Public Comment on Docket No. USBC-2026-0628

To: U.S. Census Bureau, Department of Commerce

Re: Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57524 (proposed Sept. 10, 2026)

Docket No.: USBC-2026-0628 · **RIN:** 0607-AA75

Submitted by: Federation of Protestant Welfare Agencies (FPWA)

Date: November 1st, 2026

I. Introduction

The Federation of Protestant Welfare Agencies (FPWA) respectfully submits these comments in opposition to the proposed rule. Narrowing who is counted in the decennial census and removing demographic questions from the decennial census would weaken representation and reduce the quality of the data communities rely on to understand need and allocate resources. The harm would extend to states, localities, and residents regardless of their legal status.

About FPWA

FPWA is a leading anti-poverty, social policy, and advocacy organization dedicated to strengthening human services organizations and faith institutions and advancing economic security and justice for New Yorkers with low incomes. Since 1922, FPWA has driven policy reforms to better serve those in need, and today it supports a membership network of more than 170 faith and community-based organizations across New York. Our members serve low-income children, families, older adults, and immigrant New Yorkers every day, and they rely on public programs whose funding is set by census data.

Measuring Economic Insecurity

FPWA's work centers on economic security: whether households have the resources to meet their regular costs, save for emergencies and the future, and manage debt. To measure this, FPWA relies on the True Cost of Economic Security (TCES) measure developed by the Urban

Institute (Urban). TCES uses American Community Survey (ACS) data enhanced with Urban's Analysis of Transfers, Taxes, and Income Security (ATTIS) microsimulation model.[1]

Nationally, 49 percent of people lived in families who fell below the TCES threshold in 2023.[2] In New York City's most recent report, using data from 2022 and the same methodology, 62 percent of individuals and families in the city were economically insecure, including 72 percent of families with children and 91 percent of single-parent households. Insecurity is sharply unequal by race and ethnicity: 78 percent of Hispanic New Yorkers, 68 percent of Black New Yorkers, and 63 percent of Asian American and Pacific Islander New Yorkers fall below the threshold, compared with 43 percent of White New Yorkers.[3]

The ACS is weighted to decennial census counts, and TCES breakdowns by race and ethnicity are only possible because the census collects that information. A census that undercounts immigrant communities and drops race and ethnicity questions would weaken the tools that policymakers and advocates use to see who is struggling and how to best direct resources to them.

The Census Has Always Been More Than an Apportionment Count

Article I, Section 2 of the Constitution mandates an "actual Enumeration" every ten years to apportion the House of Representatives. Apportionment may have been the census's constitutional origin, but since the very first census in 1790, it has also served as a basic source of information for government decision-making. To serve that purpose, the very first census recorded each household's members by sex, age bracket, race, and free or enslaved status. Act of Mar. 1, 1790, ch. 2, § 1, 1 Stat. 101, 101-02. The proposed rule describes apportionment as the census's "sole Constitutional purpose," but that framing ignores how the federal government itself has used the census as a data collection tool since its founding. 91 Fed. Reg. 57524 at 57524 (Sept. 10, 2026).

Congress has since built that expectation into law, requiring the Census Bureau (Bureau) to deliver detailed population tabulations to the states for redistricting; to produce annual population estimates between censuses; and to make language-assistance determinations under Section 203 of the Voting Rights Act. 13 U.S.C. §§ 141(c), 181; 52 U.S.C. § 10503. Hundreds of federal funding statutes and regulations name census counts, or products benchmarked to them, as the basis for allocating money. The decennial census is the benchmark for all of these, including the ACS and the Population Estimates Program, which are weighted and controlled to decennial counts. The case the proposed rule relies on, *Carey v. Klutznick,* 653 F.2d 732, 736 (2d

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[1] Acs, Gregory, et al. *Measuring the True Cost of Economic Security: What Does It Take to Thrive, Not Just Survive, in the US Today?* Urban Institute, Nov. 2024, www.urban.org/sites/default/files/2024-11/Measuring-the-True-Cost-of-Economic-Security.pdf.

[2] Acs, Gregory, et al. *Update 2023: Measuring the True Cost of Economic Security: What Does It Take to Thrive, Not Just Survive, in the US Today?* Urban Institute, 2026, www.urban.org/research/publication/update-2023-measuring-true-cost-economic-security.

[3] *True Cost of Economic Security: Policy Implications for New York City*. Federation of Protestant Welfare Agencies, 2025, www.fpwa.org/wp-content/uploads/2025/09/True-Cost-of-Economic-Security_Policy-Implications-for-New-York-City_9.29.25-1.pdf.

Cir. 1981), itself describes the census as "a convenient measuring stick for the dispensing of federal funds." *See* 91 Fed. Reg. at 57527. The Bureau cannot treat a use that Congress has written into hundreds of programs as irrelevant to a rulemaking that would change the data those programs depend on.

The Bureau itself found that 353 federal assistance programs used decennial census program data to guide the distribution of more than $2.8 trillion in the 2021 fiscal year, including COVID relief funds.[4] Programs that use state and local census counts to decide *where* money goes directed more than $2.24 trillion in the 2023 fiscal year, including $1.65 trillion in Medicare and Medicaid spending, $261.23 billion in programs that assist with medical costs, nutritional support, and social services, and $129.8 billion in education spending.[5]

Many of these programs directly support households facing the greatest economic insecurity. Funding for these programs shapes state and local budgets, and impacts whether Americans can afford food, health care, and housing. In fiscal year 2025, the most recent year for which we have data, allocations included $668 billion to Medicaid,[6] $101.7 billion to the Supplemental Nutrition Assistance Program (SNAP),[7] $36 billion in appropriations for Section 8 Housing Choice Vouchers,[8] and $18.41 billion to Title I grants to schools.[9] Disaster relief also relies on census counts: FEMA's threshold for a state to qualify for Public Assistance is calculated from its population in the most recent decennial census. 44 CFR § 206.48.

Excluding noncitizens who are not lawful permanent residents would shrink these funding streams in the states with the largest immigrant communities, an issue that cuts across the political spectrum. In July of 2023, there were around 6 million unauthorized immigrants who had some level of protection against deportation present in the U.S.[10] In addition to failing to count these people, the proposed rule would also exclude the 3.6 million visa holders nationwide residing in the United States for their jobs or education.[11]

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[4] Villa Ross, Ceci. *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021*. U.S. Census Bureau, June 2023, www.census.gov/library/working-papers/2023/dec/census-data-federal-funds.html.

[5] Moulton, Sean, and Janice Luong. *Census Matters: Why an Accurate Count Is Essential to Funding Our Communities*. Project On Government Oversight, 28 Oct. 2025, www.pogo.org/reports/census-matters-why-an-accurate-count-is-essential-to-funding-our-communities.

