



May 15, 2023

ATTN: Desk Officer for the Federal Housing Finance Agency
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503
Submitted via email to OIRA_submission@omb.eop.gov and RegComments@fhfa.gov

RE: Public Comment in Response to Proposed Collection; Comment Request

To Whom It May Concern,

On behalf of the Human Rights Campaign's more than three million members and supporters nationwide, we write in response to the above-captioned information collection proposed by the Federal Housing Finance Agency (FHFA), specifically an extension of the previously approved instrument used as part of its National Survey of Mortgage Originations (NSMO).¹

The Human Rights Campaign (HRC) is America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBTQ+ citizens and realize a nation that achieves fundamental fairness and equality for all. As an advocate for LGBTQ+ individuals, HRC believes that all people—including LGBTQ+ people—deserve to be counted and have their lived experiences meaningfully considered as part of the federal government's data collection efforts. We therefore write to recommend that FHFA implement measures on respondents' sexual orientation and gender identity (SOGI) as part of the NSMO.

The NSMO is a recurring quarterly survey sent to a representative sample of recent mortgage borrowers, intended to generate information on their characteristics, experiences getting a mortgage, their perceptions of the mortgage market, and their future expectations as borrowers. This collection is part of the National Mortgage Database Program jointly administered by FHFA and the Consumer Financial Protection Bureau to satisfy Congressional requirements for reports on the state of the mortgage market under the Federal Housing Enterprises Financial Safety and Soundness Act. Currently, the NSMO collects various types of demographic information from borrowers—including their age, race, and ethnicity—but not their SOGI.

LGBTQ+ people are a growing population in the United States, living in every state and county and reflecting the breadth of diversity and lived experiences of the communities in which they live. Using data collected through the U.S. Census Bureau's Household Pulse Survey, we

¹ Proposed Collection; Comment Request, 88 Fed. Reg. 23,032 (Apr. 14, 2023).

recently estimated that at least 20 million adults in the U.S. identify as LGBTQ+.² Consistent with others' research, we have also found evidence that younger people are more likely to identify as LGBTQ+.³ LGBTQ+ people are a demographically diverse population, with the Williams Institute using Gallup Daily Tracking survey data from 2012–2017 to estimate that 58% of LGBT adults identify as female and that 42% identify among communities of color, including 1% of LGBT adults that identify as American Indian and Alaska Native.⁴ The Williams Institute also recently reported on evidence that individuals belonging to certain communities of color appear more likely than their White counterparts to identify as transgender.⁵

Existing research has found that same-sex couples and LGBTQ+ people more broadly are less likely to own their homes when compared to different-sex couples and non-LGBTQ+ people.⁶ While Americans from all walks of life can encounter discrimination, LGBTQ+ people uniquely experience harassment and discrimination based on their sexual orientation and gender identity, which research demonstrates has often led to disparities in negative outcomes when compared to their non-LGBTQ+ counterparts across the life course.⁷ A longstanding body of research indicates that LGBTQ+ people are significantly more likely to be living in poverty than their straight and cisgender counterparts;⁸ these rates are often informed and reinforced by their

² HUMAN RIGHTS CAMPAIGN FOUND., WE ARE HERE: UNDERSTANDING THE SIZE OF THE LGBTQ+ COMMUNITY (2021), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/We-Are-Here-120821.pdf>.

³ SHOSHANA K. GOLDBERG ET AL., HUMAN RIGHTS CAMPAIGN & BOWLING GREEN STATE UNIV., EQUALITY ELECTORATE: THE PROJECTED GROWTH OF THE LGBTQ+ VOTING BLOC IN COMING YEARS (2022), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/LGBTQ-VEP-Oct-2022.pdf>. The Williams Institute has previously estimated that at least 2 million youth ages 13–17 identify as LGBT in the U.S., including approximately 300,000 youth who are transgender. JODY L. HERMAN ET AL., WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>; KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

⁴ *LGBT Demographic Data Interactive*, WILLIAMS INST. (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#demographic>.

⁵ HERMAN ET AL., *supra* note 3, at 6.

⁶ *See, e.g.*, ADAM P. ROMERO ET AL., WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS 11–13 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

⁷ *See generally* JOSEPH G. KOSCIW ET AL., GLSEN, THE 2021 NATIONAL SCHOOL CLIMATE SURVEY (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf> (experiences in K–12 schools); KATHRYN K. O'NEILL ET AL., WILLIAMS INST., EXPERIENCES OF LGBTQ PEOPLE IN FOUR-YEAR COLLEGES AND GRADUATE PROGRAMS (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-College-Grad-School-May-2022.pdf> (experiences in higher education); BRAD SEARS ET AL., WILLIAMS INST., LGBT PEOPLE'S EXPERIENCES OF WORKPLACE DISCRIMINATION AND HARASSMENT (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf> (experiences in employment); *You Don't Want Second Best? Anti-LGBT Discrimination in US Health Care*, HUMAN RIGHTS WATCH (July 23, 2018), <https://www.hrw.org/report/2018/07/23/you-dont-want-second-best/anti-lgbt-discrimination-us-health-care> (experiences seeking health care); NPR, ROBERT WOOD JOHNSON FOUND. & HARVARD T.H. CHAN SCH. OF PUB. HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF LGBTQ AMERICANS (2017), <https://legacy.npr.org/documents/2017/nov/npr-discrimination-lgbtq-final.pdf> (experiences in variety of contexts).

