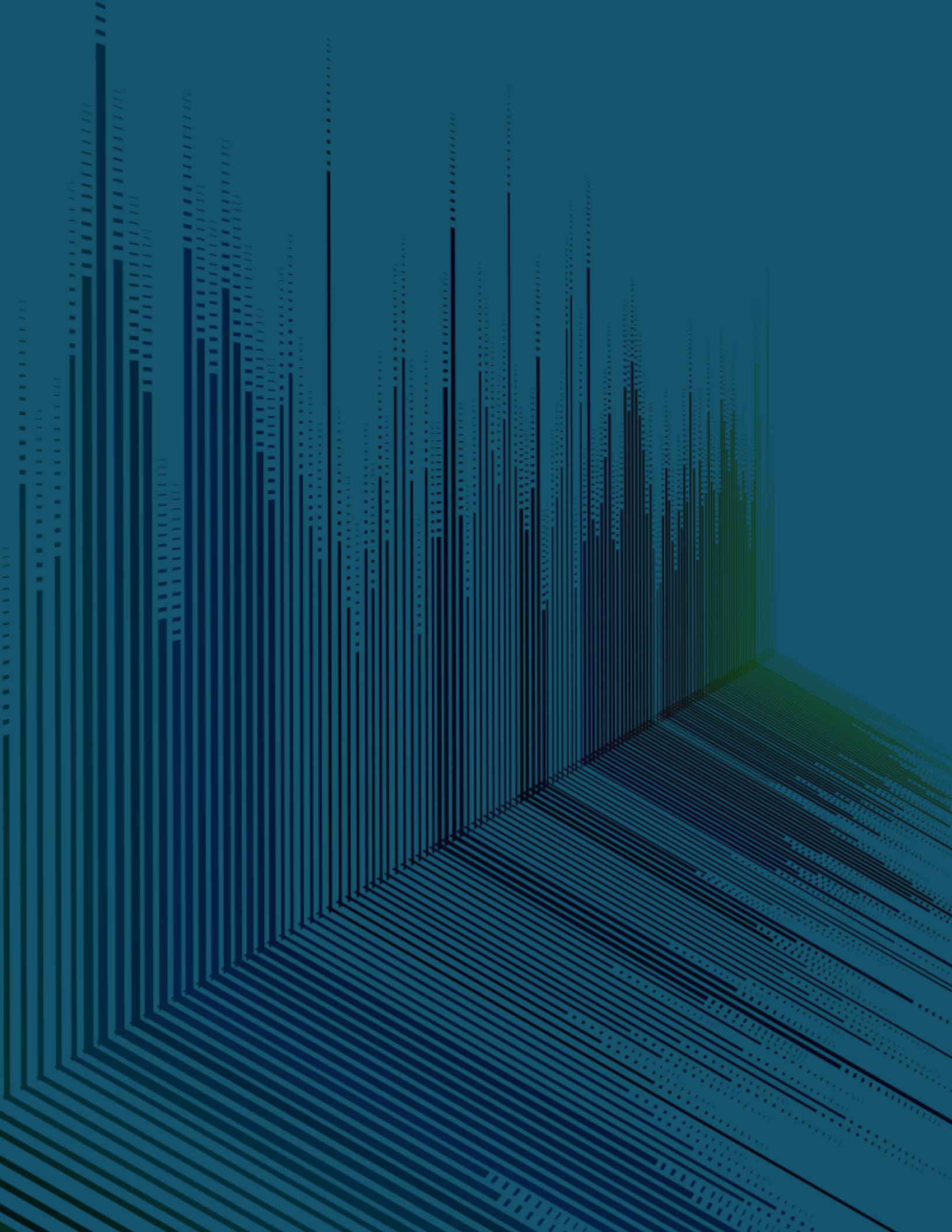


# Visibility Counts

Corporate Guidelines for LGBT+ Self-ID

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# Out Leadership and Ropes & Gray share a purpose:

to make the business world not only hospitable to LGBT+ individuals, but also a place where people of all orientations and identities can thrive. We are proud of what we have already accomplished in working toward this mission, but we know that more progress is needed. The more than 70 companies with which Out Leadership works know it, too.

We are pleased to introduce the most recent product of a partnership between Out Leadership and Ropes & Gray—a first-of-its-kind global report on LGBT+ self-identification, an incredibly important, fast-growing, but insufficiently understood practice that enables companies to invite LGBT+ employees, as members of an invisible minority within the workforce, to raise their hands to be counted and acknowledged.

In this report, we've distilled research conducted by teams at Ropes & Gray and Out Leadership that examines the benefits, best practices and challenges of implementing LGBT+ self-ID programs. Throughout, we've focused on providing practical advice for companies considering implementing self-ID. We hope the results of our research will be a valuable resource and serve as a launching pad for conversations about this important topic.

We also hope this report shows that implementing self-ID is not only desirable for organizations of all kinds, but also eminently practicable. We believe it also demonstrates that this practice creates significant benefits across the business, as Ropes & Gray has found after implementing it. Self-ID does not just create a new way to recognize and celebrate diversity—it also creates a valuable data set companies can use to guide talent development, increase operational efficiency and productivity, and prove to clients that they're being served by inclusive teams.

LGBT+ self-ID touches on topics that have traditionally been treated with sensitivity in the business context. For this reason, and because cultural attitudes and legal frameworks affecting individuals' ability to openly identify as LGBT+ vary by country—as does the ability of companies to collect and use demographic information—misconceptions exist around the legality of this practice in some major markets. This has, we believe, deterred many global organizations from implementing self-ID.

This report aims to dispel the notion that LGBT+ demographic information cannot be collected or leveraged on a global basis, and it serves as a repository of best practices and facts about the markets where companies can do so legally and safely. Leading practitioners currently implement self-ID in more than 40 countries globally—and in some cases, companies have seen this data as so important to their business that they've worked out special arrangements with governments in order to collect it.

This report also offers solutions to some of the potential challenges of implementing a self-ID program, including how to properly communicate with employees to alleviate their data privacy concerns and how to navigate the legal constraints of collecting LGBT+ demographic information.