[6] *The Federal Budget in Fiscal Year 2025: An Infographic*. Congressional Budget Office, 30 Mar. 2026, www.cbo.gov/publication/61950.

[7] Hodges, Leslie, and Jordan W. Jones. *The Food and Nutrition Assistance Landscape: Fiscal Year 2025 Annual Report*. Economic Information Bulletin no. 304, U.S. Department of Agriculture, Economic Research Service, June 2026, www.ers.usda.gov/media/29235/eib-304-report-summary.pdf.

[8] *Implementation of the Federal Fiscal Year (FFY) 2025 Funding Provisions for the Housing Choice Voucher Program*. Notice PIH 2025-13, U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, 14 May 2025, www.hud.gov/sites/default/files/OCHCO/documents/2025-13pihn.pdf.

[9] *Education for the Disadvantaged: Fiscal Year 2026 Budget Request*. U.S. Department of Education, 2025, www.ed.gov/media/document/fy-2026-congressional-justification-education-disadvantaged-110143.pdf.

[10] Passel, Jeffrey S., and Jens Manuel Krogstad. "U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023." *Pew Research Center*, 21 Aug. 2025, www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/.

[11] Baker, Bryan. *Estimates of the Nonimmigrant Population Residing in the United States: Fiscal Years 2019–2024*. U.S. Department of Homeland Security, Office of Homeland Security Statistics, 12 Aug. 2025, ohss.dhs.gov/topics/immigration/nonimmigrant/population-estimates/fy24-nonimmigrant-pop-est.

Demographic Data Have Always Been Part of the Census

Demographic questions have appeared on every census since 1790, as the proposed rule itself acknowledges. 91 Fed. Reg. at 57527 (quoting *Dep't of Com. v. New York*, 588 U.S. 752, 769 (2019)). For decades, these data have been used to identify underserved populations, target anti-poverty programs, and enforce civil rights laws, including Section 2 of the Voting Rights Act, the Fair Housing Act, and Title VI of the Civil Rights Act.

For these reasons, FPWA urges the Bureau to withdraw both parts of the proposed rule. Narrowing who is counted and eliminating demographic questions would weaken political representation for millions of residents and would degrade the accuracy of the data that economic security programs, and the communities they serve, depend on.

II. Proposed Residence Criteria (Part 60): Excluding Undocumented Immigrants and Non-LPR Noncitizens

Prior Law and Practice

For more than 230 years, "usual residence" has asked where a person lives; it has never used citizenship or immigration status as a test for who gets counted. *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992); *Fed'n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980) (three-judge court) ("*FAIR*").[12] Proposed 15 C.F.R. Part 60 is a break from over 230 years of practice rooted in the 1790 Census Act, which established the "usual residence" rule without regard to citizenship, length of residence, or intent to stay. Act of Mar. 1, 1790, § 5, 1 Stat. at 103; 91 Fed. Reg. at 57529 (proposed 15 C.F.R. § 60.4). This section traces the history of the residency clause and provides an overview of the current law and the proposed changes to residence criteria.

History of the residency clause

The census "residence rule" determines where and how people are counted during the decennial census. Since the first census in 1790, the government has answered that question using the concept of "usual residence." *Franklin*, 505 U.S. at 804. The concept implements the census mandated in Article I, Section 2, Clause 3 of the U.S. Constitution, known as the Enumeration Clause, which establishes the apportionment of Representatives and direct taxes based on a decennial enumeration directed by Congress. U.S. Const. art. I, § 2, cl. 3. As originally drafted, the Clause measured each State's "Numbers" by adding "the whole Number of free Persons." At the time, this excluded "Indians not taxed," and counted "three fifths of all other Persons," meaning enslaved people. *Id.* After the Civil War, the Fourteenth Amendment updated this formula to ensure all individuals are fully counted as whole persons, the only exclusion being "Indians not taxed." U.S. Const. amend. XIV, § 2.

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[12] *See Constitutionality of Excluding Aliens from the Census for Apportionment and Redistricting Purposes*. Congressional Research Service, report R41048, 13 Apr. 2012, p. 7 ("It does not appear that aliens have been excluded from any census."), www.everycrsreport.com/files/20120413_R41048_e4eb1c369b633cea52b254c5a305e6111eb5d795.pdf.

The language used by Congress to create this standard was deliberate. In drafting the amendment, proposals to apportion House seats by the number of "legal voters" in each State, as well as proposals for apportionment by "citizens," were considered and expressly rejected by Congress. *Evenwel v. Abbott*, 578 U.S. 54, 66 (2016) (citing Cong. Globe, 39th Cong., 1st Sess. 10 (1866)); *FAIR*, 486 F. Supp. at 576 (noting that the options of "voters" or "citizens" were "considered and expressly rejected, after considerable debate"). Instead, the Amendment "retained total population as the congressional apportionment base." *Evenwel*, 578 U.S. at 67. As the FAIR court stated, "[b]y making express provision for Indians and slaves, the Framers demonstrated their awareness that without such provisions, the language chosen would be all-inclusive." *FAIR*, 486 F. Supp. at 576.

While the Fourteenth Amendment dictates *who* to count, it does not define *where* an individual resides. The 'usual residence' standard instead derives from the First Census Act, enacted by the First Congress in 1790. *Franklin*, 505 U.S. at 804. Section 5 of the Act supplied the statutory foundation for how residence was first defined. It directs that each person be counted at his or her "usual place of abode," and that people temporarily absent be counted where they "usually reside[]." Act of Mar. 1, 1790, § 5, 1 Stat. at 103.[13] The Supreme Court has since described "usual residence" as "the gloss given the constitutional phrase 'in each State' by the first enumeration Act." *Franklin*, 505 U.S. at 804.

