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Submitted via www.regulations.gov

Daniel Sweeney
Deputy General Counsel for Economic, Statistical, and Regulatory Affairs
Office of the General Counsel, Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: Comment on Notice of Proposed Rulemaking on Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (RIN 0607-AA75, Docket No. 260903-0005)

Dear Mr. Sweeney:

Since the Fourteenth Amendment was ratified in 1868, the Constitution has required that the Decennial Census count “the whole number of persons in each State”—not the whole number of citizens, nor the whole number of lawful residents, but every person.¹ However, on September 10, 2026, the Department of Commerce (“Department”) and the Census Bureau (“Bureau”) proposed to break with that requirement by issuing a notice of proposed rulemaking entitled “Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions” [hereinafter, “Proposed Rule”].² By redefining “usual residence” to exclude most non-citizens from the apportionment count, and by eliminating direct, self-reported race and ethnicity questions, the Proposed Rule abandons both the constitutional text and 250 years of settled administrative practice. The National Women’s Law Center submits this comment in opposition to both parts of the Proposed Rule—15 CFR Part 60 (residence criteria) and 15 CFR Part 70 (demographic questions)—and urges the agencies³ to withdraw this Proposed Rule in its entirety.

The National Women’s Law Center (“the Law Center”) is a national nonprofit that has fought for gender justice for more than 50 years. The Law Center is deeply concerned about this rule’s impact on American democracy and on the populations the Law Center works to protect, including women and girls, people of color, and LGBTQ+ people.

¹ U.S. Const. art. I, § 2, cl. 3; U.S. Const. amend. XIV, § 2.

² Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57524 (proposed Sept. 10, 2026) (to be codified at 15 C.F.R. pts. 60 & 70), Docket No. USBC-2026-0628, RIN 0607-AA75, <https://www.federalregister.gov/d/2026-18481>.

³ This comment refers to the Department of Commerce and the Census Bureau collectively as “the agencies,” and refers to the Department or the Bureau individually only where a statement or action is specific to one of them.

Accurate, complete Census data underlie the enforcement of federal civil rights law, the fair apportionment of democratic representation, and the distribution of more than \$1.5 trillion annually in federal funding on which millions of Americans rely. The Proposed Rule threatens to directly harm American democracy and the communities that depend on an accurate Census count. A Census that undercounts millions of residents weakens the representational link between people and their government, shifts political power away from the communities least able to absorb that loss, and cuts off the flow of federal funding that the schools, hospitals and clinics, emergency services, and countless other types of public infrastructure rely on for a decade or even longer. Those harms will not be evenly distributed: they will fall hardest on immigrant families, women and caregivers, communities of color, and people living in poverty who are already the most difficult to count.

This comment proceeds in four parts. Part I explains what the Proposed Rule would do and why it fails the Administrative Procedure Act’s requirements for reasoned decision-making. Part II explains why excluding residents from the count is unconstitutional and how the Proposed Rule would weaken representative democracy and civil rights enforcement. Part III explains that the agencies have offered no real justification for the damage the Proposed Rule would do to the federal statistical system. And Part IV turns to the people who would bear the cost of this dangerous Proposed Rule.

I. The Proposed Rule would change who the Census counts and what it asks, without the reasoned explanation that the law requires.

The Proposed Rule would add two new parts to the Code of Federal Regulations—Part 60 governing residence criteria, and Part 70, restricting demographic questions—that together make four concerning changes to how the Census is conducted.⁴ None of these changes are supported by the law, by agency authority, or by documented research.

A. The Proposed Rule would make four concerning changes to how the Census is conducted.

First, the Proposed Rule redefines who counts as a resident. Proposed § 60.2 defines a person’s “usual residence” as the place where they “lawfully spent the greatest number of days” during a new “census enumeration period” running from January 3 through April 1 and provides that usual residences “should be consistent with, and evidenced by, their tax records.”⁵ Proposed § 60.4 then counts only lawful permanent residents (LPRs) or green card holders; “[a]ll other citizens of foreign countries” are “[n]ot counted for apportionment.”⁶ That exclusion reaches far beyond the undocumented population that dominates public discourse. It would exclude many lawfully present immigrants, including H-1B and H-2B temporary workers, H-2A agricultural workers, international students, refugees, asylum seekers, Temporary Protected Status (TPS) holders, Deferred Action for Childhood Arrivals (DACA) recipients, and VAWA self-petitioners who have escaped abuse but whose green card applications remain pending. Many of these

⁴ Proposed Rule at 57524.

⁵ Proposed Rule at 57526, 57529.

⁶ Proposed Rule at 57529.

individuals have lived, worked, and paid taxes in U.S. communities for years, and all have been included in prior enumerations. The Pew Research Center estimates that about 14 million unauthorized immigrants lived in the United States in 2023, roughly 6 million of whom had some protection from deportation, such as a pending asylum claim, TPS, or DACA.⁷ Taken together, these changes would move the constitutional “whole number of persons” baseline for congressional apportionment to a citizens-and-LPRs-only baseline—the first time in the Nation’s history that apportionment would turn on citizenship or immigration status.⁸

Second, the Proposed Rule would shift the Census from what people report to what other agencies’ files say about them. To determine residence and legal status, the Bureau proposes to rely on its “enormously broad access to administrative records” from the Department of the Treasury (including the Internal Revenue Service (IRS)), the Department of Health and Human Services (HHS), the Department of Homeland Security (DHS), the Department of State, the Department of Defense, and the U.S. Postal Service (USPS), along with state, local, tribal, and “third party commercial data.”⁹ The Bureau describes its holdings as “nearly exhaustive of the Civilian Federal governments holding” and pledges to keep expanding them.¹⁰ But tax and administrative records regularly exclude non-filers, low-income households, dependents, and marginalized populations—the very communities the Census already struggles to reach.¹¹

*Third, proposed Part 70 would prohibit any question about race, ethnicity, or sexual orientation on the decennial Census questionnaire.*¹² The Proposed Rule itself acknowledges that “demographic questions have been asked in every census since 1790.”¹³ The agencies justify this prohibition as making the Census “colorblind” reducing “response burden” and limiting the “risk of disclosure” of personal information.¹⁴ By eliminating direct collection of race and ethnicity data, the Proposed Rule abandons over two centuries of precedent and severely damages the data ecosystem relied upon by public agencies, researchers, businesses, and civil rights litigants, while disrupting all public and private surveys that rely on Census baselines.

