



November 2, 2021
Lisa Cheok
Current Population Surveys Branch
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

**Re: Request for Comment on the Annual Social and Economic Supplement (ASEC),
Docket Number USBC-2021-0021**

Dear Ms. Cheok:

The Movement Advancement Project (MAP) and 19 other organizations dedicated to advancing equality and opportunity for all appreciate the opportunity to comment on the U.S. Census Bureau's (Census or the Bureau) proposed request for clearance from the Office of Management and Budget for the collection of data concerning the Annual Social and Economic Supplement (ASEC) to be conducted in conjunction with the February, March, and April Current Population Surveys (CPS). Our comments focus on strengthening the survey to capture critical information on the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) population.

The Bureau's Household Pulse Survey's new inclusion of sexual orientation and gender identity (SOGI) questions has already generated data being used by researchers and advocates to understand the experiences of LGBT people during the COVID-19 pandemic,¹ and it has great potential for informing the development of policies that can improve the lives of LGBTQI people across the country. The success of this survey also indicates the feasibility of administering these questions. We urge the Bureau to build on this success and modify the proposed clearance request for the ASEC to add SOGI questions.

The ASEC provides essential information about poverty, income, employment, and other financial indicators (such as health insurance enrollment and childcare payments). Current data make clear that LGBTQI people fare worse than the general population in these measures, a divergency which is especially acute for certain subgroups (especially transgender people) and for people with intersecting identities, including LGBTQI people of color. But the available data does not provide the kind of complete information available from a survey at the scale of the ASEC, which limits the ability of federal agencies and others to respond to these inequalities. To begin to meet this need, the Bureau should add SOGI questions to the upcoming ASEC. The resulting high-quality data would enable federal agencies to better pursue their statutory missions, such as by improving understanding of the need for federal poverty and health

¹ Bianca Wilson, et al., *LGBT Renters and Eviction Risk*, UCLA School of Law Williams Institute (2021), <https://williamsinstitute.law.ucla.edu/publications/lgbt-renters-and-eviction-risk/>.

insurance programs and resources that benefit LGBTQI individuals and by supporting nondiscrimination enforcement. It would also support state, local, and private anti-poverty efforts and would provide a wealth of information for researchers and organizations such as ours.

The Bureau should also engage in research, development, and testing for measures that allow for the identification of intersex, nonbinary, and other sexual and diverse populations, as recommended by the National Academies of Sciences, Engineering, and Medicine.²

I. The ASEC collects and reports crucial information about the economic well-being of people in the United States.

The ASEC supplements the CPS, which is a monthly survey of about 60,000 eligible U.S. households conducted by Census for the Bureau of Labor Statistics. The CPS provides up-to-date information on the labor force status of people aged 16 and older, including demographic characteristics such as age, educational attainment, race, and Hispanic ethnicity. The ASEC is a set of supplemental questions for three months each year that collects information on economic well-being of the population.

The ASEC is the source of official annual estimates of national poverty levels and rates, as well as widely used estimates of household income, individual earnings, and the distribution of income.³ The ASEC also contains questions related to medical expenditures, and cost of a mortgage on a property, child support payments, and the amount of childcare assistance received. These questions enable analysts and policymakers to obtain better estimates of family and household income, and more precisely gauge poverty status.⁴ The Bureau of Labor Statistics publishes data from the ASEC in the annual news release, *Work Experience of the Population*,⁵ and the annual report, *A Profile of the Working Poor*.⁶ Due to its long use, the ASEC provides a consistent historical time series beginning in 1959 at the national level and can also be used to look at state-level trends and differences (through multi-year averages) going back to 1980.⁷

² National Academies of Sciences, Engineering, and Medicine. 2020. *Understanding the Well-Being of LGBTQI+ Populations*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25877>.

³ Surveys & Programs, United States Census Bureau, <https://www.census.gov/topics/income-poverty/poverty/guidance/surveys-programs.html>.

