

Information Nation:

The Need for Improved Federal Civil Rights Data Collection

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“Information Nation” builds on our earlier reports about federal civil rights data collection as well as comments submitted to the Biden administration in connection with Executive Order 13985. EO 13985 committed the administration to pursue a “comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”

The report makes broad recommendations about how data should be collected and used to advance justice and equity and provides examples about how those recommendations apply to particular data collections or issues. We hope our colleagues across the country benefit from the report as we work toward our collective goal of restoring and expanding the scope, frequency, and public accessibility of federal data collections. The author and publisher are solely responsible for the accuracy of statements and interpretations contained in this publication.



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Table Of Contents

I. Introduction 5

II. Ensure stakeholder input and an awareness of historical context at all stages 8

- a. Stakeholder consultation must begin with an awareness of historical context
- b. Stakeholder input is necessary to ensure data advance justice and equity
- c. Stakeholder input into the way data are reported and used is also crucial to advancing equity
- d. Recommendations on how to engage with stakeholders

III. Restore and expand the scope, frequency, and public accessibility of federal data collections 15

- a. The Trump administration attacked these core principles in numerous ways
- b. Data disaggregation is a key part of the scope and accessibility of data collection
- c. The federal government must go beyond reversing the damage done by the Trump administration

IV. Disaggregate data in all surveys and data collection 24

- a. Aggregated data hide inequities
- b. Recommendations for data disaggregation across surveys

V. Improve cost-benefit analyses to explicitly take account of equity and inequality 28

- a. Count costs that are difficult to measure, including the multiple costs of discrimination
- b. Ensure that marginalized communities do not literally count for less
- c. Explicitly consider inequality by including the value of transfers
- d. Assess how rulemaking redistributes power
- e. Require equity analysis in addition to cost-benefit analysis

VI. Preserve data privacy and confidentiality 31

VII. Conclusion 34

I. Introduction

Over the last several years, our country has faced numerous historic crises. The COVID-19 pandemic, the ongoing reckoning with racial injustice, and increasingly frequent natural disasters linked to climate change have laid bare the fact that our society is rife with inequities based on race and ethnicity (including first language), sex (including sexual orientation and gender identity), disability, age, and income.

Historically and today, our government has played a significant role in creating and exacerbating inequities in our society and economy. Our government codified and enforced the institution of slavery. It facilitated genocide against Native Americans. It upheld racial hierarchies through immigration law. It excluded caregiving, domestic work, and agricultural jobs disproportionately held by people of color from the protections of federal labor and employment law. It permitted segregated and inferior educational opportunities. It created redlining policies and practices that contributed to our current racial wealth gap and the ongoing overpolicing and overincarceration of Black communities. Because the federal government has been an architect and protector of structural racism, inequality, and other injustices, it now has an obligation to do all it can to correct these inequities and to create a society in which all people can thrive.

In order to tackle each of these complex problems, we first need complete, accurate, and disaggregated data to give us a full understanding of who is impacted and how — and how the situation is changing (or not changing). Data are necessary, even though not sufficient, to advance equity and justice.

A recent example of the necessity of data to advance equity is the lack of data on COVID-19 infections and deaths by race and ethnicity, especially early in the pandemic.¹ Collection and reporting of reliable data on the pandemic's racial impact are crucial to helping advocates and policymakers understand which communities they need to prioritize in response to the virus. In the spring of 2020, although anecdotes and individual experiences were suggesting disproportionate harm in Black, Latino, and Native communities, it was difficult to see the whole picture in the absence of disaggregated data.

It was only after governments began collecting disaggregated data that it became clear that people of color were becoming ill and dying of COVID-19 at higher rates than were White people. This disproportionate risk was related to the fact that people of color were more likely to work in essential, frontline jobs that put them at greater risk; to live in multi-generational (or multi-family) households where transmission to vulnerable groups was more likely; to have less access to health care; and to have chronic health conditions, often related to systemic racism and structural inequities that threaten health.²

Even now, data on the racial impacts of the pandemic are incomplete; the CDC does not collect complete data on “breakthrough” COVID-19 cases, and the agency’s data show that information on patient race and ethnicity is available for only 65 percent of COVID-19 cases.³ Several states still do not collect data on the race and ethnicity of people who contract COVID-19. New York does not collect racial data on COVID-19 cases, just deaths; Texas reports racial data on just 3 percent of cases; and Florida collects racial data, but only in the categories “White,” “Black,” and “Latinx” — all other communities are lumped together as “other.”⁴ The lack of data about COVID-19 cases among Asian American and Native Hawaiian and Pacific Islander (AANHPI) communities in particular may have created the inaccurate impression that AANHPI communities have fared well during the pandemic.⁵

As another example, after flooding and power loss from Hurricane Ida killed dozens and devastated communities across large swaths of the United States in the summer of 2021, advocates and governors of both parties spoke about the need for climate resilience measures in infrastructure spending, including flood mitigation, more workers and equipment to fight fires, broadband expansion, coastal protection, and strengthening the electrical grid.⁶ Natural disasters, which will continue to increase in frequency and intensity because of climate change, are particularly threatening to vulnerable communities. There is an acute need for data on how vulnerable or resilient communities are to disasters, so that funding can be targeted to communities most in need of help. The U.S. Census Bureau has created an experimental tool called “Community Resilience Estimates” in an effort to measure resilience.⁷ But more focus is needed in this area; for instance, this Census Bureau tool can only be as good as the inputs, which may themselves include biases in collection.

The Trump administration engaged in concerted attacks on the integrity of federal data collection. We detailed these attacks in our 2017 policy brief, “Misinformation Nation: The Threat to America’s Federal Data and Civil Rights,”⁸ and in 2019, “Misinformation Nation II: A Deeper Dive into Threats to Federal Civil Rights Data Collection.”⁹ The Trump administration stopped, attempted to stop, or delayed the collection or publication of important information about matters like pay gaps based on race and sex; data on the health, housing, and economic well-being of LGBTQ people; the expulsion of children from preschool; and on police use of force, police-involved deaths, and deaths in custody.¹⁰ It is no coincidence that an administration that was intent on denying the reality of discrimination against people of color, women, and LGBTQ people, and ignoring the excessive use of force, police-involved deaths, and deaths in custody attempted to stop the collection of data about those precise topics. Failure to collect

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data on specific topics can sometimes seem like a technical matter, but it has the effect, often intentional, of making it impossible to tackle a problem by disguising its existence or its scope.

Ending the collection and reporting of data about these topics undermined efforts by the government and advocates to quantify inequities and to pursue policies to remedy them. The Trump administration also attempted to weaponize surveys in order to sow fear and exacerbate inequities. This was particularly clear in its attempt — ultimately unsuccessful — to add an untested citizenship question to the 2020 Census, which would have intimidated respondents, particularly respondents of color; lowered response rates; and decreased the accuracy of the data.¹¹

This report builds on our earlier reports about federal civil rights data collection. In addition, it grows out of comments that our sister organization, The Leadership Conference on Civil and Human Rights, submitted in July 2021 to the Office of Management and Budget (OMB) in response to OMB’s Request for Information titled “Methods and Leading Practices for Advancing Equity and Support for Underserved Communities through Government” (Equity RFI) and the comments of numerous other organizations. The Equity RFI sought input on how to make real the commitment to equity that the Biden administration set forth in Executive Order 13985.¹² EO 13985 committed the administration to a policy that “the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” In particular, the Equity RFI asked about how to improve federal data collections and stakeholder consultation processes in order to advance equity.

This report begins with a discussion of the importance of stakeholder input and an awareness of historical context at all stages of planning, carrying out, and interpreting data collections. It then explains the need to restore and expand the scope, frequency, and public accessibility of federal data collections, including going beyond reversing the damage done by the Trump administration. It discusses the need for disaggregated data in all surveys and data collections. It then turns to ways that federal agencies can improve cost-benefit analysis to explicitly take account of equity and inequality. Finally, it addresses the importance of data privacy. Given The Education Fund’s role at the center of the civil and human rights coalition and its work on a wide range of subjects and with multiple federal agencies, this report makes broad recommendations about how data should be collected and used to further the goals of advancing justice and equity and provides examples about how those recommendations apply to particular data collections or issues.

Failure to collect data on specific topics can sometimes seem like a technical matter, but it has the effect, often intentional, of making it impossible to tackle a problem by disguising its existence or its scope.

II. Ensure stakeholder input and an awareness of historical context at all stages

Federal agencies must begin the process of data collection by consulting with stakeholders. Gathering and honoring stakeholder input helps ensure that data collected are accurate and reflective of the lived experiences of the people affected, and thus that they can lead to effective policy solutions.

a. Stakeholder consultation must begin with an awareness of historical context

Federal agencies must be aware of and sensitive to historical and ongoing traumas and the government's role in them. This is both because that history has shaped the world about which the government is seeking to collect data in ways that agencies should be aware of, and also because that history affects communities' trust in government, or lack thereof. Agencies must take those realities into account in the way they interact with communities, determine areas of inquiry, and frame their questions.¹³

Several advocacy organizations pointed out the importance of historical awareness in their comments in response to the Equity RFI. For example, the comments by the Pueblo of Zuni noted that the Zuni people, A:shiwí, have experienced “often violent and traumatic—historical and ongoing governmental attempts at social, psychological, cultural, ideological, and economic assimilation, disenfranchisement, silencing, and erasure.”¹⁴

In the area of contraceptive care, the nonprofit Upstream USA noted that the first step toward equity is to “look at the history of the topic one is working on,” which for contraceptive care “means confronting the history of eugenics, forced and coerced sterilization, and racially-targeted population control.”¹⁵ That history impacts how contraceptive care is delivered and received today.