Never has the residence standard conditioned residence on citizenship or immigration status. *FAIR*, 486 F. Supp. at 576 ("[T]he population base for purposes of apportionment has always included all persons, including aliens both lawfully and unlawfully within our borders.").[14] In fact, Congress has repeatedly considered and declined to exclude noncitizens from the apportionment base, often on the understanding that doing so would require a constitutional amendment. *See FAIR*, 486 F. Supp. at 576–77 (observing that "a variety of proposals were made to exclude aliens from the apportionment base" during the first half of the twentieth century, and that "it appears to have been generally accepted that such a result would require a constitutional amendment").[15]

Current practice

Every census since 1790 has sought to count each resident at his or her usual residence.[16] Under the 2020 criteria, "usual residence" turns on "where a person lives and sleeps most of the time,"

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[13] *Id.* (directing that "every person whose usual place of abode shall be in any family" be "returned as of such family," and that "every person occasionally absent at the time of the enumeration" be counted "as belonging to that place in which he usually resides in the United States").
[14] *Constitutionality of Excluding Aliens*, p. 7.
[15] *See* 71 Cong. Rec. 1821 (1929) (reprinting Senate Legislative Counsel opinion concluding that statutory exclusion of aliens from the apportionment base would be unconstitutional); 86 Cong. Rec. 4372 (1940) (statement of Rep. Celler) ("The only way we can exclude them would be to pass a constitutional amendment."); *Constitutionality of Excluding Aliens*, pp. 11–13 and n. 74 (describing the history of proposals to exclude aliens, including the deletion in conference of a 1989 Senate-passed provision that would have barred counting undocumented immigrants for apportionment).
[16] National Research Council. *Once, Only Once, and in the Right Place: Residence Rules in the Decennial Census*. Edited by Daniel L. Cork and Paul R. Voss, National Academies Press, 2006, p. 15 (explaining that every census since 1790 "has adopted the same basic goal of counting every resident of the United States once, and only once, at what is determined to be his or her usual place of residence").

with no distinction by immigration status. 83 Fed. Reg. 5525 at 5526 (February 8, 2018); *see* 91 Fed. Reg. at 57525. The 2020 criteria made this explicit: foreign citizens "living in" the United States were counted "at the U.S. residence where they live and sleep most of the time," and only foreign citizens "visiting the United States, such as on a vacation or business trip," were not counted. 83 Fed. Reg. at 5533. The Bureau described its enumeration procedures as "guided by the constitutional and statutory mandates to count all residents of the several states." *Id.* at 5526. The Bureau explains that usual residence "is not always the same as a person's legal residence, voting residence, or where they prefer to be counted," and grounds the concept in the 1790 Act's command that persons be enumerated at their "usual place of abode." *Id.* In other words, under the 2020 criteria, "usual residence" was a factual question about where a person lives. It was not a legal inquiry into domicile or voting eligibility. And while the Supreme Court has recognized that "usual residence" may include "some element of allegiance or enduring tie to a place," it did so to count federal employees temporarily stationed overseas toward their home States, not to exclude people who live in a State. *Franklin*, 505 U.S. at 804–06. The Bureau adopted the current criteria after a public review lasting nearly three years and drawing nearly 78,000 comments. It published them in the Federal Register as final criteria (not as codified regulations). 83 Fed. Reg. at 5525–26; *see* 80 Fed. Reg. 28950 (May 20, 2015).

Proposed Part 60 Would, for the First Time, Make Immigration Status a Condition of Being Counted

Proposed 15 C.F.R. § 60.4 would limit the apportionment count to U.S. citizens and lawful permanent residents; all other noncitizens – undocumented immigrants, visa holders, asylum seekers, Deferred Action for Childhood Arrivals (DACA) recipients, and Temporary Protected Status (TPS) holders – would be excluded entirely from the apportionment count. 91 Fed. Reg. at 57529 (proposed § 60.4(a)–(b)). The exclusion applies regardless of how long a person has lived in the United States, whether they are lawfully present, or whether they work, pay taxes, or are raising children who are U.S. citizens. The Bureau states that it would exclude both undocumented immigrants and "aliens whose legal status is less durable and indefinite in length than lawful permanent resident status." 91 Fed. Reg. at 57526.

The proposed rule would also redefine "usual residence" itself. For more than two centuries, usual residence has meant where a person actually lives. *See supra* Prior Law and Practice. Proposed § 60.2(a) would instead define it as "the residence at which they have lawfully spent the greatest number of days during the census enumeration period." It adds that a person's usual residence "should be consistent with, and evidenced by, their tax records (e.g., tax returns, W-2 forms)." 91 Fed. Reg. at 57529 (proposed § 60.2(a)). Under proposed § 60.2(c), usual residence would be measured across a new "census enumeration period" running from January 3 to April 1. *Id.* (proposed § 60.2(c)). This is a sharp departure from prior practice. Since the first census, "usual residence" has meant where a person "lives and sleeps most of the time." 83 Fed. Reg. at 5526; *see* Act of Mar. 1, 1790, § 5, 1 Stat. at 103. The Bureau has never measured that test against a fixed reference period.[17]

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[17] National Research Council, *Once, Only Once*, pp. 36–37.

The proposal outlines two ways for the Bureau to identify who would be excluded. First, it is considering using administrative records to verify residence and determine a person's legal status. It lists records from the Departments of the Treasury, Health and Human Services, Homeland Security, State, and War [Defense], the Postal Service, state and local governments, and "third-party commercial data." 91 Fed. Reg. at 57526, 57529. Second, it could introduce a legal status question on the decennial census. The Bureau asserts that such a question "would accord with substantial past practice," but the practice it cites involved questions about citizenship, not immigration status. 91 Fed. Reg. at 57526 (citing *Dep't of Com.,* 588 U.S. at 760).

The proposed changes in 15 C.F.R. § 60.4 would exclude from the apportionment base many people who live in the United States lawfully, often for years, including refugees, asylees and asylum seekers, TPS and DACA recipients, people on H-1B and other work visas, international students, and people with pending green card applications. 91 Fed. Reg. at 57529 (proposed 15 C.F.R. § 60.4(b)). Many of these individuals are lawfully present residents who pay taxes and have lived in their communities for years. The rule would radically redefine "usual residence," a standard that has asked where a person lives since 1790, to ask whether a person's presence is lawful, without any justification grounded in the history or practice of the census.

The Rule Would, for the First Time, Codify Residence Criteria as Binding Regulations Governing Every Future Census

Congress has delegated to the Secretary of Commerce the authority to take the decennial census "in such form and content as he may determine." 13 U.S.C. § 141(a). The Census Bureau has exercised that authority by setting operational residence criteria for each census. But neither the Constitution nor any statute defines "usual residence." 83 Fed. Reg. at 5526. The concept instead rests on a long tradition of practice dating to the 1790 Census Act. *See* Act of Mar. 1, 1790, § 5, 1 Stat. at 103.[18]

The 2020 Census illustrates this practice. The Bureau explains that every decade it "undertakes a review of the Residence Criteria and Residence Situations" to ensure that usual residence is applied consistently with the Census Act of 1790 and to address new and changing living situations. 83 Fed. Reg. at 5526. For 2020, the review took nearly three years[19] and the final criteria were published in the Federal Register, but they did not add to or amend any part of the Code of Federal Regulations. *See* 83 Fed. Reg. at 5525.