⁴ Proposed Information Collection; Comment Request; Current Population Survey, Annual Social and Economic Supplement, 83 Fed. Reg. 20,790 (May 8, 2018), <https://www.federalregister.gov/documents/2018/05/08/2018-09762/proposed-information-collection-comment-request-current-population-survey-annual-social-and-economic>.

⁵ Labor Force Statistics from the Current Population Survey: Work Experience During the Year, U.S. Bureau of Labor Statistics (last visited Oct. 28, 2021), <https://www.bls.gov/cps/lfcharacteristics.htm#workexp>.

⁶ U.S. Bureau of Lab. Stat., *A profile of the working poor, 2019*, BLS Rep. (2021), <https://www.bls.gov/opub/reports/working-poor/2019/home.htm>.

⁷ *Id.*

II. LGBTQI people’s economic well-being is worse than the general population.

While large scale, nationally representative data is lacking, the available data reveals that LGBTQI people’s experience with the subjects the ASEC measures—poverty, employment, and health insurance enrollment—are worse than the U.S. population as a whole. There is further divergence within LGBTQI communities. Transgender people tend to fare significantly worse in those measures than others, as are other subpopulations, such as LGBTQI people of color.

In particular, research reveals that LGBT people in the U.S. experience poverty at higher rates compared to cisgender heterosexual people.⁸ Available data indicates that, nationwide, 22% of LGBT people live in poverty, compared to 16% of cisgender straight people.⁹ This divergence remains true even after accounting for other factors that may influence poverty.¹⁰ People experiencing poverty are at greater risk of food insecurity, among other negative consequences; and the overall percentage of LGBT people who report not having enough food to eat is more than twice the proportion found in the general population.¹¹ Overall, just before the COVID-19 pandemic, nearly 27% of LGBT people, an estimated 3,029,000 adults, experienced food insecurity, compared to about 11% of the general population.¹² While there is even less data available on intersex populations in the U.S., there is also evidence that like other sexual and gender minorities, intersex adults too face economic disparities.¹³

The likelihood of experiencing poverty and/or food insecurity is especially acute for subgroups of LGBTQI people. Transgender people and cisgender bisexual women experience

⁸ Soon Kyu Choi et al., *State Profiles of LGBT Poverty in the United States*, UCLA School of Law Williams Institute 2 (Dec. 2019), <https://williamsinstitute.law.ucla.edu/publications/state-lgbt-poverty-us/>; M.V. Lee Badgett et al., *LGBT Poverty in the United States: A study of differences between sexual orientation and gender identity groups*, UCLA School of Law Williams Institute 2 (Oct. 2019), <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>; Christopher S. Carpenter et al., *Transgender Status, Gender Identity and Socioeconomic Outcomes in the United States*, 73 ILR Review 573, 573 (May 1, 2020), <https://doi.org/10.1177/0019793920902776>.

⁹ M.V. Lee Badgett et al., *LGBT Poverty in the United States: A study of differences between sexual orientation and gender identity groups*, UCLA School of Law Williams Institute (Oct. 2019), <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>.

¹⁰ *Id.*

¹¹ Bianca Wilson and Kerith Conron, *National Estimates of Food Insecurity: LGBT People and COVID-19*, UCLA School of Law Williams Institute (Apr. 2020), <https://williamsinstitute.law.ucla.edu/publications/food-insecurity-covid19/>.

¹² *Id.* (This data preceded the COVID-19 pandemic, which exacerbated food insecurity for many, including LGBTQI people.)

