CENSUS FUNDER COLLABORATIVE

October 14, 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:

We write in response to the Census Bureau (Department of Commerce) Notice of Proposed Rulemaking, "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions" (FDMS Docket No. USBC-2026-0628), published in the *Federal Register* on September 10, 2026.

I. About the Census Funder Collaborative

The Census Funder Collaborative (CFC) is a philanthropic initiative involving hundreds of charitable funders that came together around a nationwide initiative to ensure a fair and accurate 2020 Census, particularly in historically undercounted communities. These undercounted communities include but are not limited to communities of color, low-income families, immigrant households, young children, and rural communities. Today, the collaborative's work continues on the American Community Survey and the 2030 Census. CFC includes leaders of nonpartisan philanthropic institutions from across the country, large and small, who give grants each year to advance the common good and improve the quality of life in the United States. We are steered by a committee of some of the nation's most prominent national and regional foundations.

Although we have different funding priorities, are ideologically diverse, and do not always agree with each other, we share a commitment to reliable and accurate data as a necessary foundation for a well-functioning government, robust civil society, and thriving business sector in the United States. The decennial census is foundational to this commitment for grantmakers, grantees, and other partners.

Philanthropy uses census data to address all types of community needs. **For example, foundations and grantees rely on accurate census data to support the well-being of children and families, improve educational outcomes, increase access to health services,**

develop and test new medical treatments, and promote economic development along with business and government partners. Foundations and grantees also support disaster preparedness and recovery, relying on census data to understand who lives in a vulnerable area or a disaster zone, how communities have been affected, and where further aid is needed. Philanthropy, often in partnership with local governments, also helps communities create parks, senior centers, libraries, community centers, and youth programs, using census data to plan and execute effective projects.

II. Our Position on the NPRM

As set forth below, we believe that **the proposed residence rule and limitations on demographic questions in the census create significant barriers to an accurate and complete census, as required by the U.S. Constitution and federal law. These proposed changes would have an adverse impact on charitable funders and our grantees.** In an environment where the Bureau already faces challenges to ensuring a fair and accurate count, including reduced response rates, distrust of government, uncertain funding, and more, this rule would cause enormous disruption to the census at an unprecedented scale.

Accordingly, we respectfully oppose the proposed rule and request that the Census Bureau and Commerce Department permanently withdraw it. The census itself—as well as the federal data, funding allocations, and district boundaries that flow from it—must fully, fairly, and accurately reflect the country's diverse populations and must be conducted in accordance with the U.S. Constitution and federal statutes.

These proposals would result in substantial undercounts and reduced census data quality, with significant consequences for philanthropic organizations, government and business partners, and the communities they serve. The proposals in this rule –separately and collectively–would undermine the census. Under these proposals, census data would not be accurate, due to the impermissible policies and other deficiencies outlined below. The resulting inaccurate census would affect all communities across the nation. Census data used for apportionment, guiding public resource allocations, and more would not reflect the true demographic composition of the population, harming the work of all levels of government and all people who rely on these data.

Decennial census results also provide the foundation for many essential government data products–such as the annual population estimates and the American Community Survey–as well as numerous private data sources. As such, the effects of these changes are not limited to the decennial census.

Accurate census data are essential to philanthropy's charitable objectives. By undermining census accuracy, these proposals would significantly harm our work. Philanthropic organizations and our partners rely heavily on decennial census data–and federal sources derived from decennial census data such as the American Community Survey (ACS)–to understand the challenges facing communities and deliver programs and services that will make

the greatest difference. Foundations and grantees use census data at every step of our work: identifying community needs and effective interventions, effectively allocating grants and other resources, efficiently delivering vital services and programs, measuring progress, and assessing impact. Because philanthropy uses census data and census-derived data to evaluate needs and improvements over time, undercounting in a single census would have a long-term deleterious impact.

Many philanthropies also work with governments in public-private partnerships that rely on census data. These proposals would make it harder for governments to accurately plan for their communities' needs. For example, federal, state, local, and tribal agencies rely on census data and census-derived datasets to efficiently allocate resources. During fiscal year 2023, 371 federal programs relied on census data to direct over $2.24 trillion in approved federal funding to states and localities.[1] Given that philanthropy works with governments to address unmet community needs, this also impacts our efforts. Inaccurate census data would yield an incomplete picture of where underserved households and residents are concentrated, as well as the social, educational, and economic conditions these communities experience. A lack of accurate data to guide such partnerships would lead to wasted or inefficiently allocated philanthropic resources and place additional burdens on philanthropy.

