The Leadership Conference on Civil and Human Rights

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November 2, 2026

Daniel Sweeney
Deputy General Counsel for Economic, Statistical, and Regulatory Affairs
Office of the General Counsel
U.S. Department of Commerce
Washington, DC 20230

Re: **Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (FR Doc. 2026-18481)**

Dear Mr. Sweeney:

On behalf of The Leadership Conference on Civil and Human Rights, our Census Task Force co-chairs, Asian Americans Advancing Justice – AAJC and NALEO Educational Fund, and the 205 undersigned organizations, we appreciate this opportunity to provide comments in opposition to the notice of proposed rulemaking (NPRM) published by the Census Bureau, Department of Commerce: Federal Register Notice, Docket Number USBC-2026-0628, "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions."

The Leadership Conference is the nation's oldest, largest, and most diverse civil and human rights coalition and provides a powerful unified voice for the many constituencies we represent. Our coalition views an accurate and fair census — and the collection of useful, objective data about our nation's people, housing, economy, and communities generally — to be among the most important civil rights issues of our day. The Leadership Conference's longstanding role as a Census Information Center has allowed us to highlight the fundamental importance of comprehensive, high-quality data about our population, communities, and economy. We also have a long history of firsthand experience working in support of the decennial census.

The decennial census, required by the U.S. Constitution, is a cornerstone of our democracy. Accurate census data are critical for representation, carrying out the laws of our nation, and ensuring a functioning democracy. For these reasons, **we strongly oppose the proposals contained in the NPRM and urge the Census Bureau (Department of Commerce) to withdraw this proposed rule.** The census belongs to the people. This proposed rule seeks to erase people from the census, silence their voices, and dictate that they do not count in our democracy.

The proposed rule would: 1) exclude noncitizens other than "lawful permanent residents" from congressional apportionment through an administrative action; 2) eliminate questions about race and ethnicity from the decennial census; 3) redefine "usual residence" in multiple ways, including an unprecedented enumeration period and tying enumeration to certain administrative records; and 4) prohibit sexual orientation questions on future censuses. The proposed rule would create two new parts within Title 15 of the Code of Federal Regulations, applying these changes to all future censuses.

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These proposals, together and separately, would result in inaccurate and unusable census data. The proposed rule is unconstitutional, unprecedented, and violates multiple laws by seeking to erase certain communities entirely from representation and from federal data. These proposals would distort population counts, suppress census participation, and silence entire communities. Any resulting census would be grossly inaccurate and cut to the core of our democracy – shifting representation and critical resources away from certain communities, making it impossible to enforce foundational civil rights laws, and removing reliable data that governments and private actors across the United States rely upon for informed decision-making. These consequences would harm everyone, regardless of their citizenship, race, ethnicity, or where they live.

The initial 33-day comment period provided for this proposed rule, ending on October 13, 2026, was grossly inadequate. While we support the recent extension of the public comment period until November 2, 2026,[1] a 53-day comment period is still not sufficient for the public to review and provide input on this rule given the scope of the proposed changes and the devastating effects they would have on census data.[2] Moreover, given the secretary of commerce's termination of the Census Bureau's advisory committees,[3] ensuring ample opportunity for the public to respond to the proposed changes is essential for promoting public trust in the census. The Department of Commerce and the Census Bureau **should further extend the comment period until at least December 10, 2026**, to provide a meaningful opportunity for public input, as appropriate for a significant rulemaking, **and provide additional time for meaningful Tribal consultation**, as required to uphold the federal government's government-to-government relationship with Tribal Nations.

I. Excluding noncitizens from apportionment is unconstitutional and cannot be accomplished through rulemaking.

The NPRM proposes to remove noncitizens other than "lawful permanent residents" from the congressional apportionment base, by changing the census "residence criteria" to state that certain noncitizens would be "not counted for apportionment" (proposed 15 CFR § 60.4).[4] This would result in excluding many categories of U.S. residents from the apportionment count, including visa holders, refugees, asylum applicants, undocumented immigrants, and others. **This proposal is unconstitutional,** as the 14th Amendment to the

[1] U.S. Census Bureau. Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions; Extension of Comment Period. Federal Register, Doc. 2026-20328. October 5, 2026.
[2] *See* The Leadership Conference on Civil and Human Rights et al. Request for Extension of Comment Period for Proposed Rule: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." September 16, 2026 (in-depth discussion about the insufficient comment period and the need for an extension).
[3] The Leadership Conference on Civil and Human Rights et al. Letter to the Department of Commerce on Termination of Census Advisory Committees. May 7, 2025.
[4] U.S. Census Bureau. "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." 91 FR 57526, 57529. Doc. 2026-18481. September 10, 2026.

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Constitution requires apportionment based on the "whole number of persons in each State."[5] In addition, attempting to execute this proposal would only serve to depress response rates and lead to an inaccurate census.

A. The U.S. Constitution requires counting all persons for apportionment of representatives.

Excluding noncitizens from apportionment would violate the U.S. Constitution's 14th Amendment, which requires the apportionment of House seats based on a count of "the whole number of persons in each State," regardless of citizenship or immigration status.[6] Denying representation to all "persons" seeks to erase and undo the historic democratic purpose of the 14th Amendment and the intent of the Constitution. A constitutional amendment would be necessary to exclude individuals from the census count for the purpose of apportioning House seats. A regulation is insufficient to change the Constitution.

This proposal **violates the plain language of the Constitution**, which states that "Representatives shall be apportioned among the several States according to their respective numbers, **counting the whole number of persons in each State**."[7] The proposal also violates the statute governing apportionment, which requires that the apportionment totals sent to Congress include "the whole number of persons in each State" consistent with the Constitution.[8]

The Framers intended that apportionment should include inhabitants without regard to citizenship or immigration status. Since the first census in 1790, residents have been counted for apportionment purposes without differentiating based on their immigration status.[9] Later, the clear intent of the 14th Amendment was to include *all* residents for purposes of apportionment. Congress rejected basing apportionment on the number of citizens when debating the 14th Amendment, and instead deliberately chose the word "persons" for the amendment's text. Congress explicitly chose to maintain a population-based count, rather than one based on politically defined categories such as immigration status or voter eligibility.[10]

[5] U.S. Const. Art. I, Sec. 2, Cl. 3; U.S. Const., amend. XIV, § 2.
[6] U.S. Const. Art. I, Sec. 2, Cl. 3; U.S. Const., amend. XIV, § 2.
[7] U.S. Const. Art. I, Sec. 2, Cl. 3; U.S. Const., amend. XIV, § 2.
[8] 2 U.S.C. § 2a(a).
[9] *See, e.g.*, Brief of Amici Curiae Historians in Support of Plaintiffs, *Common Cause v. Trump*, No. 20-cv-02023 (D.D.C. 2020).
[10] *Ibid* at 12-16.

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The Constitution originally excluded "Indians not taxed" from apportionment.[11] However, the "Indians not taxed" provision is no longer in effect.[12] It was originally included for narrow purposes of protecting Tribal sovereignty.[13]

Throughout our history, the three branches of government have followed this intent and agreed that the "whole number of persons in each State" includes noncitizens. Congress has never acted to amend the Constitution to exclude noncitizens; this would be necessary in order to change its meaning. In fact, Congress has consistently rejected proposals to exclude noncitizens from apportionment.[14]

The judiciary has also consistently upheld these principles of the Constitution. In 2016, when asked to weigh in on a related question in *Evenwel v. Abbott*, a case about state legislative redistricting, a unanimous Supreme Court noted that the 14th Amendment contemplates that "representatives serve all residents, not just those eligible or registered to vote,"[15] and that seminal cases setting forth the one-person, one-vote principle confirmed a total-population basis for representational equality in the U.S. House of Representatives.[16]

The executive branch has consistently carried out the Constitution in this way, through the Census Bureau and Department of Commerce. The Department of Justice under multiple presidents has also advanced this understanding of the Constitution.[17] For example, the Justice Department under President Ronald Reagan concluded that excluding "illegal aliens" from the apportionment base would be "unconstitutional" and noted that Congress "rejected arguments that representation should be based on