¹³ Caroline Medina and Lindsay Mahowald, *Key Issues Facing People With Intersex Traits*, Center for American Progress (October 2021). <https://www.americanprogress.org/issues/lgbtq-rights/news/2021/10/26/506558/key-issues-facing-people-intersex-traits/>.

the highest rates of economic insecurity.¹⁴ And, as the Administration has recognized, intersecting identities compound this inequality.¹⁵ Research reveals that poverty is particularly high at the intersections of racial and LGBTQI identities.¹⁶ So too, LGBT people in rural areas have higher poverty rates than both LGBT people in urban areas and straight cisgender people who live in either rural or urban areas.¹⁷

Relatedly, LGBTQI people are more likely to be unemployed than the general population.¹⁸ The COVID-19 pandemic has made this disparity even worse.¹⁹ And, again, available data reveals there are profound disparities within LGBTQI communities. Employment discrimination and the impact of social stigma contribute to very high rates of unemployment among transgender workers. Prior to the COVID-19 pandemic, the poverty rate for transgender workers was three times higher than the general population (15% compared to 5%); for transgender people of color, it was higher still (20%).²⁰

The recent—and greatly appreciated—addition of SOGI demographic questions to the Bureau’s Household Pulse Survey created data that reinforces and builds upon prior evidence that LGBTQI people are disproportionately likely to live in poverty and experience economic pressure and/or food insecurity. As the Bureau reported in its results from late July and early August 2021, 37% of LGBT adults lived in a household that had difficulty paying for usual household expenses, compared to 26% of non-LGBT adults, and 13% of LGBT adults lived in a household where there was sometimes or often not enough to eat in the past seven days,

¹⁴ M.V. Lee Badgett et al., *LGBT Poverty in the United States: A study of differences between sexual orientation and gender identity groups*, UCLA School of Law Williams Institute (Oct. 2019), <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>.

¹⁵ Exec. Order No. 13,988, 86 FR 7,023 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/> (“Discrimination on the basis of gender identity or sexual orientation manifests differently for different individuals, and it often overlaps with other forms of prohibited discrimination, including discrimination on the basis of race or disability. For example, transgender Black Americans face unconscionably high levels of workplace discrimination, homelessness, and violence, including fatal violence.”).

¹⁶ M.V. Lee Badgett et al., *LGBT Poverty in the United States: A study of differences between sexual orientation and gender identity groups*, UCLA School of Law Williams Institute 3 (Oct. 2019), <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>.

¹⁷ *Id.*

¹⁸ Sharita Gruberg, *Same-Sex Couples Experience Higher Unemployment Rates Throughout an Economic Recovery*, Ctr. for Am. Progress (May 5, 2020), <https://www.americanprogress.org/issues/lgbtq-rights/news/2020/05/05/484547/sex-couples-experience-higher-unemployment-rates-throughout-economic-recovery/>.

¹⁹ *Id.*

²⁰ Sandy James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality, 142 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

compared to 7% of non-LGBT adults.²¹ This early data also suggests that as much as 23% of LGBT people and 32% of transgender people lost employment in the month prior to the survey, compared to about 16% of non-LGBT people.²²

LGBT people are also less likely to have health insurance, although the Affordable Care Act resulted in some improvement in enrollment rates.²³ Federally collected data (by the National Center for Health Statistics (NCHS)) reveals that health insurance enrollment rates vary by sexual orientation, with LGB people still less likely to be insured than heterosexual people.²⁴ While the NCHS survey data does not include gender identity questions (“an important limitation of this data set”),²⁵ other studies reveal transgender people are more likely to be uninsured than cisgender people.²⁶

Significant barriers to eliminating these disparities exist. Discrimination and social stigma make it difficult to improve persistently high unemployment rates and reduce poverty. And despite their significant need, LGBTQI people often find it difficult to access social services and other government supports. LGBT older adults, for example, are “20% less likely [than their heterosexual peers] to access services such as housing assistance, meal programs, senior centers and food stamps.”²⁷ As the Administration has recognized, federal agencies must act to eliminate

²¹ Thom File and Joey Marshall, *LGBT Community Hit Harder by Economic Impact of Pandemic*, 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>.

²² Kate Sosin, *LGBTQ+ Americans Greet the Biden-Harris Era with Hope, Hesitancy*, The 19th News (Jan. 21, 2021), <https://19thnews.org/2021/09/lgbtq-census-data-federal-collection-first-time/LGBT>.

