

LGBTQI+ DATA INCLUSION ACT

JUNE 21, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. CAROLYN B. MALONEY of New York, from the Committee on Oversight and Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4176]

The Committee on Oversight and Reform, to whom was referred the bill (H.R. 4176) to improve Federal population surveys by requiring the collection of voluntary, self-disclosed information on sexual orientation and gender identity in certain surveys, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

CONTENTS

	Page
Summary and Purpose of the Legislation	3
Background and Need for Legislation	3
Section-by-Section Analysis	5
Legislative History	6
Committee Consideration	6
Roll Call Votes	6
Explanation of Amendments	12
List of Related Committee Hearings	12
Statement of Oversight Findings and Recommendations of the Committee	12
Statement of General Performance Goals and Objectives	12
Application of Law to the Legislative Branch	12
Duplication of Federal Programs	13
Disclosure of Directed Rule Makings	13
Federal Advisory Committee Act	13
Unfunded Mandates Statement	13
Earmark Identification	13
Committee Cost Estimate	13
New Budget Authority and Congressional Budget Office Cost Estimate	

Changes in Existing Law Made by the Bill, as Reported	13
Supplemental, Minority, Additional, or Dissenting Views	14

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “LGBTQI+ Data Inclusion Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

- (1) The National Academies on Sciences, Engineering, and Medicine (NASEM), in their 2022 report, found that complete and accurate demographic information on the LGBTQI+ community should be standardized and collected.
- (2) Comprehensive statistics are needed to inform public policy and Federal programs.
- (3) The availability of data also has a critical role in ensuring that any disparities in areas like health outcomes, housing, and employment can be addressed.
- (4) As of the March release of the NASEM report, limited Federal surveys collect data on sexual orientation and gender, with none currently measuring intersex populations.

SEC. 3. REQUIREMENT TO COLLECT DATA ON SEXUAL ORIENTATION, GENDER IDENTITY, AND VARIATIONS IN SEX CHARACTERISTICS.

(a) **SURVEY REQUIREMENT.**—Not later than 360 days after the date of the enactment of this Act, the head of any agency that collects information through a covered survey shall establish data standards that require, with regard to the survey, the following:

- (1) **REVIEW.**—The review of existing data sets to determine in which data sets information about sexual orientation, gender identity, and variations in sex characteristics is not included.
- (2) **METHODS.**—An identification of appropriate methods to include questions on sexual orientation, gender identity, and variations in sex characteristics in covered surveys that facilitate categorization and voluntary participation and preserve privacy and confidentiality.
- (3) **DATA COLLECTION.**—The use of the appropriate methods identified in paragraph (2) to gather data on sexual orientation, gender identity, and variations in sex characteristics.
- (4) **ASSESSMENT.**—The implementation of a process to routinely assess needed changes in covered survey methods related to asking questions on sexual orientation, gender identity, and variations in sex characteristics.

(b) **DATA REPORTS; WAIVER.**—

- (1) **DATA REPORTS.**—Not later than 3 years after the date of the enactment of this Act, any report published by an agency that relies on covered survey demographic data shall include information on sexual orientation, gender identity, and variations in sex characteristics.
- (2) **WAIVER.**—The head of the statistical unit of an agency may waive the requirement under paragraph (1), on a case-by-case basis, if the standards and policies in subsection (c) can not be met.

(c) **CONFIDENTIALITY.**—Any information collected relating to the sexual orientation, gender identity, or variations in sex characteristics of a covered survey participant shall be maintained in accordance with applicable confidentiality and privacy laws, policies, and standards.

(d) **APPLICABILITY.**—

- (1) **CONSTRUCTION.**—Nothing in this Act shall be construed to require an individual to disclose their sexual orientation, gender identity, or variations in sex characteristics to an agency.
- (2) **EXEMPTION FROM PENALTY.**—An individual is not subject to any fine or other penalty for refusing to answer any survey question regarding gender identity, sexual orientation, or variations in sex characteristics, including any fine or penalty under subchapter II of chapter 7 of title 13, United States Code.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to permit the use of information collected under this section in a manner that would adversely affect any individual.