Fourth, the Proposed Rule lays the groundwork for a legal-status question. In order to effectuate its proposal to consider legal status as part of residency for the purposes of apportionment, the

⁷ Jeffrey S. Passel & Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, Pew Rsch. Ctr. (Aug. 21, 2025), <https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/>.

⁸ See U.S. Const. amend. XIV, § 2; *Trump v. New York*, 592 U.S. 125, 145–48 (2020) (Breyer, J., dissenting) (tracing this history and quoting the Census Bureau Director’s testimony that “for every census since the first one in 1790, we have tried to count residents of the country, regardless of their status”).

⁹ Proposed Rule at 57526 & n.6.

¹⁰ *Id.* at 57526.

¹¹ See Gabriel Zucker, *Opportunities and Limitations of Using Data to Reach Non-Filers with the CTC*, New America (Aug. 20, 2021), <https://www.newamerica.org/insights/data-and-non-filers/>; Gabriel Zucker & Lindsey Wagner, *Talking to Non-Filers: Evidence from Qualitative Research with Families Who Don’t Regularly File Taxes*, New America (July 16, 2021), <https://www.newamerica.org/insights/talking-to-non-filers/>; Geoffrey Gee et al., *The Claiming of Children on U.S. Tax Returns* (Nat’l Bureau of Econ. Rsch., Working Paper No. 33277, 2024), <https://www.nber.org/papers/w33277>.

¹² Proposed Rule at 57530.

¹³ *Id.* at 57527 (quoting *Dep’t of Com. v. New York*, 588 U.S. 752, 769 (2019)); see U.S. Census Bureau, *Measuring Race and Ethnicity Across the Decades: 1790–2010* https://www.census.gov/data-tools/demo/race/MREAD_1790_2010.html.

¹⁴ Proposed Rule at 57524, 57527.

Bureau considers adding a “question about legal status on the short-form decennial census questionnaire” and “welcomes comments” on doing so.¹⁵ The Bureau’s proposal to rely on immigration status to determine residency, as well as the absence of any other proposal for how legal status would be determined, indicate that such a legal-status inquiry is not merely being contemplated but is a core component of the Proposed Rule. As Part IV explains, even the prospect of such a question would depress the response rates across entire households and communities.

Together these changes would transform the Census from a count of everyone into a system of verification, disqualification, and data erasure. By the agencies’ own implicit admissions, these modifications reduce data accuracy and undermine the Census’s core function of providing an accurate count of the population of each state for the purposes of apportionment. The agencies have neither legal authority nor a reasoned basis to make these proposed changes.

B. The Proposed Rule violates the Administrative Procedure Act because it is contrary to law and abandons more than two centuries of practice without reasoned explanation.

The Administrative Procedure Act (APA) requires courts to set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “contrary to constitutional right,” or “in excess of statutory . . . authority.”¹⁶ Census decisions are subject to that review: the Census Act “confers broad authority on the Secretary,” but it does “not leave his discretion unbounded.”¹⁷ The Proposed Rule is contrary to the Constitution and the Census Act for the reasons explained in Part II, and is arbitrary and capricious for the reasons that follow and those explained in Part III.

When an agency changes a longstanding practice, it must explain why it is changing its position, show good reasons for the new policy, and account for the reliance interests the prior practice created.¹⁸ With regard to the Census, those reliance interests are enormous. All fifty States draw legislative districts using total-population data from the decennial Census; funding for hundreds of federal programs is determined by Census counts; enforcement of the Voting Rights Act and other civil rights laws depend on Census race and ethnicity data; and researchers, businesses, and public-health agencies rely on the decennial baseline.¹⁹ The Proposed Rule does not acknowledge, let alone weigh, any of these reliance interests. It likewise ignores an important aspect of the problem—its effect on the States—asserting that the Proposed Rule has “no federalism implications” while saying only that the Bureau “expects” to keep publishing population statistics separate from those used for apportionment.²⁰

¹⁵ *Id.* at 57526.

¹⁶ 5 U.S.C. § 706(2)(A)-(C).

¹⁷ *Dep’t of Com. v. New York*, 588 U.S. 752, 771-772 (2019).

¹⁸ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

¹⁹ U.S. Census Bureau, *Why We Conduct the Decennial Census of Population and Housing*, <https://www.census.gov/programs-surveys/decennial-census/about/why.html>.

²⁰ Proposed Rule at 57528 & n.5; see *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); 13 U.S.C. § 141(c). Even that expectation is difficult to credit. Under the Proposed Rule, residence would be determined by matching administrative records, and those records omit many of the very residents the Proposed Rule would exclude from apportionment. The Proposed Rule does not explain how the

The Supreme Court has already set aside one Census decision that rested on an inadequate explanation. In *Department of Commerce v. New York*, the Court held that the Secretary’s stated reason for adding a citizenship question “seem[ed] to have been contrived” and was “incongruent with what the record reveals.”²¹ The Court emphasized that the reasoned-explanation requirement “is meant to ensure that agencies offer genuine justifications for important decisions.”²² Four Justices would also have held the decision arbitrary because the Secretary “did not give adequate consideration to issues that should have been central to his judgment, such as the high likelihood of an undercount.”²³ The Proposed Rule repeats that failure. It never grapples with the undercount risk even though the Bureau’s own regulatory impact analysis concedes that the Proposed Rule would make the Census less accurate.²⁴

Finally, a 53-day comment period is no substitute for the record-building that a change of this magnitude requires. The Bureau proposed its residence criteria for the 2020 Census in 2016 and finalized them in 2018, after extensive testing and public engagement.²⁵ By contrast, the Department published this Proposed Rule on September 10, 2026, with comments originally due on October 13, 2026, now extended to November 2, 2026. Given that operational planning and field testing for the 2030 Census are already well underway,²⁶ rushing this sweeping rulemaking under these circumstances deprives the public of a fair opportunity to evaluate changes that would fundamentally reshape the decennial Census.

II. The Proposed Rule violates the Constitution and would weaken representative democracy and the enforcement of voting rights.