Finally, while the comment period for this proposed rule has been extended to 53 days rather than the original 33 days, this period is still inadequate to assess the wide-ranging effects of this proposed rule on philanthropic organizations and other stakeholders. As noted in our letter requesting an extension of the public comment period, a period of at least 90 days is necessary for this "significant regulatory action." The Bureau should also provide additional Tribal consultation, as required to uphold the federal government's government-to-government relationship with Tribal Nations.

III. Concern 1: Race and Ethnicity Data

The rule proposes to prohibit questions about race and ethnicity on the census, which would effectively eliminate reliable race and ethnicity data from all federal and other government and private sector statistics. **Eliminating decennial census data on race and ethnicity is unprecedented and would have widespread consequences across our society, including for philanthropy.**

This is a significant divergence from how the census has always been conducted. The effect would be not just the loss of information on the race and ethnicity of people across the nation, but also the loss of a shared civic data infrastructure. **Because the decennial census provides the underlying universal benchmark (or "gold standard" denominator) for the entire federal statistical system, removing this information would create compounding**

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

downstream effects for the philanthropic sector and our grantees; state, local, and tribal governments (as well as the federal government), the business sector, public health entities, and more. In short, the elimination of race and ethnicity questions from the decennial census would mean that governments, philanthropy and communities will no longer have a common, credible way to measure who is being served, who is being left behind, and whether living standards are getting better for everyone.

A. These types of characteristics have always been collected on the census, and there is no adequate replacement for these data.

The census has collected data on race and ethnicity in some manner since the first census in 1790.[2] The census is the gold standard for high-quality data, and census data ground other federal statistics. **If race and ethnicity data are not collected on the decennial census, then no other federal data products will be able to provide reliable race and ethnicity data.**

Decennial census results provide the foundation for many government data products, as well as data sources outside government. These include the **annual population estimates, produced each year from decennial data** for the nation as a whole, as well as states, counties, cities, and towns. The Census Bureau uses decennial census data and the annual population estimates to design and conduct **the American Community Survey (the "ACS")**, which provides important data annually about a wide range of socio-economic measures. Census data are needed to design ACS sampling and ensure it is consistent with the composition of the U.S. population. Likewise, **numerous other critical federal surveys**—including the Current Population Survey, American Housing Survey, and National Health Interview Survey—rely on data from the decennial census to create survey samples, weight responses, and measure sampling error.

If race and ethnicity data are not collected on the census, it will be impossible for these other surveys and data products to provide accurate race or ethnicity data. For example, even if race data are still collected on the ACS, the ACS uses decennial data to establish a baseline and ensure a representative sample. Under this proposal, ACS race and ethnicity estimates would be impossible to evaluate for accuracy and as a result, would not be reliable or useful.[3] Similarly, other public and private data sources either rely on the decennial census, or are piecemeal and insufficient to approximate the census's coverage and quality.[4] In addition,

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[2] U.S. Census Bureau, "Decennial Census by Decade: 1790," https://www.census.gov/programs-surveys/decennial-census/decade.1790.html; *See also,* Pew Research Center, *Race and Multiracial Americans in the U.S. Census* (2015), https://www.pewresearch.org/social-trends/2015/06/11/chapter-1-race-and-multiracial-americans-in-the-u-s-census/.

[3] *See, e.g.,* 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), September 10, 2026, p. 13–15, https://www.regulations.gov/document/USBC-2026-0628-0002.