The proposed rule abandons this practice and proposes to "formalize, by regulation, the residence criteria found below for decennial census enumeration moving forward," by adding two new parts to the Code of Federal Regulations. 91 Fed. Reg. at 57526 (to be codified at 15 C.F.R. pts. 60, 70). The criteria would no longer be set census by census. They would become binding regulations governing every future census. Additionally, the rule's severability clauses would

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[18] National Research Council, *Once, Only Once*, pp. 2, 53.

[19] In May 2015, the Bureau published a notice asking for public comment on its 2010 residence rule. 80 Fed. Reg. at 28,950. In June 2016, the Bureau published proposed 2020 criteria, with a 60-day comment period. Proposed 2020 Census Residence Criteria and Residence Situations, 81 Fed. Reg. 42,577 (June 30, 2016); *see* 83 Fed. Reg. at 5526. In February 2018, the Bureau issued "final criteria," with responses to those comments. 83 Fed. Reg. at 5525–33.

keep each criterion in force even if others are struck down. 91 Fed. Reg. at 57526, 57528, 57530–31 (proposed §§ 60.11, 70.5).

This codification matters because it changes what a future Bureau would have to do to change course. Agencies generally may revise non-codified guidance without notice and comment. *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 101 (2015); 5 U.S.C. § 553(b)(A). A legislative rule, however, may be amended or repealed only through the same notice-and-comment process used to adopt it. 5 U.S.C. § 551(5) (defining "rule making" as the "agency process for formulating, amending, or repealing a rule"); 5 U.S.C. § 553(b)–(c); *Perez*, 575 U.S. at 101 (explaining that the APA requires agencies "to use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance").

Why the Proposed Change Is Harmful

The consequences would extend beyond noncitizens to whole communities

Many federal formula programs, including Medicaid, SNAP, Title I, Community Development Block Grants, and disaster relief, are allocated by total population and by the number of people in need rather than by citizenship. If the Bureau removes excluded residents from the population base used for these formulas, funding will fall in states and localities with large immigrant populations while the cost of serving those residents stays the same. As one analysis of census-guided spending put it, "[a]n inaccurate census count can send billions of dollars to the wrong locations," and formula allocations are especially sensitive when the miscount falls on a population a program is meant to serve.[20] The harm falls on every resident of those communities regardless of citizenship status. About 4.6 million U.S.-born children live with an unauthorized immigrant parent.[21]

It would chill participation and produce an undercount larger than the excluded population

Tying census response to administrative-record matching and legal-status determinations, and possibly a legal-status question, would suppress participation broadly, including in mixed-status households and among citizen children of noncitizen parents. The Bureau's own researchers estimated that adding a citizenship question to the 2020 Census would reduce self-response by 8.0 percentage points in households that may contain noncitizens, and by 2.2 percentage points overall.[22] These communities were already undercounted. The 2020 Census missed an estimated

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[20] Moulton, Sean. *Dollars and Demographics: How Census Data Shapes Federal Funding Distribution*. Project On Government Oversight, 11 Sept. 2023, www.pogo.org/reports/dollars-and-demographics-how-census-data-shapes-federal-funding-distribution.

[21] Passel and Krogstad, "U.S. Unauthorized Immigrant Population."

[22] Brown, J. David, et al. *Predicting the Effect of Adding a Citizenship Question to the 2020 Census*. Working Paper 19-18, U.S. Census Bureau, Center for Economic Studies, 2019, ideas.repec.org/p/cen/wpaper/19-18.html.

4.99 percent of Hispanic residents, 3.30 percent of Black residents, 5.64 percent of American Indians living on reservations, and 2.79 percent of children ages 0 to 4.[2324]

Tax-record matching would systematically miss the lowest-income households

Federal law does not require people with income below the filing threshold to file a return, so many of the poorest households have no recent record with the IRS. Federal tax units that did not file have been estimated at more than 15 million households in a single year.[25] When the federal government used tax records to deliver pandemic stimulus payments, an estimated 12 million low-income people risked being left out because they were not required to file taxes.[26] The Census Bureau's own research shows that the same gaps fall on the groups the census already undercounts. Children of Black and Hispanic mothers, children in households with limited English proficiency, children whose mothers did not finish high school, and children in families with lower income-to-poverty ratios[27] were less likely to appear in IRS Form 1040 records.[28] A residence or status determination that relies on tax-record consistency would treat the absence of a return as the absence of a person. That would push the people with the least income, the people that programs like SNAP, Medicaid, and Title I are designed to reach, out of the count that determines how much funding their communities receive.

Status determinations by record linkage are unproven and error-prone

Assigning legal status through tax records and administrative-record linkage has never been done at the scale of a national census. It is susceptible to error for people who file jointly, are claimed as dependents, have inconsistent records, or file no tax return at all.[29] The rule does not say

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[23] "Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census." *U.S. Census Bureau*, press release, 10 Mar. 2022, www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html.

[24] U.S. Census Bureau. (2022, March 10). *Census Bureau releases estimates of undercount and overcount in the 2020 Census* [Press release]. https://www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html

[25] Gleckman, Howard, and Elaine Maag. "Free File Is an Easy Way for Government to Get Coronavirus Payments to Non-Filers." *TaxVox*, Tax Policy Center, 30 Mar. 2020, taxpolicycenter.org/taxvox/free-file-easy-way-government-get-coronavirus-payments-non-filers.

[26] Marr, Chuck, et al. "Aggressive State Outreach Can Help Reach the 12 Million Non-Filers Eligible for Stimulus Payments." *Center on Budget and Policy Priorities*, 14 Oct. 2020, www.cbpp.org/research/federal-tax/aggressive-state-outreach-can-help-reach-the-12-million-non-filers-eligible.

[27] The income-to-poverty ratio is a family's total income divided by its official poverty threshold. For an explanation of how the Census Bureau calculates poverty status, see "How the Census Bureau Measures Poverty." *U.S. Census Bureau*, 13 Jan. 2026, www.census.gov/topics/income-poverty/poverty/guidance/poverty-measures.html.

[28] Aldana, Gloria G. *Comparison of Child Reporting in the American Community Survey and Federal Income Tax Returns Based on California Birth Records*. Working Paper CES-24-55, U.S. Census Bureau, Center for Economic Studies, 2024, www.census.gov/library/working-papers/2024/adrm/CES-WP-24-55.html.

[29] Pillai, Drishti, and Samantha Artiga. "Proposed Changes to Demographic Data Collection in the Census Could Impact Efforts to Address Health and Health Care Disparities." *KFF*, 25 Sept. 2026, www.kff.org/racial-equity-and-health-policy/proposed-changes-to-demographic-data-collection-in-the-census-could-impact-efforts-to-address-health-and-health-care-disparities/.

which third-party commercial data it would use, how that data would be weighed, or how accuracy would be tested. *See* 91 Fed. Reg. at 57526.