At its core, the Proposed Rule is detrimental to American democracy and to public confidence in our representative system. The Census exists to power representative democracy: it dictates how political power is divided among the States and within them. A Census that no longer counts everyone, and that substitutes opaque cross-agency data matching for a transparent, self-reported count, violates the Constitution’s command and weakens the premise that representation flows from an accurate picture of who actually lives in our communities.

A. The Constitution and the Census Act require the Census to count every resident, regardless of immigration status.

The Constitution’s text and history point in one direction. The Framers apportioned House seats by the “whole number of persons” in each State, and when Congress debated the Fourteenth

Bureau would accurately count, and then separately publish, a population it no longer attempts to enumerate in full. See *infra* Part III.B.

²¹ *Dep’t of Com.*, 588 U.S. at 784–85.

²² *Id.*

²³ *Id.* at 820 (Breyer, J., concurring in part and dissenting in part).

²⁴ See *infra* Part III.A.

²⁵ Compare Proposed 2020 Census Residence Rule and Residence Situations, 81 Fed. Reg. 42577 (June 30, 2016) <https://www.federalregister.gov/documents/2016/06/30/2016-15372/proposed-2020-census-residence-criteria-and-residence-situations>, with Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525 (Feb. 8, 2018) <https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations>.

²⁶ U.S. Census Bureau, 2030 Census Research and Testing, <https://www.census.gov/programs-surveys/decennial-census/decade/2030/planning-management/plan/research-and-testing.html>.

Amendment, it considered and rejected proposals to apportion seats by voters instead.²⁷ Opponents of voter-based apportionment insisted that “population is the true basis of representation; for women, children, and other non-voting classes may have as vital an interest in the legislation of the country as those who actually deposit the ballot.”²⁸ In *Evenwel v. Abbott*, the Supreme Court unanimously reaffirmed that “representatives serve all residents, not just those eligible or registered to vote,” and that “total-population apportionment promotes equitable and effective representation.”²⁹ Lower federal courts have addressed noncitizens specifically; more than four decades ago, a three-judge panel held that “the population base for purposes of apportionment has always included all persons, including aliens both lawfully and unlawfully within our borders.”³⁰ At a minimum, reasoned decision-making requires the agencies to address this binding Supreme Court precedent and the relevant lower court decisions before departing from historical practice. Yet the Proposed Rule neither cites nor engages with either decision, let alone grapples with their clear legal mandates.

The Census Act reinforces this constitutional command. Congress directed the Secretary to report “[t]he tabulation of total population by States” and the President to transmit “the whole number of persons in each State.”³¹ Consistent with those directives, “usual residence” has determined where a person is counted since the First Census Act of 1790—not whether that person is counted at all.³² Congress reinforced that longstanding rule when it enacted the modern apportionment statute in 1929, repeatedly rejecting proposals to exclude noncitizens.³³ The Bureau likewise drew no distinction in its 2020 residence criteria between foreign citizens present lawfully and those present unlawfully.³⁴ This uninterrupted history is decisive: had Congress intended to exclude noncitizens from the apportionment count, or intended to give the agencies the power to do so, it would have said so.

The courts agree, having struck down the previous Trump administration’s efforts to exclude noncitizens from the apportionment count. In 2020, a Presidential memorandum directed the Secretary of Commerce to exclude undocumented immigrants from the apportionment base outright.³⁵ Three separate three-judge district courts held that policy unlawful on the merits, reasoning that the governing statutes, 13 U.S.C. § 141(b) and 2 U.S.C. § 2a(a), require the Secretary to report the “whole number of persons in each State” and that “usual residence,” the

²⁷ *Evenwel v. Abbott*, 578 U.S. 54, 64–67 (2016) (quoting Cong. Globe, 39th Cong., 1st Sess., 141 (1866) (remarks of Rep. Blaine)).

²⁸ *Id.*

²⁹ *Evenwel*, 578 U.S. at 74.

³⁰ *Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980) (three-judge court).

³¹ 13 U.S.C. § 141(b); 2 U.S.C. § 2a(a).

³² *Franklin v. Massachusetts*, 505 U.S. 788, 804–05 (1992) (citing Act of Mar. 1, 1790, ch. 2, § 5, 1 Stat. 101, 103).

³³ 2 U.S.C. § 2a(a); *Trump v. New York*, 592 U.S. at 144–47 (Breyer, J., dissenting, discussing legislative history).

³⁴ Proposed Rule at 57525 (citing 83 Fed. Reg. at 5526, 5530 (Feb. 8, 2018),

<https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations>).

³⁵ See *Excluding of Illegal Aliens from the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679 (July 23, 2020), <https://www.federalregister.gov/documents/2020/07/23/2020-16216/excluding-illegal-aliens-from-the-apportionment-base-following-the-2020-census>.

touchstone Congress chose for enumeration,³⁶ has never turned on immigration status.³⁷ The Supreme Court never reached the merits of any of these cases; it vacated them because the policy's implementation was too speculative to establish standing or ripeness.³⁸ Three Justices would have reached the merits and held the exclusion unlawful because "[t]he concept of residency does not turn, and has never turned, solely on a person's immigration status."³⁹ This Proposed Rule attempts to revive the same result, redefining "usual residence" to exclude people based on immigration status, in direct contravention of every court that has reached the merits of this issue.

To mask these clear constitutional and statutory shortfalls, the agencies rely on *Department of Commerce v. New York* for authority, claiming that the Enumeration Clause "permits Congress, and by extension the Secretary, to inquire about citizenship."⁴⁰ But that case addressed only the Secretary's authority to *ask a citizenship question* and expressly declined to decide "the constitutionality of any other question."⁴¹ Whether the government may collect citizenship data and whether it may refuse to count people using that data are different questions, and *Department of Commerce* addressed only the first.

B. The Proposed Rule would shift congressional seats and override the States' own choices about how to draw their districts.

The Census count is used to allocate House seats, and derivatively, Electoral College votes, for the following ten years. Excluding millions of residents would shift seats among States, with cascading effects on redistricting and federal funding, in ways that are difficult to predict and not confined to any region or party.⁴² Because immigrant and mixed-status populations are concentrated in particular communities, the loss of representation would fall hardest on those communities and on the citizens, many of them people of color, who live alongside them.⁴³ And the harm would not stop at the congressional level: the Proposed Rule would also reach into state and local redistricting, a function the Constitution leaves to the States.

