

Public Comments Received During the 30-day Comment Period

June 2022

National Household Education Survey 2023 (NHES) Full-Scale Data Collection

ED-2022-SCC-0015

Comments on FR Doc # 2022-09313

Name: Kierra Johnson, Executive Director, National LGBTQ Task Force

Thank you for this opportunity. The National LGBTQ Task Force and GLSEN respectfully submit this comment on the National Household Education Survey 2023 (NHES:2023) Full-Scale Data Collection, OMB Control number 1850-0768; ICR Reference Number 202202-1850-001.

The National LGBTQ Task Force advances full freedom, justice and equality for LGBTQ people. We are building a future where everyone can be free to be their entire selves in every aspect of their lives. Today, despite all the progress we have made to end discrimination, millions of LGBTQ people face barriers in every aspect of their lives: in education, housing, employment, healthcare, retirement, and basic human rights. These barriers must go.

The National Household Education Survey

The National Center for Education Statistics (NCES), within the U.S. Department of Education, is authorized to conduct the NHES survey by the Education Sciences Reform Act of 2002 (ESRA 2002, 20 U.S.C. §9543). The Office of Management and Budget (OMB) approval number for this survey is 1850-0768. The NHES “provides up-to-date information on the educational needs for people in the United States. The chief goal of the NHES is to describe Americans’ educational experiences, thereby offering policymakers, researchers, and educators a variety of statistics on the condition of education in the United States. To monitor educational trends over time, NHES conducts repeated measurements of the same phenomena in different years. The NHES has also fielded one-time surveys on topics of interest to the Department of Education.” National Household Education Survey (NHES), U.S. Census Bureau, <https://www.census.gov/programs-surveys/nhes.html>.

“The NHES has been conducted approximately every two to three years from 1991 to 2016. There was a 5-year gap in data collection between 2007 and 2012 when the NHES switched from a telephone survey to a mail survey. The most recent collection of NHES was in 2019, and the next collection will be in 2023, after which it will be conducted on a three-year-cycle.” Id.

Full-scale data collections – all carried out with taxpayer monies including those collected from lesbian, gay, bisexual, transgender, gender non-binary and intersex people (LGBTQ) in this country – are vital opportunities for agencies across the United States government to gather valuable disaggregated data about parents through the NHES. To date, Congress and the federal government have failed the LGBTQ community and our country by not using the decennial Census and other survey opportunities like NHES to gather disaggregated data about LGBTQ people. We appreciate the fact that, since the mid-1990s the NHES has collected data about the sex of children’s parents under categories called Parent1 and Parent2. National Center for Education Statistics, National Household Education Surveys Program (NHES), <https://nces.ed.gov/nhes/about.asp#NHESTopics>. This modest change in labels has enabled LGBTQ parents to be seen and to be counted more accurately.

Private entities, like Gallup, collect data, but it is no substitute for the federal government collecting data on the approximately 7 percent of the U.S. population that identifies as LGBTQ. Jeffrey M. Jones, “LGBT Identification in U.S. Ticks Up to 7.1%” (February 17, 2022) at <https://news.gallup.com/poll/389792/lgbt-identification-ticks-up.aspx>. Capturing data on LGBTQ parents is vital to fulfill the directives set out by Executive Order 13985iii, which mandates that federal agencies promote equity for LGBTQ+ and other underserved communities through various actions including but not limited to expanding data collection efforts with the support of the Equitable Data Working Group.

E.O. 13985 of Jan 20, 2021, <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>. Additionally, the addition of recommended measures of sexual orientation, gender identity, and variations in sex characteristics as a standardized component of demographic questions to NHES data collection mechanisms fulfills the directives set out by Executive Order 13988, which directs all federal agencies that enforce federal laws prohibiting sex discrimination to also prohibit discrimination based on sexual orientation and gender identity. E.O. 13988 of Jan 20, 2021, <https://www.federalregister.gov/documents/2021/01/25/2021-01761/preventing-and-combating-discrimination-on-the-basis-of-gender-identity-or-sexual-orientation>.