We sincerely thank the many professionals and organizations that responded to the research or otherwise assisted us. Their leadership, transparency and insights have made this report possible.

We are honored to share the experiences of the many companies that have invested tremendous care and significant operational effort to pioneer LGBT+ self-ID, thereby advancing equality both within the workplace and in society overall. By sharing our successes and the lessons we've learned, we are working together to make the world in which we live and work a better place.



**Todd Sears**  
*Founder and Principal*  
Out Leadership



**Brad Malt**  
*Chair*  
Ropes & Gray



# Overview

## What is LGBT+ Self-ID?

Where it's legal to do so, most multinational businesses ask employees to voluntarily disclose demographic information in categories that include disability, age, race and gender, but far fewer collect sexual orientation and gender identity (SOGI) data. In part, this is because employers are not yet required to collect statistics on the number of LGBT+ people they employ.

Many forward-thinking enterprises began collecting sexual orientation data in some markets in the mid-2000s, and many of those have subsequently expanded their processes to cover more markets and to include gender identity. We know, however, that many large, sophisticated multinational organizations currently do not collect this information—in part because of the sensitivity of the subject matter, and in part because of perceived legal restrictions and operational complexity.

### Research Methodology

In February 2019, Out Leadership surveyed executives, including HR and diversity professionals, at 38 organizations representing a variety of sectors, including law, banking, technology, consulting, asset management, private equity, media and retail. The survey included a combination of qualitative and quantitative questions, and all interviews were conducted via a custom survey tool built by global law firm Ropes & Gray. Results were analyzed and collated by Ropes & Gray. All responses are presented in aggregate and are anonymized, except where explicitly quoted in the report.

Of the 38 respondents, we found that some are far along in their rollout

of self-ID for sexual orientation and gender identity, while others are still finding their footing. But the future looks promising. We discovered that 22 of the 38 organizations allow for LGBT+ self-ID. Eleven of the remaining 16 said they plan to implement a self-ID program in the future; the five that said they currently had no plans to do so were most likely to identify as key barriers their company size (very large or very small) and the complexity of the task.

### Why is LGBT+ Self-ID a Critical Business Issue?

There are many incentives for employers to create workplaces where LGBT+ people feel empowered to be open about their identities. Research conducted by the Human

Rights Campaign in 2018 suggests that up to 46% of LGBT+ Americans are not out at work, and the percentage increases dramatically in less open societies. The Center for Talent Innovation's research, *The Power of Out 2.0*, (of which Out Leadership was a sponsor), reported that LGBT+ people who are out at work are happier in their roles, more likely to identify sponsorship, more likely to be promoted and more likely to stay in their jobs—all of which have a significant impact on the bottom line.

Conversely, some factors have a negative effect. Employees who conceal their LGBT+ identities experience significant reductions in their productivity — up to 20% — as a result of doing so. Each year, more than 20% of LGBT+ people

<sup>1</sup> *State Occupational Employment and Wage Estimates*, Bureau of Labor Statistics (May 2018); *There Are Significant Business Costs to Replacing Employees*, Heather Boushey and Sarah Jane Glynn, Center for American Progress (2012).



in the United States (and up to 40% globally) report experiencing discrimination at work related to their sexual orientation or gender identity. And the cost of replacing employees who leave keeps going up, ranging from 20% of an entry-level employee's total compensation to 300% of a senior executive's.<sup>1</sup>

LGBT+ self-ID isn't just about collecting and leveraging data—it is an essential first step in the LGBT+ employee engagement process. Implementing a self-ID program gives organizations the opportunity to recognize and celebrate the identity of their employees and, in the process, make a positive statement about their own cultures.

In Out Leadership's work with businesses and CEOs globally, we have noted that their investments in LGBT+ inclusion can pay unanticipated dividends, especially among Allies—individuals or businesses that support the LGBT+ community. While estimates of the population of LGBT+ people range from 5% of the total population to 20% of millennials, a far larger population identify as Allies. Over the past 10 years or so, Allies have played an important role in advancing LGBT+ equality and inclusion. Efforts initially aimed solely at the LGBT+ community, such as self-identification, have the added benefit of messaging to Allies that an organization is serious about advancing LGBT+ equality, which can

## Business Benefits of LGBT+ Self-ID

1. Position the organization as LGBT+ inclusive with clients, customers and other external stakeholders
2. Track the recruitment, retention and promotion of LGBT+ individuals more effectively
3. Identify top LGBT+ talent and ensure that they receive appropriate development opportunities
4. Decrease turnover of LGBT+ employees and reduce replacement costs
5. Provide additional and more targeted benefits to LGBT+ employees
6. Measure and increase engagement of LGBT+ employees
7. Communicate confidentially with LGBT+ leaders and employees
8. Offer more information and other resources for affinity groups
9. Advocate for equality in LGBT+-unfriendly regions

Participants at OutNEXT's 2018 Global Summit



result in increased employee and client engagement broadly.

From a gender perspective, it's also worth noting that efforts to more effectively include transgender and gender nonconforming employees can have the ancillary benefit of breaking down gender norms and stereotypes within an organization, ultimately leading to better outcomes at all levels.

## Implementation Challenges

Successfully creating a system to collect SOGI data from employees can be a complex, detailed and often time-intensive project. Our survey showed that 13 of the 22 organizations that have launched a program faced some implementation challenges. It's important to

emphasize that many enterprises choose to undertake this process despite the complexity. The business benefits are that significant.

Most importantly, any discussion of collecting employee demographic information raises critical privacy issues. Data privacy regulations in some countries prohibit employers from collecting any such information from employees; in other countries, there are specific restrictions around asking about sexual orientation and gender identity. And in some countries, the law so dramatically restricts employers' ability to use such data that the costs of collection outweigh the benefits.

Businesses embarking on this work must also understand, and address, employee sensitivity and trust issues around disclosing their sexual

orientation and gender identity in the workplace. Building trust with employees that any SOGI information they disclose will remain confidential is fundamental to successful self-ID implementation. It is also critical to build time into the process to solicit feedback from, and gain the trust of, key stakeholders who will champion and facilitate the project.