Every State, and virtually every county, city, and school board, draws its districts using the redistricting data that the Bureau is statutorily required to deliver under Public Law 94-171.⁴⁴ The Equal Protection Clause requires them to do so with care: based on the Supreme Court's interpretation in *Reynolds v. Sims*, state legislative districts must be "as nearly of equal

³⁶ 2 U.S.C. § 2a(a).

³⁷ See *New York v. Trump*, 485 F. Supp. 3d 422, 467–75 (S.D.N.Y. 2020) (three-judge court) (per curiam), *vacated*, 592 U.S. 125 (2020); *City of San Jose v. Trump*, 497 F. Supp. 3d 680, 733–42 (N.D. Cal. 2020) (three-judge court), *vacated*, No. 20-561 (U.S. Dec. 28, 2020); *Useche v. Trump*, No. 8:20-cv-02225, 2020 WL 6545886, slip op. at 21–30 (D. Md. Nov. 6, 2020), *vacated*, No. 20-662 (U.S. Dec. 28, 2020).

³⁸ *Trump v. New York*, 592 U.S. at 131–37; see cases cited *supra* note 37.

³⁹ *Trump v. New York*, 592 U.S. at 144 (Breyer, J., joined by Sotomayor & Kagan, JJ., dissenting).

⁴⁰ *Dep't of Com.*, 588 U.S. at 770; see also 2 U.S.C. § 2a(a).

⁴¹ *Dep't of Com.*, 588 U.S. at 770.

⁴² Jeff Adelson and Albert Sun, *Trump's Census Proposal Could Cut House Seats From Red States*, NY TIMES, (Sept. 18, 2026) https://www.nytimes.com/interactive/2026/09/19/us/trump-census-immigrants-red-states.html?unlocked_article_code=1.CVE.DWxY.b32N91NAwabY&smid=url-share.

⁴³ *Id.*

⁴⁴ 13 U.S.C. § 141(c); Pub. L. No. 94-171, 89 Stat. 1023 (1975).

population as is practicable.”⁴⁵ Within that constitutional floor, the choice of how to set equal voting districts belongs to the States. In *Evenwel* the Court declined to decide whether States may equalize something other than total population, while recognizing that total-population apportionment is a practice that “all 50 States and countless local jurisdictions have followed for decades, even centuries.”⁴⁶ How a State apportions its own legislature, in other words, is a question for that State’s people, its constitution, and its laws.

However, the Proposed Rule would take that choice away from states. By removing excluded residents from the primary Census count and offering only an “expectation” that the Bureau will publish them elsewhere,⁴⁷ the agencies would leave States that choose or that are required by law to apportion by total population without a reliable, official dataset for doing so. A State cannot meet *Reynolds*’ equal-population command using a count from which the federal government has stripped millions of its residents, and it cannot draw lawful maps from figures that the Bureau may never produce.

The structure of a State’s government, including how its legislature is apportioned, is a core attribute of its sovereignty, and so it evokes key federalism interests when the federal government inserts itself into these matters. For that reason, the Supreme Court requires Congress to make its intention “unmistakably clear in the language of the statute” before federal law is read to alter the usual constitutional balance between the States and the federal government.⁴⁸ The same principle underlies the presumption against preemption: courts “start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress,” and when a federal statute “is susceptible of more than one plausible reading, courts ordinarily ‘accept the reading that disfavors pre-emption.’”⁴⁹ That presumption applies with particular force in fields the States have traditionally occupied.⁵⁰

Nothing in the Census Act comes close to that clear statement. Congress directed the Secretary to deliver “[t]abulations of population” to the officials in each State responsible for legislative apportionment and districting;⁵¹ it has never authorized the agencies to decide which of a State’s residents those tabulations may leave out. Yet the Proposed Rule reinterprets “usual residence” without statutory authority, in defiance of more than two centuries of practice, and in a way that prevents States from carrying out functions their own constitutions and laws assign to them—all while asserting that it has “no federalism implications.”⁵² It does so without consulting the States, which have partnered with the Bureau on Census data through the State Data Center

⁴⁵ *Reynolds v. Sims*, 377 U.S. 533, 577 (1964).

⁴⁶ *Evenwel*, 578 U.S. at 73–75.

⁴⁷ Proposed Rule at 57528 & n.5.

⁴⁸ *Gregory v. Ashcroft*, 501 U.S. 452, 460–1 (1991) (quoting *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 65 (1989)).

⁴⁹ *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (first quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); and then quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)).

⁵⁰ *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541–42 (2001).

⁵¹ 13 U.S.C. § 141(c).

⁵² Proposed Rule at 57528.

program since 1978.⁵³ The Proposed Rule thus disrupts the settled balance between the States and the federal government, and it is precisely the kind of intrusion on state sovereignty that requires a clear statement from Congress. No such statement exists.

C. The Proposed Rule would eliminate the data needed to enforce the Voting Rights Act, just as the Supreme Court has raised the evidentiary bar.

Just as States need a complete count to draw fair maps, voters and the Department of Justice (DOJ) need accurate race and ethnicity data to challenge maps that are discriminatory and illegal. The Proposed Rule cites *Louisiana v. Callais* as part of an “evolving” legal landscape that supposedly reduces the need for race data.⁵⁴ *Callais* says the opposite. The Court updated the *Thornburg v. Gingles* framework for vote-dilution claims under Section 2 of the Voting Rights Act but held that its interpretation “does not require abandonment of the *Gingles* framework.”⁵⁵ DOJ or a private plaintiff must still show that a minority community is “sufficiently numerous and compact to constitute a majority in a reasonably configured district” and prove racially polarized voting through “an analysis that controls for party affiliation.”⁵⁶

The *Callais* evidentiary requirements depend on block-level counts of the voting-age population by race and ethnicity—granular data that only the decennial Census provides.⁵⁷ Indeed, the *Callais* Court itself relied on Census Bureau data on registration and turnout by race.⁵⁸ Congress explicitly charged DOJ with enforcing Section 2 and protecting minority voters from vote dilution.⁵⁹ Stripping block-level race and ethnicity data from the primary decennial Census files would frustrate that congressional design by disabling DOJ’s civil rights enforcement capacity.