²³ Arielle Bosworth et al., *Health Insurance Coverage and Access to Care for LGBTQ+ Individuals: Current Trends and Key Challenges*, Office of Health Policy, 1 (June 2021), <https://aspe.hhs.gov/sites/default/files/2021-07/lgbt-health-ib.pdf>.

²⁴ *Id.* at 5 (Explaining that “LGB+ individuals had higher rates of Medicaid or public insurance enrollment, lower rates of Medicare enrollment, and lower rates of dual eligibility compared to the non-LGB+ population, which likely reflect differences in income and age across the two groups.”).

²⁵ *Id.* at 2.

²⁶ Sandy James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality, 94 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

²⁷ Sara J. Czaja et al., *Concerns about Aging and Caregiving Among Middle-Aged and Older Lesbian and Gay Adults*, 20 *Aging & Mental Health* 1107, 1107 (Nov. 2016), <https://doi.org/10.1080/13607863.2015.1072795>; see also LGBT Movement Advancement Project (MAP) et al., *Improving the Lives of LGBT Older Adults*, 5 (Mar. 2010), <https://www.lgbtmap.org/file/improving-the-lives-of-lgbt-older-adults.pdf>.

these “systemic barriers to opportunities and benefits for ... underserved groups,” including LGBTQI people.²⁸

III. The available data on LGBTQI economic well-being is inadequate, limiting the ability to improve well-being.

Data from large scale, nationally representative surveys of LGBTQI people is lacking. As the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys cogently explained, “there remains a lack of data on the characteristics and well-being” of sexual and gender minority (SGM) populations and “[i]n order to understand the diverse needs of SGM populations, *more representative and better quality data need to be collected.*”²⁹ Few private organizations can collect data at the scale and quality of the federal government. The Bureau’s surveys, in particular, are the gold standard. For example, the most comprehensive, and hugely valuable, survey of the experience of transgender people, the National Center for Transgender Equity’s U.S. Transgender Survey, had almost 28,000 respondents.³⁰ In contrast, the CPS, including the ASEC, surveys approximately 60,000 households on a monthly basis.

Until the Household Pulse Survey, the Bureau has not included SOGI questions in any of its surveys. The Bureau has collected data on same-sex couples for some time, and in so doing, contributed to breaking down stereotypes about those couples, where they live, and what their families look like.³¹ But this data leaves out significant portions of the LGBTQI community, notably unmarried people, who are likely to have different economic indicators than married people.

The lack of comprehensive federal data on LGBTQI people’s economic well-being hinders efforts to improve that well-being. Developing and assessing targeted programs to reduce disparities, as has been done for racial and ethnic groups, is “substantially hindered by a lack of data about LGBT disparities.”³² As the authors of the report discussing LGB+ health insurance

²⁸ Exec. Order No. 13,950, 86 FR 57,849 (Oct. 19, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

²⁹ *Toward a Research Agenda for Measuring Sexual Orientation and Gender Identity in Federal Surveys: Findings, Recommendations, and Next Steps*, Fed. Interagency Working Grp. on Improving Measurement of Sexual Orientation and Gender Identity in Fed. Surv., 2 (Oct. 20, 2016), https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/SOGI_Research_Agenda_Final_Report_20161020.pdf (emphasis added).

³⁰ *U.S. Transgender Survey*, National Center for Transgender Equality (last visited Oct. 28, 2021), <https://transequality.org/issues/us-trans-survey>.

³¹ *The Evolution of Data Collection for Same-Sex Married Couple Households*, Census, <https://www.census.gov/content/dam/Census/library/visualizations/2019/demo/Same-sex-Married-Couple-Timeline.pdf>.

