



DEPARTMENT OF COMMERCE, U. S. CENSUS BUREAU

ISSUE: FEDERAL DATA COLLECTION REGARDING SAME-SEX COUPLES

POLICY DESCRIPTION: The US Census Bureau argues that the Federal Defense of Marriage Act (DoMA) prohibits it from enumerating same-sex married couples. The DoMA codification into US law reads as follows, “In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife” (1 U.S.C. § 7). The Census Bureau interprets that statute to mean that it must edit the responses of same-sex married couples in the Decennial Census and the American Community Survey (ACS) so that same-sex spouses are reported as "unmarried partners" in all Census Bureau tabulations.

Given that same-sex couples can be legally married in the US, this procedure potentially alters legally accurate responses into inaccurate responses, producing inaccuracies and distortions. Same-sex married couples are hidden in the data, limiting the ability of researchers, policymakers, journalists, and the public to accurately assess the characteristics of same-sex couples and their families.

There are four specific Bureau policies that impact how same-sex couples are counted and characterized in publicly released data from the Census Bureau.

1. Since 1990, Census forms allowed persons to be identified as an "unmarried partner" of the householder (the person who fills out the Census form). Since Census 2000, same-sex unmarried partners identified in the Census and ACS actually include two groups: those where the householder identifies the partner as a "husband/wife" and those where the category chosen was "unmarried partner." **The Bureau recodes all same-sex "husbands" and "wives" to "unmarried partner"**. Public data releases could, but do not, provide a way for researchers to identify which same-sex couples had their self-identification altered.



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Providing a data “flag” that would indicate that the record was changed would make it possible for researchers to “manually” separate same-sex couples who are spouses from those who consider themselves unmarried partners. Adding a data flag would allow researchers to assess differences between same-sex couples who view themselves as married and those who do not. Further, it would not conflict with DoMA’s requirement that same-sex couples not be counted as married.

2. **Census Bureau procedures alter marital status data in the annual ACS for some persons in unmarried couples** (Census 2010 does not include this question). The ACS marital status question includes the following options: currently married, separated, widowed, divorced, or never married. The Bureau’s editing rules require that unmarried partners, same-sex or different-sex, cannot also be coded as “currently married.” As a result, the Bureau changes their response to some other marital status. This procedure limits the ability of researchers to accurately assess the characteristics of these couples and creates inaccuracies and potential undercounts among the “currently married” since any who are living with an “unmarried partner” are eliminated from the data. Leaving these marital statuses unaltered does not violate DoMA since respondents are asked about their individual marital status, not about the sex of the person to whom they may be married.
3. **The Census Bureau processes and releases data using a definition of “family” that excludes unmarried partner couples.** The Bureau releases a substantial amount of data that describes characteristics of different types of families. The Bureau processes the data such that only persons related by blood, marriage (as defined by DoMA) or adoption are included in analyses of families. The decision to never include “unmarried partners” in these families means that some same-sex and different-sex couple households are misrepresented. A same-sex couple raising a child would be counted as a single parent family. This policy effectively restricts access to information about same-sex couples and about the family structures in which they are raising children. Since DoMA makes no mention of a definition for family, it does not apply in this case.
4. **The ACS fails to identify persons formally registered with a state in a non-marital relationship category.** The marital status questions on the ACS do not include a response that allows an individual in a legally recognized civil union or registered partnership to identify as such. DoMA does not bar the federal government from collecting information on



these explicitly non-marital couples. Nearly one in four Americans lives in a jurisdiction that has a formal statewide registration system.

RECOMMENDATIONS FOR CHANGE: We recommend that the Census Bureau make four changes that would allow researchers to better enumerate and understand the characteristics of same-sex couples.

1. Include data flags when the records of same-sex "husbands" and "wives" are altered to become "unmarried partners."
2. Do not alter the marital status of "unmarried partners" who indicate that they are also currently married.
3. Change the definition of "family" so that public data files can include "unmarried partner" relationships.
4. Alter the marital status question responses in the ACS to include a category for persons who have registered with a state as a civil union or domestic partnership.

PROCESS FOR MAKING CHANGES: None of the recommendations require legislative initiative, though rescinding DoMA would allow the Census Bureau to simply publicly enumerate same-sex married couples in lieu of the first recommendation. The first two recommended changes affect only Census Bureau protocols for data processing and require no changes to survey instruments. These changes can be accomplished via internal Census Bureau decision-making. The last two recommendations would likely involve wider governmental involvement with stakeholders who use these data (see obstacles below).

In meetings and communication with Martin O'Connell, chief of the Census Bureau's Fertility and Family Statistics Branch, it appears that Bureau staff is amenable to considering these changes. Letters from members of Congress and other government officials along with public pressure will hasten the process.