III. The Agencies have failed to consider the damage the Proposed Rule would do to the federal statistical system.

The Supreme Court has called the decennial Census the “linchpin of the federal statistical system.”⁶⁰ It anchors survey weighting, public-health research, funding formulas, disaster planning, and civil rights analysis.⁶¹ A flaw introduced at the point of enumeration therefore does

⁵³ U.S. Census Bureau, *State Data Center Program Guidelines* 1–5 (2014), <https://www2.census.gov/about/partners/sdc/resources/guidelines.pdf>.

⁵⁴ Proposed Rule at 57527.

⁵⁵ *Louisiana v. Callais*, 608 U.S. ___, 146 S. Ct. 1131 (2026) (slip op., at 26); see *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986).

⁵⁶ *Callais*, slip op., at 29–30; see also *Allen v. Milligan*, 608 U.S. ___, 146 S. Ct. 1377 (2026) (per curiam) (applying *Callais*).

⁵⁷ Sample surveys cannot fill that gap. The American Community Survey (ACS), for example, does not produce block-level estimates, and it is itself weighted to population estimates built on the decennial count. Eliminating decennial race and ethnicity data would therefore not only remove the block-level data that Section 2 enforcement requires, but also weaken the very survey the agencies suggest as a substitute. See *infra* Part III.A.

⁵⁸ *Callais*, slip op., at 27.

⁵⁹ 52 U.S.C. § 10308(d) (commanding the DOJ to enforce Section 2 of the Voting Rights Act).

⁶⁰ *Dep’t of Com. v. New York*, 588 U.S. at 65 (2019) (quoting *Dep’t of Com. v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999)).

⁶¹ See U.S. Census Bureau, *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021* (2023), <https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf>; Nat’l Acad. of Scis., Eng’g & Med., *Principles and Practices for a Federal Statistical Agency* (7th ed. 2021), <https://www.nationalacademies.org/read/25885/chapter/1>.

not remain isolated in the Census file. It propagates outward for a decade or longer, shaping what governments, researchers, service providers, and communities can know about the people who make up our country and how resources are allocated among them. The agencies propose to introduce such flaws deliberately, and they offer no adequate justification for doing so.

A. The agencies concede the Proposed Rule would make the Census—including its race and ethnicity data—less accurate and offers no evidence-based reason to accept that cost.

The agencies' own analysis admits that the Proposed Rule would make the Census less accurate—and admits that they cannot say whether anything is gained in exchange. The Preliminary Regulatory Impact Analysis (PRIA) accompanying the Proposed Rule concedes that omitting race and ethnicity from the 2030 questionnaire “would require the development of estimates from a base population derived from outdated and/or less accurate data and would deteriorate the accuracy of the estimation method itself.”⁶² Because those estimates are carried forward from the most recent self-reported count, the damage compounds: each year further from the last decennial baseline, race and ethnicity estimates grow less reliable—underscoring both why the decennial data matter and why their loss cannot be cured by estimation. The PRIA acknowledges that “[n]umerous key dependencies have been structured around the reliable annual release of intercensal estimates for race and ethnicity, such as population controls for major federal surveys.”⁶³ And it recognizes that, without new decennial data to recalibrate them, “the ACS sampling weights, and therefore its population estimates, will become less reliable.”⁶⁴ Yet the PRIA states that “Census cannot quantify or provide a dollar value for the expected benefits or costs of the proposed rule,” and ends by conceding that “it does not attempt to quantify benefits and costs.”⁶⁵ Agencies that concede their rule will degrade the very data they are charged with producing, and cannot identify a benefit that outweighs that cost, have not engaged in the reasoned decision-making the APA requires.⁶⁶

The rest of the agencies' analysis confirms the gap. The PRIA considers only one alternative—taking no action—and never evaluates a narrower option.⁶⁷ It points to the ACS as a possible substitute for decennial data, but the ACS cannot replace the benchmark on which it depends: the ACS is weighted to population controls derived from the decennial Census, and the PRIA itself acknowledges that without updated decennial data those weights “will become less reliable” and that the ACS “may not be a suitable substitute” for communities with small populations.⁶⁸ The PRIA acknowledges that public health authorities rely on race and ethnicity estimates and that the Department of Housing and Urban Development uses tribal counts to allocate Indian Housing Block Grants,⁶⁹ but the Proposed Rule fails to grapple with those critical reliance interests. And although the PRIA recognizes that Census data guide “trillions of dollars in federal

⁶² U.S. Census Bureau, *Preliminary Regulatory Impact Analysis*, Docket No. USBC-2026-0628-0002, at 15 (Sept. 2026) [hereinafter PRIA], <https://www.regulations.gov/document/USBC-2026-0628-0002>.

⁶³ *Id.*

⁶⁴ *Id.* at 13; *see also id.* at 12 (“The accuracy of the ACS total-population estimates may decline because the ACS will not have an updated full count of the U.S. population.”).

⁶⁵ *Id.* at 10, 16, 17.

⁶⁶ 5 U.S.C. § 706(2)(A)—(C).

⁶⁷ *Id.* at 16-17.

⁶⁸ *Id.* at 10, 12-14.

⁶⁹ *Id.* at 14.

funding . . . for hospitals, fire departments, schools, roads, and other critical programs and services,”⁷⁰ the Department classified the Proposed Rule as “not economically significant,” avoiding the full cost-benefit analysis that designation would require.⁷¹

The Proposed Rule also fails to justify the loss of data accuracy. It certifies that small governmental entities would not be significantly affected because Census information “would remain available or could be obtained in other ways,” without identifying any other source of block-level population and race data.⁷² It asserts that removing questions “is expected to increase response rate,” but offers no estimate of how much; its only support for the premise that shorter questionnaires raise response is a 2014 Congressional Research Service report on the ACS and a 1992 study of mail-back rates, neither of which tested removing race and ethnicity questions.⁷³ The response-rate rationale is also difficult to credit on its own terms. In the same rulemaking, the agencies propose adding a legal-status question,⁷⁴ a change that Census Bureau economists have found depresses self-response and leads households to leave people off the roster.⁷⁵ The agencies’ justification for removing the race and ethnicity questions is merely pretext; they have not shown that including the race and ethnicity questions is burdensome for respondents, nor that the questions significantly affect Census response rates. On top of that, the agencies failed to conduct an actual Paperwork Reduction Act analysis, instead simply inviting the public to supply the burden estimates the agencies never made.⁷⁶