[11] U.S. Const. Art. I, Sec. 2, Cl. 3.
[12] An Act to authorize the Secretary of the Interior to issue certificates of citizenship to Indians, Pub. L. 68-175, 43 Stat. 253 (1924).
[13] *See, e.g.*, Brief of Amicus Curiae National Congress of American Indians in Support of Appellees, *Trump v. New York*, No. 20-366 (U.S. 2020); *See also,* Native American Rights Fund. "Counting All Persons in the U.S. Census." *NARF.org.* November 21, 2020.
[14] *See* Brief of Amici Curiae Historians in Support of Plaintiffs at 16-26, *Common Cause v. Trump*, No. 20-cv-02023 (D.D.C. 2020); *See also,* Shanahan, Brendan A. "A Century-Long Battle Over the Census." *Time.* April 2, 2025.
[15] *Evenwel v. Abbott*, 578 U.S. 54, 74 (2016).
[16] See *Wesberry v. Sanders*, 376 U. S. 1, 7-8 (1964); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). Cited in *Evenwel v. Abbott*, 578 U.S. 54 (2016).
[17] *See*, Federal Defendants' Post-Argument Mem. at 1, *FAIR v. Klutznick*, No. 79-3269 (D.D.C. 1980); Letter from Thomas M. Boyd, Acting Assistant Attorney General, to Rep. William D. Ford, House of Representatives. June 29, 1988; Letter from

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people with permanent ties to the country."[18]

A constitutional amendment would be necessary in order to exclude individuals from the apportionment count. Amending the Constitution requires a joint resolution approved by two-thirds of each chamber and ratified by three-fourths of the states.[19] It cannot be accomplished through an executive branch rulemaking. The claim that the bureau has administrative discretion to exclude whole categories of people from apportionment is patently false.

While we do not concede the facts, the NPRM sets forth many theories as to why this proposal is grounded in legal fact, yet **we continue to rest on settled law.** The Constitution, statutes, and settled law clearly provide that all persons in the United States must be counted for apportionment. Since the nation's founding, the census has been used to measure the population, not political membership. The constitutional and statutory frameworks underlying the census reflect an affirmative decision, made by the Framers and consistently reaffirmed by Congress, that the census should count all people who reside in a state, regardless of their immigration status. The Constitution's command to count everyone binds all branches of government.

B. This proposal would lead to an inaccurate enumeration.

Based on all available evidence, attempting to execute this untested proposal would only serve to **depress response rates and lead to an inaccurate census for *all* U.S. residents.** The proposed rule's "Supplementary Information" states that in order to exclude particular noncitizens from apportionment, the Census Bureau is considering multiple methods: "utilizing its enormously broad access to administrative records to determine an individual's legal status" and "includ[ing] a question about legal status on the shortform decennial census questionnaire."[20] **Both of these methods pose significant risks to an accurate enumeration.**

In addition, these proposals evince a lack of forethought and clarity regarding multiple categories of U.S. residents. For example, the language lacks clarity around how U.S. nationals from U.S. territories would be counted. These persons are lawful residents but have a status other than "citizen" or "lawful permanent resident." Residents of U.S. territories are not part of the apportionment population, but people from these areas who are residing within the 50 states must be included.[21]

Carol T. Crawford, Assistant Attorney General, to Senator Jeff Bingham. September 22, 1989. 135 Congressional Record S12235.

[18] Letter from Thomas M. Boyd, Acting Assistant Attorney General. June 29, 1988.

[19] U.S. Const. Art. V.

[20] U.S. Census Bureau. "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." 91 FR 57526, Doc. 2026-18481. September 10, 2026.

[21] *See*, U.S. Census Bureau. "Island Areas Censuses Technical Documentation." *Census.gov.* Revised September 8, 2022.

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1. These changes have never been properly tested, and there is no scientific evidence to support their adoption. When the bureau makes changes to the census, it conducts years or decades of advance research, testing, and multiple rounds of expert input – to understand the effects on census accuracy, response rates, and more.[22] This process applies to even small proposals to change question wording, and larger decisions receive greater scrutiny. In contrast, these major, unprecedented proposals were presented without any demonstrated underlying evidence. **To the contrary, all available research to date *relevant to* the proposed changes – including on similar past proposals — shows they are likely to severely damage the census's accuracy.**

2. A question about legal status (immigration status) is unprecedented and has never been tested. The bureau has not proposed a format for this question, and there is no evidence about its impact on response rates and census quality. Such a question would require years of statistically valid research and testing to determine its full effects on census accuracy, let alone its ability to adequately measure immigration status. **Based on its unconstitutional intent and all available evidence, however, an immigration status question would lead to an inaccurate census and malapportionment.**

3. The citizenship question proposed for the 2020 Census, which the NPRM cites as a precedent, was found to reduce response rates and significantly degrade data quality –- not capture accurate data about citizenship status. **An immigration status question would likely have similar, and possibly even worse, effects.** Indeed, the concerns the bureau raises elsewhere in the proposed rule about the "sensitive nature" of race and ethnicity questions[23] are more applicable to a citizenship or immigration status question, since these populations have fears of federal immigration enforcement actions as well as bias-motivated crimes.

Research on the citizenship question shows it would reduce response rates for many groups of people, not just noncitizens, leading to undercounts and damaging census accuracy. First, it does not accurately measure the full population of noncitizens, due to reduced response rates. A 2018 study published by the Census Bureau found that adding a citizenship question would lead to a 5.8% differential decline in noncitizen self-response rates, mirroring similar findings in 2017 and 2018 Census Bureau internal memoranda.[24] Following up with nonresponding households could not fully remedy these undercounts, as the bureau's follow-up procedures historically have proved unable to reach and identify all "hard-to-count" and historically

[22] *See, e.g.*, U.S. Census Bureau. "Final 2020 Census Residence Criteria and Residence Situations." 83 FR 5525, Doc. 2018-02370. February 8, 2018. (The process to revise the 2020 residence rules involved public comment on the 2010 rule, an extended comment period on the 2020 proposals, and comments on the final rule, as well as input by Census Advisory Committees.); Office of Management and Budget, "Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity." 89 FR 22182, Doc. 2024-06469. March 29, 2024. (The process to revise SPD-15 involved decades of research on the proposed changes, followed by a robust public input process.); U.S. Census Bureau. "American Community Survey: Content Changes." *Census.gov.* Revised June 17, 2026.

[23] 91 FR 57527, Doc. 2026-18481. September 10, 2026.

[24] Brown, J. David et al. Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census. June 2019. *See also*, U.S. Census Bureau. Memoranda issued on December 22, 2017, and January 3, 2018, cited in Brief of Amici Curiae the Leadership Conference on Civil and Human Rights et al. in Support of Respondents at 24-25, *Department of Commerce v. New York*, No. 18-966 (U.S. 2019).

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undercounted households. It would also be impossible for the bureau to fully determine whether undercounts are attributable to citizens or to other residents, making the census overall less accurate.[25] Additionally, given that the edict of the decennial census is to count *all* persons, missing or miscounting any person is concerning, since the harms affect the entire community in which they are based.