Additionally, it is important to note that even in the best of circumstances, there will be LGBT+ employees who will never choose to self-identify to their employer. Quite often, the decision to self-identify falls along generational lines, with millennials demanding the opportunity to do so (and expanding the categories as they go), while some LGBT+ Gen X and larger numbers of LGBT+ Boomers, many of whom have probably spent a significant portion of their careers keeping their orientation from colleagues, may decline to participate.

Businesses should also expect significant underreporting in the initial years of their efforts to collect this information, as it will take time for employees to trust the process and the stated goals of the effort. As employees have the opportunity to see the positive impacts of employer strategy guided by a better understanding of LGBT+ employees, more will opt to self-ID. It's important that senior leaders understand the tendency for underreporting in the early stages to avoid the perception that the low numbers represent the actual population of LGBT+ employees.



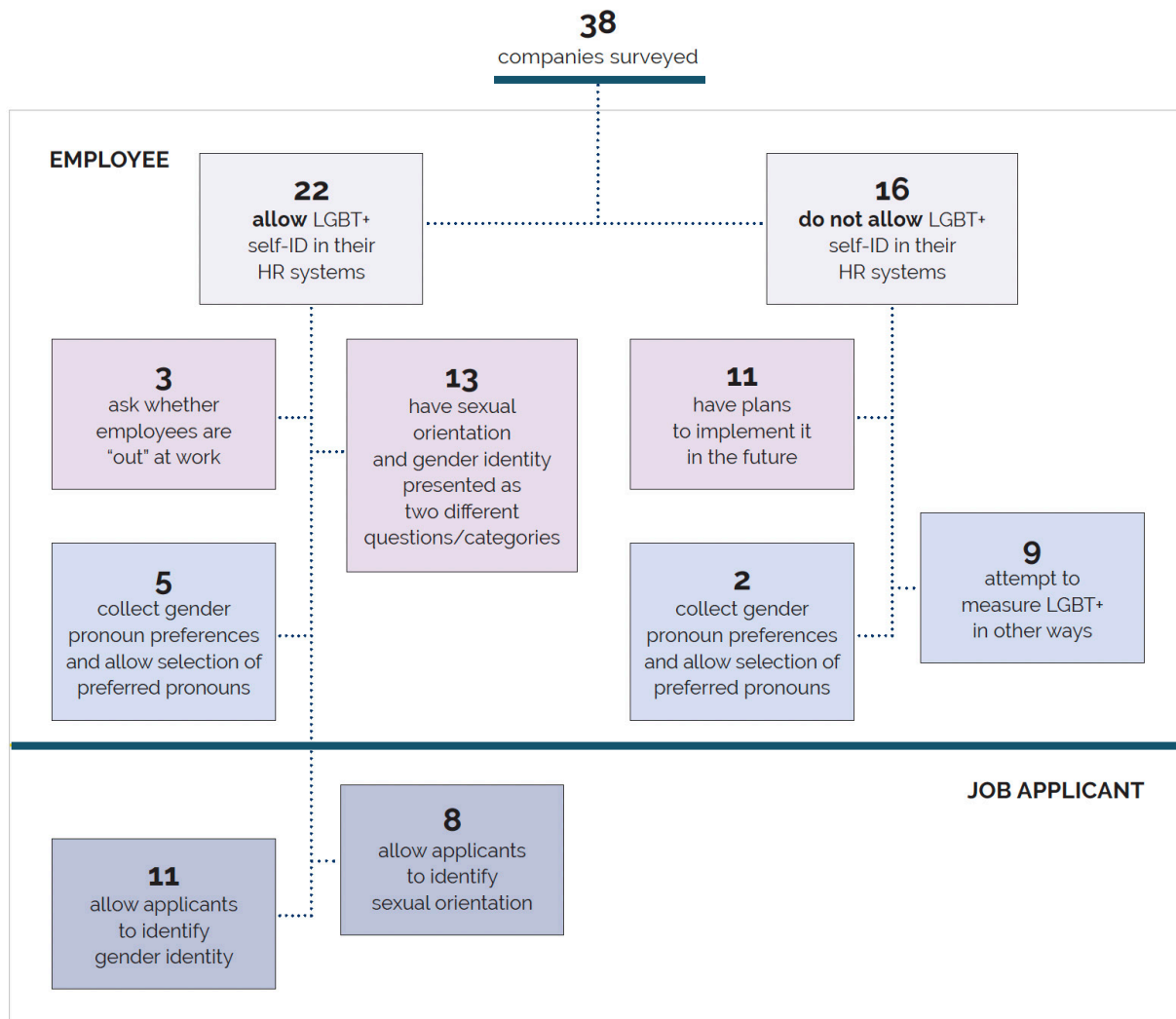
Todd Sears at Quorum  
in San Francisco in 2015



# Self-ID by the Number

In this section, we provide a top-level distillation of our survey results, which we will expand on in later sections of the report. Here you'll find aggregate data, culled from the quantitative elements of the survey, that can serve as a helpful reference guide as you continue reading.