³² Kyle C. Velte, *Straightwashing the Census*, 61 B.C. L. Rev. 69, 106 (2020), <https://lawdigitalcommons.bc.edu/bclr/vol61/iss1/3>.

enrollment discussed above explained earlier this year, “Data collection on LGBTQ+ individuals is less consistent in federal and state data sources than other demographic information... As a result, our understanding of healthcare issues faced by this population is more limited than for other groups, a factor which itself can contribute to disparities.”³³

It is similarly difficult to assess the effectiveness of antidiscrimination laws and determine enforcement priorities, without baseline data.³⁴ To this end, more comprehensive data focused on economic well-being is especially important given the historic myth of gay affluence and power. While available research reveals it to be unfounded, the stereotype of LGBTQ people as politically powerful and wealthy continues. Perniciously, this myth has been used to slow or stop civil rights advancements.³⁵

IV. The ASEC’s collection of SOGI data would facilitate numerous federal agencies’ work, especially as it relates to the Administration’s goal of promoting equity in the administration of federal programs.

Data from a nationally representative, large-scale, Bureau-administered survey providing data about LGBTQI peoples’ incomes, employment status, health-insurance enrollment status, and other measures of economic well-being will enable various federal agencies to effectuate their statutory obligations. With this data, the Bureau of Labor Statistics (BLS), which collaborates on the ASEC, could publish more comprehensive data on the labor force. The many agencies that administer programs tied to national poverty measures derived from the ASEC would be better able to measure the success of those programs and target needy populations. Agencies that enforce nondiscrimination mandates would have robust baseline measures to inform their investigations. All told, collection of SOGI data in the ASEC will help agencies do their jobs and is entirely consistent with the Administration’s direction to federal agencies broadly to assess and improve equity in their programs.³⁶

First, BLS’s statutory mission is to “acquire and diffuse. . . useful information on subjects connected with labor, in the most general and comprehensive sense of that word. . . especially. . . the earnings of laboring men and women.”³⁷ Among other ways in which it fulfills this mission, BLS publishes annual information drawn from the ASEC on the U.S. population’s work

³³Bosworth et al., at 2, <https://aspe.hhs.gov/sites/default/files/2021-07/lgbt-health-ib.pdf>.

³⁴ Kyle C. Velte, *Straightwashing the Census*, 61 B.C. L. Rev. 69, 110-11 (2020); see also Kellan Baker & Laura E. Durso, *Filling in the Map: The Need for LGBT Data Collection*, Ctr. for Am. Progress (Sept. 16, 2015), <https://www.americanprogress.org/issues/Agbt/news/2015/09/16/121128/filling-in-the-map-the-need-for-lgbt-data-collection/>.

³⁵ *Id.*

³⁶ Exec. Order No. 13,950, 86 Fed. Reg. 57,849 (Oct. 19, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

³⁷ 29 U.S.C. § 1.

experience, disaggregating it by sex and race and ethnic groups,³⁸ and reports profiling the working poor, disaggregating that description by sex, race, and ethnicity, education levels, occupation, and family status.³⁹ Adding SOGI questions to the ASEC would enhance the utility of these reports by revealing more detailed information about working people in the country, notably by providing significantly more robust and detailed information on LGBTQI employment and develop a more complete and nuanced understanding of what current research reveals about their relative disadvantages.

Adding SOGI data to the ASEC would also enable agencies that rely on the Official Poverty Measure (or derivative measures of poverty) to better pursue their statutory missions, as the ASEC is the basis for this measure. By statute, the Department of Health and Human Services derives its poverty guidelines from the Official Poverty Measure.⁴⁰ These poverty guidelines are used as an eligibility criterion by numerous federal programs, including the following:⁴¹

- **Department of Health and Human Services**

- Medicaid
- Medicare Part D Low Income Subsidies
- Children’s Health Insurance Program
- Consolidated Health Centers (CHCs), including Federally Qualified Health Centers (FQHCs)
- Maternal and child health services
- Title X Family Planning Program
- Older Americans Act Nutrition Program
- Head Start
- Health professions student loans and scholarships
- Community Services Block Grant
- Social Services Block Grant (Including Transfers from TANF)
- Low-income Home Energy Assistance

- **Department of Agriculture**

- Supplemental Nutrition Assistance Program (SNAP)
- National School Lunch Program
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Child and Adult Care Food Program

³⁸ *Work Experience of the Population—2019*, Bureau of Labor Statistics (Dec. 9, 2020), <https://www.bls.gov/news.release/pdf/work.pdf>.