[4] *See, e.g.,* Insights Association, "Letter to the Department of Commerce on Race and Ethnicity Data Elimination Proposal," August 25, 2026, p. 2,

the Bureau or other data users could not substitute administrative records for decennial census collection of race and ethnicity data. 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, they could not fully replace self-response data for race and ethnicity, due to differences in coverage, quality, and consistency, as well as conceptual misalignment.[5]

B. This proposal has no grounding in research, evidence, or appropriate procedures for ensuring accurate data.

Under established procedures, the Census Bureau rigorously researches and tests potential effects before adding, moving, revising, or eliminating any question on the census. Typically, the Bureau rigorously researches proposals to change or eliminate questions (such as from the ACS), in order to ensure these revisions do not adversely affect accuracy or create data gaps that could negatively affect public and private entities. After years of robust research and public input, if the evidence is favorable, the Bureau conducts robust testing to understand the effects on census respondents. For example, for the ACS, the research and testing of any changes to content occurs at least five years before proposed implementation.

Removing race and ethnicity questions entirely has never been tested and has no precedent. It would have a massive impact on broader data availability, quality, and accuracy, with no analysis or evidence behind the change. Its implications would be so widespread that the effects cannot be adequately assessed in a brief period. The Bureau should not make such drastic changes with no basis in evidence, and most importantly, cannot independently eliminate this data collection, which is required to implement statutes passed by Congress and is irreplaceable.

C. Race & ethnicity data are essential for many uses related to the work of philanthropy. Accurate data on race and ethnicity are necessary to ensure that public and private programs effectively meet the differing and changing needs of communities. Philanthropic organizations that work with all types of communities across the nation rely on these data. Race and ethnicity data are essential for evaluating the success of employment and education programs, uncovering health disparities between groups, ensuring

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https://www.insightsassociation.org/Portals/INSIGHTS/xBlog/uploads/2026/8/25/IA-SecLutnick-Census-RaceEthnicityQuestion-8-25-26.pdf

[5] *See, e.g.,* Independent Census Scientific Advisory Committee, "Recommendations and Comments to the US Census Bureau from the Independent Census Scientific Advisory Committee (I-CSAC) Spring 2026 Meeting," March 27, 2026, p. 3–5, https://static1.squarespace.com/static/6890d038372a532ebb7b32a2/t/69ce8c427e97c2491bbfc7e8/1775144002871/Spring+2026+I-CSAC+Recommendations.pdf; Sharon R. Ennis et al., *When Race and Hispanic Origin Reporting are Discrepant Across Administrative Records and Third Party Sources* (2015), https://www.census.gov/library/working-papers/2015/adrm/carra-wp-2015-08.html; Asian Americans Advancing Justice – AAJC, *Assessing Availability and Quality of Administrative Records for Asian Americans and Native Hawaiians and Pacific Islanders* (2025), https://www.advancingjustice-aajc.org/report/assessing-availability-and-quality-administrative-records-asian-americans-and-native; Alaska Federation of Natives, "The Need for a Question on American Indians and Alaska Natives," September 2026, p. 3, https://handsoffourcens.us/assets/resources/afn-gotnv-aian-talking-points.pdf.

services like emergency preparedness and disaster aid reach all members of a community, and similar assessments that guide our work.

The goal of collecting race and ethnicity data is not to examine all issues from the standpoint of racial identity, but rather to use these data as part of a holistic examination to understand the true underlying causes of challenges, identify effective solutions, and determine where to focus resources to address these challenges. Data on race and ethnicity are also essential to understand the lived realities of the people who philanthropies serve, whose race and ethnicity may influence their circumstances, and whose cultures are often an important part of their lives. In addition, eliminating race and ethnicity data does not eliminate the reality of different circumstances and needs that result from current and historic discrimination.

Foundations and grantees **use census race and ethnicity data across core functions of philanthropy, including needs assessment, effective programming, evaluation, and more.** These data are necessary to understand demographic change across multiple factors and inform long-term planning. Without these data, philanthropies would have great difficulty establishing reliable population baselines, measuring population demographic changes over time in local areas, and distinguishing where needs are growing or changing. It would also be more difficult to evaluate outcomes, because funders would have less independent population data with which to assess who was reached, who was left out, and whether troubling gaps were narrowed. Across philanthropic work, race and ethnicity data are just one part of comprehensive, evidence-based assessments, but are crucial demographic factors that we and sectors across the nation rely on.[6]

Foundations and grantees rely on census race and ethnicity data to serve communities across multiple areas, such as public health, economic development, disaster relief, education, housing, transportation, employment, and the needs of children and families, seniors, and veterans. For example, race and ethnicity data allow philanthropies and our partners to understand trends in health outcomes. Without these data, a foundation funding disease interventions could know the local number of residents who died of a disease, but could not compare disease rates across racial groups to help inform residents about their risk or design interventions.[7] When supporting disaster preparedness, grantees and local governments would be unable to target multilingual disaster warnings.

