

October 3, 2022

NSTC Subcommittee on Equitable Data
Office of Science and Technology Policy
Eisenhower Executive Office Building
1650 Pennsylvania Ave. NW
Washington, DC 20504
Submitted via *email* to equitabledata@ostp.eop.gov

**RE: Request for Information; Federal Evidence Agenda on LGBTQI+ Equity
(RIN 2022-18219)**

To Whom It May Concern,

We are grateful for the opportunity to provide comments to the White House Office of Science and Technology Policy (“OSTP”) on its above-captioned request for information, which seeks to help inform the development of the Federal Evidence Agenda on LGBTQI+ Equity (the “Equity Agenda”). *See* 87 Fed. Reg. 52,083 (August 24, 2022).

The undersigned are legal and policy scholars affiliated with the Williams Institute at the UCLA School of Law. We are dedicated to conducting rigorous and independent research on sexual orientation and gender identity (“SOGI”), including on the demographics of lesbian, gay, bisexual, and transgender (“LGBT”) people. We collect and analyze original data, as well as analyzes governmental and private data, and has long worked with federal agencies to improve SOGI data collection among the U.S. population.

Based on our decades of relevant research, we offer several general recommendations on SOGI data collection for the OSTP to consider as it develops the Equity Agenda. First, we recommend that the Equity Agenda mandate consistent SOGI data collection on all federal surveys where demographic data are collected. Second, we recommend that the Equity Agenda direct federal agencies to require that states collect SOGI data in surveys they administer in partnership with the federal government or with federal funding, assuming states can adequately protect privacy of respondents. Third, we recommend that the Equity Agenda encourage federal agencies to analyze and produce reports based on the SOGI data they collect.

I. The Equity Agenda Should Mandate Routine and Consistent SOGI Data Collection

Routine and consistent collection of SOGI data on federal surveys is essential for ensuring that LGBT people are accurately counted and studied, that government and private entities are able to understand and meet the needs of this population, and that federal agencies are able to fulfill their missions and purposes. Currently, many federally administered and funded surveys gather information about respondents’ race, ethnicity, sex, marital status, and other personal demographic characteristics. Many of these instruments, however, do not include direct measures of SOGI and, consequently, provide little data with which to examine the

demographic, economic, health, geographic, and other characteristics of the LGBT population.¹ We have included a non-exhaustive list of federal surveys lacking sexual orientation and/or gender identity measures as an attachment to this comment. Population-based data on LGBT people and their families are needed to inform laws, policies, resource distribution, and public and private interventions that affect LGBT people and to assess the impact of such actions. Moreover, the collection of data on LGBT populations is necessary for federal agencies to fulfill their mission and purposes, including, for example, to enforce non-discrimination laws, advance health and wellbeing, and provide assistance to those most in need.²

For several reasons, it is important for federal agencies to collect SOGI data on their surveys to further these goals regardless of whether a particular survey will provide information that will better enable the agency to understand a known disparity facing LGBT people. First, inclusion of SOGI measures on federal surveys may reveal disparities that were previously unknown. Requiring federal agencies to routinely and consistently collect SOGI data will take the burden off of private entities to first establish that a disparity exists before an agency incorporates SOGI measures into its survey. To illustrate, the Household Pulse Survey did not initially include SOGI measures,³ preventing the government and researchers from being able to use the dataset to explore the impact of the COVID-19 pandemic on LGBT people. Privately funded research, which was conducted months after the Pulse survey was launched, had to fill this gap.⁴ This research found that LGBT people were more likely to experience negative health and economic impacts related to the pandemic.⁵ Had the Pulse survey initially included these questions, the federal government and private organizations would have been better able to respond to the needs of LGBT people.