The agencies’ other rationales for eliminating race and ethnicity questions are no better. The “colorblind” rationale confuses counting with classifying. The authorities the Proposed Rule cites—a concurrence in *Students for Fair Admissions, Callais*, *Allen v. Milligan*, an executive order on diversity programs, and the Department’s rescission of portions of its Title VI regulations—concern when government may use race to allocate benefits or burdens, not whether it may measure the population it serves.⁷⁷ The Title VI rescission reflects a policy preference about disparate-impact enforcement under one statute, which is irrelevant to a constitutionally mandated count; Census race data predate Title VI by nearly two centuries.⁷⁸ The “reduced need” rationale is contradicted by the Bureau’s own statements that race data are “required for many Federal programs and [are] critical in making policy decisions, particularly for civil rights,” including VRA compliance, equal employment enforcement, redistricting, and

⁷⁰ *Id.* at 9; see also U.S. Census Bureau, *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021* (2023), <https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf> (more than \$2.8 trillion in fiscal year 2021).

⁷¹ Proposed Rule at 57528 (citing Exec. Order No. 12,866 § 3(f)(1)).

⁷² *Id.* at 57528.

⁷³ *Id.* at 57527 & n.8.

⁷⁴ *Id.* at 57526.

⁷⁵ J. David Brown & Misty L. Heggeness, *Citizenship Question Effects on Household Survey Response*, 45(1) J. Pol’y Analysis & Mgmt. 70004 (published online Mar. 20, 2025), <https://doi.org/10.1002/pam.70004>.

⁷⁶ Proposed Rule at 57528.

⁷⁷ Proposed Rule at 57527 & nn.11–12 (citing, *inter alia*, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 276–77 (2023) (Thomas, J., concurring), *Callais*, slip op., at 29–30; *Allen v. Milligan*, 608 U.S. ___, 146 S. Ct. 1377 (2026) (per curiam) (applying *Callais*); see also Rescinding Portions of Department of Commerce Title VI Regulations, 91 Fed. Reg. 20326, 20329 (Apr. 16, 2026) <https://www.federalregister.gov/documents/2026/04/16/2026-07477/rescinding-portions-of-department-of-commerce-title-vi-regulations-to-conform-more-closely-with-the>).

⁷⁸ *Id.*

public-health programs.⁷⁹ And the privacy rationale is self-contradictory: the same rule that invokes the Privacy Act to strip self-reported race questions would expand linkage of tax, immigration, benefits, and commercial records for every household, and would let the Bureau obtain race data from those records anyway.⁸⁰ Removing the questions would not reduce what the government knows about a person's race; it would replace the person's own answer with a record they never saw and cannot correct. Indeed, agencies that are considering a legal-status question—among the most sensitive information the government can ask for—cannot credibly claim that privacy concerns require them to stop asking about race. Furthermore, the agencies' reliance on a privacy rationale to eliminate self-reported demographic questions is fundamentally irreconcilable with their proposal to sweepingly expand the collection and linkage of private tax, financial, and administrative records. Dropping direct questions does not reduce the total volume of sensitive data the government holds; rather, it replaces transparent, self-reported information with opaque data-matching that is less accurate and bypasses individual awareness and consent.

B. The Agencies have not adequately demonstrated that comparison of administrative records can replace self-reported data.

The Proposed Rule's second core change—replacing what people report about themselves with what government and commercial files say about them—rests on records that were never designed to count people. Tax returns, benefits files, immigration records, and commercial databases are built to administer a program or to sell a product. They record who filed, who enrolled, or who bought—not who lives where. They are often out of date, they contain errors that the people they describe never see and cannot correct, and they systematically miss the people who interact least with the government. Yet the Proposed Rule describes only in general terms how the Bureau would combine these sources,⁸¹ and it fails to explain why administrative records would improve the Census count, even as the evidence points toward serious degradation. Tax filings omit non-filers, dependents, low-income households, and people with unstable housing. For example, in 2020, an estimated 12 million people who did not normally file taxes because they have very low incomes were eligible for pandemic stimulus payments; of the 9 million reachable through SNAP or Medicaid, about 3.2 million were children and 27% were Black—more than double Black Americans' share of the population.⁸² Similarly, the record in *Department of Commerce* showed that the government lacked administrative records altogether for about 10% of the population—approximately 35 million people.⁸³ That is why, in 2020, the Bureau used administrative records to enumerate only 4.6% of addresses, and only for households that had not responded: these data can serve only as a supplement to direct

⁷⁹ U.S. Census Bureau, *2020 Census Race and Ethnicity FAQs*, <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/faqs-race-ethnicity.html>.

⁸⁰ Proposed Rule at 57527 & n.14, 57530 (proposed 15 C.F.R. § 70.4).

⁸¹ The Proposed Rule lists the agencies and commercial sources from which records would be drawn, but it does not explain how records would be matched to individuals, what share of the population would be enumerated through records rather than self-response, how conflicts among records would be resolved, or how a person could identify or correct an error. See Proposed Rule at 57526 & n.6, 57528 n.7.

⁸² Chuck Marr et al., *Aggressive State Outreach Can Help Reach the 12 Million Non-Filers Eligible for Stimulus Payments*, CTR. ON BUDGET & POL'Y PRIORITIES (Oct. 14, 2020), <https://www.cbpp.org/research/federal-tax/aggressive-state-outreach-can-help-reach-the-12-million-non-filers-eligible>.

⁸³ *Dep't of Com.*, 588 U.S. at 776.

enumeration, not a substitute.⁸⁴ Further, the Proposed Rule offers no standard for resolving conflicts between records, saying only that their use “will necessarily be situation dependent.”⁸⁵

C. A distorted 2030 baseline would corrupt a decade of federal data and permanently break the Nation’s population record, degrading countless federal, state, and private surveys that measure change over time.