The National Council of Asian Pacific Americans also noted the importance of historical context to understanding and gathering data about the very different communities that make up the broad categories “Asian Americans” (AA) and “Native Hawaiians and Pacific Islanders” (NHPI). For instance, in terms of immigration, only 27 percent of Japanese Americans are immigrants, because many Japanese people immigrated to the United States in the 19th century to labor on Hawaiian plantations. By contrast, 85 percent of Bhutanese Americans are foreign-born, as many arrived recently as refugees.¹⁶ Some health disparities among AANHPI communities are similarly due to histories of war and colonialism. Southeast Asian Americans who were exposed to Agent Orange during the Vietnam War are at higher

risk of developing cancer; and the Marshall Islands were used as a military testing site for the detonation of dozens of nuclear warheads in the 1940s and 50s, with “lasting negative impacts on the health and well-being of the Marshallese community to this day.”¹⁷ This history makes it much more clear why, for instance, it is important that data about AANHPI communities be broken down or disaggregated by subgroup, such as Marshallese and Japanese, rather than lumped together as a single group.

b. Stakeholder input is necessary to ensure data advance justice and equity

Stakeholder input into all stages of data collection can ensure that the way data are collected and used advances equity and justice. When surveys are designed or modified, perspectives from a broad range of diverse stakeholder communities can help ensure that the questions and allowable responses are reflective of lived experiences, especially of marginalized communities. If surveys are designed without stakeholder input, the resulting data can be inaccurate or misleading, with the effect of erasing the identities and concealing the experiences of historically excluded individuals and communities. For instance, the lack of a “Middle Eastern and North African” option among the racial categories on federal surveys means that the experiences of people and communities of Middle Eastern and North African descent are erased. Surveys designed without considering the views of impacted communities are also likely to have lower response rates.

1. Continued use of OMB’s outdated standards on race and ethnicity

The saga of the seemingly abandoned attempts to update OMB’s Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (OMB standards or standards) demonstrate both admirable practices of soliciting and considering stakeholder input and, unfortunately, the adverse consequences of ignoring it.

For many years, the OMB standards have included people of Middle Eastern and North African (MENA) descent in the “White” racial category, even though many MENA people do not consider themselves to be White. MENA communities have advocated for the inclusion of a “Middle Eastern and North African” category in the standards for more than 30 years.¹⁸ The standards have also favored the collection of data on race and ethnicity through two separate questions, even though studies show that nearly half of Hispanic or Latino respondents do not identify with any of the delineated racial categories.¹⁹

Over the last decade, the Census Bureau engaged in a commendable effort of extensive stakeholder consultation, research, and testing about whether to revise the race and ethnicity questions for the 2020 Census.²⁰ OMB also solicited extensive public comments through Federal Register Notices on possible revisions to its standards, which affect the census and all other federal surveys.

In 2017, based on its research and testing, Census Bureau staff recommended to the census director that the agency combine the race and ethnicity questions into a single question, add a “Middle Eastern and North African” category, and make other updates to the way the 2020 Census would ask questions about race and ethnicity.²¹ These changes were subject to concurrent OMB revisions to its standards. OMB had twice solicited public comment on the proposed changes and had announced that it would make a final decision on changes by December 2017.²²

But OMB never finalized new standards or even explained why it had not done so. This left the Census Bureau no choice but to continue with a two-question format and to offer only the race categories set forth in the standards.²³ OMB’s failure to update the standards in advance of the 2020 Census continues to leave policymakers and advocates with a skewed understanding of the nation’s racial and ethnic makeup, in particular by obscuring the existence and needs of MENA communities.

OMB should proceed expeditiously to modernize the race and ethnicity standards through the regulatory process, while the Census Bureau should begin the process of improving the race and ethnicity questions for the 2030 Census and other surveys, such as the American Community Survey (ACS), in a timely way to ensure that data accurately portray the U.S. population.

2. Attempt to include citizenship question on the 2020 Census

The Trump administration’s unsuccessful effort to include a citizenship question on the 2020 Census is another example of how data collection designed without regard to, or in opposition to, stakeholder input can be harmful.

Commerce Secretary Wilbur Ross proposed adding a citizenship question late in the process of finalizing the census questionnaire, without stakeholder consultation or testing. The Trump administration claimed that the information was necessary to enforce the Voting Rights Act (VRA).²⁴ In fact, the Justice Department has enforced the VRA since its enactment based on the results of data collected only from a sample of U.S. households, first through the so-called census “long form” and later through the American Community Survey, which replaced the long form in 2005. The ACS, like the long form before it, asks about citizenship; the data are used to help implement the VRA. Asking the question on the census form that goes to all households would have raised concerns among immigrants and non-immigrants and citizens and non-citizens alike about the confidentiality of information gathered by the government and how census data might be used. The Census Bureau’s own recent studies showed that a citizenship question would likely reduce response rates and lead to an undercount, especially in immigrant communities.²⁵

Fortunately, the Supreme Court recognized that the government’s rationale for adding the question was pretextual,²⁶ and the question was not included on the 2020 Census.²⁷

c. Stakeholder input into the way data are reported and used is also crucial to advancing equity

The way data are interpreted and used is just as important as what data are collected. Valuing stakeholders' views on the ways data will be used and interpreted can ensure that data are not presented or employed in ways that are harmful to the goal of advancing equity. Agencies should employ the same type of affirmative outreach strategies to engage affected communities at these later stages as they do at the stage of designing survey instruments and other collection activities.

1. Misuse of race-norming

The recent controversy over the statistical practice of “race-norming” demonstrates how data can be presented and used either to advance or to hamper equity and how important stakeholder feedback is to ensuring that data are used in a pro-equity way.

Race-norming originated as a technique to recognize and correct for the fact that many standardized tests are systematically biased against Black and other non-White test-takers, in lieu of identifying and employing less discriminatory measures. In the 1970s and 80s it became common for government employers to adjust aptitude scores in job applications to account for these biases. In other words, race-norming was originally used to counteract systemic racism and advance equity — albeit in the context of continuing to use admittedly biased measures.²⁸

Race-norming was outlawed in employment by the Civil Rights Act of 1991, but a version of it remains common in medicine. This newer version of race-norming has sometimes been used in a way that perpetuates racist beliefs and outcomes. The issue gained attention in the summer of 2021 because of news reports that the NFL would stop using race-norming in its settlement of players' concussion lawsuits against the league. The way race-norming was used in this context made it less likely that Black players would be compensated for injuries from concussions. Specifically, because the cognitive tests that were being used to measure the effects of concussions on football players consistently showed lower scores for Black test-takers, if a Black player and a White player had the same cognitive test results, race-norming would mean that the Black player would be assumed to have had a lower starting score and thus to have had less of a cognitive decline due to head injuries. In other words, by race-norming data, the NFL calculated that Black players were owed less compensation than White players with similar scores.²⁹ A similar practice of race-norming is common in many areas of medicine, sometimes in ways that have consistently negative impacts on Black and other non-White communities.³⁰

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It was only after two Black players filed a lawsuit about the practice of race-norming, medical experts expressed concerns, and NFL families delivered tens of thousands of petitions to a courthouse in Philadelphia, that the existence of the practice and its racist implications and results became widely known. The NFL subsequently agreed to stop using it.³¹ Systematic involvement earlier in the decision-making process by members of affected communities and experts with knowledge of these communities could help avoid this type of racist misuse of data.

d. Recommendations on how to engage with stakeholders

In order to engage meaningfully with stakeholders, agencies should reduce barriers to stakeholders' ability to provide comments and other feedback. They should also actively reach out to and engage stakeholders who are members of or representatives of marginalized communities and to those who do not frequently participate in the regulatory or policymaking processes. These recommendations are tailored to agency actions about surveys and data collections but also are more generally applicable to all federal policymaking.

1. Notice and comment process

A federal law called the Paperwork Reduction Act requires agencies to provide written notice to the public and an opportunity for public comment whenever they propose a new or amended collection of information from the public and every three years even when the information collection does not change. The Paperwork Reduction Act generally requires a notice period of at least 60 days on specified topics, including the necessity of the information collection; the accuracy of the agency's estimate of the paperwork burden; the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the information collection.³² As the law's name suggests, its focus is on reducing the burden of paperwork, not on ensuring that information collections advance civil rights. A different law, the Administrative Procedures Act, requires public notice and comment for all federal regulations.

The notice and comment processes required by these laws are important, but agencies should go beyond them to ensure that they hear the views of affected communities.³³

When agencies solicit comments, those notices should be provided in multiple languages, published at the same time. They should also be written in ways that are "cognitively accessible" for people with disabilities. For instance, they should be screen reader accessible and available in a plain language format.³⁴ The Department of Health and Human Services (HHS) has long created language access plans to ensure that entities are aware of the languages spoken by communities they serve and that people can access programs in those languages. Agencies could broaden this idea by creating an access plan for their stakeholder engagement efforts that would include language interpreters and interpreted materials, sign language interpreters, large print or Braille documents, audio/video formats, and other communication assistance.³⁵

Comments should also be accepted in any language. This is not consistently the practice now. For instance, under both the Trump and Biden administrations, the Department of Homeland Security (DHS) solicited comments on proposed changes to the public charge rule, which would impact millions of individuals, many of whom do not speak English. In both cases, DHS specified that it would only accept comments in English. By comparison, the Department of Health and Human Services' Office for Civil Rights accepted comments on its proposed nondiscrimination rules in any language.³⁶

Participating in the notice and comment process can be very difficult for some people with disabilities, including people with autism and intellectual disability, as well as physical disabilities. To reduce barriers to participation for people with disabilities, agencies should accept comments in a variety of nontraditional formats, including voice recordings and through alternative and augmentative communication devices.³⁷

In addition to simply soliciting comments on regulations.gov, agencies should post notices in other online locations where stakeholders are likely to see them, including through social media. They should also conduct listening sessions and hearings with the option to participate virtually and by phone, particularly for people in rural areas with little broadband access.³⁸

2. Affirmative outreach to stakeholders

In addition to making the conventional notice and comment process more accessible, agencies should conduct affirmative outreach to organizations that are part of, or represent, marginalized communities and those that are not “frequent flyers” in the regulatory process. While the notice and comment process is ostensibly open to the public, comments submitted through it disproportionately come from lawyers, national advocacy organizations, and corporate interests — less so from individuals and smaller organizations. Affirmative outreach is needed to counter this tendency.³⁹

Agencies should aim to develop meaningful relationships with community organizations, so the organizations can serve as ambassadors and can relay messages to communities that often do not trust the government. Agencies can cultivate that trust by ensuring that stakeholder input is honored and valued and by conveying results back to communities to make sure their contributions were captured accurately or to explain why the agency might have followed a different course of action.