Recent experience shows the risk of rushing such systems. In the administration's first rapid attempt to use the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) program in 2025 to bulk check voter rolls for noncitizens, the tool flagged naturalized citizens as noncitizens. In St. Louis County, Missouri, about 35 percent of registered voters that SAVE identified as noncitizens were in fact naturalized U.S. citizens; in Boone County, Missouri, more than half of those flagged were citizens.[30] Similar errors in a census context could result in citizens and lawful residents being misclassified or omitted incorrectly.

The rule offers no due process

The rule as written provides no way for a person to see, correct, or contest the administrative record used to exclude them. Residents have no stated avenue to dispute a status determination, and states have no stated avenue to challenge the Bureau's assessments of their populations before apportionment and funding counts are final. At minimum, any use of administrative records to exclude people from the count requires notice, a correction process, and a state-level review mechanism.

The fixed enumeration window could misplace mobile and economically precarious residents

The proposed rule would define usual residence by where a person "lawfully spent the greatest number of days" between January 3 and April 1, with a day counted if the person was present for as little as one hour. 91 Fed. Reg. at 57529 (proposed § 60.2(a)–(c)). A window of under three months can misrepresent where a person lives most of the year, especially for seasonal and agricultural workers, people doubled up or moving between relatives' homes, students, and people experiencing housing instability. Previously, the Bureau had flexibility to weigh a broader set of facts in deciding where someone "live[s] and sleep[s] most of the time." 83 Fed. Reg. at 5526. A fixed period would reduce the Bureau's ability to account for circumstances that affect where people actually live most of the year. This is of particular concern for New York, as a 2006 study done by the University of Florida found that New Yorkers account for 13.1 percent of Florida's temporary seasonal residents.[31] As the chosen census proposal period targets mid-winter months, this timing would disadvantage the New York count by counting these so-called "snowbirds," many of whom spend fewer than 5 months in the state, as Florida rather than New York residents.

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[30] Singh, Jasleen. "Watch Out for False Voter Fraud Claims Fueled by SAVE Program." *Brennan Center for Justice*, 12 June 2026, www.brennancenter.org/our-work/research-reports/watch-out-false-voter-fraud-claims-fueled-save-program.

[31] Smith, Stanley K., and Mark House. "Snowbirds, Sunbirds, and Stayers: Seasonal Migration of Elderly Adults in Florida." *The Journals of Gerontology, Series B: Psychological Sciences and Social Sciences*, vol. 61, no. 5, 2006, pp. S232–39, https://doi.org/10.1093/geronb/61.5.S232.

III. Proposed Restrictions on Demographic Questions (Part 70): Eliminating Race, Ethnicity, and Sexual Orientation Questions

Prior Law and Practice

Every census since 1790 has collected demographic information about the people it counts, and race has been included from the very first enumeration. *Dep't of Com.*, 588 U.S. at 769; Act of Mar. 1, 1790, § 1, 1 Stat. at 101–02. Proposed 15 C.F.R. Part 70 would, for the first time, break from that practice by prohibiting, permanently and by regulation, questions that have been part of the census for more than two centuries. 91 Fed. Reg. at 57530 (proposed § 70.2(a)). This section traces the history of demographic questions on the census and describes how census content is chosen under current practice.

History of demographic questions on the census

Since the First Census Act of 1790, Congress required marshals to classify each household's members by sex, race, and free or enslaved status. Act of Mar. 1, 1790, § 1, 1 Stat. at 101–02. As the Supreme Court has explained in an opinion that the proposed rule itself relies on, "demographic questions have been asked in every census since 1790." *Dep't of Com.*, 588 U.S. at 769; *see* 91 Fed. Reg. at 57527.

The 1790 census law divided the work between Congress, which determined the content of the census schedules, and the marshals, who carried out that count.[32] That arrangement, with minor changes, governed the first six censuses, each authorized by its own act.[33] The 1790 Act also created the mandatory response requirement. Act of Mar. 1, 1790, § 6, 1 Stat. at 103; *see also* 13 U.S.C. § 221(a). After 1840, Congress continued to enact a separate law for each census, and at times dictated the specific questions or categories the census had to include.[34] In 1902, Congress established a permanent Census Office. Act of Mar. 6, 1902, ch. 139, 32 Stat. 51. In 1929, Congress enacted a statute providing for "the fifteenth and subsequent decennial censuses," which governed every census until the enactment of Title 13. Act of June 18, 1929, ch. 28, 46 Stat. 21. That law delegated the details of census content to the executive branch, providing that "[t]he number, form, and subdivision of the inquiries in the schedules used to take the census shall be determined by the Director of the Census, with the approval of the Secretary of Commerce." *Id.* § 4, 46 Stat. at 22. In 1954, Congress consolidated these laws, including the 1929 Act, into Title 13 of the United States Code. Act of Aug. 31, 1954, ch. 1158, 68 Stat. 1012.

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[32] *Records, Computers, and the Rights of Citizens: Report of the Secretary's Advisory Committee on Automated Personal Data Systems*. U.S. Department of Health, Education, and Welfare, 1973, app. C (explaining that the 1790 census law "divided the labor between the Congress, which determined the content of the census schedules, and the federal marshals, who appointed assistant marshals to do the enumeration"), https://archive.epic.org/privacy/hew1973report/appenc.htm.

[33] *Id.* ("This system, with minor modifications, was used in the first six censuses."); *see* Act of Mar. 1, 1790, 1 Stat. at 101 n.(a) (listing the census acts for 1800 through 1840).

[34] *See* Act of June 18, 1929, ch. 28, 46 Stat. 21 (providing for "the fifteenth and subsequent decennial censuses"); Pratt, Beverly M., et al. *Measuring Race and Ethnicity Across the Decades: 1790–2010*. U.S. Census Bureau, 2015, 1890 entry (noting that Congress mandated the racial categories for the 1890 census), https://www.census.gov/data-tools/demo/race/MREAD_1790_2010.html.