³⁹ U.S. Bureau of Lab. Stat., *A profile of the working poor, 2019*, BLS Rep. (2021), <https://www.bls.gov/opub/reports/working-poor/2019/home.htm>.

⁴⁰ 42 U.S.C. § 9902(2).

⁴¹ *Programs that Use the Poverty Guidelines as a Part of Eligibility Discrimination*, Dep’t of Health and Hum. Serv. (last visited Oct. 28, 2021), <https://www.hhs.gov/answers/hhs-administrative/what-programs-use-the-poverty-guidelines/index.html>.

- School Breakfast Program
 - Summer Food Service Program
 - Commodity Supplemental Food Program
 - Food Distribution Program on Indian Reservations (FDPIR)
 - Senior Farmers' Market Nutrition Program (SFMNP)
 - Special Milk Program for Children
- **Department of Education**
 - TRIO Programs
 - Educational stipends for the Native Hawaiian Career and Technical Education Program (NHCTEP)
 - Educational stipends for the Native American Career and Technical Education Program (NHCTEP)
 - D.C. School Choice Incentives
 - Federal Student Aid - Income-Driven Plans
 - **Department of Energy:** Weatherization Assistance Program
 - **Department of Labor**
 - Job Corps
 - Workforce Innovation and Opportunity Act (WIOA)
 - Senior Community Service Employment Program (SCSEP)
 - **Department of Treasury**
 - Health Insurance Premium Tax Credits
 - Low-Income Taxpayer Clinics (LITC)
 - Fee waiver for Offer in Compromise
 - Reduced user fee for Installment Agreements
 - **Corporation for National and Community Service**
 - Foster Grandparent Program
 - Senior Companion Program
 - **Federal Communications Commission:** LifeLine
 - **Legal Services Corporation:** Legal Services

Each of these programs could be better administered with more complete information about the demographic profile of eligible populations—including LGBTQI people. For example, if one of the many agencies listed above understands the percentage of the eligible population for a particular program that is LGBTQI, it will be able to assess, and when necessary, improve, its ability to serve LGBTQI communities via this program. It may be able to determine whether its services are reaching LGBTQI recipients—including discrete or intersecting subgroups of that population or LGBTQI people outside of urban areas for example—at the same rate as the total population, and it will be able to better target outreach. As HHS previously explained, “[f]ully

understanding the human service needs of LGBT populations. . . will require expanding the number of survey and administrative data sources that directly and accurately measure sexual orientation and gender identity.⁴² Adding the SOGI data collection is accordingly essential to meet the Administration’s mandate to improve equity in the administration of federal programs through better collection and use of data.

Similarly, some state and local governments have chosen to use the federal poverty guidelines in some of their own programs and activities. Examples include financial guidelines for child support enforcement and determination of legal indigence for court purposes. Some private companies (such as utilities, telephone companies, and pharmaceutical companies) and some charitable agencies also use the guidelines in setting eligibility for their services to low-income persons.⁴³ These entities would also be able to better assess their success in serving eligible LGBTQI program recipients if the ASEC provides them with baseline demographic poverty data.

The ASEC also collects data regarding health insurance coverage, including detailed information about federal insurance programs including Medicare, Medicaid, SCHIP, and coverage through the Military or Indian Health Service.⁴⁴ Policy makers currently use this data to understand ways in which certain demographic groups are able or unable to access such coverage. They generally cannot do so currently for LGBTQI people, despite their persistent health disparities and disproportionate lack of insurance. Adding the SOGI data collection, and developing intersex measures, would be a major step to facilitate better understanding about the lack of insurance for LGBTQI people.

