

Manager of the Strategic Collections and Clearance Governance and Strategy Division
U.S. Department of Education
400 Maryland Avenue SW, LBJ, Room 6W203
Washington, DC 20202-8240

March 23, 2023

RE: Agency Information Collection Activities; Comment Request; National Teacher and Principal Survey of 2023– 2024 (NTPS 2023–24) Data Collection Docket Number ED-2023-SCC-0019

Dear Manager of the Strategic Collections and Clearance Governance and Strategy Division:

We are grateful for the opportunity to provide comments on the Department of Education’s notice regarding revision of information collection through the 2023-2024 National Teacher and Principal Survey (the “NTPS”). *See* 88 Fed. Reg. 3,981 (Jan. 23, 2023).

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 offer this submission to provide support generally for inclusion of sexual orientation and gender identity measures in the 2023-2024 NTPS. In its Comment Request, the National Center for Education Statistics (“NCES”) of the Department of Education (“The Department”) posed five questions, including: “(1) is this collection necessary to the proper functions of the Department.”² We conclude that the proposal to include SOGI measures is necessary to the proper functions of the department because LGBT people represent a significant and diverse portion of the population, research shows that LGBT teachers and principals may have unique experiences in the workplace which would be better understood through survey data, public

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 88 Fed. Reg. 3,981.

policy is in favor of LGBT data collection, and suitable measures have already been identified for federal population surveys.

I. LGBT people represent a significant and diverse population

LGBT-identified people comprise approximately 4.5% of the U.S. adult population and 9.5% of youth between ages 13 and 17.³ Applying these figures to the U.S. population, we estimate that approximately 11 million adults and 2 million youth ages 13 to 17 in the U.S. identify as LGBT. These estimates include approximately 1.3 million adults and 300,000 youth ages 13 to 17 who are transgender.⁴

We also know from the data that the LGBT population is remarkably diverse and that the experiences of LGBT people are not uniform but, rather, are shaped by factors such as race, ethnicity, socioeconomic status, geographical location, primary language, education, disability, religion, family composition, and age.⁵ In fact, we estimate that approximately 40% of LGBT people are people of color, with 21% of LGBT adults identifying as Latino/a⁶ or Hispanic, 12% as Black, and 5% as more than one race.⁷ Research has also shown that LGBT people are more likely to be in poverty than non-LGBT people,⁸ contrary to the popular stereotype of LGBT affluence, and that LGBT people face persistent and pervasive discrimination in employment, housing, and other important settings.⁹ Additionally, LGBT people face numerous health

³ KERITH J. CONRON & SHOSHANA K. GOLDBERG, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES 1 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Jul-2020.pdf>; KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES 2 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

⁴ JODY L. HERMAN ET AL., WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 4 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>.

⁵ Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (2011), <http://www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx>.

⁶ Here we use the term “Latina” to discuss individuals within that ethnic group. Some use the term “Latinx” - an emerging, gender-neutral alternative to Latino or Latina as an inclusive term that embraces “a wide variety of racial, national, and even gender-based identifications.” ED MORALES, LATINX: THE NEW FORCE IN AMERICAN POLITICS & CULTURE 5 (2019). We acknowledge that LGBT and non-LGBT people may describe themselves or their communities using other terms, such as Latino, Latina, Chicano/a, or Hispanic, or by their family’s country of origin. We encourage those utilizing this memo to use the terminology that best fits them, their communities, and their experiences.

⁷ WILLIAMS INST., *LGBT Demographic Data Interactive* (January 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#demographic>.

⁸ See e.g. BIANCA D.M. WILSON ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES (2023), <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>.