(f) **DEFINITIONS.**—In this section:

- (1) **AGENCY.**—The term “agency” has the meaning given that term in section 551 of title 5, United States Code.
- (2) **COVERED SURVEY.**—The term “covered survey” means a survey that includes demographic data in which—

- (A) a subject self-reports information; or
- (B) a knowledgeable proxy provides information about the subject or responds for all individuals in a household.
- (3) DEMOGRAPHIC DATA.—The term “demographic data” means information about the race or ethnicity, sex, and age of a survey participant or population.
- (4) GENDER IDENTITY.—The term “gender identity” means the gender-related identity, appearance, mannerism, or other gender-related characteristic of an individual, regardless of the designated sex at birth of the individual.
- (5) SEXUAL ORIENTATION.—The term “sexual orientation” means how a person identifies in terms of their emotional, romantic, or sexual attraction, and includes identification as straight, heterosexual, gay, lesbian, or bisexual, among other terms.
- (6) SURVEY.—The term “survey” means a data collection activity involving observation or a questionnaire for a sample of a population and includes the decennial census.
- (7) VARIATIONS IN SEX CHARACTERISTICS.—The term “variations in sex characteristics”—
 - (A) means a physical trait present at birth or naturally occurring at a later time (including genitals, gonads, hormone function, and chromosome patterns), that differ from normative expectations for male or female bodies regarding the development, appearance, or function of sex-related characteristics; and
 - (B) is sometimes referred to as intersex traits.

Amend the title so as to read:

A bill to improve Federal populations surveys by requiring the collection of voluntary, self-disclosed information on sexual orientation, gender identity, and variations in sex characteristics in certain surveys, and for other purposes.

SUMMARY AND PURPOSE OF LEGISLATION

The LGBTQ Data Inclusion Act, H.R. 4176, would require federal agencies that collect demographic survey data to assess methods for incorporating questions about sexual orientation, gender identity (SOGI), and variations in sex characteristics into existing surveys within 360 days of enactment. The bill would also require any report published by an agency that relies on covered survey demographic data to include information on sexual orientation, gender identity, and variations in sex characteristics no later than three years after enactment.

Under the LGBTQI+ Data Inclusion Act, responses to inquiries regarding sexual orientation, gender identity, and variations in sex characteristics would be voluntary, and collected data would be subject to robust privacy and confidentiality standards.

BACKGROUND AND NEED FOR LEGISLATION

Federal data collection informs a significant range of government functions and policies that affect the health, safety, and wellbeing of the entire United States population. Federal agencies that establish policies governing how people access health care, learn in classrooms, obtain stable housing, and navigate employment rely on data to set budgets and administer crucial programs.

Currently, more than 100 federal agencies engage in data collection, and no uniform policy requires the collection of data pertaining to LGBTQI+ people.¹ While some federal surveys collect data on LGBTQI+ populations, this information is frequently piecemeal and falls short of representing the full universe of LGBTQI+

¹ Letter from David Stacy, Government Affairs Director, Human Rights Campaign, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (June 14, 2022).

communities.² For example, while the American Community Survey poses questions regarding the identification of cohabitating same-sex couples, these questions capture fewer than 1 in 6 LGBTQI+ people in the United States.³

According to a report released by the National Academies of Sciences, Engineering, and Medicine (NASEM), there is a significant gap in data collection for the LGBTQI+ community, which leads to a lack of programming and services for those within this community. There have been many changes within the LGBTQI+ community that have not been captured due to the lack of available data.⁴ NASEM also reports that government agencies and others need to change their data collection systems to better capture the needs of the community. As a result of gaps in data collection, federal policymakers have a limited understanding of the specific needs of LGBTQI+ people—limiting the ability of the federal government to develop tailored policy solutions for LGBTQI+ communities that have historically experienced health and economic inequities. While data is limited, existing research demonstrates that LGBTQI+ people experience disproportionate rates of poverty, unemployment, economic instability, housing insecurity, adverse mental and physical health outcomes, and discrimination.⁵ These inequities are even more significant for LGBTQI+ people of color, LGBTQI+ people with disabilities, and LGBTQI+ older adults.⁶

The LGBTQI+ Data Inclusion Act would establish a uniform requirement for all federal data collection agencies to determine and implement methods for collecting data pertaining to LGBTQI+ populations in their surveys. By facilitating the collection of voluntary, self-disclosed demographic data on sexual orientation, gender identity, and variations in sex characteristics, the bill would equip policymakers with the tools necessary to understand and address specific challenges that LGBTQI+ people face.