In 1976, Congress amended Title 13 and established the framework that governs census content today. The 1976 amendments gave the Secretary of Commerce authority over the census's "form and content" and required the Secretary to report to Congress, in advance of each census, the subjects to be covered and the questions to be asked, along with any later changes. Act of Oct. 17, 1976, Pub. L. No. 94-521, § 7(a), 90 Stat. 2459, 2461–62 (codified as amended at 13 U.S.C. § 141(a), (f)). During this era, Congress also enacted and expanded major civil rights legislation, which informed the race and ethnicity questions asked under the modern framework. *See* 62 Fed. Reg. 58782 at 58782 (October 30, 1997) ("Development of the data standards stemmed in large measure from new responsibilities to enforce civil rights laws."). For example, Congress extended the Voting Rights Act to protect citizens "of Spanish heritage" in 1975, and the census began asking every person about Hispanic origin in 1980 to help enforce the Act. Act of Aug. 6, 1975, Pub. L. No. 94-73, § 207, 89 Stat. 400, 402.[35]

In 1977, the Office of Management and Budget (OMB) issued government-wide standards for federal race and ethnicity data developed to support civil rights enforcement. 43 Fed. Reg. 19260 at 19269–70 (May 4, 1978) (reissuing as Directive No. 15 the standards in Exhibit F of OMB Circular No. A-46, "as revised May 12, 1977"); *see* 62 Fed. Reg. at 58782. Modern race and ethnicity questions have developed within OMB's standards, which OMB revised twice, first in 1997 and then again in 2024. 62 Fed. Reg. at 58782; 89 Fed. Reg. 22182 at 22183 (March 29, 2024) (noting that "[s]ince 1977, SPD 15 has been revised one time, resulting in an update in 1997"). These revisions were made to better reflect how Americans identify and followed years of research, interagency review, and public comment. *See* 62 Fed. Reg. at 58782–85 (describing a four-year review that included congressional hearings, public comment, and national testing, undertaken "to enhance the accuracy of the demographic information collected by the Federal Government"); 89 Fed. Reg. at 22183–84 (describing a review undertaken "to better reflect the diversity of the Nation," which drew on a decade of federal research, including the 2015 National Content Test, and "over 20,000 comments" from the public). And in 2019, the Supreme Court confirmed that "[a]ll three branches of Government have understood the Constitution to allow Congress, and by extension the Secretary, to use the census for more than simply counting the population." *Dep't of Com.*, 588 U.S. at 769. It also held that the Secretary's choices about census content remain subject to review under the Administrative Procedure Act. *Id.* at 771–72.

Current practice

The decennial census is the only federal data collection that asks about the race and ethnicity of every person living in the United States.[36] Under current practice, race and ethnicity data are collected from every individual through self-identification, under government-wide standards set by OMB. *See* 62 Fed. Reg. at 58789 ("Self-reporting or self-identification using two separate

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[35] *Redistricting Law 2020*. National Conference of State Legislatures, 2019, p. 15,

[36] *See Questions Planned for the 2020 Census and American Community Survey*. U.S. Census Bureau, Mar. 2018, p. 1 n. 1 (explaining that "ACS asks for basic demographic and housing information from a sample of households, while the decennial census asks for basic demographic and housing information from all households"), www2.census.gov/library/publications/decennial/2020/operations/planned-questions-2020-acs.pdf; *Which Data Set Is Right for Me?* U.S. Census Bureau, 2021 (describing the decennial census as "a 100% count of the United States population" and ACS 1-year estimates as "a sample of roughly 3.5 million U.S. addresses per year"), www.census.gov/content/dam/Census/library/factsheets/2021/which-data-set/which-data-set-is-right-for-me.pdf.

questions is the preferred method for collecting data on race and ethnicity.").[37] These questions are included to meet federal needs the Bureau documents and reports to Congress in advance of every census. 13 U.S.C. § 141(f).[38]

Consistent with OMB's standards, the 2020 Census asked every person about their Hispanic origin and their race.[39] The 2020 questions continued a long trend toward more accurate and more detailed data. For the first time, they included dedicated write-in areas for respondents who identified as White or as Black or African American, allowing the Bureau to collect detailed responses for every major category.[40] These changes grew out of a decade of research, including the 2010 Census Race and Hispanic Origin Alternative Questionnaire Experiment and the 2015 National Content Test. *See* 89 Fed. Reg. at 22184 (describing the 2015 National Content Test as research on which the 2024 revision "relied heavily").[41] The 2024 SPD 15, OMB's most recent standard, requires a single combined race and ethnicity question, a new minimum category that separates Middle Eastern or North African (MENA) populations from "White," and the collection of detailed race and ethnicity categories by default. Each change moves toward greater detail and disaggregation. 89 Fed. Reg. at 22191–92.[42]

Since the 1990 Census, OMB and the Bureau have asked federal agencies to document their data needs, and the Bureau uses that documentation to evaluate what the census should ask.[43] In March 2017, the Bureau reported to Congress that race and Hispanic origin would be among the subjects of the 2020 Census, explaining that the planned subjects "represent the established federal needs for the data."[44] The Bureau submitted its planned questions in March 2018, explaining that race and Hispanic-origin data are used, among other things, to monitor compliance with the Voting Rights Act.[45] Proposed § 70.2(a) would prohibit these questions. 91 Fed. Reg. at 57530 (proposed § 70.2(a)).

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[37] *Subjects Planned for the 2020 Census and American Community Survey: Federal Legislative and Program Uses*. U.S. Census Bureau, Mar. 2017, p. 11 (explaining that the Bureau collects race and ethnicity data "in accordance with the 1997 Office of Management and Budget standards," and that the categories "are based on self-identification"), https://www2.census.gov/library/publications/decennial/2020/operations/planned-subjects-2020-acs.pdf.

[38] "Three Years to Go, Census Bureau Prepares for 2020 Census." *U.S. Census Bureau*, press release CB17-TPS.28, 31 Mar. 2017, https://www.census.gov/newsroom/press-releases/2017/cb17-tps28.html.

[39] *Redistricting Law 2020*, p. 15.

[40] *Id.* at p. 16; "2020 Census Frequently Asked Questions About Race and Ethnicity." *U.S. Census Bureau*, https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/faqs-race-ethnicity.html.

[41] Mathews, Kelly, et al. *2015 National Content Test Race and Ethnicity Analysis Report: A New Design for the 21st Century*. U.S. Census Bureau, 28 Feb. 2017, https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/plan/final-analysis/2015nct-race-ethnicity-analysis.html; *American Community Survey User Note 2021-03: Improvements to the Race Question*. U.S. Census Bureau, https://www.census.gov/programs-surveys/acs/technical-documentation/user-notes/2021-03.html.

[42] *But see* Jones, Layla A. "Census Bureau Quietly Scraps Plan for Improved Data Collection on Race and Ethnicity." *Talking Points Memo*, 26 June 2026 (reporting that a May 11, 2026 supplemental statement to OMB, ICR Ref. No. 202605-0607-002, stated that "the Census Bureau will use the 1997 standards in the American Community Survey and the Puerto Rico Community Survey"), https://talkingpointsmemo.com/?p=1550513.