A citizenship question would also exacerbate undercounts of hard-to-count and historically undercounted populations.[26] The Census Bureau's own 2019 Census Test found statistically significant lower self-response rates for the questionnaire with the citizenship question among several groups and areas, including mail respondents, census tracts receiving bilingual materials, and tracts with a high proportion of Hispanic residents (as well as certain tracts with Asian residents).[27]

Such a question also negatively affects response rates for citizens and their households. The question could exacerbate mistrust of government shared by many communities. In addition, citizens living in households with noncitizens may be deterred. A **2025 study** found that including a citizenship question significantly lowered response rates among multiple groups, including households with at least one *U.S.-born* Hispanic member; households containing a *naturalized citizen*; households of mixed status (containing members with Social Security numbers and individual taxpayer identification numbers); and *even* households with all U.S.-born non-Hispanic white members. The study also found that a citizenship question caused omissions (failure to include all household members on the census form) at a rate that was statistically significant for the *entire population*, and for *most groups of people*, including citizens, mixed-status households, and most racial groups.[28] **These undercounts would lead to an inaccurate census for all residents.**

4. Administrative records on citizenship are flawed, insufficient for an actual enumeration, and would also lead to inaccurate census data. Using administrative records to determine the immigration status of all residents, either alone or in combination with an immigration status question, would be dangerously unreliable. The bureau cannot rely solely on administrative records to conduct an "actual enumeration," as

[25] Testimony of John G. Keane, Census Director at 9-12. Hearing before the Subcommittee on Census and Population of the Committee on Post Office and Civil Service, House of Representatives. 100th Congress. April 18, 1988.
[26] *See*, Deborah Stempowski. "Counting Every Voice: Understanding Hard-to-Count and Historically Undercounted Populations." *Census.gov*. November 7, 2023.
[27] U.S. Census Bureau. 2019 Census Test Report. January 3, 2020. *See also*, Brown, J. David et al. "Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census." June 2019.
[28] Brown, J. David and Heggeness, Misty L. Citizenship Question Effects on Household Survey Response. *Journal of Policy Analysis and Management* Vol. 45, No. 1. March 20, 2025. Pgs. 14-16. *See also*, NALEO, "Countdown to Census 2020: New Data on Latino Perceptions." February 10, 2020. (Among immigrant respondents, 67% were concerned about a citizenship question, including 48% of naturalized citizens and 69% of lawful permanent residents.)

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required under the Constitution, and must avoid the use of "statistical sampling" for purposes of apportionment.[29]

Administrative records on citizenship contain significant inaccuracies and limitations, such that relying on these records to determine immigration status, even in combination with a question, would produce inaccurate results. While administrative records can improve accuracy when used in a well-researched and careful manner, as a supplement to other data, and to provide *estimates* of a population, this proposal would use them as a litmus test to exclude people from the count. This is impermissible, untested, and irresponsible. Administrative records and procedures are insufficient to accurately determine immigration status for purposes of apportionment.[30] **Significant flaws with administrative records on citizenship include:**

- **The bureau's administrative records do not have comprehensive coverage.** The bureau's single largest administrative data source, IRS Form 1040 data, covers at most 76.4% of the population. The bureau reports having to combine 31 separate sources just to approximate comprehensive coverage.[31]
- **The bureau's ability to link or match records has major unresolved limitations**, leading to significant gaps. In January 2026, the bureau's research found that immigrants, recent movers, and low-income individuals are among the groups least likely to be successfully matched.[32]
- **Key sources, such as the Department of Homeland Security (DHS) data and Social Security Administration (SSA) data, are not fully reliable.** In 2019, DHS's own Privacy Impact Assessment to share immigration-related records with the Census Bureau stated that "linking records between datasets is not likely to be 100% accurate" and it explicitly acknowledged the risk that the bureau could use DHS data to assign a person an incorrect immigration status.[33] SSA citizenship data, which would likely be a central source, also have serious accuracy problems — including gaps in data about

[29] U.S. Const. Art. I, Sec. 2, Cl. 3; *Department of Commerce v. United States House of Representatives*, 525 U.S. 316 (1999). *See also,* U.S. Census Bureau. "Recommendations and Comments to the U.S. Census Bureau from the National Advisory Committee 2024 Spring Meeting," Recommendation 21. September 2024. Pg. 12.
[30] *See also,* Census Quality Reinforcement Task Force. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026.
[31] Brown, J. David and Murray-Close, Marta. Producing U.S. Population Statistics Using Multiple Administrative Sources. November 2023.
[32] Raze, Kyle et al. Non-Random Assignment of Individual Identifiers and Selection into Linked Data: Implications for Research. January 2026.
[33] U.S. Department of Homeland Security. "Privacy Impact Assessment for DHS/ALL/PIA-079, DHS Immigration-Related Information Sharing with U.S. Census Bureau." December 2019.

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naturalizations because SSA has no process for automatically updating a person's citizenship status — and SSA has acknowledged its citizenship data "may not be current."[34]

- **The bureau is aware of these significant limitations.** For example, in 2018, the bureau found "pervasive" discrepancies between citizenship data from administrative records and surveys, and stated that administrative records "may miss some naturalizations and capture others with a delay."[35] In 2020, **when the bureau attempted to capture citizenship status for apportionment in its Citizen Voting Age Population project,** the bureau's technical report confirmed that a portion of the population could not be assigned citizenship status from the available administrative records, and people the administrative records fail to capture are systematically different (meaning estimating their citizenship would produce significant errors).[36]

In addition, given that administrative records contain many discrepancies, this would require Census Bureau staff to make consequential decisions and grant them significant new discretion, without transparency. For example, the bureau could make a decision to wrongly exclude a person from being counted because two administrative records for that person do not match. Lack of transparency and fairness around such decisions could lead to systematic undercounts of people based on administrative records.

Due to these concerns, administrative records on citizenship are not sufficient for the bureau's stated task of enumerating immigration status for purposes of apportionment, and they would exacerbate an inaccurate census.

Finally, regardless of the methodology used, it is paramount that the Census Bureau always comply with the strict confidentiality provisions of Title 13, which protect individuals' personal information from disclosure and misuse. Sharing individuals' information or records with other agencies, or using it for anything other than statistical purposes, is illegal and cannot be tolerated at the Census Bureau.[37]

C. This proposal would significantly harm communities and data users throughout the nation.

Excluding noncitizens from apportionment, through a flawed process that produces inaccurate census data, would result in a census that does not reflect the reality of U.S. communities, creating widespread damage. Erasing persons from the apportionment base and representation would make governments unable to

[34] *See*, Fair Elections Center. Issue Brief: Examining Changes to USCIS's SAVE System. July 2025; *See also*, Fair Elections Center. Comment to the U.S. Department of Homeland Security re: "Department of Homeland Security/U.S. Citizenship and Immigration Services (USCIS)-004 Systematic Alien Verification for Entitlements Program." December 1, 2025.
[35] Brown, J. David et al. Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census. June 2019.
[36] Abowd, John M. et al. Determination of the 2020 U.S. Citizen Voting Age Population (CVAP) Using Administrative Records and Statistical Methodology: Technical Report. October 2020.
[37] 13 U.S.C. § 9; 13 U.S.C. § 8; 13 U.S.C. § 214; 18 U.S.C. §§ 3559, 3571; 44 U.S.C. § 3561; *Baldrige v. Shapiro*, 455 U.S. 345, 356-358, 346 (1982). *See also*, 44 U.S.C. § 3572; 5 U.S.C. 552a(i).

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accurately plan for and serve their communities' needs. This proposal would make census results inaccurate for all communities, destabilizing federal data overall. **For example, this proposal would harm:**

- **Local, state, and Tribal governments:** Governments rely on accurate census data to plan for the needs of their communities. Under this proposal, governments would not have reliable information on the number of people they serve. Local institutions, including emergency response departments, hospitals, and law enforcement agencies, would not be able to accurately plan for serving their populations.[38]
- **Businesses:** Companies use census data for many decisions, including planning new facilities and stores, marketing products and services, and hiring workers. With inaccurate census data about the entire nation's population (regardless of citizenship or immigration status), businesses would not have accurate information for these decisions. In low-margin industries, even slight inaccuracies in the data could materially affect the utility of business projections.[39]
- **Education and children:** An inaccurate census for all people, as well as undercounts of immigrant communities and marginalized groups, would make education systems unable to plan for students' needs. This would lead to misallocated funding and severe consequences on students' academic outcomes. It would also exacerbate existing undercounts of children, making it impossible to support children's needs, from foster care to childcare and more.[40]

Because this proposal to exclude noncitizens would cause undercounts and fundamental inaccuracies in the census, it would also have wide-ranging impacts on civil rights enforcement, healthcare, environmental planning, emergency management, criminal justice, and more. Without an accurate count of the full U.S. population, data for every specific purpose would be fundamentally damaged and unreliable for decades to come.

