

Congress of the United States
Washington, DC 20515

November 15, 2022

The Honorable Gina Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

The Honorable Robert L. Santos
Director
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

RE: Soliciting Input or Suggestions on 2030 Census Preliminary Research (Docket Number 220526-0123)

Dear Secretary Raimondo and Director Santos:

We, the undersigned members of the U.S. House of Representatives, write to express our strong support for the Census Bureau to engage in research, testing, and development to explicitly include the LGBTQI+ community in the 2030 decennial Census. As members of Congress, we are committed to advancing the rights of all of our constituents, including members of the LGBTQI+ community. Better data on the communities we represent, including our LGBTQI+ constituents, will allow us to better serve their needs.

This past June, the House of Representatives passed the LGBTQI+ Data Inclusion Act, which would require federal surveys to collect voluntary information on sexual orientation, gender identity, and variations in sex characteristics (SOGISC). The Census Bureau, however, does not need to wait for this bill to become law to collect vital information on the LGBTQI+ community. In fact, there are statutory and enforcement reasons for the Bureau to collect this data, which will allow various federal agencies to better enforce federal laws and address disparities experienced by LGBTQI+ people. Collecting data on SOGISC in the 2030 Census will provide us as policymakers with a more comprehensive picture of the experiences of LGBTQI+ people and equip us with data to better draft policies and programs to meet the community's needs. Importantly, the scale of the data collected by the Census allows for data disaggregation that is crucial for intersectional analyses of disparities faced among different parts of the LGBTQI+ communities.

Reaching and motivating everyone

Collecting SOGISC Data

It has been more than 5 years since the Department of Justice and other agencies submitted letters to the Census Bureau requesting that questions related to sexual orientation and gender identity be included in the American Community Survey for the 2020 Census.¹ The Department of Justice's letter identified several core agency functions that require this data, including to enforce prohibitions against discrimination, such as under Title VII of the Civil Rights Act; to help administer grants; and to plan education efforts around prohibitions on discrimination.² Since these letters were sent, the U.S. Supreme Court has affirmed that the prohibition on sex discrimination in Title VII of the Civil Rights Act of 1964 extends to discrimination based on sexual orientation and gender identity.³ The Biden Administration has made clear that this holding should be applied to all federal laws prohibiting sex discrimination⁴ and "applies with equal force to discrimination against intersex people" based on their sex characteristics.⁵ It is thus more critical than ever that the U.S. government collect better data on LGBTQI+ people. The decennial Census is a key vehicle for collecting such data. We support the Bureau revitalizing its work—including engaging with other federal agencies as necessary—to conduct the proper research, testing, and analysis to ensure the effective inclusion of questions relating to SOGISC data collection in the 2030 Census.

We urge the Census Bureau to implement recommendations made by the 2022 National Academies of Science, Engineering, and Medicine report on Measuring Sex, Gender Identity, and Sexual Orientation. In addition, the Bureau's inclusion of SOGISC data collection in its Household Pulse Survey should inform its work to research, test, and develop measures to collect data on the LGBTQI+ community in the 2030 Census. The Bureau should also consult with experts on SOGISC data collection, LGBTQI+ community organizations, and federal agencies that have surveyed the LGBTQI+ community as part of this process.

As part of its work to implement SOGISC questions, the Census Bureau should support research, testing, and development to:

- Evaluate measures to incorporate emerging sexual orientation and gender identities and allow people to more accurately self-identify, including the option to select all responses and the inclusion of nonbinary options in gender identity questions;
- Evaluate standalone measures to collect data on people with intersex traits;

¹ See Senator Tom Carper and Senator Kamala D. Harris, "Letter to John H. Thompson, Director, United States Census Bureau," May 22, 2017, https://www.carper.senate.gov/public/_cache/files/de7e0915-ea9f-4c51-a2d5-f3ee4abe0bf3/2017-05-22-carper-harris-letter-to-census-bureau-re-new-subjects-press-.pdf.

² *Id.* The Census Bureau found that 132 Federal programs used Census data to distribute more than \$675 billion dollars during fiscal year 2015 alone. Marissa Hotchkiss & Jessica Phelan, U.S. Census Bureau, Use of Census Bureau Data in Federal Funds Distribution 3 (2017), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/working-papers/Uses-of-Census-Bureau-Data-in-Federal-Funds-Distribution.pdf>.

³ *Bostock v. Clayton County*, 590 U.S. ____ (June 15, 2020).

⁴ Exec. Order 13988, 86 Fed. Reg. 7,023–25 (Jan. 20, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>

⁵ Department of Justice, Title IX Legal Manual (updated Aug. 21, 2021), <https://www.justice.gov/crt/title-ix#Bostock>.

- Evaluate, including through the use of existing research, the appropriate question placement and formatting of SOGISC measures;
- Ensure that SOGISC measures are translated in culturally competent ways in order to avoid barriers to non-English speakers responding to these questions;
- Assess the performance of SOGISC measures in proxy reporting settings;
- Develop strategies to address SOGISC non-responses in both in-person and proxy interviews;
- Develop trainings for Census staff who engage with the public, so they understand how to best collect SOGISC data and address questions or concerns relating to this data collection;
- Evaluate how the Bureau's efforts to use administrative records to enhance operational efficiency and data quality are impacted by the lack of SOGISC data in many administrative data collection efforts and how to address those deficiencies; and
- Evaluate and adopt best practices to safeguard the privacy and safety of LGBTQI+ individuals who provide responses to SOGISC questions.