The LGBTQI+ Data Inclusion Act strikes a balance between mandatory inclusion of data pertaining to sexual orientation, gender identity, and variations in sex characteristics, while making

²Letter from Center for American Progress et al. to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Congressman Ral Grijalva (June 14, 2022).

³Center for American Progress, *Collecting Data About LGBTQI+ and Other Sexual and Gender-Diverse Communities* (May 24, 2022) (online at www.americanprogress.org/article/collecting-data-about-lgbtqi-and-other-sexual-and-gender-diverse-communities/).

⁴National Academies of Sciences, Engineering, and Medicine, *New Report Calls for More Comprehensive Data on LGBTQI+ Well-Being* (Oct. 2020) (online at www.nationalacademies.org/news/2020/10/new-report-calls-for-more-comprehensive-data-on-lgbtqi-well-being).

⁵Williams Institute, *LGBT Poverty in the United States: A Study of Differences Between Sexual Orientation and Gender Identity Groups* (Oct. 2019) (online at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>); National Academies of Science, Engineering, and Medicine, *Understanding the Well-Being of LGBTQI+ Populations* (2020) (online at <https://nap.nationalacademies.org/read/25877/chapter/1>); Williams Institute, *LGBT People and Housing Affordability, Discrimination, and Homelessness* (Apr. 2020) (online at <https://williamsinstitute.law.ucla.edu/publications/lgbt-housing-instability/>); Laetitia Zeeman and Kay Aranda, *A Systematic Review of the Health and Healthcare Inequalities for People with Intersex Variance*, *International Journal of Environmental Research and Public Health* (2020); Center for American Progress, *The State of the LGBTQ Community in 2020: A National Public Opinion Study* (Oct. 26, 2021) (online at www.americanprogress.org/article/state-lgbtq-community-2020/).

⁶Center for American Progress, *LGBTQ People of Color Encounter Heightened Discrimination* (June 24, 2021) (online at www.americanprogress.org/article/lgbtq-people-color-encounter-heightened-discrimination/); Center for American Progress, *The United States Must Advance Economic Security for Disabled LGBTQI+ Workers* (Nov. 3, 2021) (online at www.americanprogress.org/article/united-states-must-advance-economic-security-disabled-lgbtqi-workers/); Center for American Progress, *Protecting and Advancing Health Care for Transgender Adult Communities* (Aug. 18, 2021) (online at www.americanprogress.org/article/protecting-advancing-health-care-transgender-adult-communities/).

questions non-mandatory for respondents and preserving privacy and confidentiality standards necessary to prevent personal identification of any individual. The bill would also establish a waiver process for the heads of statistical units at agencies with data collection responsibilities to waive the requirements on a case-by-case basis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title is the “LGBTQI+ Data Inclusion Act.”

Sec. 2. Findings

The National Academies of Sciences, Engineering, and Medicine reported that complete and accurate demographic data on LGBTQI+ individuals should be standardized and collected because comprehensive statistics are needed to inform public policy and federal programs. Data availability is important in ensuring that disparities can be addressed. There are limited federal surveys that collect data on sexual orientation and gender, with none measuring intersex populations.

Sec. 3. Requirement to collect data on sexual orientation, gender identity, and variations in sex characteristics

(a) *Survey Requirement.* This subsection would require agencies to review existing data sets within one year of enactment to determine where information on sexual orientation, gender identity, and variations in sex characteristics are not included. Agencies would then be required to identify and employ appropriate methods to include questions on sexual orientation, gender identity, and variations in sex characteristics in covered surveys that allow for voluntary participation and protect privacy and confidentiality. Agencies would also be required to routinely assess needed changes in their data collection methods.

(b) *Data Reports; Waiver.* This subsection would require that information on sexual orientation, gender identity, and variations in sex characteristics must be included in any report released by an agency that relies on covered survey demographic data must include no later than three years after the enactment. On a case-by-case basis, the head of the statistical unit of an agency would be permitted to waive the report requirement if privacy and confidentiality standards could not be met.

(c) *Confidentiality.* This subsection would ensure that any information collected regarding the sexual orientation, gender identity, or variations in sex characteristics of a respondent would be maintained in accordance with applicable confidentiality and privacy laws, policies, and standards.