⁸ M. V. LEE BADGETT ET AL., 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>; *see also* BIANCA D.M. WILSON ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES (2023), [WORKING FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER EQUAL RIGHTS
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P 202-628-4160 | F 202-423-2861 | \[HRC@HRC.ORG\]\(mailto:HRC@HRC.ORG\)](https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-</p></div><div data-bbox=)

experiences with discrimination. Likewise, and importantly for this proposal, recent studies have suggested that discrimination against LGBTQ+ people while seeking mortgage loans may also be informing their reported lower homeownership rates.⁹

Federal agencies have long been researching and collecting information on LGBTQ+ people like what we recommend be collected here.¹⁰ In many ways, SOGI information is not different from other forms of sensitive demographic information already collected by FHFA through the existing NSMO instrument, such as information about borrowers' race and ethnicity.¹¹ For decades, government and other researchers have studied SOGI and found that it is more than possible to measure these concepts and obtain quality data; and likewise that respondents largely do not find this information to be so sensitive that they would not provide it.¹² In a recent report on the collection of SOGI information in the survey context, the Office of Management and Budget (OMB) highlighted guiding principles that have emerged out of that work to support the ongoing collection of SOGI information, including that collected data should have utility, be in support of an agency's mission, and done with emphasis on protecting respondents' confidentiality.¹³ OMB's recommendations are notably consistent with recommendations issued by a panel formed by the National Academies of Sciences, Engineering, and Medicine on SOGI measurement in federal surveys and other instruments (the "NASEM Panel").¹⁴

We would recommend that any implemented SOGI measures for the NSMO align with OMB and the NASEM Panel's recommendations and these longstanding agency practices, as such measures would serve to advance equity for LGBTQ+ people by ensuring necessary evidence can be collected to allow for assessment of any potential differences in experience within the mortgage market between LGBTQ+ and non-LGBTQ+ borrowers.¹⁵ It is our opinion that the benefits of amending this collection to include such SOGI measures would outweigh any potential burden on respondents and other relevant entities, given these measures have been well-tested and in light of our knowledge on LGBTQ+ people encountering discrimination across a variety of contexts, including in mortgage lending. While it is not the case that only certain populations can experience exclusion from the mortgage market, data on whether and how individuals belonging to specific communities have had such experiences—including on the

[Poverty-COVID-Feb-2023.pdf](#) (using data from the Behavioral Risk Factor Surveillance System and the Census Bureau's Household Pulse Survey to analyze poverty rates during the early days of the COVID-19 pandemic).

⁹ J. Shahar Dillbary & Griffin Edwards, *An Empirical Analysis of Sexual Orientation Discrimination*, 86 U. CHI. L. REV. 1 (2019), <https://lawreview.uchicago.edu/publication/empirical-analysis-sexual-orientation-discrimination>; Hua Sun & Lei Gao, *Lending Practices to Same-Sex Borrowers*, 116 PNAS 9293 (2019), <https://www.pnas.org/content/pnas/116/19/9293.full.pdf>.

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

¹¹ *Id.* at 10 ("We note that sex assigned at birth, gender identity, and sexual orientation are not the only types of potentially sensitive information that need to be collected respectfully and confidentially and used appropriately . . .").

¹² *Id.* at 52–55, 67.

¹³ OMB, RECOMMENDATIONS ON THE BEST PRACTICES FOR THE COLLECTION OF SEXUAL ORIENTATION AND GENDER IDENTITY DATA ON FEDERAL STATISTICAL SURVEYS 3 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/SOGI-Best-Practices.pdf>.

¹⁴ NAT'L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 10.

¹⁵ See NAT'L SCIENCE & TECHNOLOGY COUNCIL, FEDERAL EVIDENCE AGENDA ON LGBTQI+ EQUITY 3 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>.

intersectional experiences of groups like LGBTQ+ people of color and others historically experiencing the brunt of marginalization and exclusion—would be necessary to ensure the NSMO fulfills its purpose in generating “comprehensive information on the range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed and the characteristics—and particularly the creditworthiness—of borrowers for these types of loans.”¹⁶ Finally, we would also encourage FHFA to, alongside implementing these SOGI measures, plan to analyze any collected data and explore improvements to its collection of SOGI data in the future, given existing recommendations by OMB and the NASEM Panel on needed research on measures and response options that would allow even more individuals to be counted in collected data exactly as they identify.¹⁷

Thank you for the opportunity to submit comments in favor of ensuring LGBTQ+ people are consistently and safely included in the government’s data collection efforts.

¹⁶ 88 Fed. Reg. at 23,033.

¹⁷ See, e.g., NAT’L ACADEMIES OF SCIENCES, ENGINEERING, & MED., *supra* note 10, at 132–33, 145 (recommending assessment of nonbinary response options and other possible improvements to gender identity measures; recommending research on measures allowing identification of intersex people, who report experiencing discrimination along similar lines as LGBTQ+ people).