⁹ See, e.g., BRAD SEARS ET AL., WILLIAMS INST., LGBT PEOPLE’S EXPERIENCES OF WORKPLACE HARASSMENT AND DISCRIMINATION (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>; Pizer et al., Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People, 45 Loy. L.A. L. Rev 715 (2012); ADAM P. ROMERO, SHOSHANA K. GOLDBERG, AND LUIS A. VASQUEZ, WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS (2020), <https://williamsinstitute.law.ucla.edu/publications/lgbt-housing-instability/>; James et al., Nat’l Ctr. for Transgender

disparities compared to the general population.¹⁰

II. Research shows that LGBT teachers and principals may have unique experiences in the workplace that could be better understood through survey data

LGBT teachers and principals, like other LGBT professionals, experience unique barriers in the workplace due to sexual orientation and gender identity. This includes a long and well-documented history of discrimination in the workplace, and a recent spike in anti-LGBT legislation targeting schools. Unique experiences of LGBT teachers and school administrators may also include barriers to or opportunities for advancement that could be evaluated more thoroughly with the addition of SOGI measures to the NTPS.

Evidence of anti-LGBT discrimination experienced by teachers and school administrators

LGBT teachers have historically experienced both institutional and interpersonal discrimination. Often this has taken the form of attempts to ban the employment of LGBT teachers outright. For example, in California, statewide efforts to purge LGBT teachers from public education began in the early 1950s when the state enacted laws criminalizing same-sex sexual conduct and subsequently used criminal records to deny or revoke state licenses, including teaching certification.¹¹ Scholars estimate that hundreds of teachers lost their jobs as a result.¹² Similar purges of LGBT government or state-licensed employees, including teachers, occurred in Florida, Iowa, Massachusetts, Texas, Oklahoma, Idaho, North Carolina, and New York City.¹³

Although LGBT public school teachers are protected from discrimination under Title VII of the Civil Rights Act and the U.S. Constitution,¹⁴ research on LGBT employees in U.S. public schools shows a continuing pattern of discrimination and harassment.¹⁵ As one study noted, “the

Equality, *Report of the 2015 U.S. Transgender Survey* 44-45 (2016), <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

¹⁰ See, Institute of Medicine, *supra* note 5.

¹¹ BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT 5-19 (2009), <https://williamsinstitute.law.ucla.edu/publications/lgbt-discrim-state-employment/>.

¹² *Id.*

¹³ *Id.* at 5-21 to 5-33.

¹⁴ See e.g. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000e; *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020); *Equality Act: Hearing on S. 393 and H.R. 5 Before the S. Comm. On the Judiciary*, 117th Cong. (2021) (written statement of Brad Sears, Christy Mallory & Luis Vasquez), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Testimony-Equality-Act-State-Governments-Mar-2021.pdf>.

¹⁵ Stuart Biegel, *Unfinished Business: The Employment Non-discrimination Act (ENDA) and the K-12 Education Community*, 14 N.Y.U. J. LEGIS. & PUB. POL'Y 357 (2011), <http://www.nyuylpp.org/wp-content/uploads/2012/10/Stuart-Biegel-UnfinishedBusiness-The-Employment-Non-Discrimination-Act-and-the-K-12-EducationCommunity.pdf>; Todd A. DeMitchell et al., *Sexual Orientation and the Public School Teacher*, 19

public record over the past five decades is filled with examples of discriminatory treatment of gay and gender non-conforming teachers, both in state laws that sanction inequitable practices and on the part of state officials who interpret regulations and statutes in a discriminatory manner.”¹⁶ A 2009 study of public sector employment discrimination conducted by the Williams Institute identified 77 examples of discrimination or harassment against LGBT teachers or principals between 1980 and 2009.¹⁷ The examples came from across the country, with at least one report of discrimination or harassment in 32 different states.¹⁸ Such examples are abundant in a variety of sources, including court opinions, administrative complaints, academic journals, books, newspapers, and publications by and complaints made to community-based organizations.¹⁹

Recent examples from news stories and case law demonstrate that LGBT school employees continue to report harassment by co-workers, students, parents, and other community members based on their sexual orientation and gender identity. In one instance, after the principal of a Maryland middle school revealed a teacher’s status as a transgender woman without her permission, she reported upwards of sixteen incidents of harassment by students and fellow teachers, including the demand from administrators that she present as her birth sex.²⁰ She also reported adverse actions following her harassment complaints, including having her classroom moved farther away and removing her from teaching AP English.²¹ Similar workplace conditions have been reported by other LGBT school employees: allegations of a teacher’s social media profiles being hacked to indicate an “interest[] in boys and men;”²² a lesbian teacher’s being prevented from using the women’s restroom by fellow teachers;²³ a transgender employee in Nevada reported being denied access to all-gender restrooms;²⁴ and community members’ objecting to employees’ showing photos of their same-sex spouses, claiming it “promot[es] the homosexual agenda.”²⁵

BOSTON U. PUB. INTEREST L. J. 65 (2009), <https://www.bu.edu/pilj/files/2015/09/19-1DeMitchellEckesandFosseyArticle.pdf>.