(d) *Applicability.* This subsection clarifies that individuals are not required to disclose their sexual orientation, gender identity, or variations in sex characteristics and will not face any penalties, including fines, for choosing not to answer any survey questions related to their sexual orientation, gender identity, or variations in sex characteristics.

(e) *Rule of Construction.* The data collected using these surveys would not be used in a way that would adversely impact the participant or any individual.

(f) *Definitions.* This section defines specific terms within the bill as follows:

Agency is defined as each authority of the government of the United States, whether or not it is subject to review by another agency:

Covered survey means a survey that includes demographic data that is self-reported or provided by a knowledgeable proxy;

Demographic data is defined as information about the race or ethnicity, sex, and age of a survey participant or population;

Gender identity means the gender-related identity, appearance, mannerism, or other gender-related characteristic of an individual, regardless of an individual's designated sex at birth;

Sexual orientation is defined as how an individual identifies regarding their emotional, romantic, or sexual attraction, and includes identification as straight, heterosexual, gay, lesbian, or bisexual, among other terms.

Survey, means data collection involving observation or a questionnaire for a sample of a population including the decennial census;

Variations in sex characteristics is defined as a physical trait present at birth or naturally occurring later in life, that differ from normative expectations for male or female bodies regarding the development, appearance, or function of sex-related characteristics.

LEGISLATIVE HISTORY

Representative Grijalva introduced H.R. 4176, the LGBTQ Data Inclusion Act, on June 25, 2021. The bill was referred to the Committee on Oversight and Reform. Senator Baldwin introduced the Senate companion bill (S. 2287) which was referred to the Committee on Homeland Security and Governmental Affairs.

COMMITTEE CONSIDERATION

On June 14, 2022, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported by a roll call vote of 23 ayes and 16 noes.

ROLL CALL VOTES

There were five roll call votes during consideration of H.R. 4176 on the following measures:

The amendment to the ANS offered by Rep. Biggs was not adopted.

The amendment #1 to the ANS offered by Rep. Cloud was not adopted.

The amendment #2 to the ANS offered by Rep. Cloud was not adopted.

The amendment to the ANS offered by Rep. Grothman was not adopted.

H.R. 4176, as amended, was favorably reported to the House.

COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-19

ROLL CALL

Vote on: Rep. Biggs Amendment to ANS to H.R. 4176, The LGBTQ+ Data Inclusion Act

Date: 6-14-22

VOTE #: 1

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) <i>(Chairwoman)</i>		X		MR. COMER (KY) <i>(Ranking Member)</i>	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)		X		MR. HIGGINS (LA)	X		
MR. MFUME (MD)		X		MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)			
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)			
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)				VACANCY			
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 16 Nays: 24 Present:

Passed: _____ Failed: ___X_____

(REVISED 1-25-2022)

COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-19

ROLL CALL

Vote on: Rep. Cloud #1 Amendment to the ANS to H.R. 4176, the LGBTQ+ Data Inclusion Act

Date: 6-14-22

VOTE #: 2

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) <i>(Chairwoman)</i>		X		MR. COMER (KY) <i>(Ranking Member)</i>	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)				MR. HIGGINS (LA)	X		
MR. MFUME (MD)				MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)			
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)			
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)				VACANCY			
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 16 Nays: 22 Present:

Passed: _____ Failed: ___X_____

(REVISED 1-25-2022)

COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-19

ROLL CALL

Vote on: Rep. Cloud #2 Amendment to the ANS to H.R. 4176, the LGBTQ+ Data Inclusion Act

Date: 6-14-22

VOTE #: 3

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) <i>(Chairwoman)</i>		X		MR. COMER (KY) <i>(Ranking Member)</i>	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)				MR. HIGGINS (LA)	X		
MR. MFUME (MD)		X		MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)			
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)			
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)				VACANCY			
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 16 Nays: 23 Present:

Passed: _____ Failed: ___X_____

(REVISED 1-25-2022)

COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-19

ROLL CALL

Vote on: Rep. Grothman Amendment the ANS to H.R. 4176, the LGBTQ+ Data Inclusion Act