II. Eliminating census race and ethnicity data collection is unprecedented, violates statutes, and would have widespread and devastating consequences.

The proposed rule would **eliminate questions about race and ethnicity from the census**, by creating new 15 CFR § 70.2 that would permanently prohibit such questions on future censuses. This is unprecedented. The

[38] *See also,* National League of Cities. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026.
[39] *See, e.g.,* Brief of Businesses and Business Organizations as Amici Curiae in Support of Respondents at 3-5, 10-11, 14-15, *Department of Commerce v. New York*, No. 18-966 (U.S. 2019). *See also,* U.S. Census Bureau. Preliminary Regulatory Impact Analysis, "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, Docket No. 260903-0005." Pgs. 11-12; Kenny, David. "A C.E.O.'s Plea: Don't Mess With the Census." *New York Times*. April 22, 2019.
[40] *See, e.g.,* Population Reference Bureau. "Citizenship Question Risks a 2020 Census Undercount in Every State, Especially Among Children." October 5, 2018; Brief of the KIPP Foundation et al. as Amici Curiae in Support of Respondents at 3-5, 11, *Department of Commerce v. New York*, No. 18-966 (U.S. 2019).

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census has collected data on race and ethnicity in some manner since the first census in 1790.[41] This proposal breaks with over 230 years of practice and reliance by the federal government, state governments, and the private sector. It would **violate multiple civil rights statutes** that require race and ethnicity data in order to be effectively enforced. The implications of this proposal go far beyond the decennial census itself. This would effectively **eliminate reliable race and ethnicity data on the U.S. population,** because surveys and data sets across the government and private sectors depend on census race and ethnicity data. All sectors across the country **would be severely affected by the loss of accurate demographic data,** including business, healthcare, education, and more.

The text of proposed new 15 CFR § 70.2, which states that "no person shall be obligated to furnish a response to any demographic question as part of the decennial census" other than sex, date of birth, and household relationships,[42] also weakens and goes against 13 U.S.C. § 221, which requires individuals to answer the census. This provision also calls into question whether American Community Survey (ACS) responses would be made voluntary in violation of the statute, since the ACS is part of the decennial census.

A. There is no replacement for decennial census race and ethnicity data.

If race and ethnicity data are not collected on the decennial census, then other data products on race and ethnicity will not be accurate or useful. The decennial census is the only "actual enumeration" of the U.S. population, and therefore serves as the most accurate baseline for other data products. Because of this, some call the census the denominator for every statistic. Accurate decennial census data, including on race and ethnicity, are necessary for designing and weighting other surveys and research to understand the U.S. population. **Without accurate, robust decennial census data, there is no benchmark for other data sets.** For example, if race and ethnicity data were eliminated from the census under this proposed rule, but still collected on the American Community Survey, the ACS data would be impossible to produce and evaluate for accuracy because the ACS uses decennial data to establish a baseline.[43]

Decennial census results are essential for producing other federal surveys and data products. For example, the Census Bureau's annual population estimates rely on census data to produce updated population statistics for the nation, states, and localities. The bureau uses core demographics derived from the census to guide ACS sampling and ensure ACS data are consistent with estimates of the population as a whole. As noted in the bureau's own Preliminary Regulatory Impact Analysis, under this proposed rule as a whole, "The accuracy of ACS total-population estimates may decline because the ACS will not have an updated full count

[41] *See*, Parker, Kim et al. Race and Multiracial Americans in the U.S. Census. *Pew Research Center*. June 11, 2015. *See also*, U.S. Census Bureau, "Decennial Census by Decade: 1790." *Census.gov*. July 23, 2026.
[42] 91 FR 57530, Doc. 2026-18481. September 10, 2026.
[43] *See* U.S. Census Bureau. American Community Survey Design and Methodology Report. December 2024; *See also* U.S. Census Bureau. Preliminary Regulatory Impact Analysis, "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, Docket No. 260903-0005." Pgs. 12-13.

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of the U.S. population …Without new decennial census data to recalibrate [intercensal] estimates, the ACS sampling weights, and therefore its population estimates, will become less reliable."[44]

Other federal surveys, such as the Current Population Survey, Consumer Expenditure Survey, American Housing Survey, and many others, also rely on data from the decennial census to create survey samples, weight responses, and measure error.[45] **The same concept applies for surveys and data products produced by the private sector.** Private-sector researchers of every type, including businesses, polling firms, market researchers, and others, "use Census demographic benchmarks to build representative samples and to weight survey data so that results reflect the actual composition of the U.S. population, a state, a metro area, or a local market. Without an authoritative, universal benchmark, survey results cannot be reliably generalized to the public."[46]

The bureau's Preliminary Regulatory Impact Analysis clearly details this problem: "the quality of the estimates for the ACS and other federal surveys may deteriorate after the release of the 2030 decennial census data."47 "Numerous key dependencies" also rely on census race and ethnicity data, including "major federal surveys; denominators for crucial social and economic indicators" such as mortality rates and unemployment rates; "required information for state and federal grants and other funding formulas; foundational data to support planning at the local level;" and "countless research projects across academia, government, and the private sector. To produce and release these data, the decennial census counts of the population by race and ethnicity are relied upon, as there are no other comparably accurate, comprehensive, and reliable sources of this information. Omitting race and ethnicity from the 2030 Census questionnaire would require the development of estimates from a base population derived from outdated and/or less accurate data and would deteriorate the accuracy of the estimation method itself."[48]

In addition, some communities rely even more heavily on decennial census race and ethnicity data, because they are not covered by the ACS. ACS one-year estimates are available only for areas with populations over 65,000, so they do not cover all Tribal Nations or localities. The ACS also does not cover the Island Areas (the U.S. territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands, which are covered by the decennial Island Area Censuses).[49] The loss of decennial race

[44] U.S. Census Bureau. Preliminary Regulatory Impact Analysis, "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, Docket No. 260903-0005*."* Pgs. 12-13.
[45] *See Ibid.* at 15. *See also,* Census Quality Reinforcement. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026.
[46] Insights Association. Letter to Commerce Dept on Race and Ethnicity Data Elimination Proposal. August 25, 2026.
[47] U.S. Census Bureau. Preliminary Regulatory Impact Analysis, "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, Docket No. 260903-0005*."* Pg. 15.
[48] *Ibid.*
[49] U.S. Census Bureau. Preliminary Regulatory Impact Analysis, "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, Docket No. 260903-0005." Pgs. 13-14.

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and ethnicity data would affect all communities, but would have an even more direct effect for these communities.

Eliminating these data would be unprecedented, and testing argues for more race and ethnicity data collection, not less. Extensive research, testing, and stakeholder consultation show that implementing modernized federal standards for race and ethnicity data collection (2024 Statistical Policy Directive No. 15) would yield more useful census data. The modernized 2024 standards reflect efforts to bring federal questionnaires up-to-date with how individuals choose to identify themselves, resulting in more accurate data.[50] These standards, which combine race and ethnicity into one question, add Middle Eastern or North African as a new minimum reporting category, and call for disaggregated data, were arrived at through decades of research and testing, federal agency review, robust public engagement, and a transparent and lengthy public comment process.[51] The Census Bureau should implement these standards and must implement them before the next decennial census.