¹⁶ Biegel, *supra*, at 385.

¹⁷ SEARS, HUNTER & MALLORY, *supra* note 11 at 12-59 to 12-189.

¹⁸ *Id.*

¹⁹ *Id.* at 12-1.

²⁰ *Eller v. Prince George’s Cty. Pub. Sch.*, No. CV TDC-18-3649, 2022 WL 170972, at *1 (D. Md. Jan. 14, 2022).

²¹ *Id.*

²² Arthur S. Leonard, *Title VII Sexual Orientation Bias Claims Divide Trial Courts*, GAY CITY NEWS (June 23, 2016), <https://www.gaycitynews.com/title-vii-sexual-orientation-bias-claims-divide-trial-courts/>.

²³ Kerri O’Brien, *Former Teacher Files Lawsuit Against Chesterfield Schools, Says She Was Told To Be More Feminine*, ABC 8 NEWS (Feb. 5, 2019), <https://www.wric.com/news/taking-action/former-teacher-files-lawsuit-against-chesterfield-schools-says-she-was-told-to-be-more-feminine/>.

²⁴ *Roberts v. Clark Cty. Sch. Dist.*, 215 F. Supp. 3d 1001, 1015–16 (D. Nev. 2016).

²⁵ *Bailey v. Mansfield Independent Sch. Dist.*, 425 F. Supp. 3d 696, 706 (N.D. Tx. 2019); Michael Levenson, *Teacher Who Was Suspended after She Showed Photo of Her Wife Reaches \$100,000 Settlement*, N.Y. TIMES (Feb. 27, 2020), <https://www.nytimes.com/2020/02/27/us/stacy-bailey-mansfield-teacher.html>.

These examples are consistent with our findings from recent empirical research on employment discrimination. A 2021 survey conducted by the Williams Institute found that 46% of LGBT workers experienced employment discrimination or harassment because of their sexual orientation or gender identity at some point in their lives.²⁶ Nearly one-third (31.1%) experienced discrimination or harassment within the past five years. Among LGBT workers who had worked for state or local government employers in particular, 28.2% experienced discrimination or harassment at some point in their lives. More specifically, about 1 in 10 reported being fired or not hired by a state or local government employer because of their sexual orientation or gender identity and about one-fifth (19%) reported experiencing verbal harassment while working for a state or local government employer.²⁷ In response to survey questions that asked for details pertaining to experiences of discrimination, several teachers reported discrimination and harassment by co-workers, supervisors, and students.²⁸

Impact of recent state anti-LGBT legislation on teachers and school administrators

Approximately 188 bills have been filed in state legislatures which target or limit discussion about LGBT issues in primary or secondary schools in 2023 alone.²⁹ Such policies, while often directed toward LGBT youth, can contribute to unsupportive climates for LGBT teachers, principals, and school staff as well. There is evidence of a long history of such policies being both introduced and enacted. One study documented several historical ballot initiatives to prevent LGBT teachers from working in schools and examined anti-LGBT language in the education regulations of eleven states as of 2017.³⁰ Before Florida's "Don't Say Gay" bill in 2022,³¹ there were multiple states with anti-LGBT curriculum laws that explicitly called out LGBT issues for disfavored treatment, including Alabama, Louisiana, Mississippi, Oklahoma, and Texas.³² As of the date of this comment, seven states limit discussion of LGBT topics in schools and five states allow parents to opt out of LGBT-inclusive curricula.³³

Research indicates that such a social climate may have an adverse impact on LGBT teachers, impeding a productive classroom experience and creating stigmatization and

²⁶ SEARS ET AL., *supra* note 9, at 1.