Examples of the types of organizations that agencies should reach out to are national, state, and local advocacy organizations; federally qualified health centers; historically Black colleges and universities (HBCUs) and Hispanic-Serving Institutions (HSIs); tribal groups; self-advocacy organizations for people with disabilities; and organizations led by people of color, LGBTQ people, people with disabilities, and immigrants. These groups should be treated as “partners in the policymaking process, with perspectives as important as those of industry groups and state and local governments.”⁴⁰

Agencies should also consider outreach to community representatives in schools, jails and prisons, shelters for people experiencing homelessness, community centers, and other locations to engage directly with disadvantaged students, incarcerated people, unhoused people, voters, and others.⁴¹

If agencies establish advisory boards or similar bodies that require an ongoing commitment, they should be transparent about the time commitment and compensation, be flexible, and hold virtual meetings at multiple times to accommodate work and child care schedules.⁴² Outreach to community organizations should not be done only when the topic at hand is about that particular community. For instance, outreach to LGBTQ groups should not just be done for data collection or policymaking about sexual orientation and gender identity (SOGI) issues, nor to Native American tribes and groups just about tribal surveys or policy issues. Because data collection and policy impact all people, outreach should be done to all communities on the full range of data collection issues and policies, including immigration, gun safety, and justice reform.⁴³ In conducting outreach to Native American tribes, it is important not to treat multiple tribes as one homogenous group. Each tribe is a sovereign nation. It is particularly important to be attentive to Native “cultural protocols around information sharing, confidentiality, and sensitivity.”⁴⁴

III. Restore and expand the scope, frequency, and public accessibility of federal data collections

For decades, The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights, other civil rights and advocacy organizations, and researchers have fought to preserve and expand the scope, frequency, and public accessibility of data collections across the government. A key part of scope is disaggregation: Agencies must collect and present information on subgroups, such as by race, ethnicity, gender, and age, so that the resulting data accurately reflect reality for different subgroups of people, rather than masking these nuanced realities by just revealing large trends. The need for disaggregation across surveys and data collections is discussed in more depth in section IV.

a. The Trump administration attacked these core principles in numerous ways

As we cataloged in our 2019 “Misinformation Nation II” policy brief, the Trump administration attacked these core principles and attempted to politicize and weaponize surveys and data collection. In addition to the attempt to add a citizenship question to the 2020 Census and the decision not to revise the OMB standards for collecting race and ethnicity data, which prevented the Census Bureau from modernizing these questions in the 2020 Census, there were several other threats to the 2020 Census. These included an inadequate budget in FY 2018, when the Census Bureau needed to perform a dress rehearsal for the census; a lack of qualified, independent, full-time leadership at the bureau;⁴⁵ and an unjustifiable shortening of the time allotted to complete the census despite the pandemic.⁴⁶ There were numerous efforts to limit the collection of data on the health, economic, housing, and other circumstances of LGBTQ individuals, including in the Census Bureau’s American Community Survey, HHS’s National Survey of Older Americans Act Participants, an HHS survey of individuals with disabilities, a HUD survey on LGBTQ homelessness programs, the National Crime Victimization Survey, and the Department of Education’s Civil Rights Data Collection.⁴⁷ The FBI withheld and delayed several studies of crime and criminal justice, including on use of force, police-involved deaths, and deaths in custody.⁴⁸ In the area of labor and employment, the administration attempted to stop the collection of data on racial and gender pay gaps; eliminated a requirement for employers to report labor law violations; and tried to hide an analysis of eliminating a tipped-worker regulation.⁴⁹ Education, health and human services, and housing data collections were also curtailed, including by eliminating questions in the Civil Rights Data Collection about student scores on AP tests, ending collection of data on preschool expulsions, and reducing the amount of data gathered on mortgage lending practices by financial institutions.⁵⁰

b. Data disaggregation is a key part of the scope and accessibility of data collection

In many existing federal surveys, data about a certain phenomenon, like labor market participation or student loan default rates, are not sufficiently disaggregated by race and ethnicity (including subgroups and first language), sex (including sexual orientation and gender identity), disability, age, income, and other characteristics like geographic area or social determinants of health. Or, the data may be broken down, for instance, by race, by gender, and by age, but not by race, gender, and age. In that case, the data would reveal outcomes for men and women, or Black and White and Latino and Native and AAPI people, but not for Black women or for Korean American men over the age of 65.⁵¹

Disaggregation means breaking down large data categories into more specific subcategories.⁵² When data are disaggregated, researchers can analyze the relationship between multiple variables, such as race and age (a process known as cross-tabulation). While disaggregation technically refers to the way data are presented, it is not possible to disaggregate a data set unless the information on subgroups has been collected. So, in the discussion below, we use “disaggregation” to refer both to collecting information on race, ethnicity, subgroups, and other characteristics and also to making the resulting data available broken down by those characteristics.

c. The federal government must go beyond reversing the damage done by the Trump administration

Since President Biden took office in January 2021, his administration has begun to reverse many of the Trump administration’s attacks on data collection and accessibility. But there remains more work to be done just to get back to where the nation was a little more than four years ago. OMB should lead agencies in examining changes to their data collection practices over the last four years to determine whether these changes harmed the goal of advancing equity by reducing the scope, frequency, and public accessibility of data collection. OMB standards should also be viewed as the floor, not the ceiling, as to what data are collected.

Beyond simply reversing the harmful changes made by the Trump administration, the government should expand the scope, frequency, and public accessibility of data collections to ensure that there is robust information on the significant challenges facing our country. Scope and frequency are both important aspects of ensuring that the government is collecting data that accurately reflect the country. If data are not collected on important issues, we cannot know the size or shape of those issues; and if data are not collected frequently enough, our understanding will be outdated and inaccurate. There can be a tension between the scope and frequency of data collection, on the one hand, and the burden on the public on the other. We argue that the increased burden on the public in responding is offset by the value of the data collection to the public.

Public accessibility is crucial to allow advocates, researchers, and other members of the public to assess and address the needs of vulnerable populations and underserved communities. And data belong to the public, both in the sense that the public provides the information, either directly as survey respondents or indirectly through other programs that are sources of administrative records, and in the sense that the public pays for data collection activities through tax dollars.

The discussion below is not an exhaustive list of all improvements needed to federal data collections. It simply highlights several particularly vital surveys and data collections that should be created, expanded, or made more accessible.

1. Department of Education's Civil Rights Data Collection

The civil and human rights community has relied on the Department of Education's Civil Rights Data Collection (CRDC) since the program began in 1968. It is vitally important to preserve and increase the scope, frequency, and public accessibility of the CRDC so as to support the work of the Department of Education and others in ensuring equal educational opportunity and compliance with federal civil rights law. The CRDC plays an important role in ensuring the Department of Education's Office for Civil Rights (OCR) takes its responsibilities seriously and takes action when there is unequal educational opportunity. Disaggregated data reported in the CRDC by race, ethnicity, native language, socioeconomic status, English learner status, disability status, disability type, and sex (including sexual orientation, gender identity, and pregnancy or parenting status) shed light on students' experiences in schools and whether all students have equal access to a high-quality education. Effective data collection and dissemination are necessary for evaluation and review of all other programs and activities.

Attacks on the scope, frequency, and public accessibility of data are all illustrated by changes to the CRDC under the Trump administration. In terms of scope, the Department of Education cut important questions from the survey instrument, including those about the number of English learner (EL) students enrolled in EL programs, disaggregated by disability status under the Individuals with Disabilities Education Act (IDEA); numbers of preschool students who received one out-of-school suspension (disaggregated by race, sex, disability-IDEA, and EL status) and those who received more than one; whether preschool is provided to all students, students with disabilities, students in Title I schools, and students from low-income families; and numbers of specific types of violent incidents, including physical attacks or fights with firearms or explosives.⁵³

In terms of frequency, the Department of Education delayed the CRDC collection originally scheduled for 2019-2020 until 2020-2021 and then did not finalize the survey instrument for 2020-2021 until more than halfway through the school year.⁵⁴ In terms of public accessibility, the Department of Education did not make public the CRDC results for

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2017-2018 until October 2020,⁵⁵ and the most recent national estimates readily available to the public are still from the 2015-2016 school year.⁵⁶

The CRDC also has gaps when it comes to collecting important demographic information about students, including sexual orientation and gender identity (SOGI)⁵⁷ and pregnancy and parenting status.⁵⁸ OCR should collect, disaggregate, and cross-tabulate data on sex, race and ethnicity, native language, socioeconomic status, English learner status, disability status, disability type, sexual orientation, gender identity, and pregnancy or parenting status.⁵⁹ It should also add questions about instances of bullying and harassment, bullying and harassment policies, and overall school climate.⁶⁰

As The Leadership Conference recommended in prior comments and letters on the CRDC, in addition to expanding the scope of the CRDC survey, OCR should also expand its frequency and availability. It should make the survey annual instead of biennial and should use the CRDC's user-friendly interface to make information from other Department of Education data sets more readily available to the public.⁶¹

2. Resume collection of data on pay gaps through the EEO-1 Component 2

Under the Trump administration, the U.S. Equal Employment Opportunity Commission (EEOC) ended the collection of data on race- and gender-based pay gaps through the EEO-1 Component 2 data collection. This data collection is vital to understanding and tackling pay discrimination and should be reinstated.

Pay discrimination inflicts serious harm on women and people of color. Black women are paid just 64 cents for every dollar paid to non-Hispanic White men, Latina women 57 cents,⁶² Asian American and Pacific Islander women 85 cents, and some Asian American subgroups, like Burmese women, just 52 cents.⁶³

Accordingly, in September 2016, after extensive stakeholder engagement and analysis, the EEOC finalized a plan to begin collecting summary pay data by race and sex from businesses with more than 100 employees. However, in August 2017, under the new administration, OMB abruptly stayed the collection of Component 2 data. The EEOC only began collecting the data for 2017 and 2018 after being ordered to do so by a federal court.⁶⁴ The EEOC argued in a March 23, 2020 notice that it would not collect the data because doing so would burden employers and because the utility of the data was “uncertain,” even though it had not even analyzed the data it had already gathered and despite thousands of comments from civil rights and other stakeholder groups, academics, and members of the public discussing the utility of those data.⁶⁵

As of yet, the EEOC has not announced plans to reinstate the Component 2 data collection. In the interest of advancing equity and the scope, frequency, and public availability of vital civil rights data, it should do so.⁶⁶ The EEOC should also consider using the EEO-1 to collect other important data on sexual orientation, immigration, and/or disability status and further disaggregating race and ethnicity data, including for AANHPI communities and individuals of Latino, Hispanic, or Middle Eastern and North African descent.