Date: 6-14-22

VOTE #: 4

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) <i>(Chairwoman)</i>		X		MR. COMER (KY) <i>(Ranking Member)</i>	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)				MR. HIGGINS (LA)	X		
MR. MFUME (MD)		X		MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)			
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)			
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)				VACANCY			
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 16 Nays: 23 Present:

Passed: _____ Failed: ___X___

(REVISED 1-25-2022)

COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-19

ROLL CALL

Vote on: H.R. 4176, the LGBTQ+ Data Inclusion Act, as amended

Date: 6-14-22

VOTE #: 5

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) <i>(Chairwoman)</i>	X			MR. COMER (KY) <i>(Ranking Member)</i>		X	
MS. NORTON (DC)	X			MR. JORDAN (OH)			
MR. LYNCH (MA)	X			MS. FOXX (NC)		X	
MR. COOPER (TN)	X			MR. HICE (GA)		X	
MR. CONNOLLY (VA)	X			MR. GROTHMAN (WI)		X	
MR. KRISHNAMOORTHY (IL)	X			MR. CLOUD (TX)		X	
MR. RASKIN (MD)	X			MR. GIBBS (OH)		X	
MR. KHANNA (CA)				MR. HIGGINS (LA)		X	
MR. MFUME (MD)	X			MR. NORMAN (SC)		X	
MS. OCASIO-CORTEZ (NY)	X			MR. SESSIONS (TX)			
MS. TLAIB (MI)	X			MR. KELLER (PA)		X	
MS. PORTER (CA)	X			MR. BIGGS (AZ)		X	
MS. BUSH (MO)	X			MR. CLYDE (GA)		X	
MS. BROWN (OH)	X			MS. MACE (SC)			
MR. DAVIS (IL)	X			MR. FRANKLIN (FL)		X	
MS. WASSERMAN SCHULTZ (FL)	X			MR. LATURNER (KS)		X	
MR. WELCH (VT)	X			MR. FALLON (TX)		X	
MR. JOHNSON (GA)	X			MS. HERRELL (NM)		X	
MR. SARBANES (MD)	X			MR. DONALDS (FL)		X	
MS. SPEIER (CA)				VACANCY			
MS. KELLY (IL)	X						
MS. LAWRENCE (MI)	X						
MR. DESAULNIER (CA)	X						
MR. GOMEZ (CA)	X						
MS. PRESSLEY (MA)	X						

Roll Call Totals: Ayes: 23 Nays: 16 Present:

Passed: X Failed:

(REVISED 1-25-2022)

EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, Chairwoman Maloney (D–NY), offered an amendment in the nature of a substitute (ANS) to include intersex persons by requiring data collection for variations in sex characteristics, which means a physical trait present at birth or naturally occurring at a later time, that differs from normative expectations for male and female bodies. The definitions for sexual orientation and gender identity are also aligned to match current standards. The amendment would also update the name of the bill to the LGBTQI+ Data Inclusion Act. The Maloney ANS was adopted by voice.

Representative Biggs (R–AZ) offered an amendment to the ANS that would have required the collection of citizenship status.

Representative Cloud (R–TX) offered one amendment to the ANS that would have taken several exclusionary changes to the bill intended to undermine its intent, including the addition of definitions for “female” and “male”, and “sex.” Rep. Cloud offered a second amendment to the ANS that would have added significant unnecessary reporting burdens for both families and federal agencies.

Representative Grothman (R–WI) offered an amendment to the ANS that would have prohibited the collection of sexual orientation and gender identity information from a minor or the parent or guardian of a minor.

LIST OF RELATED COMMITTEE HEARINGS

In accordance with section 103(i) of H. Res. 6, the Committee held a hearing to consider topics addressed in the legislation on April 7, 2022.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the Background and Need for Legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goal or objective of this bill is to improve federal population surveys by requiring the collection of voluntary, self-disclosed information on sexual orientation and gender identity in certain surveys, and for other purposes.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill, the LGBTQI+ Data Inclusion Act, does not relate to employment or access to public services and accommodations.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII no provision of this bill establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

This bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

The Committee has requested, but not yet received, a cost estimate from the Congressional Budget Office.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

COMMITTEE ESTIMATE

The Committee has requested, but not yet received, a cost estimate from the Congressional Budget Office.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 4176, the LGBTQI+ Data Inclusion Act makes no changes to existing law.