²⁷ *Id.*, at 6.

²⁸ *Id.*

²⁹ *Mapping Attacks on LGBTQ Rights in U.S. State Legislature, Schools and Education*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights?impact=&state=> (last visited Mar. 15, 2023).

³⁰ Clifford Rosky, *Anti-Gay Curriculum Laws*, 117 COLUMBIA L. REV. 1461, 1465 (2017), <https://columbialawreview.org/content/anti-gay-curriculum-laws/>.

³¹ H.B. 1557, 2022 Sess., Ch. 2022-22 (Fla. 2022) (enacted).

³² *#DontEraseUs: FAQ about Anti-LGBT Curriculum Laws*, LAMBDA LEGAL, https://legacy.lambdalegal.org/blog/20141201_dont-erase-us (last visited Mar. 16, 2023).

³³ *LGBTQ Curricular Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/curricular_laws (last visited Mar. 15, 2023).

isolation.³⁴ LGBT teachers in South Carolina, Virginia, and other states across the nation describe being afraid to be their full selves in the workplace, remaining closeted at their jobs out of fear.³⁵ Teachers and school administrators report fear of retribution for discussing LGBT issues in class, and there is evidence of significant consequences, particularly in jurisdictions that have laws restricting discussion of LGBT issues.³⁶ For example, a North Carolina middle school teacher was suspended for showing a popular music video featuring a positive message about same-sex marriage,³⁷ and a South Carolina teacher alleged she was discharged for allowing a transgender student to use a teacher’s restroom, rather than the designated one, which was a quarter mile from their classes.³⁸ For these same reasons, some teachers fear responding to reports of LGBT bullying or harassment or even sponsoring Gay Straight Alliance clubs.³⁹ When school districts in Texas were directed to remove books with LGBT themes, one teacher, who also sponsored the Gay-Straight Alliance club, was promptly placed on administrative leave after advocating to keep the books and rainbow stickers up for her LGBT students.⁴⁰

Following the passage of Florida’s “Don’t Say Gay” law in 2022, many educators opted to quit rather than face backlash from parents or be forced to hide who they are.⁴¹ When one Florida teacher shared with his sixth-grade students that he would be marrying a man, a group of parents wrote in demanding ‘consequences,’ ultimately pushing him to resign.⁴² Another Florida teacher lost her job upon openly revealing her pansexuality to her middle school students.⁴³ A different Florida teacher had already experienced animosity from colleagues regarding her marriage to a woman, but she ultimately quit when the new legislation created the potential for a parent lawsuit to stem “from just one awkward exchange about her personal life.”⁴⁴ As these types of state laws and policies proliferate, more such experiences are likely to occur.

³⁴ GLSEN, LAWS THAT PROHIBIT THE “PROMOTION OF HOMOSEXUALITY”: IMPACTS AND IMPLICATIONS 1 (2018), https://www.glsen.org/sites/default/files/GLSEN%20Research%20Brief%20%20No%20Promo%20Homo%20Laws_1.pdf.

³⁵ Madeline Will, *LGBTQ Teachers Await Decision on Discrimination Protections*, EDUC. WEEK (Jan. 14, 2020), <https://www.edweek.org/policy-politics/lgbtq-teachers-await-decision-on-discrimination-protections/2020/01>.

³⁶ HUMAN RIGHTS WATCH, “LIKE WALKING THROUGH A HAILSTORM”: DISCRIMINATION AGAINST LGBT YOUTH IN US SCHOOLS 39–42 (2016), https://www.hrw.org/sites/default/files/report_pdf/uslgbt1216web_2.pdf.

³⁷ Alan Duke & Joe Sutton, *Teacher Suspended for Showing Class Macklemore’s ‘Same Love’ Video*, CNN (Sept. 12, 2013), <http://www.cnn.com/2013/09/12/showbiz/same-love-teacher-suspended/>.

³⁸ Complaint at 1–3, 5–6, *Matlis v. Sch. Dist. of Pickens Cty.*, No. 2016-CP-39-01232 (Ct. Com. Pl. Oct. 26, 2016).