Outreach and Education

As the Census Bureau works to finalize questions on SOGISC, the Bureau must also formulate a robust outreach and education plan to prevent undercounting of LGBTQI+ communities. Due to bias, discrimination, and related fear, many LGBTQI+ people cannot comfortably or safely share their identity with their family, coworkers, or communities and may fear disclosing their LGBTQI+ identity on the Census. LGBTQI+ people are, however, likely to participate as long as the process is affirming, transparent, and protective of privacy.⁶ The Bureau must therefore work to educate and engage the community, including in close coordination with LGBTQI+ organizations and trusted community leaders, to convey the importance and necessity of collecting this information and how the Bureau ensures privacy and confidentiality for all Census responses—especially those related to SOGISC measures. The Bureau should also explain the benefits of collecting SOGISC information in public-facing documents that help respondents understand why the Bureau asks these questions on the Census.⁷

To ensure this data is properly collected and reduce the chances of an undercount, the Bureau should:

⁶ 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> (finding that most respondents of surveys that asked questions about sexual orientation and gender identity were willing to answer such questions. A few respondents had concerns about data privacy and others commented on the importance of training staff as to why the data was being collected).

⁷ See, e.g., 2020 Census: Why We Ask, U.S. Census Bureau (Aug. 3, 2018), <https://www.census.gov/library/fact-sheets/2018/dec/why-we-ask.html>.

- Conduct messaging testing in coordination with LGBTQI+ organizations, including messaging testing with a focus on those within the LGBTQI+ community who are most marginalized, such as those with multiple marginalized identities;
- Hire a workforce, especially those engaged in outreach to the public, that is representative of the diverse LGBTQI+ community; and
- Handle SOGISC data with rigorous privacy and confidentiality standards in every phase of analysis and dissemination, and communicate those standards, as well as the Bureau's nondiscrimination protections, to the public, so respondents feel comfortable providing accurate information.

Conclusion

Better data leads to better policies, programs, and service delivery. We know the data collected in the 2030 Census will not just influence policy decisions but also the allocation of critical resources. Diverse LGBTQI+ people deserve to be counted and have their voices heard. By collecting SOGISC data in the decennial Census and engaging in robust outreach to these communities, the Census Bureau will properly represent LGBTQI+ people in our nation's population count and provide policymakers, including ourselves and our other colleagues in Congress, access to more comprehensive data to better inform our policy-making decisions.

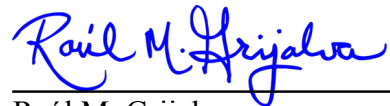
Sincerely,



David N. Cicilline
Member of Congress



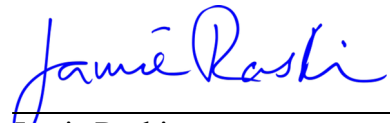
Katie Porter
Member of Congress



Raúl M. Grijalva
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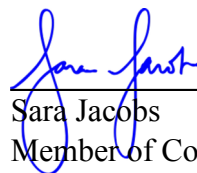
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Ro Khanna
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Mark Takano
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Sara Jacobs
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Pramila Jayapal
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Nanette Diaz Barragan
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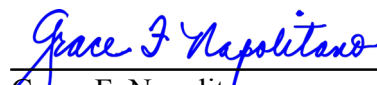
Marie Newman
Member of Congress



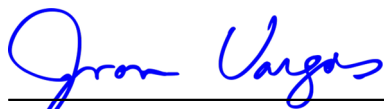
Eleanor Holmes Norton
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Mike Quigley
Member of Congress



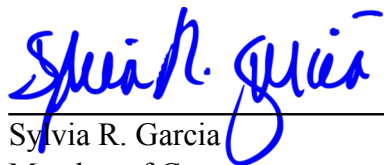
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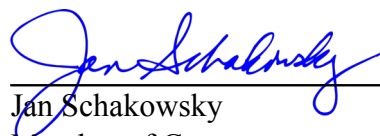
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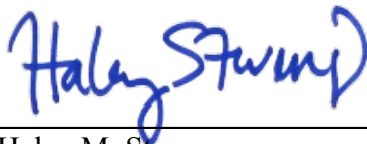
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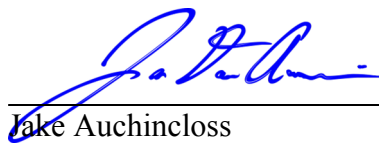
Frederica S. Wilson
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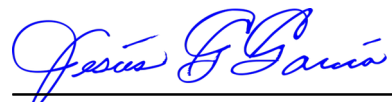
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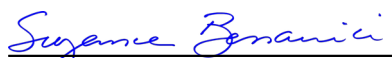
Jesús G. "Chuy" García
Member of Congress



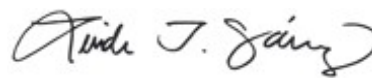
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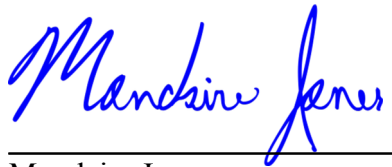
Earl Blumenauer
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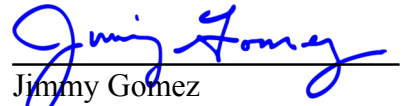
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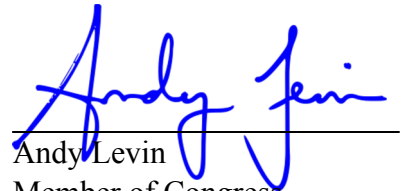
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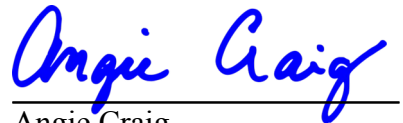
Raul Ruiz, M.D.
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Angie Craig
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