MINORITY VIEWS

Committee Republicans oppose H.R. 4176. This legislation requires the federal government to collect data on Americans' sexual preferences, gender identity, and gender expression. More specifically, federal agencies must review existing surveys to determine which ones do not capture this information; if they do not, agencies must include sensitive and intrusive questions to capture it. The bill also requires agencies' survey reports include demographic data on sexual orientation and gender identity, defining "gender identity," "sexual orientation," and "variations in sex characteristics." The bill raises major privacy issues and lacks basic protections, including preventing these questions from being directed to children or preventing parents or guardians from characterizing children as falling into one of the targeted groups.

I. THIS BILL REQUIRES FEDERAL AGENCIES TO COLLECT SENSITIVE DATA ON AMERICANS, MAKING SUCH INFORMATION VULNERABLE TO POTENTIAL COMPROMISE, DATA LEAKS, AND HACKS

The U.S. government has no business collecting data on Americans' "sexual orientation" or "gender identity." While Democrats argue responding to such questions would be optional under the bill, their presence on a federal survey is likely to pressure respondents into answering them. Furthermore, the bill allows respondents to provide false answers to these questions, so it is likely some may perceive a certain benefit in claiming to belong to a perceived 'protected' demographic category. And notably, Committee Democrats have failed to provide a compelling rationale for collecting such information on all federal surveys. While Democrats have said this information is needed to potentially "expand needed funding and programmatic services" for the effected population, this is an amorphous and ill-defined need.¹ It still begs the question as to how such information collections will be used and what funding Democrats think is needed. We should be alarmed by this attempt to mandate the federal government collect such sensitive and private information from Americans. This bill would apply broadly across the more than 130 individual surveys, to include those related to the Census, that agencies conduct to measure important topics like the socio-economic makeup of American households, U.S. business employment rates and income data, public pensions, national prisoner statistics, and housing vacancies. The bill also requires all agencies to publish reports with this collected data, regardless of the reliability or validity of the collected information.

¹Press Release, *During Pride, Oversight Committee Passes Historic Legislation to Ensure Federal Data Inclusive of LGBTQI+ Communities*, Committee on Oversight & Reform Democrats Press Office (June 14, 2022).

In fact, one wonders why Committee Democrats believe such information should be collected at all when questioning someone on their sexual orientation is illegal, particularly in an employment context. Title VII of the Civil Rights Act of 1964 protects against employment discrimination due to sex, interpreted by the Supreme Court to afford protections on the basis of sexual orientation and gender identity. In fact, H.R. 4176 will likely require federal employers, who participate in federally administered demographic and economic surveys, to provide their employees' private information regarding the traits targeted by this bill.

Finally, federal agencies continue to suffer from weak data security. From IRS employee(s) leaking tax returns to the press to China hacking the Office of Personnel Management's background investigation files, federal agencies have failed to protect some of the most personal and sensitive information. Americans are therefore rightly concerned about the federal government's collection, handling, and use of personal information.² By collecting personal information on Americans' sexual orientation and gender identity, the federal government puts at risk data that can be misused by our adversaries, malicious actors, and even political opponents. Congress should not exacerbate current data privacy and confidentiality risks, especially where Democrats have failed to provide any tangible policy benefits.

II. THIS LEGISLATION HAS FAILED BEFORE, BUT DEMOCRATS CONTINUE TO PUSH THEIR DIVISIVE "WOKE" AGENDA ONTO THE AMERICAN PEOPLE

This bill is identical to previous bills that failed to advance through Congress.³ Despite prior failures, House Democrats continue to waste time on their social agenda while ignoring crises that impact all Americans. This Committee and the Congress should be focused on addressing crippling inflation, increasing gas prices, supply chain disruptions, an unsecured southern border, growing national security threats from our adversaries, a rising national crime wave, a botched withdrawal from Afghanistan during which brave Americans and our allies died and/or were abandoned, and consistently misguided and freedom-eroding COVID-19 pandemic policies that have further grown government overreach into every aspect of Americans' lives.

Rather than working toward solutions for all Americans, Democrats have once again chosen to focus on identity politics with a blatant attempt to further classify, categorize, and ultimately divide the American people. The vast majority of Americans want to live in peace with their neighbors and have an equal chance to pursue the American dream. This bill provides no benefit except to

²Brooke Auxier, et al., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information*, PEW RESEARCH CENTER (Nov. 15, 2022), available at <https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/>.