This data is also essential for better administering federal insurance programs with respect to covered LGBTQI people. As the Centers for Medicare & Medicaid Services (CMS) and HHS explained, “[d]ata at the census block or individual level would help the above offices understand and improve care for the subpopulations of Medicare, Medicaid, and dual Medicare-Medicaid (federally insured) enrollees who are lesbian, gay, bisexual, or transgender (LGBT).⁴⁵ Similarly, the Federal Coordinated Health Care Office, established by the Affordable Care Act to coordinate between Medicare and Medicaid, has a statutory goal to “[i]mprov[] the quality of health care and long-term services for dual [Medicare and Medicaid] eligible individuals.” As it

⁴² Andrew Burwick et al., *Human Services for Low-Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*, OPRE Report 19, https://www.acf.hhs.gov/sites/default/files/documents/opre/lgbt_hsneeds_assessment_reportfinal_1_12_15.pdf.

⁴³ *Programs that Use the Poverty Guidelines as a Part of Eligibility Discrimination*, Dep’t of Health and Hum. Serv. (last visited Oct. 28, 2021), <https://www.hhs.gov/answers/hhs-administrative/what-programs-use-the-poverty-guidelines/index.html>.

⁴⁴ Current Population Survey Annual Social and Economic Supplement (CPS-ASEC), U.S. Census Bureau (Sep. 10, 2019), <https://www.census.gov/topics/health/health-insurance/guidance/cps-asec.html> (at “Flow Chart”).

⁴⁵ Letter from CMS to Census Bureau (June 29, 2016), <https://www.documentcloud.org/documents/3894328-Letter-from-CMS-to-Census-Bureau-June-29-2016.html>.

previously explained, “[w]ithout information on sexual orientation and gender identity, FCHCHO will be disadvantaged in fulfilling this goal for federally insured LGBT individuals.”⁴⁶

Collecting SOGI data via the ASEC would also facilitate enforcement of statutory nondiscrimination protections by numerous agencies. Section 1557 of the Affordable Care Act, for example, prohibits discrimination in health programs or activities receiving Federal financial assistance on the basis of sex—including sexual orientation and gender identity—among other protected characteristics.⁴⁷ SOGI data is necessary to effectuate this mission. As CMS previously explained, “the lack of information on sexual and gender identity prevents the study of whether sexual and gender minorities are experiencing discrimination in the receipt of CMS services.”⁴⁸ Similarly, both the Department of Justice and the Equal Employment Opportunity Commission enforce Title VII of the Civil Rights Act of 1960’s prohibitions against sex discrimination—including sexual orientation and gender identity—in employment.⁴⁹ Additional baseline ASEC employment data would facilitate these missions.

V. ASEC collection of SOGI data would also benefit private researchers and advocates.

The addition of SOGI data to the ASEC, and the resulting inclusion of this demographic information in publications based on ASEC data (such as employment rates, poverty rates, health insurance rates, etc.) would be of significant utility to private researchers and advocates. The following are examples of the way in which the signatories to this letter would be able to advance their work with this data:

- Family Equality will utilize this data in initiatives to support low-income LGBTQ families, particularly families of color and those in rural states and areas, to help address economic and health disparities they face. (Family Equality)
- Central to understanding the experiences of LGBTQI people—and addressing disparities through policy intervention—is data collection on large, nationally representative surveys like the Current Population Survey. The Movement Advancement Project is excited to leverage this data to help the public, policymakers, and the media understand who LGBTQI people are and the challenges they experience. The Census Bureau is uniquely situated to do this work with its resources and know-how, as well as the vast reach of the surveys, which is needed to reach these populations. (MAP)

⁴⁶ *Id.*

⁴⁷ 42 U.S.C. § 18116(a).

⁴⁸ Letter from CMS to Census Bureau (June 29, 2016), *available at* <https://www.documentcloud.org/documents/3894328-Letter-from-CMS-to-Census-Bureau-June-29-2016.html>.

⁴⁹ 42 U.S.C. § 2000e-2; *see also* Letter from DOJ to Census Bureau (Nov. 4, 2016), at 2, <https://apps.npr.org/documents/document.html?id=3892167-DOJ-to-Census-Bureau-2016-11-04-Edit>.