The decennial Census sets the population figures against which the ACS, the Current Population Survey, and countless state, private, and academic surveys are weighted for the following decade.⁸⁶ The Bureau’s population estimates, built on the decennial count, also supply the race-specific denominators for federal health statistics such as cancer incidence and maternal mortality rates.⁸⁷ Distorting that baseline would corrupt ten years of demographic modeling, public-health analysis, economic research, and civil-rights enforcement. Eliminating direct race and ethnicity questions would deepen the problem by removing the primary benchmark used to calibrate survey measures of racial and ethnic disparities—leaving a decade of weakened evidence about where disparities exist and whether public policy is reducing or entrenching them. And the harm would not end in 2040. Abandoning self-reported race and ethnicity data in 2030 would set a precedent for doing the same in 2040, 2050, and beyond, steadily degrading every survey that relies on decennial estimates. Researchers, courts, and agencies measure longitudinal change—in segregation, in health and economic disparities, in whether programs reach their intended beneficiaries—by comparing survey results across time, which are ultimately benchmarked to the Census. Racial population estimates inferred from administrative records are not comparable to self-reported answers, so the Proposed Rule would create a permanent break: data collected after 2030 could no longer be reliably compared with data collected before it, and every survey benchmarked to the Census would inherit the same break.

D. The Proposed Rule would prevent improving data accuracy for LGBTQ+ people and destabilize the questions that capture same-sex couples.

Part 70 of the Proposed Rule bars any question about sexual orientation, even though none currently appears on the Census, and narrows the permissible purpose of the household relationship question to “facilitating data verification.”⁸⁸ That question—including the “Same-sex husband/wife/spouse” and “Same-sex unmarried partner” categories added in 2020—is the decennial Census’s only direct measure of same-sex couples, and the product of decades of refinement discussed in Part IV.G below.⁸⁹ The Proposed Rule’s practical effect is to inhibit the

⁸⁴ Mary H. Mulry et al., *Using Administrative Records for Enumeration in the 2020 U.S. Census*, U.S. Census Bureau Rsch. Rep. Series RRS2025-02 (Apr. 18, 2025), <https://www.census.gov/library/working-papers/2025/adrm/RRS2025-02.html>; see also PRIA at 9 (describing the use of administrative data as a subject of “active research”).

⁸⁵ Proposed Rule at 57528 n.7.

⁸⁶ PRIA at 9.

⁸⁷ See Ctrs. for Disease Control & Prevention, *U.S. Cancer Statistics: Population Denominator Data Sources*, <https://www.cdc.gov/united-states-cancer-statistics/technical-notes/population-denominator-data-sources.html>.

⁸⁸ Proposed Rule at 57530 (proposed 15 C.F.R. § 70.2(b)).

⁸⁹ Danielle Taylor, *The Context and Evolution of Data Collection for Same-Sex Married Couple Households*, U.S. Census Bureau (July 10, 2020), https://www.census.gov/library/visualizations/2020/demo/the_context_and_evolution_of_data_collection_for_same_sex_married_couple_households.html.

future integration of LGBTQ+ people into federal demographic data and to preserve their statistical invisibility even as better data are needed to understand disparities in housing, health, safety, and economic security.⁹⁰

IV. The Proposed Rule, and the inaccuracies it would create, would burden real people and communities—with those already facing disparities being most affected.

The Census determines how representation and resources reach every community. Its results decide how many representatives speak for a community in Congress and in the state legislature, how much federal funding reaches a family trying to feed their children, and whether a shelter can keep its doors open. Because errors introduced in the 2030 Census cannot be corrected by a later survey cycle, an undercounted community will remain underrepresented in government, underweighted in federal data, and underfunded through at least 2040.

A. Every resident of an undercounted community would pay the price for the inaccuracies created by this Proposed Rule, whether they are a citizen or not.

The Census Bureau’s own analysis found that 353 federal programs relied upon decennial census data to distribute more than \$2.8 trillion in federal funds in fiscal year 2021 alone⁹¹—including Title I funding for schools in high-poverty areas, which is allocated through formulas based primarily on Census poverty estimates, along with Community Development Block Grants, Head Start funding, and Medicaid’s federal medical assistance percentage. Because these formulas operate on a *population share*, an undercount concentrated in particular communities reduces their funding for a decade, regardless of actual need. Texas is a recent example: the 2020 Census missed an estimated 548,000 Texans, a net undercount of 1.92%,⁹² which demographers estimate will cost the state of Texas \$19.18 billion in federal funds over the decade as well as a congressional seat.⁹³ Every Texan bears that cost.

Representation works the same way: as *Evenwel* recognized, “[n]onvoters have an important stake in many policy debates—children, their parents, even their grandparents, for example, have a stake in a strong public-education system—and in receiving constituent services.”⁹⁴ When a community’s count shrinks, every resident’s voice in Congress and the state legislature shrinks with it. The new residence test would also affect ordinary citizens directly. Millions of citizens—low-income seniors depending on Social Security, people with disabilities, young adults—do not file tax returns, yet each person’s residence would have to be “evidenced by” tax records.

⁹⁰ See Off. of Mgmt. & Budget, Off. of the Chief Statistician of the U.S., *Recommendations on the Best Practices for the Collection of Sexual Orientation and Gender Identity Data on Federal Statistical Surveys* (Jan. 2023), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/01/SOGI-Best-Practices.pdf>.

⁹¹ U.S. Census Bureau, *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021* (2023), <https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf> (more than \$2.8 trillion in fiscal year 2021).

⁹² U.S. Census Bureau, *2020 Census Undercounts in Six States, Overcounts in Eight* (May 19, 2022), <https://www.census.gov/library/stories/2022/05/2020-census-undercount-overcount-rates-by-state.html>.

⁹³ Lesley Henton, *Texas Will Lose over \$19 Billion in Federal Funding and 1 U.S. House Seat Due to Census Undercount*, Texas A&M Stories (May 31, 2022), <https://stories.tamu.edu/news/2022/05/31/texas-will-lose-over-19-billion-in-federal-funding-and-1-us-house-seat-due-to-census-undercount/>.

⁹⁴ *Evenwel*, 578 U.S. at 74.

Because residence would turn on where a person spent the most days between January 3 and April 1, the Proposed Rule could reassign retirees who winter in warmer States, seasonal workers, college students, and families who split times between homes, shifting population and funding away from where they actually live.⁹⁵ These burdens fall on everyone.