## Self-ID Policies Results Tree and Key Takeaways



# Key Findings

## At a Glance: Implementing Self-ID

### Top Motivations for Implementing LGBT+ Self-ID

1. Led by diversity and inclusion initiative
2. Requested by employee resource group (ERG)
3. Tracking recruitment, retention and promotion of LGBT+ employees



### Top Benefits of LGBT+ Self-ID

1. Signal commitment to LGBT+ community
2. Track and enhance recruitment, retention and promotion of LGBT+ employees
3. Provide targeted benefits for LGBT+ employees



### Key Implementation Milestones

- Get buy-in from senior leaders and other stakeholders
- Audit compliance and data privacy regulations for each country in which your business operates
- Identify the best HR technology platform for your self-ID solution
- Execute an internal communications campaign to build trust and drive participation
- Follow up to share results and communicate benefits

### Implementation Best Practices

1. Engage key stakeholders, including employee resource groups (ERGs)
2. Coordinate internal communications
3. Collect and analyze data
4. Share positive outcomes, building engagement and trust



### Top Challenges in Implementing Self-ID

1. Data privacy and employment laws and regulations
2. Employee nonparticipation
3. Lack of global standards for sexual orientation and gender identity categories



- 
- 77%** cited a request by their **diversity and inclusion initiative** as the top motivation for implementing self-ID
  - 45%** cited a request by an **employee resource group**
  - 36%** cited **retention tracking**
- 

- 77%** identified **data privacy** as the *biggest challenge* in implementing LGBT+ self-ID
  - 69%** cited employee **nonparticipation**
  - 54%** said a **lack of standardized** sexual orientation and gender identity **categories**
- 

- 59%** said their company presents sexual orientation and gender identity as **different questions** in the self-ID process
- 

- 11** respondents allow applicants to identify by **gender identity** and...
  - 8** allow job applicants to identify in terms of **sexual orientation**, while...
  - 9** respondents measure LGBT+ employee composition in ways **other than** self-ID via their HR system
- 

- 7** respondents said it took **at least 1 year** to implement self-ID
  - 5** respondents said it took **less than 3 months**
- 

- 6** respondents **plan to** implement self-ID within 1 year
- 

- 5** respondents said their employer **collects gender pronoun preferences** or offers the opportunity to select and use preferred pronouns



**Bob Annibale**  
*Global Director*  
Citi Community Development  
and Inclusive Finance

## At Citi, our employees reflect

the remarkable range of cultures and perspectives of our clients across the more than 160 countries and jurisdictions where we do business—a powerful advantage that combines global insights with deep local knowledge. We recognize that unique individuals, collaborative teams and inclusive leaders have far-reaching impact and are the engines of new ideas. It's our willingness to embrace the richness of our diverse teams, ideas and possibilities that drives our growth and progress.

Citi identified LGBT+ self-ID as a strategic priority for our diversity and inclusion efforts several years ago. We believe that investing in this process has had, and will continue to have, a number of benefits. On the most basic level, it communicates to our employees who are LGBT+ that we know that they are here, that they are welcome in the organization, and that management wants to understand how their identity impacts their experience of working here. Additionally, by better understanding the demographic makeup of our employees, we will be better able to make strategic decisions in terms of recruitment and development. And we'll continue to deliver on our commitment to create inclusive workplaces where people from diverse backgrounds are able to contribute completely.

## About Bob Annibale

Bob leads Citi's partnerships, programs and investments with global, national and local organizations to support inclusive finance and community development through economic empowerment. He was a founder of Citi Inclusive Finance, which works across Citi's businesses and geographies to expand access to financial services, and leads Citi Community Development, supporting affordable housing, financial inclusion, immigrant integration and micro-enterprises in underserved communities.

Since joining Citi, he has held a number of senior regional and global treasury, risk and corporate positions in Athens, Bahrain, Nairobi, London and New York.

Bob serves on the U.S. FDIC Advisory Committee on Economic Inclusion and the Mexican Ministry of Foreign Affairs Advisory Council on Financial Education and Inclusion. He serves as a founding member of SAGE's Housing Advisory Council supporting the senior LGBT community, and on the board of the Citi Foundation, Accion International and the Bedford Stuyvestant Restoration Corporation.

Bob was honored by the Obama administration as a White House Champion of Change for his work leading Citi's programs promoting immigrant integration and citizenship in the United States. His leadership contributed to Citi's recognition by Euromoney as the inaugural "Best Bank for Financial Inclusion."



When we agreed to participate in this study, we did so because we feel that we still have a lot to learn, and we are grateful to the other organizations that have shared their insights for this report. At Citi, we are very much in the middle of our journey when it comes to implementing LGBT+ self-ID. We have not, in fact, begun collecting sexual orientation and gender identity data in most markets.

We have, however, done a great deal of the due diligence around the world—including by conducting, in 2018, a data privacy review in 48 countries where we operate. As a result of this review, which also included consideration of in-country legal, compliance and cross-border data privacy concerns, we have developed a global, granular sense of the various obstacles—legal and cultural—organizations face when considering implementing self-ID. Wherever self-disclosure of sexual orientation would not put employees at any legal risk of prosecution, we are staging self-ID by including sexual orientation and gender identity questions on our anonymous global Voice of the Employee survey in 39 countries, covering approximately 169,000 employees (or 82% of Citi's global workforce). And in 2019, we will look to expand our collection of SOGI data to more than three dozen countries.

Through this due diligence process, we have made two key insights:

**Be Bold.** Although every country presents its own specific challenges, collecting SOGI information is both possible and welcome in many places around the world.

**Build Trust.** Perhaps the greatest obstacle to implementing and effectively leveraging self-ID is employee participation. Efforts to implement it must communicate effectively about why sharing this information will be beneficial to employees, and how the data will be safeguarded.

We believe that implementing LGBT+ self-ID will help us invest more effectively in our employees, and better deliver on our organization's potential. We're looking forward to sharing more about our progress going forward, and we're grateful to all the companies that have led the way on this work.

Thank you,

**Bob Annibale**

*Co-lead, Citi Pride Affinity*

*Global Director*

*Citi Community Development and Inclusive Finance*

In 2018, he was recognized by Euromoney as a "Global Impact Banking Champion," by the Financial Times as one of the OUTstanding Top 100 LGBT Business Leaders for the fifth consecutive year, and among the Evening Standard's Progress 1000, "London's Most Influential People."

Bob, a U.S. and U.K. national, holds a B.A. in History and Political Science from Vassar College, New York, and an M.A. in African Studies (History) from the University of London, School of Oriental and African Studies.



# Implementation Best Practices

## Making LGBT+ Self-ID Work

Our survey found that several factors are critical to successful self-ID implementation. They include understanding key milestones; engaging key stakeholders, such as employee resource groups (ERGs); and effectively leveraging internal communications to build engagement and trust.