“Sex” is a Broad Term in Federal Law, According to the United States Supreme Court

In NHES, the Census Bureau collects data about parents’ sex, meaning male or female. National Center for Education Statistics, National Household Education Surveys Program, Questionnaires, (NHES), <https://nces.ed.gov/nhes/questionnaires.asp> On June 15, 2022, the U.S. Supreme Court ruled in the landmark case *Bostock v. Clayton County*, 590 U.S. — (2020) that the term sex in federal non-discrimination law includes discrimination based on sexual orientation and gender identity. Finding that the term “sex” in this longstanding federal civil rights law is broad, the high court opens the door for use of the same breadth of interpretation in federal data collection. We argue here that the Census Bureau may – and in fact must – interpret the term sex for purposes of the NHES to include sexual orientation and gender identity. There is no reason to apply a “more rigorous” standard to sex discrimination against LGBTQ people than for heterosexual and cisgender men and women. Id. at 27 of the slip op at https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf] Following this line of reasoning, federal agencies should not assume that something more rigorous is required to authorize the collection of full data on the sex of parents, which logically includes their sexual orientation, gender identity and intersex characteristics. All are part-of-related to sex.

Millions of LGBTQ People Live in the U.S.

In February 2022, Gallup polling showed that people in the U.S. identified as LGBT at a rate of 7.1%. Jeffrey M. Jones, “LGBT Identification in U.S. Ticks Up to 7.1%” (February 17, 2022) at <https://news.gallup.com/poll/389792/lgbt-identification-ticks-up.aspx>. In fact, over the past few decades, increasing numbers of people have self-reported that they are queer, whether counted in same-sex couples only (because of the limitations of data collection methods) or as individuals. “In 1990, the category ‘unmarried partner’ was added to the relationship item in the decennial census to measure the growing complexity of American households and the increasing tendency for couples to live together before getting married.” U.S. Census & Same-Sex Unmarried Partners, 2000 U.S. Census Data on Same-Sex Unmarried Partner Households: Introduction and Background, Data Sets – American FactFinder, University of Chicago, Data Sets – American FactFinder, <https://bit.ly/3M9Gdt3>. Beginning in 2000, the Census Bureau used the decennial Census to collect data about same-sex couples. Id. The 2010 U.S. Census reported that 646,464 households included two adults of the same gender. U.S. Census Bureau, Households and Families: 2010, <https://www.census.gov/library/publications/2012/dec/c2010br-14.html>. In 2019, the American Community Survey (ACS), which the Census Bureau says is “the leading source for community and local-level data,” estimated that the U.S contained 980,000 same-sex households. Id.

In 2021, the Census Bureau collected data on individual LGBTQ people through its COVID-19 Household Pulse Survey (HPS), an experimental instrument. U.S. Census Bureau, Measuring Household Experiences during the Coronavirus Pandemic, <https://www.census.gov/data/experimental-data-products/household-pulse-survey.html>. This data proved revealing, showing that 7.7% people surveyed identified as lesbian, gay, or bisexual. U.S. Census Bureau, New Household Pulse Survey Data Reveals Differences between LGBT and Non-LGBT Respondents During COVID-19 Pandemic, <https://www.census.gov/library/stories/2021/11/census-bureau-survey-explores-sexual-orientation-and-gender-identity.html>. While considered experimental, the HPS results tend to match other survey and poll results. A recent Gallup survey found that 7.1% of people identify as LGBTQ. Jeffrey Jones, LGBT Identification in U.S. Ticks Up to 7.1%, (Feb. 17, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227946/>. The Williams Institute estimated that at least 1.4 million people in the U.S. identify as transgender (June 2016) at <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>. One 2017 mega regression of

population samples estimated the population of transgender people in this country to be 1 million. Transgender Population Size at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227946/>

Further, in 2021 a study by the Williams Institute at UCLA School of Law revealed that 1.2 million people in this country identify as gender non-binary. 1.2 million LGBTQ adults in the US identify as nonbinary, <https://williamsinstitute.law.ucla.edu/press/lgbtq-nonbinary-press-release/>.