3. Law enforcement use of force

The use of force by law enforcement officers, particularly against Black and Brown people, is an issue of acute national importance. But there is no comprehensive public-sector national database on law enforcement use of force, and the voluntary database run by the FBI may be shut down because of lack of participation by local law enforcement agencies.

The FBI created a National Use of Force Data Collection in 2015, and it began collecting data in 2019. Participation in the database has always been up to individual law enforcement agencies, and most of them do not bother. According to a December 2021 Government Accountability Office (GAO) report, only 44 percent of law enforcement agencies submitted data to the FBI's database in 2019, and 55 percent in 2020. The GAO's report warned that the database might be shut down by December 2022 if participation does not rise to at least 60 percent.⁶⁷

The Leadership Conference and The Education Fund have stepped in to fill this gap by establishing Accountable Now, a template for a national police use-of-force database that is available to the public.⁶⁸ Accountable Now collects available data which, when available, includes the location of an incident, the type of force used, the race of the officer and community member involved, and injuries sustained. A nonpartisan research organization, NORC at the University of Chicago, cleans and harmonizes the information for a data explorer tool so that users can compare use-of-force statistics across police departments.⁶⁹

However, data on police use of force should not have to be gathered by private organizations or be reliant on private funding. Most importantly, its success should not depend on the decisions of individual law enforcement agencies as to whether to participate. We are encouraged by the recent news that the DOJ will recommend improvements to strengthen data collection and reporting by law enforcement agencies that receive federal funding.⁷⁰ But the federal government must make use-of-force data collection and reporting mandatory for all local, state, and federal law enforcement departments in the United States and its territories. Complete and accessible data on police-community interactions are needed to create accountability, ultimately contributing to the goal of nondiscriminatory policing.⁷¹

4. Accurate federal data on hate crimes

White nationalist violence terrorizes communities in the form of hate incidents and hate crimes. When an individual is targeted for hate violence on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, or disability, the impact goes beyond that person; it devastates an entire community.

Complete and accessible data on police-community interactions are needed to create accountability.

The Hate Crimes Statistics Act recognized the importance of the federal government capturing accurate data on hate crimes in jurisdictions across the country.⁷² Data-driven policy enables law enforcement to effectively target resources and is critical to enabling communities targeted for hate to access the support and resources that they need. But federal hate crimes data as reported by the FBI through the Uniform Crime Reporting (UCR) Program are so notoriously unreliable that the data are actually undermining the work of law enforcement and community leaders trying to effectively combat hate.

For example, in 2019, the most recent year for which FBI hate crimes data are available, the FBI's UCR Program reported that 7,314 hate crime incidents occurred. The data available indicated that 2019 was the deadliest year for hate crimes since reporting began in 1991. And yet, we also know that this number grossly underestimates the actual number of hate crimes in the United States, as the FBI's report is based on voluntary local law enforcement reporting data to the FBI. In 2019, 86 percent of participating agencies did not report one single hate crime to the FBI, including at least 71 cities with populations over 100,000. Just 14 percent of the more than 15,000 participating agencies reported at least one hate crime. Meanwhile, the number of law enforcement agencies providing data declined for the second straight year.

Furthermore, in a 2017 Hate Crime Victimization Report published by the DOJ's Bureau of Justice Statistics (BJS), BJS statisticians reviewed data from the DOJ's National Crimes Victimization Survey. In that study, they estimated that U.S. residents actually experienced an average of 250,000 hate crime victimizations each year from 2004-2015.⁷³ Thus, the same DOJ that reports approximately 7,000 hate crimes incidents each year also recognizes that the actual number is closer to 250,000. The Hate Crime Victimization Report estimated that 54 percent of hate crime victimizations were not reported to police.⁷⁴

When a person or community knows that hate crimes have targeted people in their community and learns that the police department, and in some cases an entire city or state, has reported to the federal government that no hate crime has occurred, it sends a very clear message about who is protected and who is respected. It can undermine communities' trust in law enforcement and government in general. The Department of Justice has committed to improving hate crimes data collection. This will require both effective engagement with communities targeted for hate and holding law enforcement agencies accountable for accurate reporting.

5. Higher education data

In 2018, The Education Fund, The Leadership Conference, and dozens of other members of the Higher Education Civil Rights Coalition published the “Civil Rights Principles for Higher Education.”⁷⁵ As that report highlighted, high-quality, disaggregated data are needed to shine a light on inequities within higher education and to inform policies that combat those inequities. Without better information about how institutions and programs are serving students, racial, socioeconomic, and other inequities will remain hidden and our system will continue to fail the students who can benefit most from a college education.

For example, federal graduation rates only count 47 percent of today’s college students, leaving out part-time students and transfer students who are disproportionately students of color or low-income students.⁷⁶ These graduation rates also fail to count transfer from a two- to a four-year program as a successful outcome. The Department of Education recently added completion rates for part-time and transfer students to a national longitudinal survey,⁷⁷ but these data are not disaggregated by race, gender, age, or disability, so key questions of equity and postsecondary completion remain unanswered.

Another example of a data gap that affects the most marginalized communities is post-college employment and earnings, where federal data omit those individuals who do not receive federal financial aid — about 30 percent of college students nationwide. Furthermore, median salaries are only available at the institutional (college) level, clouding important differences in outcomes between programs and cannot be matched with students’ and workers’ demographic information. In some institutions and systems, large proportions of students are left out. For example, about three-quarters of students in the California Community Colleges System are omitted from these earnings metrics because they do not receive federal aid.⁷⁸ A student-level data network would shed light on which programs and institutions are successfully closing racial and ethnic employment gaps.

The data-related policy recommendations in “Civil Rights Principles for Higher Education” are:⁷⁹

- **Overtake the student-level data ban.** A decade-old ban on the collection of student-level data stymies efforts to uncover inequitable outcomes within individual colleges and programs. A secure, privacy-protected, student-level data network (SLDN) disaggregated by key student characteristics would make available more comprehensive and useful data on college access, affordability, and outcomes. This information should be available publicly at the institution- and program-levels, equipping students, families, policymakers, and institutions to make better-informed decisions. It would provide advocates with the information they need to more effectively fight for the most marginalized students.

- **Maintain, continuously update, and improve the College Scorecard.** A robust, consumer-friendly, centralized online resource like the College Scorecard is critical for allowing students and families easy access to up-to-date, meaningful, and comparable information about schools and programs. While students need access to information about future earnings and career opportunities related to certain fields of study, value must not be defined in narrow terms. For example, there are some programs that have a high initial return on investment immediately after graduation and others that take longer to show their full value for students (i.e. STEM programs vs. liberal arts). The College Scorecard should provide useful and accessible data without narrowing students' options by defining value in narrow terms.
- **Disaggregate Asian American and Native Hawaiian and Pacific Islander (AANHPI) data.** Without disaggregating data for AANHPI students, it is not possible to see the significant barriers to a quality higher education that different groups within this diverse community are facing. For example, the barriers to college access and success Southeast Asian American (SEAA) students face are more like those faced by Black and Latino students than other groups of Asian American students. Often students from low-income, refugee communities affected by war, genocide, and displacement to the United States, SEAs have limited access to high-quality education and meaningful educational support to succeed to the same degree as their peers. Without the opportunity to understand the experiences of diverse student groups through meaningful and detailed data, inequities will be missed, and colleges and universities will continue to fail students.
- **Allow for cross-tabulation of data.** It is critical to have access to cross-tabulated data that allow for an understanding of student experience at the intersection of identities. Latino students with disabilities, for example, may have a very different experience from Latino students without disabilities or White students with disabilities. These data allow communities, educators, researchers, and policymakers to identify what is working for different groups of students and where interventions are needed.

6. Health Care Rights Law (Section 1557 of the Affordable Care Act)

Section 1557 of the Affordable Care Act (ACA) ensures nondiscrimination in health programs and activities receiving federal financial assistance, programs and activities administered by the federal government, and entities created under Title I of the ACA. The Leadership Conference and many other civil rights advocates worked closely with the Obama administration on regulations implementing Section 1557, which were finalized in 2016. In 2020, the Trump administration enacted new regulations that significantly narrowed the protections of the 2016 regulations.

The Department of Health and Human Services and its Office for Civil Rights (OCR) should issue new regulations restoring the protections of the 2016 regulations, and they should also go further by, among other recommendations, requiring all covered entities to collect comprehensive and disaggregated demographic data about the populations they serve, including by race, ethnicity, preferred language, sex, gender identity, sexual orientation, disability status, pregnancy status, and age. These data are integral to understanding whether a particular health program is upholding civil rights requirements, addressing health disparities, and improving the health outcomes of all groups. Without these data, average improvement in the health outcomes could mask a lack of improvement or even deterioration in outcomes for a specific population.

7. HUD's Affirmatively Furthering Fair Housing data and mapping tool

As part of the Department of Housing and Urban Development's (HUD) mandate to carry out its Affirmatively Furthering Fair Housing (AFFH) rule, HUD created an AFFH data and mapping tool that is a good example of a user-friendly data tool available to the public. The tool contains information on topics like racial concentration over time, where households of different national origins are located, and the racial and ethnic concentrations of neighborhoods in which publicly supported housing is located. It includes data from the Census Bureau as well as other sources. Other agencies should consider building similar tools with publicly available information. However, the tool would be more useful with additional disaggregation.⁸⁰

8. Federal Communications Commission's equal employment opportunity data

Collecting employment data is central to the obligation of the Federal Communications Commission (FCC) to ensure nondiscriminatory employment practices and to track the success of its policies. The FCC is statutorily required by the Communications Act to collect industry-wide broadcast television employment data through demographic employment reports (Form 395-B). But for nearly 20 years, the FCC has failed to collect industry-wide equal opportunity employment (EEO) statistics as required by law. This failure to collect data makes it difficult, if not impossible, for the FCC to evaluate industry trends that may shed light on the overall effectiveness of the FCC EEO rules protecting against unlawful discrimination. The FCC should comply with its statutory obligation to collect EEO data.

IV. Disaggregate data in all surveys and data collection

Disaggregation is necessary so that researchers and advocates can see nuances in large trends and the interactions of different factors on marginalized groups. Disaggregation on the basis of characteristics such as race and ethnicity, country of origin, and sexual orientation and gender identity is particularly important both because those are the bases for civil rights enforcement and also because these aspects of individuals' identities have been the bases for their marginalization. After a long history of policies and practices that excluded people and discriminated against them because of their race, ethnicity, sex (including sexual orientation and gender identity), age, and disability, it is only possible to know if progress is being made by reviewing data that takes into account those same factors.