### Key Milestones

A disciplined rollout on a considered timeline is crucial. Key milestones include:

- Understanding the business and talent rationales for implementing self-ID
- Surveying the ERG for feedback to involve employees in the implementation process and ensure their comfort with the collection and use of personal data
- Getting buy-in from senior leaders and other stakeholders
- Creating a proposal with a business case for implementation
- Assessing whether it is legal—and safe—for LGBT+ people to be out in each country in which a business operates
- Performing a compliance audit to ensure that it is permissible to collect this personal demographic information in each country
- Assessing whether it is possible to store data gathered from each country centrally, rather than locally
- Implementing a data security

process that ensures compliance with all local laws and gains employees' trust

- Identifying the best HR technology platform and implementing a self-ID solution
- Executing an internal communications campaign to build trust and drive participation
- Sending a survey to employees
- Following up to share results and communicate benefits

### Leveraging Stakeholders

Socializing self-ID is a critical step that should come early in the implementation process. Especially in large, complex organizations, HR departments need to explain to leadership and key stakeholders both the rationale for, and benefits of, self-ID. Soliciting input from key stakeholders provides an opportunity to engage in dialogue, identify pain points and pave the way for a smooth rollout.

Achieving buy-in from key stakeholders takes time, and it is advisable to proceed slowly and establish internal checkpoints to

move the conversation forward.

As noted by **Geoffrey Williams of Thomson Reuters**, "Getting self-ID in place is only half the battle."

Indeed, several of our respondents confirmed that a disciplined and transparent approach works best, and there was consistency in the stakeholders identified as essential by our respondents. These individuals/departments included:

- CEOs/other chief executives
- Human resources
- Diversity and employee resource groups (ERGs)
- General counsel's office and compliance/risk management
- Data privacy and security
- Information technology
- Communications
- Organizational development

Of these, employee resource groups were most often cited as critical to a successful implementation, as they are uniquely suited to communicate the message of self-ID to their members. **Chris Crespo of EY** cites the company's outreach to its ERG, which



hosted successful self-ID discussions around National Coming Out Day, and ERG communications as primary reasons for its high percentage of self-identified LGBT+ employees.

In addition to engaging the right departments, global businesses need to involve stakeholders at the regional and local levels. As **Kimberley Messer of IBM** says, "It takes a partnership between global and local country leadership to be successful."

## Effective Internal Communications

Businesses that successfully implement self-ID have robust internal messaging campaigns that drive participation and create trust around confidentiality by sharing the intent of self-ID and its benefits.

Employers should make the case that information will be used constructively. **Chris Crespo of EY** says, "Be able to describe what is in it for people to self-identify, and show gratitude to those that participate." Enterprises that have implemented self-ID say the following benefits resonate most with employees: increased resources for the LGBT+ community within the organization; invitations to programs; and the ability to monitor and improve retention, promotion and advancement.

Emphasizing that self-ID is voluntary, confidential and will not influence individual employment decisions is another vital message. At some

enterprises, only selected diversity leaders can access the data, which, as a further precaution, is only available on a need-to-know basis.

Respondents also recommend that communications be sent by recognizable and influential leaders, and, in global organizations, by executives specific to the region or

**“Soliciting input from key stakeholders provides an opportunity to engage in dialogue, identify pain points and pave the way for a smooth rollout.”**

country where employees are based. Follow-ups from diversity professionals can be useful for reinforcing program benefit messages; separate communications from the head of the LGBT+ ERG are also effective.

In contrast, communications are less effective when self-ID is positioned as a compliance initiative, or a governmental contracting requirement.

Organizations have another opportunity to gain trust by requesting feedback and sharing insights learned from the first wave of self-identification. If possible, announcing new benefits or identifying demonstrable improvements will strongly encourage additional participation.

"One-off campaigns don't work," says **Anne Hurst of PwC**. "You need sustained, ongoing activity and reminders throughout the year."

Using a variety of phased communications methods to build awareness and anticipation and incorporating varied calls to action also helps. Businesses that have successfully rolled out self-ID delivered their messages through multiple vehicles, including email, intranet posts, video, and presentations at town halls and ERG

meetings. For example, one large financial services company included a video message from its chief human resources officer and a story on its intranet site in the United States and in local offices in Ireland and the United Kingdom. At one global bank, inclusion ambassadors were key to making the campaign local and personal.

Effectively timing internal communications is also important. For example, self-ID can be tied to the general updating of information, like addresses, certifications and year-end reviews. Onboarding is also a great time to invite employees to self-identify. Additionally, companies should consider making announcements during special calendar events, including LGBT Pride and History Months; International Day Against Homophobia, Transphobia and Biphobia; Spirit Day; and National Coming Out Day.

# Primary Roadblocks

This report has so far addressed successful strategies for implementing self-ID. This section looks at some common obstacles that many organizations face when seeking to put a self-ID program into effect.

## You Can't Rush Success

Creating and launching a system to collect SOGI data from employees requires extensive internal due diligence, and organizations should understand that the process can be time-consuming. Five of the 22 businesses surveyed that collect this data told us that it took them less than three months; seven said it took more than a year. The complexity of the task increases significantly depending on the number of countries in which a business operates and wishes to collect employee data.

Survey respondents identified three primary roadblocks:

1. Confusion about terminology and categories
2. Employee nonparticipation
3. Data privacy concerns

While each of these roadblocks is distinct, they overlap in practice. For example, data privacy concerns may discourage employee participation.

## Terminology and Category Challenges

Some enterprises seeking to implement self-ID have found navigating the constellation of sexual orientation and gender identity categories challenging. In a nonbinary world, the expansive and fluid set of gender identity categories can present an unwieldy data challenge. Organizations need to be able to compare apples to apples when making HR policy decisions, but they also want to recognize and respect the varied identities of their employees. This problem is exacerbated when a business uses an HR platform that is not equipped to handle multiple identity designations.

While debates about terminology can be robust in the LGBT+ community, and many companies have found internal conversations about how best to allow individuals to categorize themselves edifying, there's also no need to reinvent the wheel. The Consortium of Higher Education recommends a two-question sequence for collecting SOGI data. Organizations may consider the simplified approach in the sidebar on page 15, developed in consultation with Out Leadership's senior researcher.

