LGBTQ people when compared to the U.S. general population. For example, we found that LBQ cisgender women (48.3%) and transgender people (47.7%) were more likely than GBQ cisgender men (31.5%) to be living in a low-income household, with all three groups reporting rates higher than that of the general population (30.4% in 2018).⁷ Similarly, we found that LGBTQ people are more likely to report unemployment when compared to the national average (8.1% vs. 4.1%, at the end of 2017).⁸ Likewise, 47.5% of transgender people, 39.2% of GBQ cisgender men, and 37.5% of LBQ cisgender women reported being fired or been denied a job at least once as adults.⁹ Finally, we found evidence of housing instability, with 15.2% of all LGBTQ respondents reporting moving residences three or more times in a two-year period.¹⁰

Our recent research on the impact of COVID-19 on U.S. adults has found that the pandemic has had a severe economic impact on LGBT adults—and particularly on LGBT people of color.¹¹ For example, LGBT respondents were more likely than their non-LGBT counterparts to report being laid off (12.4% v. 7.8%) or furloughed (14.1% v. 9.7%) from their jobs; to report problems affording basic household goods (23.5% v. 16.8%); and to report problems paying their rent or mortgage (19.9% v. 11.7%).¹² LGBT people of color were more than twice as likely to report that their ability to pay for household goods got worse (28.7% v. 14.2%), and were over three times as likely to report that their ability to pay their rent or mortgage (26.3% v. 8.8%) got worse, as compared to non-LGBT White people.¹³ More than half (63.1%) of LGBT people of

³ See questionnaires available at Sample ACS & PRCS Forms and Instructions, CENSUS.GOV, <https://www.census.gov/programs-surveys/acs/about/forms-and-instructions.html> (last accessed May 03, 2022).

⁴ Williams Institute Scholars, Comment Letter on Proposed Basic Demographic Items for the Current Population Survey (March 22, 2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Comment-CPS-Mar-2021.pdf>.

⁵ *Id.*

⁶ ILAN H. MEYER, BIANCA D.M. WILSON & KATHRYN O'NEILL, WILLIAMS INST., LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES 1 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf>.

⁷ *Id.* at 10–11.

⁸ *Id.*

⁹ *Id.* at 19.

¹⁰ *Id.* at 11.

¹¹ See, e.g., BRAD SEARS, KERITH J. CONRON & ANDREW R. FLORES, WILLIAMS INST., THE IMPACT OF THE FALL 2020 COVID-19 SURGE ON LGBT ADULTS IN THE US (2021),

<https://williamsinstitute.law.ucla.edu/publications/covid-surge-lgbt>.

¹² *Id.* at 9.

¹³ *Id.* at 10.

color were very concerned about their ability to pay their bills, as compared to 42.4% of LGBT White and 33.2% of non-LGBT White people.¹⁴

There has been little population-based research about LGBT and transsexual¹⁵ (“LGBT”) people in Puerto Rico specifically. However, data collected through the Behavioral Risk Factor Surveillance System indicate that smoking, depression, and cardiovascular disease are more common among LGBT than non-LGBT people in Puerto Rico.¹⁶ Health generally follows a socioeconomic gradient;¹⁷ thus, these findings indicate that as observed elsewhere in the U.S.,¹⁸ data on the “social, economic, housing, and demographic characteristics”¹⁹ of LGBT people in Puerto Rico may provide valuable insight into that population’s health and other needs.

As the Bureau is aware, data collected through the ACS and PRCS are used in part to inform federal spending on infrastructure, services, programs, economic development, and emergency management.²⁰ And, these surveys are uniquely positioned as “the only source of comparable data” on various characteristics for “small-areas and small subpopulations” across the country.²¹ We therefore strongly recommend the inclusion of SOGI measures on both surveys, as data from each are needed to ensure that LGBT people are included in local, state, and federal government efforts to address socioeconomic, health, and other disparities across the U.S. population.

Research on federal implementations of SOGI measures suggests that respondents are unlikely to consider SOGI information to be particularly sensitive, and would therefore provide such information if asked.²² Similarly, studies suggest that sexual minority people are not a population that is difficult to survey.²³ Questions measuring sexual orientation have been included on federal surveys for over two decades,²⁴ including in large-scale, population-based

¹⁴ *Id.*

¹⁵ Included here consistent with existing research on terminology used by sexual and gender minority populations in Puerto Rico, see, e.g., study cited *infra*.

¹⁶ Alex Cabrera-Serrano et al., *Tobacco Use and Associated Health Conditions and Risk Factors in the Lesbian, Gay, Bisexual, Transgender, and Transsexual Populations of Puerto Rico, 2013-2015*, 38 P.R. HEALTH SCI. J. 46 (2019), <https://pubmed.ncbi.nlm.nih.gov/30924915>.