Among the hundreds of organizations' and individuals' responses submitted to OMB in response to the Equity RFI, there was wide agreement that data disaggregation is a high priority.⁸¹

All agencies should disaggregate data in all data collections by geographic area, race and ethnicity (including first language), sex (including sexual orientation and gender identity), disability, age, and income. Agencies should also disaggregate data in many cases by factors such as parenting, pregnancy, caregiving status, and social determinants of health — unless there are compelling reasons why they are not able to do so. It may be necessary to oversample smaller subgroups to make disaggregated data statistically reliable in a cost-effective way.⁸² It is also important to keep data privacy in mind when making disaggregated data available, as there is a greater risk of identifying individuals when more information is provided about smaller populations.

OMB should work with the Census Bureau, agencies, and stakeholders, including community members, data users, and researchers, to develop protocols for using data disaggregation consistently across federal data collections, analysis, and reporting. These protocols could address issues like how to tabulate responses written into text boxes and how and when to report a “roll up” of racial and ethnic subgroups if the data are not adequate to report more detailed information.⁸³ Uniform standards will result in higher quality data and permit more ready analysis across federal data sets. OMB should require agencies to either disaggregate data in all data collections or provide compelling reasons why they are not able to do so.

a. Aggregated data hide inequities

Failure to disaggregate data makes it impossible to quantify and compare the experiences and outcomes of subgroups, particularly those that are historically and currently marginalized. Broad trends like decreasing unemployment or falling COVID-19 infection rates often mask much more negative outcomes for particular groups.⁸⁴

Disaggregated data can be a matter of life and death. As Rhonda Vonshay Sharpe of the Women’s Institute for Science, Equity, and Race put it, “How did we learn that Black women have a lower incidence of breast cancer but a higher mortality rate? Or that Black men are more likely to get prostate cancer and twice as likely to die from it? We disaggregated data by gender *and* race.”⁸⁵

There are numerous examples of inequities that would remain hidden if data were not disaggregated:

- Black men have the highest rate of new cancer diagnoses of any group.⁸⁶
- Black and Indigenous women have much higher rates of maternal mortality compared to non-Hispanic White women.⁸⁷
- Despite the “model minority myth” that Asian Americans have high levels of income, homeownership, education, and health, disaggregated data show huge disparities in all of these areas among AANHPI groups. For instance, the percentage of Asian Americans living below the poverty line ranges from 6.8 percent of Filipino Americans to 39.4 percent of Burmese Americans.⁸⁸
- LGBTQ people have higher poverty rates than cisgender straight people. While rates vary based on sexual orientation and gender identity, as well as race and other factors, LGBTQ people as a group experienced a poverty rate of 21.6 percent according to a 2019 report, compared to 15.7 percent for cisgender straight people. LGBTQ people were twice as likely to receive SNAP benefits as non-LGBTQ households (14.6 percent compared with 7.8 percent).⁸⁹
- The LGBTQ community was particularly hard-hit financially by the COVID-19 pandemic, with 66 percent of LGBTQ households experiencing financial problems during the pandemic, compared to 44 percent of non-LGBTQ households. This is likely related to the fact that approximately 40 percent of LGBTQ people work in highly impacted fields like food service, hospitals, K-12 and higher education, and retail, compared to just 22 percent of non-LGBTQ individuals.⁹⁰ However, due to inadequate data collection, it is unknown how many LGBTQ people contracted COVID-19.⁹¹

**Disaggregated
data can be
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and death.**

b. Recommendations for data disaggregation across surveys

1. Combine race and Hispanic origin questions

As discussed above in section II.b.1., despite receiving thousands of comments and announcing that it would make a decision by December 2017 about revising its outdated 1997 OMB Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, OMB still has not modified those standards. This failure, in turn, prevented the Census Bureau from being able to make several improvements to the 2020 Census that its experts had proposed in February 2017, likewise in response to years of stakeholder feedback.

OMB should honor the overwhelming amount of feedback it received on the standards and make the changes necessary to allow the Census Bureau and other agencies to combine the separate race and Hispanic origin questions into a single race/ethnicity question, while continuing to permit people to select more than one race or ethnicity. This would allow respondents to answer consistent with their self-understanding. Many Hispanic or Latino people do not identify with any of the official racial categories, and many, such as Afro-Latinos and Asian American Latinos, identify with more than one heritage.⁹²

2. Add “Middle Eastern and North African” category

Continuing on the theme of OMB standards, OMB should also update them to permit federal agencies to add a new “Middle Eastern or North African” category when collecting data on race and ethnicity.

This would end the erasure of MENA people that results from including them in the definition of the “White” racial category and would reflect the fact that MENA people generally identify as a distinct racial or ethnic group.⁹³ It would allow the collection of important data on this often marginalized community. For instance, current population numbers, COVID-19 infection and death rates, hate crimes, and socioeconomic and health outcomes of people of MENA origin are unknown or underreported.⁹⁴

3. Further disaggregate data about Asian American and Native Hawaiian and Pacific Islander communities

Asian Americans and Native Hawaiian and Pacific Islander communities are tremendously diverse. The Census Bureau reports data annually on at least 22 distinct, self-identified AANHPI groups, each with unique linguistic, cultural, and historical differences. When government agencies report only aggregate data under the “Asian” category, they conceal significant differences and inequities among the many distinct AANHPI groups. Agencies should disaggregate data based on the numerous AANHPI subgroups.

Disaggregating data on AANHPI groups helps policymakers figure out how to best support unique communities in education, health, and more. Without data on how many people live in each community, who comprises that community, and what their unique needs are, policymakers cannot know how to address community needs effectively and successfully.

For example, knowing the disaggregated data on the higher-than-average rates of cervical cancer among Hmong Americans helps health policymakers and practitioners provide better, more targeted care for Hmong Americans than if they only had cervical cancer rates for one large “Asian” group.

As another example, for Southeast Asian Americans (SEAA), the mass collective trauma from war, genocide, displacement, and the stressors associated with relocation — like English language difficulties, cultural conflicts, and racism — affect health and socioeconomic outcomes. Disaggregating AANHPI data makes visible the needs of SEAA communities and helps to ensure that they receive their just share of resources and support.

Without data on how many people live in each community, who comprises that community, and what their unique needs are, policymakers cannot know how to address community needs effectively and successfully.

4. Sexual orientation and gender identity

Federal agencies should add questions about sexual orientation and gender identity (SOGI) to all surveys and data collections and disaggregate results on those bases.

Most major surveys administered by the government still do not collect information on SOGI. As the LGBTQIA+ Primary Care Alliance put it, this “perpetuates the invisibility of sexual and gender diverse people and further stigmatizes them as unworthy of notice.”⁹⁵ Some federal surveys ask questions that are partial proxies for SOGI; for instance, the census and the American Community Survey ask about “same-sex” spouses or partners in the household relationship question. However, given that many LGBTQ people do not live with a spouse or partner, these questions do not produce data on the number of LGBTQ people — and they do not ask about gender identity at all.⁹⁶

Collecting data about SOGI is also supported by the 2020 Consensus Study Report of the National Academies of Sciences, Engineering, and Medicine, which recommends that government entities and other stakeholders should consider adding those measures “to all data collection efforts and instruments.”⁹⁷

Studies by the OMB’s Federal Interagency Working Group on Measuring Sexual Orientation and Gender Identity show that SOGI questions can readily be used on surveys and provide a roadmap to when to include those questions. Research also shows that these questions are not especially difficult or sensitive, and securing responses does not require higher levels of effort.⁹⁸

V. Improve cost-benefit analyses to explicitly take account of equity and inequality

A key use of data in federal government policymaking is in performing the cost-benefit analyses (CBA) that must accompany all “significant” proposed regulatory actions. The requirement to perform CBAs is set forth in the 1993 Executive Order 12866, which requires agencies choosing among alternative approaches to choose those that “maximize net benefits.”⁹⁹ Although EO 12866 defines “net benefits” to include “potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity,”¹⁰⁰ in practice, CBA generally focuses on quantifiable monetary costs.

There are several changes OMB could make to the way CBAs are performed that would better reflect reality, advance equity, and serve historically disadvantaged communities.

a. Count costs that are difficult to measure, including the multiple costs of discrimination

It is often much easier to quantify the costs of a regulation than the costs of inaction. For instance, consider a proposed regulation to require businesses to provide ramps for wheelchair users or provide accessibility to people with limited English proficiency. It is relatively easy to calculate the costs to businesses of installing ramps or adopting accessible systems. But it is more complicated to quantify the benefits to individuals and communities who need those accommodations if they are put into place and the very real costs if they are not. Or to take another example, in health care, the costs of providing access to comprehensive primary care are easy to measure, but the long-term benefits of that access, or the cost of its absence, are more difficult to quantify.¹⁰¹

CBA models also often fail to account for cost savings across government programs, i.e., savings to agencies other than the one considering the change in policy. This undermines the possibility of expanding programs meant to mitigate the root causes of inequities in multiple ways.¹⁰²

When weighing whether recipients of federal financial assistance should be required to take affirmative action to ensure a diverse, equitable, and inclusive environment, for example, OMB should take into account the costs of inaction to the recipients. An inclusive and holistic understanding of what and who is bearing a cost, and what and who stands to benefit, is crucial to effective and inclusive policymaking. Additional leadership in this area is needed from the federal government.

b. Ensure that marginalized communities do not literally count for less

CBA can have the effect of devaluing marginalized communities. For instance, the Federal Emergency Management Agency and the Army Corps of Engineers perform cost-benefit analyses in evaluating communities' proposed flood control infrastructure projects. In so doing, they look at the property values of the communities seeking protections against natural disasters. But communities of color and low-wealth communities often do not have high enough property values to “justify” the costs of mitigation measures within a CBA framework. The result is that marginalized communities are less likely to receive infrastructure investments, leaving them unprotected and more vulnerable to losing their wealth and livelihoods in floods.¹⁰³

Several of the changes to CBA discussed here would help to avoid this inequity. For instance, calculating the true long-term costs to communities of destruction and displacement by natural disasters would reveal higher costs than a simple loss of the value of the properties at issue. Equity analysis, discussed below, could also highlight the inequitable outcome if the government supports improved flood infrastructure only, or disproportionately, in wealthy communities.

c. Explicitly consider inequality by including the value of transfers

Inequality of income, wealth, and power is a major problem for our economy and our democracy. Currently, the way cost-benefit analyses are conducted largely ignores economic and wealth inequality, instead looking at whether a proposed action makes the whole economic “pie” larger or smaller. Since transfers of money or benefits from one group to another do not increase or decrease the overall pie, they are often calculated as neutral in cost-benefit analysis, regardless of whether they take “pie” from those who have a lot and give it to those who have little or vice versa — in other words, whether they increase or decrease inequality.