B. Federal statutes cannot be enforced without census race and ethnicity data.

Multiple **federal statutes**, passed by Congress and currently in effect, **require race and ethnicity data** in order to be enforced.[52] This proposal would effectively eliminate reliable race and ethnicity data across the federal government, making enforcement and implementation of these statutes impossible. While many statutes do not explicitly require the collection of race and ethnicity data, census race and ethnicity data are necessary for enforcing these statutes. **Statutes that rely on census race and ethnicity data include, but are not limited to, the following.**

- **Housing:** The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) prohibits discrimination in housing-related transactions, including the sale, rental, and financing of homes based on race, religion, disability, and other characteristics.[53] Census race and ethnicity data are vital for understanding the impact of housing practices and providing a benchmark for investigations.[54]

[50] *See* U.S. Census Bureau. 2015 National Content Test Race and Ethnicity Analysis Report. February 2017; *See also*, U.S. Census Bureau. 2016 American Community Survey Content Test for Race and Hispanic Origin. September 19, 2017; and U.S. Census Bureau. 2010 Census Race and Hispanic Origin Alternative Questionnaire Experiment. August 8, 2012.
[51] *See* Office of Management and Budget. "Initial Proposals For Updating OMB's Race and Ethnicity Statistical Standards." 88 FR 5375, Doc. 2023-01635. January 27, 2023. (Received over 20,700 public comments.); Office of Management and Budget. "Public Engagement." *SPD15Revision.gov*. Revised September 24, 2026. *See also*, Office of Management and Budget. "Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity." 81 FR 67398, Doc. 2016-23672. September 30, 2016; Office of Management and Budget. "Proposals From the Federal Interagency Working Group for Revision of the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity." 82 FR 12242, Doc. 2017-03973. March 1, 2017.
[52] *See*, U.S. Census Bureau. "Why We Ask the Race Question." 2020.
[53] 42 U.S.C. §§ 3601–3631.
[54] *See*, Leadership Conference. Race and Ethnicity in the 2020 Census. November 2014. Pgs. 9-15.

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- **Education:** Title VI of the Civil Rights Act of 1964 bars recipients of federal financial assistance from discriminating on the basis of race, color, and national origin.[55] Institutions subject to Title VI nondiscrimination requirements include state and local education agencies and systems. Since *Brown v. Board of Education*, race and ethnicity data have been essential to upholding laws that require equal access to education. Title VII of the Elementary and Secondary Education Act of 1965, as amended, also relies on race data to evaluate federally assisted programs and analyze the education status of specific populations. In addition, the Elementary and Secondary Education Act of 1965 (as amended) specifically requires the collection and reporting of statistical data on education, by race, ethnicity and other characteristics.[56]
- **Programs for Tribal Nations:** Programs such as the Indian Housing Block Grant program, Indian Community Development Block Grant program, and the Indian Health Service all depend on accurate estimates of American Indians and Alaska Natives in order to adequately provide services to Tribes, as the federal government is required to do.[57] Federal agencies "need to know the number of American Indians and Alaska Natives to appropriate money fairly" and implement programs for Tribes and Indigenous communities, including the Bureau of Indian Affairs, the Bureau of Indian Education, the Department of the Interior, the Department of Agriculture, the Department of Transportation, and more.[58] Data for these purposes come from the race and ethnicity question. Only the decennial census can provide accurate data for these needs, because surveys such as the ACS have high error rates for more sparsely populated communities such as those on Tribal lands. Where ACS data can be used, they also rely on an accurate census baseline.[59]
- **Federally funded programs:** Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race in federally funded programs. Agencies must collect demographic data in their records, to ensure compliance with these nondiscrimination requirements and monitor disparities.[60] Census race and ethnicity data are essential for the analyses that agencies conduct to comply with these laws.
- **Healthcare:** Title VI extends to federal health programs and healthcare facilities that receive federal funding. In addition, race and ethnicity data are essential to understand health trends across the U.S. population. To that end, the Public Health Service Act, as amended, requires the Department of Health and Human Services to ensure that "any federally conducted" health care "program, activity or survey (including Current Population Surveys and American Community Surveys)" conducted by the Census Bureau, collects and reports "data on race, ethnicity," and other characteristics to understand

[55] 42 U.S.C. § 2000d.
[56] 20 U.S.C. § 9543; 20 U.S.C. § 9533.
[57] *See, e.g.*, U.S. Census Bureau. "Why We Ask Questions About Race." Accessed September 15, 2026; U.S. Census Bureau. Preliminary Regulatory Impact Analysis, "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, Docket No. 260903-0005." Pgs. 14-15.
[58] *Ibid.*
[59] *See Ibid.;* U.S. Census Bureau. Preliminary Regulatory Impact Analysis.
[60] *See, e.g.*, 28 C.F.R. § 42.106(b) (Department of Justice); 34 C.F.R. § 100.6(b) (Department of Education); 45 C.F.R. § 80.6(b) (Department of Health & Human Services); 7 C.F.R. § 15.5(b) (Department of Agriculture).

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the population of health program participants.[61] Similarly, federal law also requires the Census Bureau to help produce information on children without health insurance coverage, by "family income, age, and race or ethnicity."[62] Reliable race and ethnicity data for these purposes are not possible without the decennial census.

- **Voting rights:** The Voting Rights Act of 1965 prohibits discrimination on the basis of race, color, or membership in a language minority group, in voting practices and procedures, including redistricting, election systems, and voter registration procedures. Census data are necessary to determine whether certain protections apply and whether violations have occurred. Section 203 of the Voting Rights Act (as amended) relies on census data to determine and enforce language access protections. Decennial census demographic tabulations at the census block level are necessary to enforce Section 2 of the Voting Rights Act.[63]
- **Employment:** Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in the workplace on the basis of race, sex, religion, and other characteristics. Race and ethnicity data from the census, cross-tabulated with information such as occupation and earnings, serve as the primary benchmark for comparing the relevant characteristics of an organization's internal workforce with the broader labor market.

These are only a few examples of federal laws that implicate these data. **These laws were passed by Congress and remain in effect.** Removing usable race and ethnicity data would force agencies to contravene these laws. This proposal would make it impossible to follow the law and meet the needs of constituents.

Accurate census data are also essential for the federal government to fulfill its trust and treaty obligations to Tribal Nations and Native Americans via federal funding and service provision, as many federal programs require American Indian and Alaska Native population numbers to appropriate money fairly.[64] Data on Native Hawaiian populations are also uniquely important to fulfill these communities' needs and the government's obligations to them.[65]

Finally, the bureau asserts that there are "substantial doubts about the meaning, significance, and impact" of collecting race and ethnicity data. None of the authorities highlighted by the bureau require the government to stop collecting race and ethnicity data. Measuring a population is simply objective information gathering and does not actively confer anything beyond the collection of data. Meanwhile, federal laws that necessitate these

[61] 42 U.S.C. § 300kk.
[62] 42 U.S.C. § 1397ii(b)(1).
[63] 52 U.S.C. § 10301; *see also, Thornburg v. Gingles*, 478 U.S. 30 (1986)
[64] *See also,* Native American Rights Fund. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026.
[65] *See,* Hawaiian Council. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026.

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data remain in force. **In addition, failing to measure discrimination and inequality does not mean they no longer exist.**

C. Race and ethnicity data are also necessary for upholding similar state and local laws.

States have similar laws that rely on understanding race and ethnicity characteristics of their populations, such as anti-discrimination laws in health, housing, education, and more. Many states also have voting rights legislation that provides protections against racial discrimination and requires these data.[66]

In addition, states rely on decennial census data (the P.L. 94-171 file) to draft redistricting plans for state legislative seats, and local governments also use the data to allocate representation on county and city councils, school boards, and other governing bodies. These redistricting plans must comply with the state's own redistricting laws. The federal government cannot deny the states data that are necessary to enforce these laws. **Census data are the only comprehensive source for race and ethnicity data across the nation.**

D. Race and ethnicity data are indispensable for many other uses.

Race and ethnicity data collected in the census are essential for data users across the country. These data provide critical information for businesses to grow and compete, furnish healthcare providers with essential data to save lives, help local governments target services more efficiently, and more.