[6] *See also,* Race and ethnicity data as used by the business sector: Insights Association, "Letter to the Department of Commerce on Race and Ethnicity Data Elimination Proposal," August 25, 2026, https://www.insightsassociation.org/Portals/INSIGHTS/xBlog/uploads/2026/8/25/IA-SecLutnick-Census-RaceEthnicityQuestion-8-25-26.pdf.

[7] *See, e.g.,* Vi D. Le and Melanie Klein, "The Public Health Cost of Eliminating Race and Ethnicity Data," *Federation of American Scientists*, September 4, 2026, https://fas.org/publication/public-health-cost-eliminating-race-data; Nambi Ndugga et al, "Understanding Racial and Ethnic Identity in Federal Data and Impacts for Health Disparities," *KFF*, November 1, 2024, https://www.kff.org/racial-equity-and-health-policy/understanding-racial-ethnic-identity-in-federal-data-impacts-health-disparities.

D. These data are also necessary for federal agencies and other government bodies, under current laws and obligations.

Federal statutes still on the books, passed and enforced under multiple Congresses, require agencies to assess and identify discrimination. Race and ethnicity data are required and critical for these uses. In addition, if governments do not have accurate race and ethnicity data to use to enforce federal, state and local laws—more burdens and risks fall on communities served by philanthropic organizations.

Race and ethnicity data are critical to enforce federal laws, including those that prohibit discrimination in housing, healthcare, education, and more. Indeed, the Census Bureau itself has stated that "the data collected in these questions is needed by federal agencies to monitor compliance with the antidiscrimination provisions of laws such as the Voting Rights Act and the Civil Rights Act."[8] Specific examples include: Title VI of the Civil Rights Act of 1964 (barring all recipients of federal financial assistance from discriminating on the basis of race, color, and national origin); Title VII of the Elementary and Secondary Education Act of 1965; the Fair Housing Act; and the Voting Rights Act of 1965.[9] For example, the Elementary and Secondary Education Act of 1965 specifically requires the collection and reporting of data on education outcomes disaggregated by race and ethnicity.[10] The Public Health Service Act directs the department of Health and Human Services to coordinate with the Census Bureau to ensure the collection of race and ethnicity data that are "statistically reliable" enough to study the population of health program participants.[11] Some federal programs explicitly depend on race and ethnicity information to distribute funding, such as Indian Housing Block Grants and the Indian Health Service.[12] **Census race and ethnicity data are necessary to implement these federal laws, as the only source of comprehensive nationwide data and the baseline for other data products.**

In addition, race and ethnicity data on American Indian and Alaska Native populations are essential for upholding the nation-to-nation relationship between the United States and Tribal Nations. Census data are used to calculate federal funding formulas and annual congressional appropriations for numerous Tribal-serving programs. Data on Native Hawaiian populations are also uniquely important to fulfill these communities' needs and the government's obligations to them.

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[8] *See*, U.S. Census Bureau, "Why We Ask the Race Question," 2020, https://www2.census.gov/programs-surveys/decennial/2020/partners/outreach-materials/handouts/why-we-ask-the-race-question.pdf.

[9] *See also*, The Leadership Conference Education Fund, Asian Americans Advancing Justice – AAJC and NALEO Educational Fund, *Race and Ethnicity in the 2020 Census* (2014), p. 9–15, https://censuscounts.org/wp-content/uploads/2019/03/Census-Report-2014-WEB.pdf.

[10] 20 U.S.C. § 6311(h)(1)(C)(ii)-(vi)); 20 U.S.C. § 9543; 20 U.S.C. § 9533.

[11] 42 U.S.C. § 300kk.

[12] U.S. Census Bureau, "Why We Ask Questions About Race," Census.gov, accessed September 20, 2026, https://www.census.gov/acs/www/about/why-we-ask-each-question/race.