This problem could be addressed by requiring agencies to calculate and account for transfers between groups in order to assess their impact on economic and wealth inequality.¹⁰⁴

d. Assess how rulemaking redistributes power

Cost-benefit analyses should also explicitly consider inequality of power and how the proposed action would redistribute or further concentrate power. Currently, businesses and wealthy individuals hold much more power than the majority of people in our country and have a

An inclusive and holistic understanding of what and who is bearing a cost, and what and who stands to benefit, is crucial to effective policymaking.

greatly outsized influence on the regulatory process, which tends to further concentrate power. Agencies and OMB should begin to address this by prioritizing proposed rules that have the support of more people and of organizations representing less privileged people and those that would tend to facilitate compliance with and enforcement of nondiscrimination laws, address the legacies and current realities of discriminatory policies, raise wages, increase union density, address environmental pollution and climate change, or otherwise benefit communities of color and other marginalized communities.¹⁰⁵

e. Require equity analysis in addition to cost-benefit analysis

Finally, to ensure that cost-benefit analyses do not increase inequality and inequity, agencies or OMB should perform an “equity analysis” of proposed rules in addition to an (improved) cost-benefit analysis.

This would involve considering which group or groups tend to be marginalized in a particular context and measuring the impact a proposed policy would have on those groups.¹⁰⁶ Equity analyses should also measure the impact of a proposed policy on racial and economic inclusion, civic engagement, and social equity.¹⁰⁷ For instance, a regulation requiring companies to reduce air pollution might have a greater impact on Black and other non-White communities; policies concerning reproductive rights may have dangerous impacts on transgender men in particular. In the flood mitigation example discussed above, agencies could track which communities at risk of flooding are also low-income or chronically underserved, and also which communities have applied for, received, or been rejected for mitigation measures. Equity analyses would identify and quantify these impacts so they would be visible to the public.¹⁰⁸

One way to implement equity analyses would be to give priority to rules that agencies identify as advancing racial justice and equity, or even exempting them from EO 12866’s requirement to choose regulatory approaches that “maximize net benefits.”¹⁰⁹

VI. Preserve data privacy and confidentiality

Federal agencies must remain vigilant about protecting the privacy of individuals, particularly with regard to citizenship data, administrative records, third-party data, and “big data,” and also ensure that those privacy obligations are met through appropriate confidentiality protections against unauthorized use.

People of color, those with low incomes, and those in immigrant communities are often most vulnerable to, and reasonably more fearful of, exposure of their private information.¹¹⁰ Policymakers must acknowledge these unequal risks and concerns when designing data protections. This is particularly true when disaggregated data are gathered from small populations.¹¹¹ Stakeholders must be involved in considerations of data privacy, both to ensure that respondent privacy is protected and to be able to communicate to their constituent communities that it will be.¹¹² Privacy is a real concern, can and should be addressed in the collection and reporting of data, and should not be used as a red herring to avoid collecting, disaggregating, or reporting data with the appropriate protections in place.

The controversy over the failed attempt to include a citizenship question on the 2020 Census highlights the particularly acute confidentiality concerns of people in immigrant communities about citizenship data. The public expects the Census Bureau to protect the confidentiality of the information they provide on the census form and trusts that the bureau will not release data in any way that would reveal personally identifiable information. However, people in immigrant communities may fear that information about their family or community members’ immigration status will be shared with Immigration and Customs Enforcement or other law enforcement bodies. The government must be sensitive to these concerns and fully and transparently commit to ensuring confidentiality protections. This example also demonstrates why data policy cannot be divorced from policymaking generally. While the Trump administration was describing the collection of citizenship data as a benign or helpful effort to collect information to enforce the Voting Rights Act, it was also proposing policies that were blatantly anti-immigrant and using rhetoric that showed explicit hostility toward immigrants. Any administration must be mindful of the complete policy landscape when proposing to collect data.

The government can take an important step toward respecting people’s privacy and reassuring communities that it is safe to share their information by adopting strict and public standards that prevent the use of data it collects for negative purposes like immigration enforcement, law enforcement, redlining, or harmful targeting of specific groups.¹¹³

Privacy and confidentiality concerns can be particularly acute when administrative records and third-party data are used. These tools can also have many benefits, but it is especially important for stakeholders to have input into the use of this type of data.

The same technological tools for analyzing large and complex data sets that have helped advocates and policymakers document inequality and discrimination can also be used in ways that undermine equity. The Education Fund, The Leadership Conference, and more than 20 other civil rights and technology advocacy groups working through the Civil Rights, Privacy and Technology Table endorsed a set of principles that reflect this new technological reality. The principles were first announced in 2014¹¹⁴ and were updated in 2020.¹¹⁵ They are:

- **Ending high-tech profiling.** Surveillance technologies are empowering governments and companies to collect and analyze vast amounts of information about people. Too often, these tools are deployed without proper safeguards or are themselves biased. In some cases, surveillance technologies should simply never be deployed. In other cases, clear limitations and robust auditing mechanisms are needed to ensure that these tools are used in a responsible and equitable way. Law should hold both the government and private actors accountable for abuses.
- **Ensuring fairness in automated decisions.** Statistical technologies, including machine learning, are informing important decisions in areas such as employment, health, education, lending, housing, immigration, and the criminal-legal system. Decisionmaking technologies too often replicate and amplify patterns of discrimination in society. These tools must be judged not only by their design but also, and perhaps even primarily, by their impacts — especially on communities that have been historically marginalized. Transparency and oversight are imperative to ensuring that these systems promote just and equitable outcomes, and in many cases, the best outcome is to not use automated tools in high-stakes decisions at all.
- **Preserving constitutional principles.** Enforcement of constitutional principles such as equal protection and due process must keep pace with government use of technology. Search warrant requirements and other limitations on surveillance and policing are critical to protecting fundamental civil rights and civil liberties, especially for communities who have been historically marginalized and subject to disproportionate government surveillance. Moreover, governments should not compel companies to build technologies that undermine basic rights, including freedom of expression, privacy, and freedom of association.
- **Ensuring that technology serves people historically subject to discrimination.** Technology should not merely avoid harm, but actively make people's lives better. Governments, companies, and individuals who design and deploy technology should strive to mitigate societal inequities. This includes improving access to the internet and addressing biases in data and decisionmaking. Technologies should be deployed in close consultation with the most affected communities, especially those who have historically suffered the harms of discrimination.

→ **Defining responsible use of personal information and enhancing individual rights.**

Corporations have pervasive access to people's personal data, which can lead to discriminatory, predatory, and unsafe practices. Personal data collected by companies also often end up in the hands of the government, either through the direct sale of personal data or through data-driven systems purpose-built for the government. Clear baseline protections for data collection, including both primary and secondary uses of data, should be enacted to help prevent these harms.

→ **Making systems transparent and accountable.** Governments and corporations must provide people with clear, concise, and easily accessible information on what data they collect and how it is used. This information can help equip advocates and individuals with the information to ensure that technologies are used in equitable and just ways. Any technology that has a consequential impact on people's lives should be deployed with a comprehensive, accessible, and fair appeals process with robust mechanisms for enforcement, and governments and corporations must be accountable for any misuse of technology or data. When careful examination reveals that a new, invasive technology poses threats to civil rights and civil liberties, such technology should not be used under any circumstance.

Additionally, in 2020, The Leadership Conference and dozens of other civil rights, civil liberties, civil society, and consumer protection organizations endorsed principles to protect civil rights and privacy in light of technological measures to respond to COVID-19. No COVID-19 response technology has been proven trustworthy and effective for combating the pandemic in the United States. Use of such technology must only be allowed if it is nondiscriminatory, effective, voluntary, secure, accountable, and used exclusively for public health purposes.¹¹⁶

We urge federal statistical agencies to adopt these civil rights protections for the era of big data.

Use of [COVID-19 response] technology must only be allowed if it is nondiscriminatory, effective, voluntary, secure, accountable, and used exclusively for public health purposes.

VII. Conclusion

The distinct historic and ongoing challenges our country faces — systemic racism and state violence; historic levels of inequality; a worldwide pandemic; and increasingly severe natural disasters due to climate change — will not be solved by better data collection alone. But complete and disaggregated data is a necessary first step to tackle these crises. Without them, we cannot identify equity gaps, and so we cannot determine the right course to remedy them. OMB and other federal agencies can advance the causes of equity and justice by ensuring stakeholder input at all stages of federal surveys and data collection; restoring and expanding the scope, frequency, and public accessibility of data; adding much-needed data collections; increasing disaggregation of data; improving cost-benefit analyses; and preserving data privacy.

Endnotes

¹ Kendi, Ibram X. “Why Don’t We Know Who the Coronavirus Victims Are?” *The Atlantic*. Apr. 1, 2020. <https://www.theatlantic.com/ideas/archive/2020/04/stop-looking-away-race-covid-19-victims/609250/>. Clemens, Austin and Garvey, Michael. “Issue Brief: Structural Racism and the coronavirus recession highlight why more and better U.S. data need to be widely disaggregated by race and ethnicity.” *Washington Center for Equitable Growth*. Sept. 2020. <https://equitablegrowth.org/structural-racism-and-the-coronavirus-recession-highlight-why-more-and-better-u-s-data-need-to-be-widely-disaggregated-by-race-and-ethnicity/>.

² Gould, Elise and Wilson, Valerie. “Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality.” *Economic Policy Institute*. June 1, 2020. <https://www.epi.org/publication/black-workers-covid/>.

³ CDC. “Demographic Trends of COVID-19 cases and deaths in the US reported to CDC.” Last visited October 29, 2021. <https://covid.cdc.gov/covid-data-tracker/#demographics>.