- **Businesses:** Race and ethnicity data are a key set of demographic information used by industries across the United States. These data are essential for informed business decisions**,** including market research, designing products, siting facilities and stores, planning for hiring, and more. Businesses consider these data a critical input for understanding and segmenting consumers. Eliminating census race and ethnicity data would create significant costs and risk across many varied industries.[67] Importantly, private-sector stakeholders also point out that **private data cannot replace census data** because the census serves as the denominator across data sets. On the contrary, as artificial intelligence and other data-driven systems increasingly shape business, "authoritative population benchmarks are becoming more important, not less."[68]
- **Healthcare:** Race and ethnicity data allow researchers and public health officials to track disparities in health outcomes, life expectancy, disease prevalence, immunization rates, and access to care, which is necessary for designing interventions and measuring their effectiveness. For example, without census data, doctors and researchers could know only the number of Black and white Americans who died of heart disease (collected from health providers) — but could not determine other important

[66] *See, e.g.*, Legal Defense Fund. "State Voting Rights Acts." Accessed September 22, 2026.
[67] *See, e.g.*, Insights Association. Letter to Commerce Dept on Race and Ethnicity Data Elimination Proposal. August 25, 2026; WIPP Education Institute. "The Economic Stakes of Proposed Changes to the Decennial Census." October 2026.
[68] Insights Association. Letter to Commerce Dept on Race and Ethnicity Data Elimination Proposal. August 25, 2026.

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information such as what percentage of white Americans have heart disease, or whether deaths are rising or falling over time.[69]

- **Local governments:** Local governments use these data to understand and meet the needs of their populations. Basic demographic information about local populations, including race and ethnicity, is important for accurately planning programs, including infrastructure, education initiatives, economic development, disaster preparedness, parks and senior centers, and more. Race and ethnicity are part of a comprehensive analysis of various factors that may affect a local population's needs and how to serve them. Race and ethnicity data are also used to assess racial disparities in local communities and evaluate programs to ensure that they fairly serve the needs of all groups, in accordance with local and other laws.[70]

These are only some of the countless important uses for race and ethnicity data.

E. The stated rationale for this decision, protecting privacy, is pretextual.

The proposed rule argues that eliminating race and ethnicity questions "would reduce response burden as well as the risk of disclosure" and thus "obtain a more complete population count directly from respondents," citing the Privacy Act, the Paperwork Reduction Act, and the Census Act. **This rationale is pretextual, as the Census Bureau has previously been able to comply with these laws and protect respondent information while collecting race and ethnicity data in every census.**

This information is **necessary and relevant** for the Census Bureau to collect, to carry out federal laws and for many other uses. In this context, respondent burden is weighed against the need for this information. The Privacy Act requires federal agencies to maintain information that is "relevant and necessary" for the agency to meet requirements established by statute.[71]

The bureau must collect these data, *and* it must protect them. Those are not in contradiction, but can be and have been, carried out together. The census has collected data on race and ethnicity in some manner since 1790, and simultaneously census statutes have required the Census Bureau to keep individuals' information

[69] *See, e.g.,* Le, Vi D. and Klein, Melanie. "The Public Health Cost of Eliminating Race and Ethnicity Data." *Federation of American Scientists.* September 4, 2026; Ndugga, Nambi et al. "Understanding Racial and Ethnic Identity in Federal Data and Impacts for Health Disparities." *KFF.* November 1, 2024.
[70] *See also,* National League of Cities. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026. *See also, See*, U.S. Census Bureau. "Why We Ask Questions About Race." Accessed September 15, 2026; U.S. Census Bureau, "Race." Revised September 30, 2024.
[71] 5 U.S.C. 552a(e)(1).

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confidential.[72] The bureau must take seriously its Title 13 confidentiality obligations. For all the essential information the bureau collects, it already weighs the risk of disclosure when publishing information and implements internal protections. The bureau has privacy protection technologies available for its use to ensure individual responses are not disclosed.

III. The proposed changes to residence criteria are unprecedented, violate census statutes, and would result in inaccurate census data.

The proposed rule would redefine "usual residence" and contains multiple other unprecedented changes to residence criteria. This proposal violates census statutes and raises serious questions about whether people will be counted in the right place, or at all. There is no rationale or evidence for these changes, which would only increase ambiguity and the risk of inaccurate census data. These proposed changes would be impossible for Census Bureau employees to consistently operationalize, causing confusion and inconsistent results. These unclear standards would also make the census more vulnerable to manipulation, creating significant room for the Census Bureau to make determinations on a case-by-case basis, rather than following a clear rule.

A. Redefining "usual residence" violates statutes, precedent, and accuracy.

The proposed rule would redefine "usual residence" as "the residence at which [the respondent has] lawfully spent the greatest number of days during the census enumeration period" and specifies that "a person's 'usual residence' should be consistent with, and evidenced by, their tax records (e.g., tax returns, W-2 forms)." It would also newly define a "census enumeration period" of January 3 to April 1.[73]

This contravenes census statutes and longstanding practice. The Census Act of 1790 established the concept of "usual residence," explicitly specifying that "every person" should be enumerated at their "usual place of abode" as of the official census day. Traditionally, "usual residence" has meant where a person lives and sleeps most of the time, and census residence criteria have followed this definition.[74] If a person does not have a "usual residence" (such as unhoused people), they are counted in the location where they are on Census Day. This also follows the 1790 Act.[75]

The rule's three-month "enumeration period" for determining residence violates statutory directives. The 1790 Act tied the enumeration and usual residence to Census Day, not to a multi-month window.

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[72] *See, e.g.*, 13 U.S.C. § 9; 13 U.S.C. § 8; 13 U.S.C. § 214. *See also,* U.S. Census Bureau. A Monograph on Confidentiality and Privacy in the U.S. Census. July 2001.
[73] 91 FR 57529, Doc. 2026-18481. September 10, 2026.
[74] *See, e.g.,* U.S. Census Bureau. Residence Criteria and Residence Situations for the 2020 Census of the United States. February 2018.
[75] *See,* National Archives and Records Administration. "1790 Census Records." *Archives.gov.* Revised February 23, 2024.

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Continuing this practice, 13 U.S.C 141(a) mandates that the secretary of commerce "shall, in the year 1980 and every 10 years thereafter, take a decennial census of population *as of the first day of April of such year*, which date shall be known as the 'decennial census date.'" While the reference date in law has sometimes changed over the decades, the census has always been understood to enumerate people at their usual residence *as of* the legally mandated census date — never a range of dates.

In addition to violating census statutes, the unprecedented enumeration period **introduces significant potential for error**, such as for people who move during the enumeration period, people who have multiple residences, and more. For example, someone who recently moved to a new home as of April 1 could be enumerated at their old residence. People living in one location for the winter would be enumerated there, rather than where they live most of the time. Or such persons could be miscounted due to the confusing criteria.[76] This would remove representation and services from places where people live most of the time and create inaccurate information. The proposed rule creates additional confusion by specifying that "at least one hour" qualifies as a "day" for residence purposes,[77] leading to significant ambiguity about brief presences like medical stays or family visits. These unclear standards would be very difficult for enumerators and other bureau staff to coherently implement.[78] They leave significant room for case-by-case interpretation, rather than following a clear rule.

The concept of **"lawful" residence** is also unprecedented in the census. Defining residence as where someone has "lawfully spent" their days has never been included in any decennial census. It contradicts the understanding of "usual residence" since 1790. As the Census Bureau has stated in the past, "usual residence" is "not always the same as a person's legal residence, voting residence, or where they prefer to be counted."[79] This proposal raises serious questions about how the bureau would determine "lawful" residence, and how this would affect where and whether people are counted. "Lawful" residence is undefined, giving the bureau massive discretion to implement this concept. It is dangerously unclear how this would be implemented, for example, which laws would be referenced. The definition of "lawful" can vary depending on the specific law or purpose (e.g., where a person can vote, go to public school, register their car, or pay taxes; whether a dwelling was lawfully built, who is on the lease, and more) –- which are not consistent with residence for enumeration. The bureau is not a law enforcement agency, and should not make determinations about whether a person "lawfully" resided in a household.

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[76] *See, e.g.,* Massive Data Institute. What Are "Residence Criteria" and How Would They Be Used to Change Who 'Counts?' September 2026.
[77] 91 FR 57529, Doc. 2026-18481. September 10, 2026.
[78] *See, e.g.,* Census Quality Reinforcement Task Force. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026; Association of Public Data Users. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026.
[79] U.S. Census Bureau. Residence Criteria and Residence Situations for the 2020 Census of the United States. February 2018.

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These proposed changes would make the census less accurate and more vulnerable to manipulation. They would grant the bureau significant discretion to make decisions about how and whether individual people should be counted, with no transparent or clear standards.