³"LGBTQ" stands for lesbian, gay, bisexual, transgender and queer or questioning. In the 116th Congress, House and Senate lawmakers added the letter "Q" to the bill title. H.R. 4176; S. 2287; H.R. 3509, 116th Cong. (2019); S. 1980, 116th Cong. (2019); H.R. 3273, 115th Cong. (2017); S. 1570, 115th Cong. (2017); H.R. 5373, 114th Cong. (2016); S. 3134, 114th Cong. (2016).

support President Biden’s divisive diversity, equity, and inclusion agenda.⁴

III. COMMITTEE DEMOCRATS REJECTED REPUBLICANS’ AMENDMENTS ADDRESSING THE BILL’S SEXUALIZATION OF CHILDREN, FAILURE TO DEFINE BASIC TERMS LIKE “MALE” AND “FEMALE,” AND LACK OF KEY SURVEY QUESTIONS ON U.S. CITIZENSHIP

During the Committee’s markup, multiple Republican Members proposed common-sense and reasonable amendments. Rep. Andy Biggs (R–AZ) offered an amendment that would have added U.S. citizenship to the list of federal survey questions. This is a basic question and has specific relevance to the Census, which H.R. 4176 covers. Committee Republicans believe that including illegal immigrants in the apportionment counts, which are based on the Census, dilutes the votes of American citizens. Likewise, the governance of our federal agency missions and programs should be based on the number of American citizens, not illegal immigrants. Committee Democrats’ rejection of this amendment further illustrates their willingness to ignore the crisis on the southern border, however and whenever possible.

Rep. Michael Cloud (R–TX) offered an amendment to define “male,” “female,” and “sex.” These terms are used throughout the legislation, yet Democrats were unwilling (or unable) to define basic and widely accepted biology terms. Moreover, since the bill includes troubling language allowing observers or proxies to answer survey questions on behalf of someone else, Mr. Cloud offered a second privacy-enhancing amendment seeking to require questions be answered directly by respondents, not third parties who would be providing guesses. Democrats unanimously rejected both amendments.

Finally, Rep. Glenn Grothman (R–WI) offered an amendment to exclude minors from being subjected to federal survey questions asking about their sexual orientation and gender identity. Rather than ensuring the bill avoids confronting minors with sexually oriented subject matter, Committee Democrats chose to reject Mr. Grothman’s amendment.

Finally, a bill with such weighty privacy concerns deserves a dedicated Committee legislative hearing to fully understand the bill’s potential benefits, risks, and technical feasibility.⁵ In fact, House Rule XIII requires a legislative hearing before this bill can be reported to the full House. No such hearing was held. The Committee Democrats claim the April 7, 2022, Subcommittee on Civil Right and Civil Liberties hearing entitled “Free Speech Under Attack: Book Bans and Academic Censorship” met this hearing requirement.⁶ That hearing, however, was not related to this bill. In

⁴The White House, Fact Sheet, *The Biden-Harris Administration Champions LGBTQ+ Equality and Marks Pride Month* (June 1, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-the-biden-harris-administration-champions-lgbtq-equality-and-marks-pride-month/>; The White House, Fact Sheet, *Biden-Harris Administration Advances Equality and Visibility for Transgender Americans* (Mar. 31, 2022), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/31/fact-sheet-biden-harris-administration-advances-equality-and-visibility-for-transgender-americans>.

⁵House Rule XIII.

⁶*Free Speech Under Attack: Book Bans and Academic Censorship: Hearing Before the H. Comm. on Oversight and Reform Subcommittee on Civil Rights and Civil Liberties*, 117th Cong. (Apr. 7, 2022).

fact, the Census or federal data collections were not mentioned at the subcommittee hearing.

Committee Republicans agree that collecting data through federal surveys can better inform public services, but common sense cautions expanding these surveys along divisive political faultlines. Committee Republicans support child protection, legal immigration, and privacy from the federal government's intrusion into our daily lives. We are committed to addressing improvements to federal surveys in a manner that respects these foundational American principles.

IV. CONCLUSION

Committee Republicans oppose H.R. 4176.

JAMES COMER,
Ranking Member,
Committee on Oversight and Reform.