Census data on race and ethnicity are also necessary for enforcing state and local laws, including civil rights and voting rights laws, and other laws that require accurate demographic data. State and local governments also rely on block-level race and ethnicity data for redistricting. The only accurate source for those data is the decennial census.

IV. Concern 2: Excluding Certain Noncitizens from Apportionment

The proposed rule would require the Bureau to **exclude many categories of residents from the congressional apportionment base, including** temporary visa holders, long-term employment based visa holders, refugees, asylum applicants, undocumented immigrants, foreign students, and others. Many immigrants who are legally present in the United States would be excluded, such as employees of companies and organizations located in the United States, children adopted from other countries by U.S. citizens, and students. This proposal would exclude U.S. residents, some with U.S. born children, who have lived in the country or its territories for decades, paying taxes and contributing to their communities.

The rule redefines "usual residence" as the vehicle to accomplish this policy change. **Excluding noncitizens, other than Lawful Permanent Residents, from the apportionment count contravenes the U.S. Constitution, statutes, and history of the census. It would result in an incomplete census harmful to philanthropic operations and the communities we serve. It would effectively erase members of our communities and suggest that they do not belong.** Beyond its clear constitutional infirmity and the concerns detailed below, the widespread impacts of this rule cannot be fully assessed within the brief comment period.

A. This proposal is unconstitutional.

Numerous legal experts have noted this proposal is unconstitutional, as the U.S. Constitution's Fourteenth Amendment requires that the apportionment of House seats be based on a count of "the whole number of persons in each State," regardless of citizenship or immigration status.[13] In fact when considering the Fourteenth Amendment, Congress explicitly chose the broad term "persons" and rejected basing apportionment on the number of "citizens."[14] Census statutes reflect this.[15]

The U.S. Department of Justice, under every administration that has reviewed the question, has also affirmed that the Constitution requires all people in the United States to be included in the apportionment count, and noncitizens cannot be excluded.[16]

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[13] U.S. Const. Art. I, Sect. 2, Cl. 3; U.S. Const., amend. XIV, § 2.

[14] *See, e.g.,* Brief of Amici Curiae Historians in Support of Plaintiffs, *Common Cause v. Trump*, No. 20-cv-02023 (D.D.C. 2020), available at https://www.brennancenter.org/sites/default/files/2020-08/AmicusBrief_Historians_2020-08-26.pdf.

[15] 2 U.S.C. § 2a(a).

[16] *See,* Federal Defendants' Post-Argument Memo, *FAIR v. Klutznick*, No. 79-3269 (D.D.C. 1980); Thomas M. Boyd, Acting Assistant Attorney General, "Letter to Rep. William D. Ford, House of Representatives," June 29, 1988; Carol T. Crawford, Assistant Attorney General, "Letter to Senator Jeff Bingham," September 22, 1989 (135 Congressional Record S12235). Cited in Complaint of Plaintiffs

A constitutional amendment cannot be accomplished by rulemaking. It requires passage by Congress and ratification by the states.

B. Implementing this proposal would result in an inaccurate enumeration.

In addition to its constitutional infirmity, the rule does not propose a feasible way to accomplish its purpose. It outlines two potential methodologies to "distinguish" noncitizens who would be excluded from apportionment: 1) a "legal status" (immigration status) question on the census form; and 2) using "administrative records" to determine peoples' immigration status. **Both methods have significant shortcomings and are highly unlikely to correctly enumerate the targeted population.** They would also exacerbate existing distrust of government among many groups of people, which has been a barrier to census participation. **As a result, this proposal would lead to an inaccurate census for all U.S. communities.**

The Census Bureau has historically highlighted the reasons why attempting to exclude certain noncitizens from the census would reduce census accuracy. In congressional testimony in 1988, Census Director John Keane stated that excluding noncitizens from the census "would be likely to introduce significant errors" and "cannot be done as accurately as a census of all residents." He explained that asking about legal status would cause mistrust among all types of residents (including citizens and undocumented residents), leading to undercounts. The Bureau would not know whether significant changes to its totals are due to undercounts of "legal residents" or of other residents. There would be no way to know the accurate correct total (or "denominator") of noncitizen individuals who responded or not, as compared to "legal resident" individuals.[17] **These important observations remain true today.**

Including an immigration status question on the decennial census is contrary to the goals of an accurate count. An immigration status question has never been fielded in a census. It is an untested question that would require years of scientifically valid research and testing to even determine its full implications for census accuracy–as well as whether such a question could accurately measure immigration status–let alone whether it is appropriate to add to a census.