⁴ Asian & Pacific Islander American Health Forum. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pgs. 2-3. <https://www.regulations.gov/comment/OMB-2021-0005-0525>. (Hereinafter “Asian & Pacific Islander American Health Forum equity comments.”)

⁵ *Id.* at 3.

⁶ Povich, Elaine S. “States Use Hurricane Ida Damage to Push Infrastructure Bill.” *Stateline*. Sept. 20, 2021. <https://pew.org/3AoEKtG>.

⁷ Amaro, Gabriel and Willyard, Kate. “How Resilient are Communities to Disasters? Census Bureau’s New Experimental CRE Tool Shows How Vulnerable Communities Are to Disasters, Including COVID-19.” *Census.gov*. June 29, 2020. <https://www.census.gov/library/stories/2020/06/how-resilient-are-communities-to-disasters.html>.

⁸ The Leadership Conference Education Fund. “Misinformation Nation: The Threat to America’s Federal Data and Civil Rights.” *Civilrights.org*. Dec. 2017. <http://civilrightsdocs.info/pdf/policy/Data-Policy-Brief.pdf>. (Hereinafter “Misinformation Nation.”)

⁹ The Leadership Conference Education Fund, “Misinformation Nation II: A Deeper Dive into Threats to Federal Civil Rights Data Collection.” *Civilrights.org*. Mar. 2019. <http://civilrightsdocs.info/pdf/reports/Misinformation-Nation-2.pdf>. (Hereinafter “Misinformation Nation II”).

¹⁰ *Id.*

¹¹ The Leadership Conference on Civil and Human Rights. “Groundswell of Opposition Tells Commerce Department to Scrap the Citizenship Question on 2020 Census.” *Civilrights.org*. Aug. 8, 2018. <https://civilrights.org/2018/08/08/groundswell-of-opposition-tells-commerce-department-to-scrap-the-citizenship-question-on-2020-census/>.

¹² Exec. Order 13985. “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” 86 Fed. Reg. 7009. Jan. 20, 2021. <https://www.federalregister.gov/d/2021-01753/page-7009>.

¹³ Center for Law and Social Policy. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 16. <https://www.regulations.gov/comment/OMB-2021-0005-0456>. (Hereinafter “CLASP equity comments.”) National Legal Aid & Defender Association. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 11. <https://www.regulations.gov/comment/OMB-2021-0005-0520>.

¹⁴ Pueblo of Zuni. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 1, 2021. Pg. 2. <https://www.regulations.gov/comment/OMB-2021-0005-0104>. (Hereinafter “Pueblo of Zuni equity comments.”)

¹⁵ Upstream USA. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 2. <https://www.regulations.gov/comment/OMB-2021-0005-0091>. (Hereinafter “Upstream USA equity comments.”)

¹⁶ National Council of Asian Pacific Americans. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 8. <https://www.regulations.gov/comment/OMB-2021-0005-0464>. (Hereinafter “National Council of Asian Pacific Americans equity comments.”)

¹⁷ *Id.* at 7.

¹⁸ Leadership Conference Education Fund, Georgetown Law Center on Poverty and Inequality, and Economic Security and Opportunity Initiative. “Will You Count? Middle Eastern and North African Americans (MENA) in the 2020 Census.” Apr. 17, 2018. <https://www.georgetownpoverty.org/wp-content/uploads/2018/06/Fact-Sheet-MENA-HTC.pdf>.

¹⁹ Misinformation Nation II, at 5.

²⁰ *Id.*

²¹ Wang, Hansi Lo. “2020 Census to Keep Racial, Ethnic Categories Used In 2010.” *NPR*. Jan. 26, 2018. <https://www.npr.org/2018/01/26/580865378/census-request-suggests-no-race-ethnicity-data-changes-in-2020-experts-say>.

²² Wang, Hansi Lo. “Trump Administration Delays Decision on Race, Ethnicity Data for Census.” *NPR*. Dec. 2, 2017. <https://www.npr.org/2017/12/02/567843266/trumpadministration-delays-decision-on-raceethnicity-data-for-census>.

²³ Misinformation Nation II, at 5.

²⁴ Wines, Michael. “A Census Whodunit: Why Was the Citizenship Question Added?” *The New York Times*. Nov. 30, 2019. <https://www.nytimes.com/2019/11/30/us/census-citizenship-question-hofeller.html>.

²⁵ Misinformation Nation II, at 5.

²⁶ See *Department of Commerce v. New York*, 588 U.S. ___, 139 S. Ct. 2551 (2019).

²⁷ Howe, Amy. “Trump administration ends effort to include citizenship question on 2020 census.” *Scotusblog*. July 11, 2019. <https://www.scotusblog.com/2019/07/trump-administration-ends-effort-to-include-citizenship-question-on-2020-census/>.

²⁸ “NFL: How race-based formulas are interfering with concussion lawsuits.” *BBC*. June 4, 2021. <https://www.bbc.com/news/world-us-canada-57337296>.

²⁹ *Id.*

³⁰ Harris, Mary. “The Same Warped, Racist Logic Used by the NFL Is Ubiquitous in Medicine.” *Slate*. June 7, 2021. <https://slate.com/technology/2021/06/race-norming-nfl-medicine-racism-discrimination.html>.

³¹ Associated Press. “NFL agrees to end race-based brain testing in \$1B settlement on concussions.” *NPR*. Oct 20, 2021. <https://www.npr.org/2021/10/20/1047793751/nfl-concussion-settlement-race-norming-cte>.

³² Paperwork Reduction Act, 44 U.S.C. §§ 3501–3521.

³³ See Exec. Order 13563, 76 Fed. Reg. 3821. Jan. 18, 2011. <https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review>. (Principles affirmed in White House. “Memorandum: Modernizing Regulatory Review.” Jan. 21, 2021.) <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>).

³⁴ Autistic Self Advocacy Network. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 4. <https://www.regulations.gov/comment/OMB-2021-0005-0139> (Hereinafter “Autistic Self Advocacy Network equity comments.”)

³⁵ National Health Law Program. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 2, 2021. Pg. 14-15.
<https://www.regulations.gov/comment/OMB-2021-0005-0070>. (Hereinafter “National Health Law Program equity comments.”)

³⁶ National Health Law Program equity comments. Pg. 15; U.S. Citizenship and Immigration Services. Public Charge Ground of Inadmissibility Proposed Rule. Aug. 23, 2021. <https://www.regulations.gov/document/USCIS-2021-0013-0001>.

³⁷ Autistic Self Advocacy Network equity comments. Pg. 4.

³⁸ Paralyzed Veterans of America. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pgs. 12-13.
<https://www.regulations.gov/comment/OMB-2021-0005-0373>.

³⁹ Service Employees International Union. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 4.
<https://www.regulations.gov/comment/OMB-2021-0005-0305>. (Hereinafter “SEIU equity comments.”)

⁴⁰ NAACP Legal Defense and Educational Fund. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 13.
<https://www.regulations.gov/comment/OMB-2021-0005-0481>. (Hereinafter “NAACP LDF equity comments.”)

⁴¹ *Id.* at 15.

⁴² *Id.* at 17.

⁴³ Human Rights Campaign. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 4.
<https://www.regulations.gov/comment/OMB-2021-0005-0204>. (Hereinafter “Human Rights Campaign equity comments.”)

⁴⁴ Pueblo of Zuni equity comments. Pg. 9.

⁴⁵ Misinformation Nation II. Pgs. 3-6.

⁴⁶ Wang, Hansi Lo. “How Trump Officials Cut the 2020 Census Short Amid the Pandemic.” *NPR*. Sept. 18, 2020.
<https://www.npr.org/2020/09/18/911960963/how-trump-officials-cut-the-2020-census-short-amid-the-pandemic>.

⁴⁷ Misinformation Nation II. Pgs. 6-8.

⁴⁸ *Id.* at 8-10.

⁴⁹ *Id.* at 10-11.

⁵⁰ *Id.* at 10-11.

⁵¹ Women’s Institute for Science, Equity and Race (WISER). “Show Me the Data, But Disaggregate It First.” Last visited Oct. 28, 2021. <https://www.wiserpolicy.org/show-me-the-data-but-disaggregate-it-first/#>.

⁵² The Southeast Asia Resource Action Center (SEARAC). “What is Data Disaggregation?” Last visited Oct. 28 2021.
<https://www.searac.org/education/data-disaggregation-general-factsheet/>.

⁵³ *Id.* at 10-11. Department of Education, Office for Civil Rights. “Civil Rights Data Collection (CRDC) Frequently Asked Questions.” Last visited June 16, 2016. <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/crdc.html>. (Hereinafter “CRDC FAQ”).

⁵⁴ Ujifusa, Andrew. “How the Pandemic Is Affecting Schools’ Mandated Collection of Key Civil Rights Data.” *EdWeek*. Apr. 22, 2021, <https://www.edweek.org/pTheolicy-politics/how-the-pandemic-is-affecting-schools-mandated-collection-of-key-civil-rights-data/2021/04>.

⁵⁵ CRDC FAQ.

⁵⁶ Women’s Community Coalition (59 organizations including The National Women’s Law Center, Feminist Majority Foundation, and the National Partnership for Women & Families). “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 9.
<https://www.regulations.gov/comment/OMB-2021-0005-0395>. (Hereinafter “Women’s Community Coalition equity comments”).

⁵⁷ GLSEN. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 7. <https://www.regulations.gov/comment/OMB-2021-0005-0151>. (Hereinafter “GLSEN equity comments.”)

⁵⁸ Women’s Community Coalition equity comments. Pg. 9.

⁵⁹ *Id.*

⁶⁰ GLSEN equity comments. Pg. 7.

⁶¹ The Leadership Conference and other organizations. “Letter to Suzanne Goldberg, Acting Assistant Secretary, Office for Civil Rights, RE: Civil Rights Data Collection.” Mar. 22, 2021. <https://civilrights.org/resource/letter-re-civil-rights-data-collection/>.

⁶² AAUW. “The Simple Truth About the Gender Pay Gap: 2021 Update.” Last visited Oct. 28, 2021. https://www.aauw.org/app/uploads/2021/09/AAUW_SimpleTruth_2021_-fall_update.pdf.

⁶³ National Partnership for Women & Families. “Fact Sheet, Asian American and Pacific Islander Women and the Wage Gap. Mar. 2021. Pg. 1. <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/asian-women-and-the-wage-gap.pdf>.