³⁹ HUMAN RIGHTS WATCH, *supra* note 36.

⁴⁰ Tyler Kingkade, *A Texas Teacher Faces Losing Her Job After Fighting for Gay Pride Symbols in School*, NBC NEWS (Apr. 7, 2022), <https://www.nbcnews.com/news/us-news/lgbtq-students-texas-school-rainbow-stickers-rcna23208>.

⁴¹ Matt Lavietes, *‘I Cannot Teach in Florida’: LGBTQ Educators Fear Fallout from New School Law*, NBC NEWS (Apr. 1, 2022), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/cannot-teach-florida-lgbtq-educators-fear-fallout-new-school-law-rcna22106>.

⁴² *Id.*

⁴³ Hannah Natanson, *This Florida Teacher Married a Woman. Now She’s Not a Teacher Anymore*, WASH. POST (May 19, 2022), <https://www.washingtonpost.com/education/2022/05/19/gay-florida-teacher-desantis-lgbtq/>.

⁴⁴ *Id.*

Effects of discrimination and stigma on LGBT teachers and school administrators

Above we have documented examples of teachers and school administrators who were subject to discipline, spoke out publicly, or opted to quit their jobs due to stigma and discrimination. Such experiences or fear of discrimination and harassment may also have health consequences. The minority stress model, which the U.S. Institute of Medicine (now the National Academies of Sciences, Medicine, and Engineering) recognized as a core perspective for understanding LGBT health,⁴⁵ describes how LGBT people experience chronic stress stemming from their stigmatization. Stress related to both day-to-day discrimination⁴⁶ and anti-LGBT policymaking have been associated with negative health consequences.⁴⁷ Furthermore, LGBT teachers and school administrators may adopt behaviors to avoid discrimination and stigma, such as “covering,”⁴⁸ or taking precautions not to reveal their sexual orientation or transgender status. A 2021 Williams Institute study found that around half of LGBT employees who have worked in K-12 education (49.1%) were not open about being LGBT to their supervisors.⁴⁹ One-quarter (25.0%) of LGBT employees who worked in K-12 education were not out to any of their co-workers.⁵⁰

SOGI measures on the NTPS will help understand LGBT experiences of LGBT teachers and school administrators

The NTPS is a preferred means for capturing SOGI information about LGBT teachers and principals, since protocols are in place to ensure the privacy of participants.⁵¹ As a foundational matter, sexual orientation and gender identity data collected through the National Teacher and Principal Survey could be used to measure LGBT representation among teachers and principals. Additionally, SOGI measures on the NTPS will provide more insights into the experiences of LGBT teachers, including whether they are more likely to report stress at school,

⁴⁵ INSTITUTE OF MEDICINE, *THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING* 20 (2011), <https://www.ncbi.nlm.nih.gov/books/NBK64806/>; *See also See, e.g.,* Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. HEALTH & SOC. BEHAV. 38, 38 (1995); *cf.* Ilan H. Meyer, Sharon Schwartz & David M. Frost, *Social Patterning of Stress and Coping: Does Disadvantaged Social Statuses Confer More Stress and Fewer Coping Resources?* 67 SOC. SCI. & MED. 368, 371 (2008) (examining “social stress theory”).

⁴⁶ Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 AM. J. PUB. HEALTH 1869 (2001); Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 43 PROF. PSYCH.: RES. & PRAC. 460 (2012)

⁴⁷ Julia Raifman, Ellen Moscoe, S. Bryn Austin, Mark L. Hatzenbuehler & Sandro Galea, *Association of State Laws Permitting Denial of Services to Same-Sex Couples with Mental Distress in Sexual Minority Adults: A Difference-in-Difference-in-Differences Analysis*, 75 JAMA PSYCHIATRY 671-77 (2018).