## Employee Nonparticipation

To effectively leverage SOGI data, businesses need to collect a robust data set approximating the actual composition of LGBT+ individuals in their organization. Employee nonparticipation compromises that data set, hampering efforts to track the recruitment, retention and promotion of LGBT+ individuals, which is why organizations should make every effort to create low-friction, high-trust data collection processes.

Employees might abstain from self-ID for active or passive reasons. In some cases, employees may need to hear more effective communications about why identifying through the HR system, instead of via an anonymous employee sentiment survey or by participating in an affinity group, can help the organization make better strategic decisions on LGBT+ inclusion issues.

Data privacy is also a key concern. Businesses should take all necessary steps to protect employee demographic information, including SOGI data, just as they would protect privileged client data or financial details. They should regularly communicate with employees



about how their information is being protected, including during the collection process.

A few survey respondents noted that the way their employers asked for SOGI information unnecessarily depressed employee participation. For example, delivery of the questions disrupted their typical workflow, or the process for updating information was hard to find within the HR system.

Employers should also be aware that the decision to disclose personal information is influenced by a number of factors, some of which are not work-related. Employees who live and work in countries where being LGBT+ is met with high levels of societal disapproval are less likely to participate in self-ID.

Rolling out self-ID is a process. Regardless of how much or little data is collected, self-ID is essential to creating an inclusive workplace, signaling to all employees, LGBT+ and otherwise, that you are interested in understanding their experiences and identities.

## Data Privacy

In the era of Equifax and scores of other data breaches, protection of personal data is paramount. Employees have every right to expect their employers to be careful with their personal information. Businesses considering a self-ID program face both external and internal resistance due to privacy concerns, and they need to take these worries seriously.

Externally, businesses encounter regulatory challenges due to data privacy laws such as the European Union's General Data Protection Regulation (GDPR). Enforced as of May 25, 2018, the GDPR prohibits the processing of personal data revealing a person's sexual activity or orientation, with a number of exceptions, such as when the subject gives explicit consent or when such processing is necessary to protect the vital interests of the subject.

Internally, organizations face apprehension from employees and leadership about the safety of their personal information. Data breaches are a real concern for those who want to keep data about their sexual orientation or gender identity private for personal reasons. And leadership in countries that penalize LGBT+ individuals do not want to risk storing information that might put their businesses or people at risk.

One key to successfully implementing self-ID is to make sure that employees trust company data practices, so expect to face questions about internal use of self-ID data. These questions include:

- Who will have access to the data?
- How will the data be stored, and what security measures are in place to protect it?
- Will the data only be seen in the aggregate?
- What will the data be used for at the individual level?

## Recommended Phrasing for Sexual Orientation and Gender Identity Questions

### How do you identify your sexual orientation?

- Asexual
- Bisexual
- Lesbian
- Gay
- Queer
- Pansexual
- Heterosexual or straight
- Other (please specify)

### What is your gender?

- Man
- Woman
- Transgender man
- Transgender woman
- Nonbinary
- Another gender identity
- Decline to answer

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# A Q&A With Rohan Massey on Data Privacy

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In this interview, Rohan Massey, chair of Ropes & Gray's privacy & cybersecurity practice group, discusses how companies may advance their self-ID efforts while maintaining compliance with the General Data Protection Regulation (GDPR).

## ***Can you briefly describe the GDPR and its key implications?***

The GDPR is intended to give people greater rights over how their personal information is used. The principle of transparency requires organizations to inform individuals about the personal data they collect and use. The accountability principle requires organizations to demonstrate how they comply with the GDPR, whether by showing how they meet security obligations or what process they have in place for responding to subject access or deletion requests. Importantly, the extraterritorial scope of the GDPR aims to protect the rights of individuals no matter where in the world the processing takes place. Also, the GDPR gives individuals a right of action—including class actions—against those that do not comply, and regulators have a number of sanction powers available to them, including, for the worst breaches, multimillion-euro fines.

## ***Can you characterize European attitudes toward demographic data privacy generally?***

Although Europeans have embraced

social media and the digital age, history and cultural values keep people protective of their information. This is especially true of demographic information that may be held by authorities or organizations of influence, including employers. The GDPR, unlike the Data Protection Directive that preceded it, specifically identifies data concerning a person's sex life or sexual orientation as a special category of data over which an individual has additional rights, reflecting the importance of this issue in Europe.

## ***Does the GDPR specifically address how LGBT+ demographic information for employees can be requested, stored and managed?***

The GDPR is an omnibus regime covering all information that can be used to identify an individual. Within that regime are a number of special categories of personal data, including those relating to an individual's sex life and sexual orientation, which attract additional levels of protection. Racial or ethnic origin, political opinions, religious beliefs or other beliefs of a similar nature, trade union

membership, physical or mental health conditions, and generic data and biometric data are all treated the same as LGBT+ info. It's actually treated as more sensitive than your age, Social Security number and financial information.

Processing LGBT+ information will often be prohibited unless the organization can show it has its employees' explicit consent, which is not an easy thing to achieve since many jurisdictions see the employer/employee relationship as one in which the employee is not able to freely consent without undue influence. However, there may be certain scenarios in which an employer may be able to request the information in order to comply with local employment law, but even then, the employer must have informed the employee as to the purposes of data collection and the extent of data processing. Also, as a special category of personal data, LGBT+ information will need to be held securely both technically and organizationally, meaning that employers should restrict access to the data.



***Discuss the process called for under the GDPR if an employee wishes to revoke consent to provide demographic information and withdraw their information from the system?***

Where consent is used as the basis for processing, it must be freely given and capable of withdrawal at any time. The process of withdrawing the consent must be as easy as giving it, so if you are asked to email consent you should be able to email withdrawal. If you were asked to send a letter or see HR in person to withdraw, this may undermine the validity of the consent.