However, based on available research and experience with a "citizenship question," it is likely that an immigration status question would reduce census response rates and accuracy even more–distorting census data and harming philanthropic work. An immigration status question would be more complex and even more sensitive than a citizenship question. This would almost certainly exceed the known adverse consequences associated with a citizenship question (which did not specifically carry the risk that a person might be identified

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Common Cause et al., *Common Cause v. Trump*, No. 20-cv-02023 (D.D.C. 2020), available at https://www.brennancenter.org/sites/default/files/2020-07/Complaint_%202020-07-23_0.pdf.

[17] John G. Keane, Census Director, "Testimony before the Subcommittee on Census and Population of the Committee on Post Office and Civil Service, House of Representatives," April 18, 1988 (100th Congress), p. 9–12, https://babel.hathitrust.org/cgi/pt?id=pur1.32754076769284&view=1up&seq=12.

as undocumented). Consistent evidence from the Census Bureau and researchers shows that this type of question would reduce census response rates for noncitizen households (the population it is intended to measure);[18] exacerbate undercounts of populations that have been historically undercounted in past censuses (such as Hispanic households, bilingual households in general, and others);[19] and reduce census participation from citizens, legal residents, and mixed-status households.[20] Overall, this type of question would **discourage households from responding to the census and significantly undermine the accuracy of census data and census-derived data.**

Administrative records on citizenship also contain significant flaws and cannot be the basis for an accurate enumeration. Many experts have noted the limitations and unreliability of administrative records on citizenship. For example, existing sources of citizenship data, such as Department of Homeland Security (DHS) and Social Security Administration (SSA) records, are not fully reliable, with information that can be incomplete and outdated.[21] In addition, the Bureau's ability to "link" or match records across databases has significant unresolved limitations. The Bureau itself has previously acknowledged that these records have gaps and cannot accurately determine citizenship status for all people.[22] **Thus, these records would further exacerbate the inaccuracies created by this rule and cause significant concerns for census participants.**

In addition, the language lacks clarity around how U.S. nationals from U.S. territories would be counted. Such persons are lawful residents, but have a status other than "citizen" or "lawful permanent resident."

Because exclusion of "persons" from the census in this manner is unprecedented, the full impact it would have on the 2030 Census and the philanthropic organizations that rely on the census cannot be fully assessed. However, the available information strongly indicates that these proposals would undermine data quality.

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[18] J. David Brown et al, *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census* (2019), CES Working Paper 18-38R, https://www2.census.gov/ces/wp/2018/CES-WP-18-38R.pdf.

[19] *Id.;* U.S. Census Bureau, *2019 Census Test Report* (2020), https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/plan/testing-activities/2019-census-test/2019-census-test-report.html.

[20] Brown, J. David and Heggeness, Misty L, *Citizenship Question Effects on Household Survey Response* (2024), CES Working Paper 24-31, https://www2.census.gov/library/working-papers/2024/adrm/ces/CES-WP-24-31.pdf (published in Journal of Policy Analysis and Management, 2025, https://doi.org/10.1002/pam.70004).

[21] *See, e.g.,* Fair Elections Center, *Issue Brief: Examining Changes to USCIS's SAVE System* (2025), https://fairelectionscenter.org/uscis-save-system-report.

[22] John M. Abowd et al., *Determination of the 2020 U.S. Citizen Voting Age Population Using Administrative Records and Statistical Methodology* (2020), CES Working Paper 20-33, https://www2.census.gov/ces/wp/2020/CES-WP-20-33.pdf.

IV. Concern 3: Usual Residence

The rule also proposes to completely redefine “usual residence," departing from census statutes and past practice. Rather than the longstanding concept of “usual residence” as the place where a person lives and sleeps most of the time, the proposed rule would define it as the residence where the respondent has “lawfully spent the greatest number of days during the census enumeration period” and creates an unprecedented “enumeration period” of January 3 to April 1. It also specifies that “a person’s ‘usual residence’ should be consistent with, and evidenced by, their tax records (e.g., tax returns, W-2 forms).”