⁴⁸ CHRISTY MALLORY ET AL., WILLIAMS INST., *WORKPLACE DISCRIMINATION AND HARASSMENT AGAINST LGBT STATE & LOCAL GOVERNMENT EMPLOYEES 2* (2021), <https://williamsinstitute.law.ucla.edu/publications/public-sector-workplace-discrim/>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *See e.g. The 2020-21 National Teacher and Principal Survey (NTPS)*, NAT’L CTR. ED. STAT. https://nces.ed.gov/surveys/ntps/participants_2021.asp (last visited Mar. 16, 2023) (providing answers to frequently asked questions).

low satisfaction, complaints from parents, or fear of litigation, for example.⁵² Such information would also shed light on barriers experienced by LGBT teachers and principals to entering or remaining in these professions, and inform efforts to protect teachers from discrimination and harassment based on sexual orientation and gender identity through laws and policies.

III. Public policy is in favor of collecting SOGI data on the NTPS

Population-based data on all LGBT Americans and their families are necessary to inform federal and state policymaking. Indeed, as far back as 2016 federal statistical agencies have explained that:

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.⁵³

Since then, a growing number of federal government surveys allow people to voluntarily disclose their sexual orientation and/or gender identity along with other demographic data, such as race, ethnicity, and sex. Examples of federal government surveys that collect sexual orientation and gender identity data include the National Health Interview Survey, the Behavioral Risk Factor Surveillance System, the Youth Risk Behavior Surveillance System, the National Crime Victimization Survey, and the Household Pulse Survey. Additionally, federal agencies such as Housing and Urban Development⁵⁴ the Centers for Medicare and Medicaid Services⁵⁵ have proposed to add SOGI measures to future questionnaires.

The Biden Administration has made it clear that data collection on sexual orientation and gender identity – as well as data collection on intersex⁵⁶ populations – is an important policy priority. The President has directed agencies to look at their data collections to see where LGBT measures may be added, and to develop data action plans to further that goal.⁵⁷ In support of this

⁵² See Sections 7-1 and 7-2, Proposed Teacher Questionnaire, National Teacher and Principal Survey, 2023-2024 School Year; See also, Section 8-1, Proposed Principal Questionnaire, National Teacher and Principal Survey, 2023-2024 School Year.

⁵³ 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://nces.ed.gov/FCSM/pdf/current_measures_20160812.pdf (last visited Mar. 16, 2023).

⁵⁴ See 60-Day Notice of Proposed Information Collection: 2023 American Housing Survey; OMB Control No.: 2528-0017, 87 Fed. Reg. 57,215, 57,216 (Sep. 19, 2022).

⁵⁵ See Agency Information Collection Activities: Submission for OMB Review; Comment Request; CMS-P-0015A; OMB Control No. 0938-0568, 87 Fed. Reg. 19,517 (April 04, 2022).

⁵⁶ Intersex is an umbrella term for differences in sex traits or reproductive anatomy. Intersex people are born with these differences or develop them in childhood. There are many possible differences in genitalia, hormones, internal anatomy, or chromosomes, compared to the usual two ways that human bodies develop. *What is the definition of intersex?* INTERACT YOUTH ADVOCATES, <https://interactadvocates.org/faq/> (last visited Mar. 16, 2023).

⁵⁷ Exec. Order. 14,075, 87 Fed. Reg. 37,189 (Jun. 21, 2022).

process, the Office of Management and Budget has issued guidelines,⁵⁸ and the Office of Science and Technology Policy has released a Federal Evidence Agenda for LGBTQI+ Equity.⁵⁹ The inclusion of SOGI measures on the NTPS is consistent with these expectations of the Department and NCES, and furthers the critical policy interest of better quality data on this vulnerable population.

IV. Suitable measures of sexual orientation and gender identity have been developed for federal population surveys

SOGI measures have been implemented and evaluated on community surveys, privately funded surveys, and some government-funded population surveys for decades. After convening a panel of experts, the National Academies of Sciences, Engineering and Medicine released a consensus report on March 2022 documenting the results of their rigorous evaluation of sex, sexual orientation and gender identity measures (“NASEM Report”).⁶⁰ The NASEM Report examined dozens of examples of SOGI and sex characteristic data collection from both national and international sources.⁶¹ Using a set of five guiding principles: inclusiveness, precision, autonomy, parsimony, and privacy,⁶² and evaluating for many factors including readability and measured effectiveness, the report identified best practices for collecting sex, sexual orientation and gender identity information in three core settings, including on population surveys. The NASEM Report can and should be considered a model for agencies to follow when designing surveys.