***Many sophisticated companies that administer LGBT+ self-ID processes in dozens of countries around the world do not do so in France and Germany, among other countries. Why?***

France and Germany have very restrictive employment laws and interpret the data protection legislation conservatively to protect the rights of the individual. This is not to say that individuals do not have the ability to share information with their employer—it just means that they are unlikely to be compelled to do so.

***As companies become more used to the GDPR's privacy requirements, will they come to feel normalized? Do you think that the GDPR's standards will come to feel like global standards?***

The GDPR has certainly created a change in behavior toward data protection. The GDPR's broad

omnibus approach to the protection of personal data is certainly gaining traction globally, with Argentina, Brazil and India, among others, currently changing their laws to follow suit. Even in the United States, California is adopting a broad approach to the protection of consumer data from 2020, and the protection of employees may follow.

***As more companies seek to implement LGBT+ self-ID, will the process come to be standardized within areas like the European common market, or will companies still need bespoke implementations across countries?***

The issue is not just one of data protection, but also one of employment law, which is carved out of the GDPR to some extent. Companies seeking to implement LGBT+ self-ID will always need to consider local compliance issues.

***Based on your privacy law practice, is there anything you'd like to particularly share with companies that are considering implementing LGBT+ self-ID?***

Be transparent and respectful. Inform people of what you want to do and why, and then stick to it. Make sure that it is optional and no person suffers or thinks they will suffer any form of harm, distress or discrimination by participating in LGBT+ self-ID. And when you have the data, make sure you have in place the necessary security, access and deletion measures to protect this data.

## About Rohan Massey

Rohan Massey leads Ropes & Gray's privacy & cybersecurity group and focuses his practice on data protection, data security, brand protection, e-commerce and IT. In addition to advising on global data protection and privacy issues, he counsels on intellectual property issues arising in corporate transactions. Rohan specializes in international data transfer issues and advises clients on global compliance programs and reactive solutions, including data breach management issues and cyber incident response. His industry-focused knowledge and experience covers asset management and financial services; life sciences and clinical trials; and media, sponsorship, advertising, sales promotions, intellectual property, and marketing issues in the sports apparel and food and drink sectors.

Rohan, who is based in Ropes & Gray's London office, serves an international client base, as he works extensively across Europe and the United States.

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# Additional Considerations

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## Additional Considerations

There are a number of additional factors organizations should consider when implementing self-ID. They include laws and regulations, geographical differences, job applicants and new employees, pronouns, and HR technology platforms.

### Laws and Regulations

Legal and regulatory challenges due to employment and data privacy laws add a layer of complexity to self-ID implementation, necessitating a country-by-country audit—and subsequent due diligence—to determine where self-ID is permissible.

In the United States, businesses that are capturing data must study the results, identify issues and act on any employment problems identified. Ignoring issues creates legal liability.

information in countries that do not require it by law. Conversely, some businesses feel that asking self-ID questions is confusing in certain locations because LGBT+ information is already captured and protected under sex and gender regulations, making that data redundant.

Engaging global legal and compliance functions will enable a comprehensive review of country laws and regulations in connection with employment and data privacy. As discussed earlier in the section on data privacy, regulations not only

organization identify when self-ID can be implemented in additional locations.

### Geographical Differences

In businesses that implemented self-ID globally, 17 of the 22 in our survey (77%) rolled it out to only five countries or fewer, with the United States and the United Kingdom named most frequently. Nine of those respondents intend to expand self-ID to additional locations.

Some organizations, on the other hand, have had more expansive implementations. In 2018, Citigroup included sexual orientation and gender identity questions on its global employee survey across 39 countries, covering approximately 169,000 employees (or 82% of Citi's global workforce). EY will begin to allow self-ID of sexual orientation and gender identity in 35 countries following the implementation of its new HR system in 2020.

Businesses should take a considered approach to rolling out self-ID in all territories, but should not assume that global offices are necessarily resistant. Large,

**“Expanding self-ID around the globe will provide reassurance to employees that your organization cares about their well-being.”**

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Additionally, a lack of response can be perceived as a lack of responsibility and sensitivity, possibly resulting in reputational issues.

Globally, businesses may interpret laws in various countries differently. For example, some of our respondents are sensitive to capturing identity

dictate the collection of data, but also its processing and use. Clearly communicating organizational compliance to employees will engender trust and drive participation.

Finally, rather than making audits a one-time exercise, performing them annually or biannually can help an



## Self-ID Around the World\*



### Countries where self-ID is already implemented

Australia	New Zealand
Canada	Pakistan
China	Philippines
England	Singapore
Hong Kong	South Africa
India	South Korea
Indonesia	Sri Lanka
Ireland	Taiwan
Japan	Thailand
Malaysia	United States
Mexico	Vietnam
Mongolia	

### Countries where self-ID will be implemented

Aruba	Guam	Netherlands
Barbados	Isle of Man	Panama
Botswana	Italy	Papua New Guinea
Brazil	Jamaica	Paraguay
Cambodia	Laos	Saint Lucia
Curacao	Maldives	Tanzania
Fiji	Mauritius	Trinidad and Tobago
Gibraltar	Northern Mariana Islands	Turkey

\*based on the 38 surveyed employers

sophisticated organizations have been implementing self-ID globally for many years—even in places like India, where IBM engaged with NGOs and advocacy groups to establish LGBT+ business resource groups and successfully launch a self-ID program well before the 2018 Indian Supreme Court decision that ended

Section 377, which had criminalized homosexual acts.

Most importantly, businesses need to handle self-ID information sensitively and with strict regard for national borders. In some countries, employee demographic information collected by employers cannot legally be

transmitted across the border. This is a key reason why many organizations with robust global self-ID collection systems do not implement them in Germany. Additionally, businesses must also consider cultural differences and be sensitive to the safety and reputational risks posed by sharing personal information on a



global basis. For example, Americans who elect to self-identify as LGBT+ when they are working in Chicago should not have that designation follow them if they transfer to Cairo.

As a result, organizations may decide to manage, track and utilize sexual orientation and gender identity data in a more limited fashion than other U.S.-protected categories. Although restricting usage of self-ID information limits its benefits, it also might boost participation.