This redefinition of “usual residence”—including the “enumeration period,” tying enumeration to tax records, and the concept of “lawful” residence—contravenes census statute and would reduce the accuracy of census data. Consistent and implementable residence criteria are necessary for counting people once and in the right place. This is important for philanthropy because foundations and grantees across the country rely on accurate, localized data to effectively serve local communities. These untested changes would cause confusion and diminish census data quality, harming our work and the populations we serve.

This proposed definition of “usual residence” contravenes census statutes and longstanding tradition. The Census Act of 1790 established the concept of “usual place of abode” as the place where a person usually lives and sleeps, as of Census Day. It specified that people who have no “usual” location should be counted where they are on Census Day. Since then, census residence criteria have long defined “usual residence” as “the place where a person lives and sleeps most of the time.” As the Census Bureau has stated, this “is not always” or “not necessarily” the same as a person’s legal residence, voting residence, or where they prefer to be counted.[23] These other concepts of residence can vary depending on the usage, whereas the census was designed by the Framers and Congress for a specific purpose.

The concept of “lawful” residence has never been used in previous censuses, nor has it been tested. This is an unprecedented and inappropriate concept for the census, and does not match the concept of “usual” residence under longstanding census law and practice. The Census Bureau is a statistical agency, not a law enforcement, regulatory, or judicial agency. Determining the “lawful” status of any resident would be inappropriate and beyond the Bureau’s authority. “Lawful” residence is undefined and grants dangerous discretion, since the definition can vary depending on which laws are referenced or their specific purpose (e.g., where a person can vote, go to public school, register their car, or pay taxes; whether a dwelling was

[23] *See, e.g.*, U.S. Census Bureau, *Facts About Census 2000 Residence Rules* (2000), https://www2.census.gov/programs-surveys/decennial/2000/program-management/1-plan/address-list-development/resid_rules.pdf; *Facts About the Census 2010 Residence Rule and Residence Situations* (2010), https://www.census.gov/programs-surveys/decennial-census/decade/2010/about-2010/residence-rule.html; *Residence Criteria and Residence Situations for the 2020 Census of the United States* (2020), https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2020-Census-Residence-Criteria.pdf.

lawfully built, who is on the lease, and more). This new definition raises serious concerns about counting people correctly.

In addition, the proposed "enumeration period" is unprecedented and directly contradicts census statutes. Since 1790, statutory directives–currently codified at 13 U.S.C. §141–have specified a reference date ("decennial census date") for determining usual residence, not a reference period.[24] Usual residence is the place where people are usually living, "as of" that date. The rule's three-month period goes against this statutory directive. It also provides a more arbitrary, inconsistent, and less accurate basis than the current and historical concept of "usual residence," **raising many questions about where and how people will be counted.[25]** It would also create an inaccurate picture of where people live "most of the time," making philanthropy unable to plan for and serve year-round needs in communities.

Determining "usual residence" based on tax records is also unprecedented, inappropriate, and would lead to miscounting or not counting many people. Using tax records to identify "usual residence" for enumeration purposes is unworkable and harmful, because addresses used for tax purposes are fundamentally different from residence. These records are based on mailing addresses, not homes, and can even include P.O. boxes. Therefore, attempting to tie enumeration to tax records would result in an en-masse mismatch, resulting in many people being counted improperly or not at all. **Groups at risk under this proposal include military servicemembers, college students, young children, low-income residents, rural residents, and many more.[26]**

Taken together, these untested proposals redefining "usual residence" would lead to confusion and counting many people in the wrong place or not at all. People at risk of not being counted in the right place or omitted entirely from the census include seasonal workers, children in foster care, people in group facilities and domestic violence shelters, unhoused people, and others.[27] **These are populations that foundations and grantees serve and who must be accurately counted in order to properly address their needs.** The current "usual residence" definition is necessary to facilitate consistency, uphold statutory intent, and count people accurately.