⁶⁴ See *National Women’s Law Center v. Office of Management and Budget*, 358 F.Supp.3d 66 (D.D.C. Mar. 4, 2019). <https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2017cv02458/191146/45/>.

⁶⁵ The Leadership Conference. “Comment letter on Employer Information Report (EEO-1) Component 1; Revision of existing approval for EEO-1 Component 2.” Apr. 22, 2020. <https://civilrights.org/resource/comment-re-docket-id-eeoc-2020-0002-0001-notice-of-information-collection-request-for-new-control-number-and-approval-of-collection-employer-information-report-eeo-1-component-1-revision/>.

⁶⁶ “EEOC Announces New Deadlines for EEO-1 Reporting.” *JDSupra*. Apr. 1, 2021. <https://www.jdsupra.com/legalnews/eeoc-announces-new-deadlines-for-eeo-1-3722507/>.

⁶⁷ The Leadership Conference. “FBI’s Failure to Collect Use of Force Data Perpetuates Lack of Police Accountability.” Dec. 10, 2021. <https://civilrights.org/2021/12/10/fbis-failure-to-collect-use-of-force-data-perpetuates-lack-of-police-accountability/> (hereinafter “FBI’s Failure.” Christina Carrega. “FBI may have to shut down federal use-of-force database due to low participation from law enforcement.” Dec. 9, 2021. <https://www.cnn.com/2021/12/09/politics/police-use-of-force-database/index.html>.

⁶⁸ The Leadership Conference. “Civil Rights Groups Launch National Database on Police Use of Force.” Feb. 11, 2021. <https://civilrights.org/2021/02/11/civil-rights-group-launches-national-database-on-police-use-of-force/>. Accountable Now data repository. <https://civilrights.org/2021/02/11/civil-rights-group-launches-national-database-on-police-use-of-force/> and <https://www.accountablenow.com/>.

⁶⁹ Accountable Now data repository, *supra* n. 68.

⁷⁰ Brenner, Katie. “Justice Dept. to Review Enforcement of Civil Rights Protections in Grants.” *The New York Times*. Sept. 16, 2021. <https://www.nytimes.com/2021/09/16/us/politics/justice-department-civil-rights-protections.html>.

⁷¹ “FBI’s Failure,” *supra* n. 67.

⁷² Hate Crime Statistics Act, 28 U.S.C. § 534.

⁷³ Langton, Lynn and Masucci, Madeline. “Hate Crime Victimization, 2004-2015.” *Bureau of Justice Statistics*. June 29, 2017. <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5967>.

⁷⁴ *Id.*

⁷⁵ Leadership Conference Education Fund. “Civil Rights Principles for Higher Education.” July 2019. Pp. 39-40. <http://civilrightsdocs.info/pdf/reports/Higher-Ed-Civil-Rights-Principles.pdf>. (Hereinafter “Civil Rights Principles for Higher Education.”)

⁷⁶ Whitmire, Richard. “Alarming Statistics Tell the Story Behind America’s College Completion Crisis: Nearly a Third of All College Students Still Don’t Have a Degree Six Years Later.” *The 74*. April 8, 2019.

⁷⁷ Fain, Paul. “Wealth’s Influence on Enrollment and Completion.” *Inside Higher Ed*. May 23, 2019.

⁷⁸ California Community Colleges. “Methodology for Student Profile Metrics.”

⁷⁹ Civil Rights Principles for Higher Education at 43.

⁸⁰ Poverty & Race Research Action Council. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 4.
<https://www.regulations.gov/comment/OMB-2021-0005-0262>.

⁸¹ See, e.g., National Partnership for Women & Families equity comments. Pg. 3. National Health Law Program equity comments. Pg. 3. Planned Parenthood equity comments. Pg. 3. National Comprehensive Cancer Network. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 2, 2021. Pg. 4. <https://www.regulations.gov/comment/OMB-2021-0005-0141>. National Asian Pacific American Women’s Forum. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 2, 2021. Pg. 1. <https://www.regulations.gov/comment/OMB-2021-0005-0065>). Upstream USA equity comments. Pg. 2.

⁸² Clemens, Austin and Garvey, Michael. “Issue Brief: Structural Racism and the coronavirus recession highlight why more and better U.S. data need to be widely disaggregated by race and ethnicity.” *Washington Center for Equitable Growth*. Sept. 2020.
<https://equitablegrowth.org/structural-racism-and-the-coronavirus-recession-highlight-why-more-and-better-u-s-data-need-to-be-widely-disaggregated-by-race-and-ethnicity/>.

⁸³ Rubin, Victor; Ngo, Danielle; Ross, Ángel; Butler, Dalila; and Balaram, Nisha. “Counting a Diverse Nation: Disaggregating Data on Race and Ethnicity to Advance a Culture of Health.” *PolicyLink*. 2018.
https://www.policylink.org/sites/default/files/Counting_a_Diverse_Nation_08_15_18.pdf. Families USA. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 4. <https://www.regulations.gov/comment/OMB-2021-0005-0326>.

⁸⁴ WISER, *supra* n. 51.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Planned Parenthood equity comments. Pg. 3.

⁸⁸ National Council of Asian Pacific Americans equity comments. Pg. 3. See *also* National Asian Pacific American Women’s Forum equity comments. Pg. 1.

⁸⁹ Movement Advancement Project (MAP). “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 3.
<https://www.regulations.gov/comment/OMB-2021-0005-0306>. (Hereinafter “MAP equity comments.”)

⁹⁰ MAP equity comments. Pg. 3.

⁹¹ Human Rights Campaign equity comments. Pg. 2.

⁹² Misinformation Nation II, at 5.

⁹³ ACCESS (Arab Community Center for Economic and Social Services). “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pgs. 2-3.
<https://www.regulations.gov/comment/OMB-2021-0005-0469>. See *also* National Health Law Program equity comments. Pg. 3. Association of American Medical Colleges. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021.
<https://www.regulations.gov/comment/OMB-2021-0005-0145>. (Hereinafter “ACCESS equity comments.”)

⁹⁴ ACCESS equity comments. Pg. 2.

⁹⁵ LGBTQIA+ Primary Care Alliance. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 2.
<https://www.regulations.gov/comment/OMB-2021-0005-0493>; (Hereinafter “LGBTQIA+ Primary Care Alliance equity comments.”)

⁹⁶ MAP equity comments. Pg. 4.

⁹⁷ National Health Law Program equity comments. Pg. 4. GLSEN equity comments. Pg. 7. interACT: Advocates for Intersex Youth. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 7. <https://www.regulations.gov/comment/OMB-2021-0005-0442>. (Hereinafter “interact: Advocates for Intersex Youth equity comments.”) Association for Community Affiliated Plans. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 2, 2021. Pg. 2. <https://www.regulations.gov/comment/OMB-2021-0005-0083>. (Hereinafter “Association for Community Affiliated Plans equity comments.”)

⁹⁸ Movement Advancement Project equity comments. Pg. 5. LGBTQIA+ Primary Care Alliance equity comments. Pg. 2. (Focusing on surveys about health, housing, education, economic transactions, recipients of public service).

⁹⁹ Exec. Order. No. 12866. Oct. 4, 1993. <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

¹⁰⁰ *Id.* at 1.

¹⁰¹ American Academy of Family Physicians. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 2, 2021. Pg. 2. <https://www.regulations.gov/comment/OMB-2021-0005-0100>.

¹⁰² *Id.*

¹⁰³ Environmental Defense Fund equity comments. Pg. 2.

¹⁰⁴ Tucker, Todd N. and Nayak, Rajesh D. “OIRA 2.0: How Regulatory Review Can Help Respond to Existential Threats.” *Great Democracy Initiative and Roosevelt Institute*. Apr. 2020. Pgs. 26-29.

¹⁰⁵ *Id.* at 30-33.

¹⁰⁶ Tucker and Nayak, *supra* n. 104. Pgs. 35-36.

¹⁰⁷ See Perry, Andre M. and Hamilton, Darrick. “Just as we score policies’ budget impact, we should score for racial equity as well.” *Brookings Institution*. Jan. 25, 2021. <https://www.brookings.edu/blog/the-avenue/2021/01/25/just-as-we-score-policies-budget-impact-we-should-score-for-racial-equity-as-well/>.

¹⁰⁸ Environmental Defense Fund equity comments. Pg. 7.

¹⁰⁹ Public Citizen. “Comment letter on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government RFI.” July 6, 2021. Pg. 5. <https://www.regulations.gov/comment/OMB-2021-0005-0407>.

¹¹⁰ Madden, Mary. “Privacy, Security, and Digital Inequality: How Technology Experiences and Resources Vary by Socioeconomic Status, Race, and Ethnicity.” *Data&Society*. Sept. 27, 2017. https://datasociety.net/wp-content/uploads/2017/09/DataAndSociety_PrivacySecurityandDigitalInequality.pdf.

¹¹¹ Brown, Steven; MacDonald, Graham; and Bowen, Claire. “How the Federal Government Can Use Data to Make the Most of the Executive Order on Racial Equity.” *Urban Institute*. Jan. 29, 2021. <https://www.urban.org/urban-wire/how-federal-government-can-use-data-make-most-executive-order-racial-equity..>

¹¹² McClure, Dave; Santos, Robert & Kooragayala, Shiva. “Administrative Records in the 2020 US Census: Civil Rights Considerations and Opportunities.” *Urban Institute*. May 2017. Pgs. 18-23. https://www.urban.org/sites/default/files/publication/90446/census_ar_report.pdf.

¹¹³ National Health Law Program equity comments. Pg. 4.

¹¹⁴ The Leadership Conference on Civil and Human Rights. “Civil Rights Principles for the Era of Big Data.” Feb. 27, 2014. <https://civilrights.org/2014/02/27/civil-rights-principles-era-big-data/>.

¹¹⁵ Civil Rights Privacy and Technology Table. “Principles.” Last visited Oct. 28, 2021. <https://www.civilrightstable.org/principles/>.

¹¹⁶ The Leadership Conference on Civil and Human Rights. “Principles for Protecting Civil Rights and Privacy during the COVID-19 Crisis.” June 11, 2020. http://civilrightsdocs.info/pdf/policy/letters/2020/COVID-19_Privacy%2BCivil_Rights_Principles_Coalition_Support.pdf.



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