- This data would create opportunities for us to target our healthcare policy interventions and research agenda to address sources of inequity. (Whitman-Walker)
- Nationally, about one in five LGBTQ+ families are enrolled in the Supplemental Nutrition Assistance Program (SNAP) and Medicaid—programs that are funded based on census results—which is double the rate of non-LGBTQ+ families. Too often, California’s diverse LGBTQ+ community finds ourselves undercounted—which denies us power, representation and funding for programs that the most vulnerable members of our community need to survive for the next 10 years. (Equality California)

VI. SOGI Questions Have Been Effective on the Household Pulse Survey and Bureau Research Show They Can Work for the Current Population Survey.

We encourage the Bureau to modify the current request for approval of the ASEC to include the addition of SOGI questions modeled on the Household Pulse Survey questions. In order to implement the change quickly, we recommend adopting the same questions used in the Household Pulse Survey, which have revealed themselves to be reasonably feasible and effective and the Bureau has indicated they will continue to be asked in the next phase of the Household Pulse Survey.

Additionally, the questions included on the Household Pulse Survey are nearly identical to the questions that were used in cognitive testing in 2017 by the Census Bureau, the Bureau of Labor Statistics, and an outside marking firm.⁵⁰ The results of that testing show that the questions are well understood and can be effectively used in the CPS.

VII. The Bureau should engage in and promote research, development, and testing for expanded measures that allow for the identification of intersex, nonbinary, and other sexual and minority populations.

Adding existing, tested SOGI measures is an essential and immediate step to understand and address the needs of LGBTQI people and their families—including by better informing federal programs, policies, and investments. While this step can and should be taken immediately, it is also critical that the Bureau, in coordination with NCHS, National Institutes of Health, and other agencies, work to develop expanded or additional measures to identify sexual and gender minority populations who cannot be identified with current SOGI measures.

A recent consensus study by the National Academies of Sciences, Engineering, and Medicine noted that “[p]opulation-based data on intersex populations are generally not available at all,” calling this “a significant gap in terms of identifying and

⁵⁰ Renee Ellis et al., *Assessing the Feasibility of Asking About Sexual Orientation and Gender Identity in the Current Population Survey: Results from Cognitive Interviews*, U.S. Census Bureau & Bureau of Labor Statistics (Sep. 29, 2017), <https://www.bls.gov/osmr/research-papers/2017/html/st170210.htm>.

understanding the well-being of intersex populations.”⁵¹ The consensus study “emphasizes that there is an urgent need for robust scientific evidence that includes not just lesbian, gay, bisexual, and transgender people, but also intersex people, people with same-sex or same-gender attractions or behaviors, and people who identify as asexual, Two Spirit, queer, or other terms under the SGD umbrella.”⁵²

The report therefore recommends that “Federal statistical agencies ... should fund and conduct methodological research to develop, improve, and expand measures that capture the full range of sexual and gender diversity in the population—including but not limited to intersex status and emerging sexual and gender identities.”⁵³ We look forward to working with the Bureau and other statistical agencies to build on the addition of current SOGI measures for future survey years.

If you have any questions or would like to discuss the information in this comment, please contact Robin Thurston, counsel for MAP, at 202-701-1775 or rthurston@democracyforward.org.

Respectfully submitted,

American Atheists

Athlete Ally

Center for American Progress

CenterLink: The Community of LGBT Centers

Equality California

Equality Federation

Family Equality

FORGE, Inc.

GLSEN

Howard Brown Health

interACT: Advocates for Intersex Youth

MomsRising/MamásConPoder

Movement Advancement Project

⁵¹ National Academies of Sciences, Engineering, and Medicine, *Understanding the Well-Being of LGBTQI+ Populations*, The National Academies Press (2020) at 54, 67.

⁵² *Id.* at 398.

⁵³ *Id.* at 402.

National LGBT Cancer Network

National Women's Law Center

Oasis Legal Services

PowerOn, a program of LGBT
Technology Institute

The Trevor Project

Union for Reform Judaism

URGE: Unite for Reproductive and
Gender Equity

Whitman-Walker Institute