B. Reliance on tax records for "usual residence" would harm census accuracy.

Within this unprecedented and improper definition of "usual residence," the bureau's specific proposal that "a person's 'usual residence' should be consistent with, and evidenced by, their tax records (e.g., tax returns, W-2 forms)" is also **unworkable, unprecedented, and untested, risking an inaccurate count** for many groups of people.

The census is an "actual enumeration" of the "whole number of persons," as required under the Constitution,[80] and has never been based on or mediated through tax records. **Tax records are inappropriate for determining a person's usual residence** for census purposes: A legal address for tax purposes is a fundamentally different standard from a residence (abode) address for census purposes. Tax records are based on mailing address, and so may use an address such as a post office box or tax preparer's address.[81] Indeed, according to recent reporting, Treasury Department officials warned the Census Bureau about this fundamental mismatch. Officials emphasized that tax records "may be used as corroborating evidence of an individual's residence, but no particular tax record is controlling."[82] **Using tax records to verify census responses would therefore be an inappropriate and fundamental mismatch.**

This proposal would make it significantly more difficult to count people correctly and in the right place, leading to inaccuracy or omitting people entirely from the census. It would have sweeping negative impacts for many groups of people, including military personnel, college students, rural residents, young children, and others. For example, **the proposal could lead to inaccurate or incomplete counts of military service members.** Service members have at least four different residences, including current residence, duty station, legal residence, and home of record. Tax records, and the rule's new definitions, are not appropriate for counting service members and would make it more difficult.[83] It would also result in significant ambiguity and likely miscounts of college students, who are often listed as dependents on parents' tax forms. The proposal creates a contradiction between tax records and where students reside, which would create confusion,

[80] U.S. Const. Art. I, Sec. 2, Cl. 3.
[81] *See, e.g.,* Tax Policy Center, "Using Tax Records To Verify Residence Could Put 2030 Census Accuracy At Risk." October 5, 2026. Massive Data Institute. What Are "Residence Criteria" and How Would They Be Used to Change Who 'Counts?' September 2026.
[82] Kovensky, Josh and Jones, Layla A. "Commerce Overruled Treasury Concerns in Push to Narrow Census Count." *Talking Points Memo.* September 17, 2026.
[83] *See, e.g.,* Massive Data Institute. Proposed Residence Criteria Suggest Military Personnel May Be Counted in the Wrong Place. September 2026.

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upend longstanding practice, and potentially exclude many students from the count.[84] **Young children and low-income residents** are also likely to be miscounted under this proposal, due to its requirement for tax records that do not match many families' living situations.[85]

C. Additional changes to the residence criteria would further undermine accuracy.

The significant changes to "usual residence" and enumeration period, described above, would combine to create confusion and inaccurate counts for many people, including seasonal workers, people living in RVs or boats, and others with various residence situations.

In addition, the proposed rule **would also eliminate nearly all specific residence criteria guidance,** which has been carefully crafted over decades to ensure that people are correctly enumerated. **Some examples of specific residential situations that have been eliminated from the criteria include** foster children; people in domestic violence shelters on Census Day; people at soup kitchens and mobile food vans on Census Day; people in religious group quarters, such as convents and monasteries, on Census Day; boarding school students living away from their parents' or guardians' home; and people in residential treatment centers for juveniles on Census Day. **Removal of this guidance means that at best, people could be counted in the wrong place, and in many cases may not be counted at all.**[86]

For example, these changes would have wide-ranging implications for unhoused people and others without stable housing. The proposed rule would eliminate clear directions for counting people in emergency shelters, people temporarily displaced, and more, replacing them with the dangerously vague directive about where a person has "lawfully spent" a particular period, evidenced by tax records. This would result in missing many people who have unstable housing, or housing not determined "lawful" as discussed above.[87]

By removing clear residence criteria and introducing ambiguous and unprecedented concepts, the proposed rule would significantly decrease census accuracy and make the census more vulnerable to manipulation. It

[84] *See, e.g.*, National Redistricting Foundation. "Census IRS Rule Threatens College Town Representation." October 16, 2026; Massive Data Institute. Tax Records Are Critical Inputs to an Accurate Census; Failure to Test and Complement Them Could Derail the 2030 Census. October 2026. Pg. 5.

[85] Massive Data Institute. Tax Records Are Critical Inputs to an Accurate Census; Failure to Test and Complement Them Could Derail the 2030 Census. October 2026; Association of Public Data Users. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026. Pgs. 3, 9.

[86] *See also,* Massive Data Institute. What Are "Residence Criteria" and How Would They Be Used to Change Who 'Counts?' September 2026.

[87] Association of Public Data Users. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026. Pgs. 2, 9. *See also,* National Low Income Housing Coalition. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026.

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would create impossible standards and fundamental mismatches, lead to confusion for bureau staff and respondents, make census operations less transparent and consistent, and grant the bureau significant new discretion on how to count individuals. These fundamental changes would make census results incomparable to earlier counts and create unreliable census data in future decades.

D. The criteria continue to drive prison gerrymandering.

The proposed rule would continue to count individuals confined to a correctional or detention facility at the facility. Counting incarcerated people at the location where they happen to be held on Census Day is not accurate and creates a skewed picture of the U.S. population.

Treating a prison, jail, or detention center as a "usual residence" reflects a fundamental misunderstanding of the nature of incarceration. Incarcerated people move in and out of facilities often. For example, of people incarcerated in state prisons, 75% serve time in more than one prison facility.[88] While they are being moved between facilities, incarcerated people maintain a usual residence: their home remains the only stable address. Almost all incarcerated people return home after they are released.

In addition, incorrectly counting incarcerated people as residents of their prison cells rather than their home communities can result in skewing political representation, giving residents of districts with prisons greater voice than all other state residents, inconsistent with principles of equal representation.

Finally, the proposed rule does not create a viable system for determining how to count incarcerated people, because it is unclear what time period would be used to define a person's "confined" status (e.g., Census Day, a particular point during the enumeration period, or the majority of the enumeration period).[89]

IV. The proposal to prohibit sexual orientation questions on future decennial censuses is unnecessarily prohibitive.

The proposed rule (proposed new 15 CFR § 70.2) would prohibit questions about sexual orientation on the decennial census, even though the census does not currently include an explicit, standalone sexual orientation question. In other words, **the proposed rule would foreclose the bureau's ability to adopt this measure in the future,** no matter what research or data needs emerge.

[88] *See*, Prison Policy Initiative. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026; Comment to the Census Bureau re: "Proposed 2020 Census Residence Criteria and Residence Situations." September 2016.
[89] *See*, Prison Policy Initiative. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026.

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Decisions about adding new demographic questions to future censuses should be, as has been the case historically, guided by a deliberative process that includes rigorous research and testing, consultation with federal agencies about the legal and programmatic needs for the data, including at small geographic levels, and meaningful engagement with subject matter experts and impacted communities. **The proposed rule contravenes this process by barring a question without sufficient process, evidence, or reasoning.** The Census Bureau should not preclude the addition of a sexual orientation question on future censuses.

This prohibition raises important concerns about whether and how decennial census data on same-sex couples will continue to be collected and reported. The proposed rule states that it will permit questions about household relationships to appear on the decennial census for purposes of verifying the population count, but does not clarify whether the proposed prohibition on sexual orientation data would result in elimination of the same-sex relationship categories.

Same-sex couples have been counted through household relationship data for decades. Most recently, the Census Bureau redesigned the household relationship question for the 2020 decennial census to incorporate methodological improvements that addressed known measurement errors and improved the quality and accuracy of data on same-sex couples and other coupled households.[90] Decennial census data remain essential for the Census Bureau and other researchers to measure the size and characteristics of same-sex couples, particularly given the nationwide constitutional right to same-sex marriage established in *Obergefell v. Hodges* and subsequent federal and interstate recognition under the Respect for Marriage Act. The Census Bureau should not restrict the collection or publication of same-sex couple data through the household relationship question, as doing so would undermine data quality and access to these important data.[91]

V. Conclusion

We oppose the proposed rule in the strongest terms. These proposals would change the very nature of the census, violating the Constitution, statutes, and longstanding tradition. They would result in inaccurate and unusable census data and degrade our federal statistical system, with devastating consequences for all people, communities, and sectors across the United States.