¹⁷ See, e.g., NAT’L CTR. FOR HEALTH STATISTICS, HEALTH, UNITED STATES, 1998 WITH SOCIOECONOMIC STATUS AND HEALTH CHARTBOOK (1998), <https://www.cdc.gov/nchs/data/hus/hus98.pdf>.

¹⁸ SOON KYU CHOI, M.V. LEE BADGETT & BIANCA D.M. WILSON, WILLIAMS INST., STATE PROFILES OF LGBT POVERTY IN THE UNITED STATES (2019), <https://williamsinstitute.law.ucla.edu/publications/state-lgbt-poverty-us/>; Kevin C. Heslin & Jeffrey E. Hall, Ctrs. for Disease Control & Prevention, *Sexual Orientation Disparities in Risk Factors for Adverse COVID-19–Related Outcomes, by Race/Ethnicity — Behavioral Risk Factor Surveillance System, United States, 2017–2019*, 70 MORBIDITY & MORTALITY WKLY. REP. 149 (2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm?s_cid=mm7005a1_w.

¹⁹ 87 Fed. Reg. at 22,502.

²⁰ See sources cited *supra* note 2.

²¹ 87 Fed. Reg. at 22,502.

²² See, e.g., Sean Cahill et al., *Do Ask, Do Tell: High Levels of Acceptability by Patients of Routine Collection of Sexual Orientation and Gender Identity Data in Four Diverse American Community Health Centers*, 9 PLOS ONE 1 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4157837/pdf/pone.0107104.pdf>.

²³ See, e.g., Nancy Bates et al., *Are Sexual Minorities Hard-to-Survey? Insights from the 2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey*, 35 J. OFFICIAL STATS. 709 (2019), <https://sciendo.com/article/10.2478/jos-2019-0030>.

²⁴ See 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

surveys administered by the Bureau and by other agencies.²⁵ Questions used to identify transgender respondents have been included on state and investigator-led surveys for some time, with more common use of both sexual orientation and gender identity questions, including in federal surveys, over the last decade.²⁶ The federal government has long engaged in its own review of best practices for the measurement of SOGI, including through its Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys organized through the Federal Committee on Statistical Methodology.²⁷

The federal government has also supported others' research on this topic, including by funding the research of an ad hoc panel formed by the National Academies of Sciences, Engineering, and Medicine focused on SOGI-related methodological issues (the "NASEM Panel").²⁸ The NASEM Panel recently released a consensus study report offering guidance and best practices for collecting data on SOGI, as well as on variations in sex characteristics, in population-based surveys, as well as clinical and administrative settings.²⁹ The NASEM Panel's report also provides guiding principles for such data collection, specifically inclusiveness, precision, respecting autonomy, collecting only necessary data, and a dedication to confidentiality.³⁰ Notably, the measures recommended by the NASEM Panel are consistent with those utilized by the Bureau beginning with phase 3.2 of its Household Pulse Survey measuring the impact of the COVID-19 pandemic.³¹

As scholars with experience in measurement development and testing, we would recommend that the Bureau assess the performance of SOGI measures, and all other demographic items, and to make revisions as needed. Likewise, we note our concern with potential harm to respondents due to breach of confidentiality and request that the Bureau ensure that all data are collected and reported using all appropriate privacy standards. All entities responsible for ACS and PRCS data collection ought to ensure the confidentiality of respondents' information.

Thank you for your consideration. Please direct any correspondence, including questions, to vasquezl@law.ucla.edu.

FEDERAL SURVEYS 3 (2016), https://cpb-us-e1.wpmucdn.com/sites.northwestern.edu/dist/3/817/files/2017/01/WorkingGroupPaper1_CurrentMeasures_08-16-1xnai8d.pdf.

²⁵ See, e.g., *2019 BRFSS Survey Data and Documentation*, CDC.GOV (Aug. 31, 2020), https://www.cdc.gov/brfss/annual_data/annual_2019.html; *Questionnaires | YBRS*, CDC.GOV (Nov. 17, 2020), <https://www.cdc.gov/healthyouth/data/yrbs/questionnaires.htm>.

²⁶ Williams Institute Scholars, *supra* note 4.

²⁷ See generally *Measuring Sexual Orientation and Gender Identity Research Group*, FED. COMM. STAT. METHODOLOGY (2018), <https://nces.ed.gov/FCSM/SOGI.asp>.

²⁸ *Measuring Sex, Gender Identity, and Sexual Orientation for the National Institutes of Health*, NAT'L ACADEMIES OF SCIENCES, ENGINEERING, & MED., <https://www.nationalacademies.org/our-work/measuring-sex-gender-identity-and-sexual-orientation-for-the-national-institutes-of-health> (last accessed May 03, 2022).

²⁹ 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-sexual-orientation>.

³⁰ *Id.* at S-4.

³¹ Thom File & Jason-Harold Lee, *Phase 3.2 of Census Bureau Survey Questions Now Include SOGI, Child Tax Credit, COVID Vaccination of Children*, U.S. Census Bureau (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>.

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