[43] *Subjects Planned for the 2020 Census*, p. 1.

[44] "Three Years to Go."

[45] *Questions Planned for the 2020 Census*, pp. 41, 63–64; *see also Subjects Planned for the 2020 Census*, p. 11.

The Supreme Court has explained that, in addition to being the "linchpin of the federal statistical system," the census "additionally serves as a means of collecting demographic information," which is "used for such varied purposes as computing federal grant-in-aid benefits, drafting of legislation, urban and regional planning, business planning, and academic and social studies." *Dep't of Com.*, 588 U.S. at 760, 770 (quoting *Baldrige v. Shapiro*, 455 U.S. 345, 353–54 n.9 (1982), and *Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999)). These demographic questions, therefore, are not merely permissible; federal law and practice depend on them in a myriad of ways.

Proposed Part 70 would, for the first time since 1790, eliminate race and ethnicity questions from the decennial census

Proposed 15 C.F.R. § 70.2(a) would establish, by regulation, that "[n]o question about race, ethnicity, or sexual orientation shall appear on the short form decennial census questionnaire or any questionnaire used for the enumeration of the population." 91 Fed. Reg. at 57527, 57530 (proposed § 70.2(a)). Notably, the prohibition is not limited to the 2030 Census, and it is not limited to the mailed form; it would bar these questions from every census going forward, in every format used to count the population. If the proposed rule were to be promulgated, the 2030 Census would be the first since the first enumeration in 1790 not to ask about the race of the people being counted, and the first since 1970 not to ask about Hispanic origin.[46] The decennial census has not previously asked about sexual orientation, and the rule would bar the topic from every future census.[47] It rests that categorical ban on nothing more than the "(potentially) sensitive nature" of such questions. 91 Fed. Reg. at 57527.

Proposed Part 70 would also break with the census's mandatory response requirement. Under proposed § 70.2(c), apart from questions about biological sex, date of birth, and household relationship, "no person shall be obligated to furnish a response to any demographic question as part of the decennial census." 91 Fed. Reg. at 57530 (proposed § 70.2(c)). This is a sharp departure from prior practice. Congress has made answering census questions mandatory since the first census, and the only exception it has ever created, added in 1976, covers religious beliefs and affiliation. Act of Mar. 1, 1790, § 6, 1 Stat. at 103; 13 U.S.C. § 221(a), (c); Act of Oct. 17, 1976, § 13, 90 Stat. at 2465. Proposed § 70.2(c) would create by regulation a far broader exception than Congress has ever enacted. Only three demographic questions would remain mandatory: biological sex, date of birth, and household relationship. Proposed § 70.2(b) permits these "for the sake of facilitating data verification for the enumeration of the population." 91 Fed. Reg. at 57530 (proposed § 70.2(b)–(c)).

The proposal provides few details about how the Bureau intends to replace the data it would no longer collect: it would continue to "receive demographic data from other sources," a change it says, "reflects the Census Bureau's plans to increase its use of administrative records" to "fill information gaps." *Id.* at 57527, 57530 (proposed § 70.4). However, it does not identify which records would be used, whether the results would be published, or how it would assign race or

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[46] *Id.* at pp. 9 ("Hispanic Origin asked since 1970"), 11 ("Race asked since 1790").
[47] *Id.* at p. 1 (listing the 2020 Census questions as "age, sex, race, Hispanic origin, relationship, tenure, and citizenship").

ethnicity to people missing from those records. The proposal states that it would preserve race and ethnicity questions on the American Community Survey (ACS) and other surveys "not used for the enumeration of the population." *Id.* at 57527–28, 57530. However, the ACS is a sample of roughly 3.5 million addresses a year, not a count of every person.[48] And the ACS itself depends on the decennial census. The Bureau weights ACS data so that "estimates of totals by sex, age, race, and Hispanic origin are controlled to be equal to" its annual population estimates, which in turn "update the decennial census counts."[49] Eliminating race and ethnicity questions from the census would remove the benchmark on which the ACS's own race and ethnicity estimates rely.

Finally, proposed § 70.2(d) carves out a significant exception to its ban on demographic questions. "Questions that seek information related to the application of the residence criteria," which would include the legal status question the Bureau invites comment on in Part 60, "are not considered demographic questions subject to the restrictions of this part." 91 Fed. Reg. at 57530 (proposed § 70.2(d)). Because questions related to the residence criteria would not be "demographic questions," Part 70's voluntariness rule would not apply to them; they would remain subject to the Census Act's mandatory response requirement. *Id.* (proposed § 70.2(a), (c), (d)); 13 U.S.C. § 221(a). Such a question would be unprecedented.[50]

The Rule Would, for the First Time, Codify a Ban on Race and Ethnicity Questions in Every Future Census

As discussed previously in our comments on the proposed residence criteria (Part 60), the Census Bureau has exercised its delegated authority over the census by setting operational criteria one census at a time. 13 U.S.C. § 141(a). Federal agencies document their data needs, which the Bureau and OMB use to determine what the census should ask; the Bureau then reports its planned subjects to Congress at least three years before each census and its planned questions at least two years before. 13 U.S.C. § 141(f)(1)–(2).[51] When Congress has wanted to limit or direct the content of census questions, it has done so itself, by statute. *See Dep't of Com.*, 588 U.S. at 833 n.11 (Alito, J., concurring in part and dissenting in part) (observing that "when Congress wishes to limit the Secretary's authority to require responses to particular demographic questions, it 'knows precisely how to do so'"). For example, in 1976, it provided that no person may be compelled to disclose religious beliefs or affiliation. 13 U.S.C. § 221(c); Act of Oct. 17, 1976, § 13, 90 Stat. at 2465. Likewise, since 2005, it has required that census race data include a "Some Other Race" category. Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-108, tit. II, 119 Stat. 2290, 2308–09 (2005); *see* 89

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[48] *Which Data Set Is Right for Me?*

[49] *American Community Survey and Puerto Rico Community Survey Design and Methodology*. Version 3.0, U.S. Census Bureau, 2024, ch. 11, pp. 15–16, https://www.census.gov/programs-surveys/acs/methodology/design-and-methodology.html;
see Which Data Set Is Right for Me? (explaining that the Population Estimates Program "uses administrative records and other data to update the decennial census counts").

[50] *See* Part II above (explaining that the past practice the Bureau cites involved questions about citizenship, not immigration status).

[51] *Subjects Planned for the 2020 Census*, p. 1.

Fed. Reg. at 22185 n.20. We are aware of no enacted statute or regulation that has ever prohibited the census from asking about race or ethnicity.