The census belongs to the people. This proposed rule seeks to erase people from the census, silence their voices, and dictate that they do not count in our democracy.

[90] *See* Taylor, Danielle, "The Context and Evolution of Data Collection for Same-Sex Married Couple Households." *Census.gov.* July 10, 2020.
[91] *See also,* Movement Advancement Project. Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." October 2026.

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We request that the Census Bureau and Department of Commerce give serious consideration to all public comments on this proposed rule and extend the period for public comment, as well as provide additional Tribal consultation, to more clearly understand the vast implications of the proposed rule.

Finally, we urge the Census Bureau (Department of Commerce) to withdraw this proposed rule. The Census Bureau should: 1) continue to count all persons residing in the United States regardless of immigration status, as mandated under the U.S. Constitution and statutes; 2) continue to collect race and ethnicity data through the decennial census, and improve these data by implementing the 2024 Statistical Policy Directive No. 15; 3) continue using the longstanding definition of "usual residence" and abandon the unworkable residence criteria in the proposed rule; 4) count incarcerated people at their home address; and 5) not preclude the addition of a sexual orientation question on future censuses.

Thank you for your consideration of our views. We appreciate this opportunity to provide comments and look forward to continued engagement. If you have any questions about these comments, please contact Meeta Anand, senior director of the census and data equity program at The Leadership Conference on Civil and Human Rights, at anand@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
The Leadership Conference Education Fund
Asian Americans Advancing Justice – AAJC
NALEO Educational Fund

ACCESS REPRODUCTIVE JUSTICE
Advancement Project
AFL-CIO
AFT
All About the Ballots
Alliance to End Hunger
American Atheists
American Educational Research Association
American Library Association
American Oversight
APLA Health
Arab American Institute (AAI)
Asian American Legal Defense & Education Fund (AALDEF)
Asian Americans United
Asian and Pacific Islander American Vote (APIAVote)

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Association of Population Centers
Association of Public Data Users
Ausherman Family Foundation
Autistic People of Color Fund
Big Uce Youth Outreach
Black Futures Lab
Black Lives Matter OKC
Black Researchers Collective
Black Veterans Project
BLKHLTH
Breathe Project
Brennan Center for Justice at NYU School of Law
California – U.S. Census Bureau's Federal-State Cooperative for Population Estimates and for Population Projections
California Alliance of Child and Family Services
California Pan-Ethnic Health Network
California Rural Legal Assistance, Inc.
California State Census Data Center
Census Quality Reinforcement Task Force
Center for Economic and Policy Research
Center for Law and Social Policy (CLASP)
Center for Progressive Reform
Center for Responsible Lending
Center for the Study of Social Policy (CSSP)
Central American Resource Center
Children's Advocacy Alliance
Children's Defense Fund
Chinese American Service League
Chinese for Affirmative Action
Chinese-American Planning Council (CPC)
Church World Service
Civic Empowerment Coalition
Civic Nebraska
Coalition for a Healthier Frederick County
Coalition on Human Needs
Collective for Racial & Disability Justice
Colorado Center on Law and Policy
Colorado Latino Leadership, Advocacy & Research Organization (CLLARO)
Common Cause
CommonDefense.us

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Community Housing Development Corporation of North Richmond
Connecticut Voices for Children
Court Accountability Action
Delaplaine Foundation
Democracy 21
Dēmos
Disability Rights Education and Defense Fund (DREDF)
Ecology Center
Economic Policy Institute
EEO Leaders
Empowering Pacific Islander Communities (EPIC)
Environmental Data and Governance Initiative
Equal Rights Advocates
Equality California
Fair Count
First Focus on Children
Food Research & Action Center (FRAC)
Foreign Born Military Spouse Network
Free Speech For People
Frontera Federation
Future of Us
GALEO & GALEO Impact Fund
Georgetown University Center for Children and Families
Georgia Coalition for the Peoples Agenda
Goddard Riverside
Her Justice
Hispanic and Immigrant Center of Alabama
Hispanic Association of Colleges and Universities
Homecrest Community Services
Huemanity Global Faith Initiative
Ibis Reproductive Health
IDRA (Intercultural Development Research Association)
Impact Fund
Institute for Women's Policy Research
Inter-university Consortium for Political and Social Research (ICPSR)
IPUMS
Jewish Council for Public Affairs
Joint Center for Political and Economic Studies
Justice in Aging
Karen Organization of San Diego

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LatinoJustice PRLDEF
Lawyers for Good Government
Lawyers' Committee for Civil Rights Under Law
League of Conservation Voters
League of United Latin American Citizens (LULAC)
League of Women Voters of the United States
Legal Action Center
Local Progress
Louisiana Organization for Refugees and Immigrants
MACS 2030 - Minnesotans for the American Community Survey and 2030 Census
Maryland Center on Economic Policy
Michigan Public Health Association
Minnesota Public Health Association
Minority Business Enterprise Legal Defense and Education Fund (MBELDEF)
MomsRising
Muslim Advocates
NAACP Legal Defense & Educ. Fund, Inc.
National Action Network
National Alliance to End Homelessness
National Association of Social Workers
National Center for Healthy Housing
National Center for Law and Economic Justice
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Community Reinvestment Coalition
National Council of Asian Pacific Americans (NCAPA)
National Disability Rights Network (NDRN)
National Domestic Workers Alliance
National Education Association
National Fair Housing Alliance
National Health Law Program
National Homelessness Law Center
National Latina Institute for Reproductive Justice
National Low Income Housing Coalition
National Network for Arab American Communities (NNAAC)
National Network to End Domestic Violence
National Organization for Women
National Organization for Women, Hollywood Chapter
National Partnership for Women & Families
National Urban League

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National Women's Law Center
National Women's Political Caucus
Nebraska Appleseed
Network for Public Health Law
NETWORK Lobby for Catholic Social Justice
New Deal for Youth
New Jersey Citizen Action
New Mexico Asian Family Center
New York Civic Engagement Table
Nikkei Progressives
North Carolina Asian Americans Together
Oregon Consumer Justice
Oxfam America
Pacific Community of Alaska
Pacific Islander Comm. Assn. of WA
Pennsylvania Partnerships for Children
People For the American Way
People Power United
Planned Parenthood Action Fund
PolicyLink
Population Association of America
Positive Peers of Greater Minnesota
Power Coalition for Equity & Justice
Prevention Institute
Prison Policy Initiative
Public Advocacy for Kids (PAK)
Public Health Law Center
Public Rights Project
REPRO Rising Virginia
Reproaction
Robert & Ethel Kennedy Human Rights Center
Rock the Vote
Rural Institute for Inclusive Communities
Sadhana: Coalition of Progressive Hindus
SAGE
Sakhi for South Asian Survivors
Samoana Integrated Learning Initiative
Service Employees International Union
Serving at risk families everywhere, Inc.
Sikh American Legal Defense and Education Fund (SALDEF)

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Silver State Equality
Simply Put
Society for Research in Child Development (SCRD)
South Asian SOAR
Southeast Asia Resource Action Center (SEARAC)
Southern Environmental Law Center
State Voices
Students Learn Students Vote Coalition
Taiwanese American Citizens League
Tennessee Immigrant & Refugee Rights Coalition
The African American Policy Forum
The Children's Agenda
The Colorado Health Foundation
The George Gund Foundation
The Sikh Coalition
The Workers Circle
UnidosUS
Union for Reform Judaism.
Union of Concerned Scientists
United Church of Christ
UPICEC
Vermont Office of the Healthcare Advocate
Voice Buffalo
Voices for Progress
Voices for Racial Justice
Voter Participation Center
Voto Latino
William E. Morris Institute for Justice
Wisconsin Coalition Against Sexual Assault
Women Employed
Women Lawyers On Guard Action Network