LGBTQ People Raise Millions of Children in the U.S.

Large numbers of LGBTQ people are parents. The Williams Institute used 2014-2016 American Community Survey data to estimate that “114,000 same-sex couples were raising children in the U.S.” Between 2 million and 3.7 million children under age 18 have an LGBTQ parent, and approximately 200,000 of them are being raised by a same-sex couple. Many of these children are being raised by a single LGBTQ parent or by a different-sex couple where one parent is bisexual. Gary Gates, “Marriage and Family,” (2015), <https://www2.census.gov/cac/nac/meetings/2017-11/LGBTQ-families-factsheet.pdf>.

Both same-sex and different-sex married couple households were more likely than unmarried couple households to have children under 18 present. Id. However, same-sex married couple households were about half as likely as opposite-sex married couples to have children. Id. While family engagement can support students’ educational achievement and wellbeing, GLSEN’s national survey of LGBTQ+ parents or guardians with students in K-12 schools found that more than half (53%) reported being excluded or prevented from fully participating in school activities and events, being excluded by school policies and procedures, or being ignored and feeling invisible. To identify disparities impacting LGBTQ+ parents or guardians with school-aged children, it is vital that the NHES requests parents and guardians to self-report their sexual orientation, gender identity and whether they have intersex characteristics.

Though there is currently a serious lack of systematic data on intersex people and their families in the U.S. data from a large 28-country European survey suggests intersex people are as likely to be raising children as other LGBTQI+ populations. European Union Agency for Fundamental Rights (FRA), “LGBTI Survey Data Explorer,” <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>; EU-FRA, “A long way to go for LGBTI equality: EU-LGBTI II” (2020), <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>. Given the large number of children being raised by LGBTQ parents in this country – in every state and territory – to reach a more complete understanding of “Americans’ educational experiences” the federal government must logically expand the research scope of the NHES to include these parents.

According to our colleague organization Interact, “Intersex is an umbrella term for differences in sex traits or reproductive anatomy. Being intersex is a natural, healthy way bodies can be.” Planned Parenthood, “What’s Intersex?” at <https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity/whats-intersex>. “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?,” <https://interactadvocates.org/faq/>. The answer to the question, “How Common is Intersex,” is that about “1.7% of people are born intersex,” or roughly the same percentage of people born as twins. Id. (estimates from Dr. Anne Fausto-Sterling, who reviewed medical literature from 1955-1998 in *Sexing the Body: Gender Politics and the Construction of Sexuality*, 2000”).

Our Request: As Part of the Federal Government’s Commitment to, and Collection of Data About, LGBTQ People, Please Collect Disaggregated Data about LGBTQ People in the 2023 NHES and Beyond

While the federal government must play catch-up on mostly every front with respect to collecting and disseminating data about LGBTQ people, there is nothing new about federal agencies diligently working to capture LGBTQ data. For these reasons, we jointly request that in 2023 and in future years, the NHES include questions designed to capture LGBTQ parent data.

Thank you for the consideration of our request. As stakeholders, we stand ready to assist. Please contact Clermon Acklin, Federal Regulatory Counsel, at ceacklin@thetaskforce.org or 212-604-9830.

Sincerely,

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Dear Ms. Johnson,

Thank you for your feedback submitted June 1, 2022, responding to a 30-day request for comments on the proposed National Household Education Survey 2023 (NHES) Full-Scale Data Collection. The National Center for Education Statistics (NCES) appreciates your interest in NHES.

We appreciate your suggestion that the NHES expand its questions on parent's sex to include sexual orientation, gender identity and whether they have intersex characteristics. We understand the importance of providing respondents the ability to describe themselves accurately and to collect data full data on the characteristics of parents. As with all new items or topics proposed for inclusion in a questionnaire, we will need to conduct research and then develop and test new question items in English and Spanish to ensure respondents' correct comprehension and impact on response rates before including such items in a national collection. At this point in the survey schedule, we are unable to accommodate additional testing for the 2023 collection but will consider doing so for future collections.

Sincerely,

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