On the other hand, expanding self-ID around the globe will provide reassurance to employees that their employer cares about their well-being, especially since, in many countries, employees feel safe being out only at work, not at home or in their community.

For businesses rolling out self-ID around the world, demonstrating

success in some countries and regions will uncover best practices and roadblocks, as well as persuade leadership in other locations to participate. This is particularly important for businesses that do not have a centralized approach or HR system. Some respondents reported that different territories can choose which self-ID categories to implement.

### Job Applicants and New Employees

Another consideration for businesses is whether they will also invite job candidates to answer self-ID questions. Of the 22 businesses in our survey that have implemented self-ID, eight allow job applicants to identify in terms of sexual orientation, and 11 allow applicants to identify by gender identity. As with existing employees, it is important to demonstrate respect

for the privacy of a candidate's information and explain the ways in which the data will be used.

Additionally, many respondents agree that employee onboarding presents a good time to capture self-ID information, and that participation rates fall after the orientation period.

The ability to self-identify in the application process also sends an important and positive message to potential employees, the majority of whom in the United States (according to Out Leadership's 2018 research with PwC, *Out to Succeed*) will disclose if given the opportunity. The ability to self-disclose at the point of hire also will help to reduce the trend of young LGBT+ professionals covering up their sexual orientation and gender identity after college.

*Out to Succeed* found that 60% of young LGBT+ professionals did not



disclose this information to their employer or colleagues for their first job (with a Fortune 500 firm), and covered up their sexual orientation and gender identity for an average of two years.

## Pronouns

Our research did not address itself primarily to the question of pronouns, but a number of businesses we surveyed do offer a way for employees to designate their pronouns through their HR software and in some cases to communicate those preferences systematically to their managers.

In general, creating opportunities for employees to specify their pronouns (for example, by including them in email signatures or setting the expectation that internal meetings begin with everyone sharing their pronouns) is a developing best practice.

When organizations create an opportunity for employees and leaders to share their pronouns, it should not be a universal expectation. For those struggling with their gender identity, the prospect of being required to publicly disclose pronoun choice can be received as negative pressure.

## HR Technology Platforms

Global enterprises gravitate toward a shortlist of HR platforms. Some of the leading platforms, particularly

Workday and PeopleSoft, offer some limited options for collecting SOGI demographic data from employees.

From the perspective of organizations that have never collected such data from employees, the fact that these platforms facilitate this process is a net benefit. But organizations that have a strong history of leveraging LGBT+ self-ID to guide business decisions may find significant gaps between what these platforms offer and best practices.

## Conclusion

As businesses continue to move toward collecting SOGI demographic data, it is important not to lose sight of the ultimate goal of self-ID—to make the corporate world a place where LGBT+ people can flourish.

There is a wide network of organizations like yours interested in taking this crucial first step toward building a more inclusive business landscape for LGBT+ individuals. By utilizing the best practices contained in this report and sharing information with other leaders who have successfully established self-ID processes, you can make the implementation process not only seamless, but gratifying.

It is our hope that you view this report as a launching pad for conversations, and, ultimately, for action within your organization. Together, we can continue to unleash the considerable potential of LGBT+ talent.

# Opportunities for Future Research

In future iterations of this research, we hope to build out a global matrix answering these questions for each country:

- Is it legal for LGBT+ people to self-identify?
  - Is it safe for LGBT+ people to self-identify?
  - Are companies allowed by law to ask employees to volunteer information about their sexual orientation and gender identity?
  - Are employers allowed by law to collect SOGI information and share it with a third party?
  - Are employers allowed to transmit information collected by employees across borders?
- We would also like to better understand the way HR platforms facilitate adoption of LGBT+ self-ID, and how they could do so more effectively

# We want to hear from you

If you have any feedback about this research, or would like your company to participate in future research we conduct on LGBT+ self-ID, please contact Out Leadership at [info@outleadership.com](mailto:info@outleadership.com).

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# About Us



Out Leadership is the global LGBT+ business network CEOs and multinational companies trust to generate Return on Equality®.

We create global executive events and insights that help leaders realize the economic growth and talent dividend derived from inclusive business, and convene groundbreaking talent accelerators: OutNEXT, the first global leadership development program for the next generation of LGBT+ talent; Quorum, which seeks to advance LGBT+ diversity in corporate governance; and OutWOMEN, which convenes and celebrates LGBT+ women in business.

Out Leadership is a certified B Corp. For more information, please visit [www.outleadership.com](http://www.outleadership.com).

## ROPES & GRAY

Ropes & Gray is a preeminent global law firm with approximately 1,400 lawyers and legal professionals serving clients in major centers of business, finance, technology and government. The firm has offices in New York, Boston, Washington, D.C., Chicago, San Francisco, Silicon Valley, London, Hong Kong, Shanghai, Tokyo and Seoul, and has consistently been recognized for its leading practices in many areas, including private equity, M&A, finance, asset management, real estate, tax, antitrust, life sciences, health care, intellectual property, litigation & enforcement, privacy & cybersecurity, and business restructuring.

Diversity has long been an essential part of Ropes & Gray's culture, and the firm has a long history of *pro bono* work on behalf of LGBT+ organizations and causes. In 2015, Ropes & Gray successfully argued the landmark marriage equality case *Obergefell v. Hodges* before the U.S. Supreme Court. The firm has also partnered with GLBTQ Legal Advocates & Defenders and the Massachusetts Transgender Political Coalition to launch the Transgender ID Project, and is a longtime supporter of Immigration Equality.

Ropes & Gray's commitment to diversity and inclusion has been widely recognized. In the 2019 *Vault* survey, Ropes & Gray was ranked number eight for overall diversity, marking the 10th consecutive year that the firm has been ranked in the top 10. Additionally, for the past 10 years the firm has received a perfect score on the Human Rights Campaign Foundation's Corporate Equality Index, earning designation as a "Best Place to Work for LGBT Equality."

For more information, please visit [www.ropesgray.com](http://www.ropesgray.com).