Proposed Part 70 would change that. The Bureau proposes to "establish, by regulation," standards that "would prohibit the inclusion of questions about race and ethnicity or sexual orientation." 91 Fed. Reg. at 57527, 57530. Like Part 60, Part 70 would bind every future census, and its severability provisions would keep the ban in force even if other provisions of Part 70, or Part 60, were struck down. *Id.* at 57528, 57531 (proposed § 70.5). And as with Part 60, codification would mean the ban could be undone only through a new notice-and-comment rulemaking. *See supra* Part II; 5 U.S.C. § 553(b)–(c); *Perez*, 575 U.S. at 101. The rule would thus remove race and ethnicity from the census-by-census content review process through which the Bureau has long documented federal data needs.

Why the Proposed Change Is Harmful

Removing these questions would eliminate a key source of information used in economic-security analysis and civil rights enforcement

Redistricting analysis, Voting Rights Act enforcement, and equity analysis of formula funds rely on complete-count race and ethnicity data at the census block level. States draw districts from the P.L. 94-171 redistricting file, which the Secretary must provide to the state and which has reported population by race and Hispanic origin down to the block. 13 U.S.C. § 141(c).[52] Without these questions on the census itself, the ability to enforce the Voting Rights Act and other civil rights could be severely curtailed, leaving districts subjected to "packing" and "cracking" gerrymandering with no recourse to challenge this behavior under the narrower *Louisiana v. Callais*, 608 U.S. 85 (2026) "strong inference" requirement.

The American Community Survey is not a substitute

The rule states that it does not restrict demographic questions on the ACS but does not recognize that the ACS is a sample survey and relies heavily on the 10-year full census for interpretation of data. 91 Fed. Reg. at 57530 (proposed § 70.4). The ACS samples about 3.5 million addresses a year and completed interviews at about 1.9 million housing units in 2024, roughly 1.5 percent of U.S. households.[53] Its one-year estimates are published only for areas of 65,000 people or more, and even its five-year estimates stop at the block group.[54] Small-area ACS estimates carry wide margins of error. The ACS cannot provide the block-level, complete-count precision that civil rights and funding-formula analysis require.

The change would degrade the ACS, and the economic security data built on it

Although the rule would leave ACS questions in place, removing race and ethnicity from the decennial census would affect the ACS and every other Bureau survey based on a sample. ACS

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[52] Pillai and Artiga, "Proposed Changes to Demographic Data Collection."

[53] "Sample Size." *American Community Survey*, U.S. Census Bureau, https://www.census.gov/acs/www/methodology/sample-size-and-data-quality/sample-size/

[54] "American Community Survey (ACS) Questions and Answers." *Local Area Unemployment Statistics*, U.S. Bureau of Labor Statistics, https://www.bls.gov/lau/acsqa.htm.

responses are weighted so they can be used to estimate characteristics of the full population, and those weights are controlled to the Bureau's population estimates by age, sex, race, and Hispanic origin.[55] The population estimates are in turn built on a decennial census base; the current series carries race and Hispanic-origin detail forward from prior estimates while the Bureau evaluates how to incorporate 2020 Census detail.[56] A 2030 Census without race and ethnicity questions would leave these controls with no new benchmark, so error in ACS estimates for specific groups would grow over time.

This matters directly to FPWA's work and to the overall accuracy of economic security data. The ACS is the main dataset underlying the Urban Institute's ATTIS model, which is used to calculate the True Cost of Economic Security.[57] Less accurate ACS weights would make TCES rates less reliable, especially rates reported for groups with specific demographic characteristics. That would weaken our ability to understand disparities in economic security by race and ethnicity, such as the gap between the 78 percent of Hispanic New Yorkers and 43 percent of White New Yorkers who are economically insecure,[58] and to advocate for equitable policies.

The Bureau's privacy rationale raises significant questions

The Bureau argues that asking fewer demographic questions reduces the chance that respondents can be identified from published data. 91 Fed. Reg. at 57527. But the Bureau states that it "is not proposing any restrictions on its ability to receive demographic data from administrative records and other sources." *Id*. The Bureau would still hold and use demographic data about respondents, drawn from administrative records and third-party sources, with less transparency and public accountability over how those data are collected than a published questionnaire provides. The rule does not specify what data would be obtained, from whom, or how it would be shared.

The rule is internally inconsistent

The rule justifies removing race, ethnicity, and sexual orientation questions on the grounds that "the more questions that are included on the decennial census questionnaire, the lower the overall response rate." 91 Fed. Reg. at 57527. In the same notice, it invites comment on adding a legal-status question to the short form, *id.* at 57526, even though the Bureau's own research found that a citizenship question could reduce self-response, especially in households with noncitizens.[59] A rule concerned with response burden cannot credibly remove questions with long histories of use while adding a question its own researchers found would depress response.

IV. Conclusion

The decennial census is the foundation for how the federal government guides allocation of more than $2 trillion a year, enforces civil rights and voting laws, and measures whether Americans

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[55] *Id.*
[56] Hartley, Christine, et al. "COVID-19 Pandemic Leads to Innovative Census Bureau Methods of Estimating U.S. Population." *U.S. Census Bureau*, 22 June 2023, https://www.census.gov/library/stories/2023/06/blended-base-methodology.html.
[57] Acs et al., *Measuring the True Cost of Economic Security*.
[58] *True Cost of Economic Security*.
[59] Brown et al., *Predicting the Effect*.

can meet their basic needs. The proposed rule treats those uses as beside the point. Excluding millions of residents from the count would weaken political representation and shrink funding for entire communities. Eliminating race and ethnicity questions would remove a critical benchmark behind the ACS and the economic security data built on it, including the True Cost of Economic Security measure FPWA uses to advocate for New Yorkers.

For these reasons, FPWA respectfully requests that the Census Bureau:

1. Withdraw proposed Parts 60 and 70 in their entirety.
2. Retain the 2020 residence criteria, counting every person at the place where they live and sleep most of the time, without regard to immigration status.
3. Implement the 2024 SPD 15 standards in full in the 2030 Census and restore the planned 2027 ACS implementation, including disaggregated race and ethnicity data.
4. Decline to add a legal status question and decline to use administrative-record matching to determine legal status.
5. If any use of administrative records to determine residence proceeds, publish the data sources, accuracy testing, and a process for individuals and states to see, correct, and contest determinations.
6. Before any further action, publish for comment a full analysis of the rule's effects on federal funding formulas by state and locality, on redistricting and civil rights enforcement, and on the ACS.
7. Extend the comment period to December 10, 2026.

Thank you for the opportunity to comment.

Respectfully submitted,

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