In addition, some myths and stereotypes that have informed laws and policies in the past were based on assumed disparities. For example, bans on marriage equality often rested on the assumption that LGBT people were not in committed relationships and were not raising families.⁶ Research on same-sex couples and their families found that, like different-sex couples, many couples are in stable, lasting relationships and are raising children or have the desire to

¹ *Id.*

² *See, e.g.*, Letter from Julián Castro, Sec., U.S. Dep't of Housing & Urban Dev., to John H. Thompson, Director, U.S. Census Bureau (June 30, 2016) (“Valid, reliable, and nationally representative data on sexual orientation and gender identity are essential to HUD fulfilling its mission”).

³ Thom File & Jason-Harold Lee, *Phase 3.2 of the Census Bureau Survey Questions Now Include SOGI, Child Tax Credit, COVID Vaccination of Children*, U.S. CENSUS BUREAU (Aug. 5, 2021), <https://www.census.gov/library/stories/2021/08/household-pulse-survey-updates-sex-question-now-asks-sexual-orientation-and-gender-identity.html>.

⁴ BRAD SEARS, KERITH J. CONRON & ANDREW R. FLORES, WILLIAMS INST., *THE IMPACT OF THE FALL 2020 SURGE ON LGBT ADULTS IN THE U.S.* (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/COVID-LGBT-Fall-Surge-Feb-2021.pdf>.

⁵ *Id.*

⁶ Andrew Koppelman, *The Decline and Fall of the Case against Same-Sex Marriage*, 2 U. ST. THOMAS L. J. 5, 15 (2004).

form families.⁷ Myths about purported LGBT wealth,⁸ and living and social habits⁹ have also continued to distort the diverse realities of LGBT experiences. In these instances, data on LGBT people are necessary to disprove that disparities or differences between LGBT and non-LGBT people exist in order to ensure that policies are evidence-based and not motivated by animus or stereotypes.

Requiring federal agencies to include SOGI measures in their surveys would not be burdensome for agencies. Measures for collecting SOGI data have been tested; produce reliable data; and have been successfully included in a number of federal, state, and private surveys. Questions measuring sexual orientation have been included in federal surveys for over two decades, including in large-scale, population-based surveys administered by the Census Bureau and other agencies.¹⁰ Questions used to identify transgender respondents have been included in state and investigator-led surveys for some time, with more common use of gender identity questions, including in federal surveys, over the last decade.¹¹ Research on federal implementation of SOGI measures suggests that respondents do not consider SOGI information to be particularly sensitive, are not particularly hard to survey,¹² and are willing to provide this information when asked.¹³ The NASEM Panel’s consensus study report draws on decades of experience in testing and refining these questions to produce a standard set of recommended measures for asking about SOGI in a range of contexts, including on federal surveys.¹⁴ Federal agencies could incorporate these measures into their existing surveys to produce accurate and reliable data without the need for further testing.

Therefore, establishing or further exploring disparities should not be required for agencies to justify SOGI data collection on federal surveys; rather, they should be collecting SOGI information by default. This approach is consistent with recommendations on SOGI data collection issued by the Institute of Medicine, which called for “the routine collection of data on sexual orientation and gender identity in federally funded surveys” in recognition of the “central role of consistent, high-quality data in understanding and addressing disparities.”¹⁵ Accordingly,

⁷ See, e.g., Gary J. Gates, *Marriage and Family: LGBT Individuals and Same-Sex Couples*, 25 FUTURE OF CHILDREN 67 (2015); Wendy Manning, Susan Brown & Bart Stykes, *Same-Sex and Different-Sex Cohabiting Couple Relationship Study*, 53 DEMOGRAPHY 937 (2017).

⁸ See e.g. M.V. LEE BADGETT, SOON KYU CHOI & BIANCA D.M. WILSON, WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>

⁹ See, e.g., CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST., THE ECONOMIC IMPACT OF MARRIAGE EQUALITY FIVE YEARS AFTER *OBERGEFELL V. HODGES* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Economic-Impact-SS-Marriage-May-2020.pdf> (finding that an estimated 293,000 same-sex couples have married since the U.S. Supreme Court’s decision in *Obergefell v. Hodges*).