VI. Concern 4: Sexual Orientation Data

The proposed rule would prohibit questions about sexual orientation on the decennial census. The census does not currently include an explicit sexual orientation question, but **the rule**

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[24] 13 USC 141(a) requires the Commerce Department to "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'."
[25] *See, e.g.,* Massive Data Institute, *Proposed Residence Criteria Suggest Military Personnel May Be Counted in the Wrong Place* (2026), https://georgetown.app.box.com/s/89fzeffxlkns32dimpvx3qobcrvkyz1c.
[26] *See, e.g., Id.;* Massive Data Institute, *What Are "Residence Criteria" and How Would They Be Used to Change Who 'Counts?'* (2026), https://georgetown.app.box.com/s/phnyytjhgq71nkqvvujpt032i3j6994t.
[27] *Id.*

would foreclose the Bureau's ability to adopt this measure in the future, no matter what research or data needs emerge.

Decisions about adding new demographic questions to future censuses should be guided by a deliberative process that includes rigorous research and testing, consultation with federal agencies and Congress, and meaningful engagement with communities and subject matter experts. Instead, this rule would prohibit these questions without sufficient evidence or reasoning. The Census Bureau should not preclude the addition of a sexual orientation question on future censuses.

This prohibition also raises concerns about whether and how decennial census data on same-sex couples will continue to be collected and reported. Same-sex couples have been counted through household relationship data for decades. Most recently, the Bureau redesigned the household relationship question on the 2020 Census to improve the accuracy of same-sex couple counts. The Census Bureau should not restrict the collection or publication of same-sex couple data through the household relationship question, which would undermine the methodological improvements made to address known measurement errors and improve data quality. **These data remain essential for policymakers, researchers, and nonprofit organizations, as well as philanthropy organizations that seek to effectively serve these households in their communities.**

VII. Concern 5: Incarcerated Population

The proposed rules would continue to count individuals confined to a correctional or detention facility at the facility where they are incarcerated. Many philanthropy organizations have opposed this policy in the past, as it does not reflect the reality of communities and also enables "prison gerrymandering."[28]

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, 75% of people incarcerated in state prisons serve time in more than one prison facility. While they are being moved between facilities, incarcerated people maintain a usual residence: their pre-incarceration home remains their only stable address. Almost all incarcerated people return home after they are released.[29]

Counting incarcerated people at the location where they happen to be held at the time of the census creates a skewed picture of the U.S. population. It can also skew political representation, giving residents of districts with prisons greater voice than other state residents,

[28] *See,* Philanthropic Institutions, "Comment to the Census Bureau re: 2020 Census Residence Criteria and Residence Situations," August 31, 2016, https://funderscommittee.org/thirty-five-philanthropic-institutions-sign-on-to-census-bureau-rulemaking-comments.
[29] *See, e.g.*, Prison Policy Initiative, "Comment to the Census Bureau re: "Proposed 2020 Census Residence Criteria and Residence Situations," September 2016, available at https://www.prisonersofthecensus.org/letters/2016/PPI_Demos_2016_FRN_comment.pdf.

inconsistent with principles of equal representation. **We believe that in order to produce an accurate census, the Bureau should count incarcerated people at their home address.**

VI. Conclusion

This proposed rule would change the very meaning of the census, violate the Constitution and federal laws, and result in inaccurate and unreliable census data. These are not simply proposed changes to the census residence rules; they are a sea change to how the federal government has conducted the census for over 230 years. They would create a tidal wave of devastating consequences across every community, industry, and area of American life.

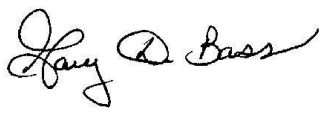
These consequences would extend to foundations and grantees, as well as our partners including state, local, and tribal governments, and the business sector. In short, the proposed rule would damage philanthropy's ability to effectively serve the needs of our communities, regardless of location or demographic makeup.

Most importantly, this proposed rule would adversely affect the communities we serve, denying their fair share of representation and resources, as well as accurate information about their true demographic composition and the people who live there.

For the reasons identified in this letter, we strongly oppose the proposals in this NPRM and respectfully urge the Commerce Department and Census Bureau to permanently withdraw the proposed regulation.

Thank you for your attention to our views.

Sincerely,



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