Although there are slight variations, the measures proposed by NCES on the NTPS are consistent with those in the NASEM report: a two-step gender question, and a sexual orientation question for public school teachers and principals.⁶³ NCES has proposed a simplified gender question for private school teachers and principals, which does not ask sex assigned at birth or sexual orientation but provides the option for respondents to select another gender option.⁶⁴ This is preferable to a binary sex question, in that it does not force private school teachers or principals to choose male or female options, but notably the questionnaire does not request information which might lead to LGBT discrimination if the school is exempt from federal

⁵⁸ OFFICE OF MANAGEMENT AND BUDGET, RECOMMENDATIONS ON THE BEST PRACTICES FOR THE COLLECTION OF SEXUAL ORIENTATION AND GENDER IDENTITY DATA ON FEDERAL STATISTICAL SURVEYS (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/SOGI-Best-Practices.pdf>.

⁵⁹ OFFICE OF SCIENCE AND TECHNOLOGY POLICY, FEDERAL EVIDENCE AGENDA ON LGBTQI+ EQUITY (Jan. 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>.

⁶⁰ *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 visited Mar. 1, 2023).

⁶¹ References, *Id.* at 151-172.

⁶² *Id.* at 37- 44.

⁶³ 9-4 (Sex Assigned at Birth), 9-5 (Gender Identity), 9-6 (Sexual Orientation), both Principal and Teacher Questionnaires, National Teacher and Principal Survey, 2023-2024.

⁶⁴ 9-4 (Gender)

nondiscrimination protections, such as those under Title IX of the Education Amendments Act of 1972, or Title VII as discussed above.⁶⁵

Furthermore, testing and implementation of SOGI measures has provided important confirmation that people will answer questions about sexual orientation and gender identity, and that asking them does not disrupt survey results. For example, survey respondents are more than twice as likely to refuse to answer questions about income as about sexual orientation, and that, in any event, the refusal rate is relatively low.⁶⁶ Other research has demonstrated that including sexual orientation and gender identity questions does not cause survey breakoff.⁶⁷ The NASEM report also finds that, for surveys and research settings in particular, data are often collected in aggregate and with protections in place to maintain confidentiality, reducing the risk of disclosure and enabling routine collection of data to identify LGBTI populations.

V. Conclusion

Data on LGBT populations are needed to improve the capacity of lawmakers, policymakers, researchers and the general public to understand and address vulnerabilities faced by LGBT people. Including measures of sexual orientation and gender identity in the National Teacher and Principal Survey would enhance the quality and utility of information available to NCES about LGBT representation among teachers and principals, and about the unique experiences of these professionals. Policy efforts to improve educational environments for both teachers and students—LGBT teachers and students in particular—would benefit from this information. Accordingly, we support the proposal from NCES to include these measures.

The Williams Institute is grateful for this opportunity to submit this comment as the Department considers revisions to the 2023-2024 National Teacher and Principal Survey. Please reach out to us if you would like to discuss our submission or if you have any questions.

Respectfully Submitted,

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⁶⁵ See generally, 20 U.S.C. §§ 1681-1688; *Exemptions from Title IX*, U.S. DEPT. OF ED., <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/index.html> (last visited Mar. 15, 2023).

⁶⁶ Beatriz C. Carlini et al., Presentation: What does this have to do with quitting smoking? Push & Pull of Asking Sensitive Questions to Callers Seeking Tobacco Treatment through Quitlines (World Conference on Tobacco or Health: 2006).

⁶⁷ Stewart Landers, Kerith Conron, and Randall Sell, Presentation: Developing Data for Advocacy (National LGBTI Health Summit: 2007); Patricia Case, *Disclosure of Sexual Orientation and Behavior in the Nurses' Health Study II: Results from a Pilot Study*, 51 J. HOMOSEXUALITY 13 (2006).

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