¹⁰ NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., MEASURING SEX, GENDER IDENTITY, AND SEXUAL ORIENTATION 19, 32 (2022), <https://nap.nationalacademies.org/catalog/26424/measuring-sex-gender-identity-and-sexual-orientation>.

¹¹ *Id.*

¹² Nancy Bates, Yazmin A. Garcia Trejo, and Monica Vines, *Are Sexual Minorities Hard to Survey? Insights From The 2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey*, 35 J. of Off. Stats. 4 (Dec. 10, 2019), <https://doi.org/10.2478/jos-2019-0030>

¹³ NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 10, at 55, 67.

¹⁴ *Id.*

¹⁵ NATIONAL ACADEMIES OF SCIENCES, ENGINEERING & MEDICINE, UNDERSTANDING THE WELL-BEING OF LGBTQI+ POPULATIONS 74 (2020) (internal citations omitted).

we recommend that the Equity Agenda require that all federal agencies collect SOGI data wherever other demographic data are collected on surveys, unless the agency concludes that collection of SOGI data, specifically, would harm respondents or where there are methodological or other considerations that make effective data collection impossible.

II. The Equity Agenda Should Direct Federal Agencies to Require that States Collect SOGI Data in Surveys They Administer in Partnership with the Federal Government or with Federal Funding

In addition to engaging in their own data collection activities, federal agencies support or jointly engage in data collection with state entities. For example, the Youth Risk Behavior Surveillance System (YRBS), which monitors health and wellbeing of high school students, includes a national survey conducted by the Centers for Disease Control (CDC) and Prevention as well state, tribal, and local surveys conducted by education and health agencies.¹⁶ Federal funding is provided to state agencies and tribal governments that administer the state, tribal, and local surveys.¹⁷ Some states do not include questions about students' sexual orientation and most do not include questions about gender identity on their YRBS instruments, though they have the option to do so.¹⁸ Similarly, states are not required to include SOGI measures on their Behavioral Risk Factor Surveillance System surveys, which track the health and wellbeing of adults, though many states do so voluntarily.¹⁹

Inclusion of SOGI measures in state-administered surveys supported by the federal government would increase the availability of state-level data on LGBT populations. These data would provide valuable information about the health and wellbeing of LGBT populations in individual states, which is important for state and local-level policymaking, particularly given that public support, available resources, and the legal landscape for LGBT people varies significantly from state to state.²⁰ Accordingly, we recommend that the Equity Agenda direct federal agencies to require that states collect SOGI data in surveys they administer in partnership with the federal government or with federal funding, assuming states can adequately protect privacy of respondents.

¹⁶ Nancy D. Brener et al., Ctrs. for Disease Control & Prevention, *Methodology of the Youth Risk Behavior Surveillance System—2103*, 62 MORBIDITY & MORTALITY WEEKLY RPT. 1, 7 (2013); See 2017 YRBS DATA USER'S GUIDE, CTRS. FOR DISEASE CTR. & PREV. (2018), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/2017_YRBS_Data_Users_Guide.pdf; 2019 YRBS DATA USER'S GUIDE, CTRS. FOR DISEASE CTR. & PREV. (2020), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2019/2019_National_YRBS_Data_Users_Guide.pdf.

¹⁷ *Id.* At 7.

¹⁸ See 2017 YRBS DATA USER'S GUIDE, CTRS. FOR DISEASE CTR. & PREV. (2018), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/2017_YRBS_Data_Users_Guide.pdf; 2019 YRBS DATA USER'S GUIDE, CTRS. FOR DISEASE CTR. & PREV. (2020), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2019/2019_National_YRBS_Data_Users_Guide.pdf.

¹⁹ See *State Data: BRFSS Data Collection Map*, NAT'L LGBT CANCER NETWORK, <https://cancer-network.org/state-data/> (last visited Sept. 22, 2022).

²⁰ See *Snapshot: LGBTQ Equality by State*, MOVEMENT ADVANCEMENT PROJECT, <https://www.lgbtmap.org/equality-maps> (last visited Sept. 22, 2022); AMIRA HASENBUSH ET AL., WILLIAMS INST., *THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES* 5 (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Divide-Dec-2014.pdf>.

III. The Equity Agenda Should Encourage Federal Agencies to Analyze and Produce Reports Based on the SOGI Data They Collect

As described above, a number of federal surveys already collect SOGI data. These surveys are administered by a range of federal agencies including the Census Bureau, the Department of Health and Human Services, the Department of Justice, and others. Several of these agencies have analyzed and produced reports focused on the SOGI data they collect.²¹ For example, the Census Bureau has produced reports examining the impact of the pandemic on LGBT people using data collected through the Household Pulse Survey,²² and providing information about same-sex couples and their families using data collected through the American Community Survey and the Current Population Survey.²³ Similarly, the CDC has produced reports on the health and wellbeing of LGBT youth using data collected through the YRBS,²⁴ and the Department of Justice has produced reports on the violent victimization of LGB people using data collected through the National Crime Victimization Survey.²⁵ These reports provide valuable information to policymakers, researchers, non-governmental organizations, government entities, and the public, and can inform a broad range of laws, policies, and service interventions.

Given that federal agencies are well-resourced and employ staff with technical expertise in data collection, analysis, and reporting, we recommend that the Equity Agenda encourage federal agencies to produce publicly available reports on the SOGI data they collect. We further recommend that the Equity Agenda require agencies to conduct an internal audit to determine whether they collect SOGI data and, if so, whether they have analyzed and produced publicly available reports on these data.

²¹ See, e.g., Thom File & Joey Marshall, *Household Pulse Survey Shows LGBT Adults More Likely to Report Living in Households with Food and Economic Insecurity than Non-LGBT Respondents*, U.S. CENSUS BUREAU (Aug. 11, 2021), <https://www.census.gov/library/stories/2021/08/lgbt-community-harder-hit-by-economic-impact-of-pandemic.html>; LAQUITTA WALKER & DANIELLE TAYLOR, U.S. CENSUS BUREAU, *SAME-SEX COUPLE HOUSEHOLDS: 2019* (2021), <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acsbr-005.pdf>; Benjamin Gurrentz & Tayelor Valerio, *More than 190,000 Children Living with Two Same-Sex Parents in 2019*, U.S. CENSUS BUREAU (Nov. 19, 2019), https://www.census.gov/library/stories/2019/11/first-time-same-sex-couples-in-current-population-survey-tables.html?utm_campaign=20191119msacos1ccstors&utm_medium=email&utm_source=govdelivery; Michelle M. Johns et al., Ctrs. for Disease Ctrl. & Prev., *Trends in Violence Victimization and Suicide Risk by Sexual Identity Among High School Students—Youth Risk Behavior Survey, United States, 2015-2019*, 69 MORBIDITY & MORTALITY WEEKLY RPT. supplement at 19 (2020); See Michelle M. Johns et al., Ctrs. for Disease Ctrl. & Prev., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors among High School Students*, 68 MORBIDITY & MORTALITY WEEKLY RPT. (2019); JENNIFER L. TRUMAN & RACHEL E. MORGAN, BUREAU OF JUSTICE STATS., *VIOLENT VICTIMIZATION BY SEXUAL ORIENTATION AND GENDER IDENTITY, 2017-2022* (2022), <https://bjs.ojp.gov/content/pub/pdf/vvsogi1720.pdf>.

III. Conclusion

We recommend that the Equity Agenda mandate consistent SOGI data collection on all federal surveys where demographic data are collected. We further recommend that the Equity Agenda direct federal agencies to require that states collect SOGI data in surveys they administer in partnership with the federal government or with federal funding, assuming states can adequately protect privacy of respondents. Finally, we recommend that the Equity Agenda encourage federal agencies to analyze and produce reports based on the SOGI data they collect.

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

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