B. Women and caregivers would face funding cuts for the programs their families depend on.

A 2018 Census Bureau survey found that women were consistently less likely than men to intend to participate in the decennial Census, and that this gap widens among women of color.⁹⁶ The Proposed Rule would exacerbate this undercounting and its harmful consequences for women and their families, who already face an elevated risk of economic instability.

According to the Census Bureau's Supplemental Poverty Measure, nearly 13.9% of adult women lived in poverty in 2025, as did more than 20% of Black women and Latinas and nearly one in three families headed by single women with children (29.3%).⁹⁷ Because women—especially women of color—and their families are more likely than men to live in or near poverty, they are also more likely to rely on a range of federally funded programs to meet their basic needs.⁹⁸ But hundreds of these programs, in turn, rely on Census counts to determine funding allocations for communities⁹⁹—making women-led households especially vulnerable to undercount-driven cuts.

Undercounting vulnerable populations can result in inaccurate and inadequate funding distribution for Medicaid and the Children's Health Insurance Program (CHIP), restricting access to maternal and pediatric care;¹⁰⁰ for the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), cutting food assistance for families; for Head Start and the Child Care and Development Block Grant, undermining services that enable parents to go to work and support their children's healthy development; and for many more programs that help women and their families secure health care, child care, housing, adequate nutrition, and access to educational opportunities.¹⁰¹

⁹⁵ National Academies of Sciences, Engineering, and Medicine, *Once, Only Once, and in the Right Place: Residence Rules in the Decennial Census* (2006), <https://doi.org/10.17226/11727>.

⁹⁶ U.S. Census Bureau, *2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey Report 21–28* (2019).

⁹⁷ National Women's Law Center, *NWLC Resources on Poverty, Income, and Health Insurance in 2025* (2026) <https://nwlc.org/resource/nwlc-resources-on-poverty-income-and-health-insurance/>.

⁹⁸ See generally National Women's Law Center, *By the Numbers: Data on Key Programs for the Well-Being of Women, LGBTQI+ People, and Their Families* (May 2025), <https://nwlc.org/resource/by-the-numbers-data-on-key-programs-for-the-well-being-of-women-lgbtqi-people-and-their-families/>.

⁹⁹ See, e.g., Sean Moulton & Janice Luong, *Census Matters: Why an Accurate Count Is Essential to Funding Our Communities*, Project on Government Oversight (Oct. 28, 2025), <https://www.pogo.org/reports/census-matters-why-an-accurate-count-is-essential-to-funding-our-communities>.

¹⁰⁰ See Andrew Reamer, *Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds*, George Washington Inst. of Pub. Pol'y, <https://gwipp.gwu.edu/counting-dollars-2020-role-decennial-census-geographic-distribution-federal-funds>; Andrew Reamer, *Counting for Dollars 2020, Report #9: State Children's Health Insurance Program (S-CHIP)*, George Washington Inst. of Pub. Pol'y (Aug. 18, 2017), <https://gwipp.gwu.edu/sites/g/files/zaxdzs6111/files/downloads/S-CHIP%20CFD%2008-18-17.pdf>; Cong. Rsch. Serv., *R43847, Medicaid's Federal Medical Assistance Percentage (FMAP)*, <https://fas.org/sgp/crs/misc/R43847.pdf>.

¹⁰¹ See, e.g., *By the Numbers*, *supra* note 98, and *Census Matters*, *supra* note 99.

Medicaid, SNAP, Head Start, and dozens of other federal programs have already seen their funding cut or frozen in recent years through legislation and/or executive action;¹⁰² if it goes into effect, the Proposed Rule will only further erode critical supports for women and caregivers who are struggling to make ends meet.

C. The Proposed Rule would worsen undercounting of communities of color and undermine data collection that shows discrimination.

Communities of color would be harmed twice by the Proposed Rule: they are already the most likely to be missed by the Census count, and this proposal would remove the data used to show this undercount. The Bureau's Post-Enumeration Survey found that the 2020 Census undercounted Black residents by 3.3%, Hispanic residents by 5.0%, and American Indians and Alaska Natives living on reservations by 5.6%, while overcounting non-Hispanic white residents by 1.6% and Asian residents by 2.6%.¹⁰³ The Hispanic undercount more than tripled in a decade, from 1.5% in 2010.¹⁰⁴ The Proposed Rule would widen these gaps further.

The tax records it treats as proof of residence disproportionately miss Black households,¹⁰⁵ and the effect reaches entire neighborhoods, not just individual families: Treasury data on stimulus-eligible non-filers show that ZIP codes with more Black and Latino families have more non-filers, and children who go unclaimed on tax returns are disproportionately concentrated in Black and Hispanic neighborhoods.¹⁰⁶ And a legal-status inquiry would further chill participation in immigrant communities, especially among Latinos.¹⁰⁷

Meanwhile, proposed Part 70 would make disparities among these communities harder to see. Race and ethnicity data are the foundation of civil rights enforcement: they are used to monitor compliance with the Voting Rights Act, enforce equal employment opportunity under the Civil Rights Act of 1964, and identify medically underserved communities under the Public Health

¹⁰² See, e.g., Emily Martin, et al., *Year One of Trump's Second Term: An Assault on Gender Justice and Democracy*, National Women's Law Center (Jan. 2026), <https://nwlc.org/resource/year-one-of-trumps-second-term-an-assault-on-gender-justice-and-democracy/>; National Women's Law Center, *The Big Ugly Bill Is Making Families Go Hungry* (May 2026), <https://nwlc.org/resource/the-big-ugly-bill-is-making-families-go-hungry/>; National Women's Law Center, *The Trump Administration's Ongoing Attacks on Child Care, Families, and Working Women* (Oct. 2026), <https://nwlc.org/resource/the-trump-administrations-ongoing-attacks-on-child-care-working-women/>.

¹⁰³ U.S. Census Bureau, *Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census* (Mar. 10, 2022), <https://www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html>.

¹⁰⁴ U.S. Census Bureau, *Census Bureau Releases Estimates of Undercount and Overcount in the 2010 Census* (May 22, 2012), https://www.census.gov/newsroom/releases/archives/2010_census/cb12-95.html.

¹⁰⁵ Chuck Marr et al., *Aggressive State Outreach Can Help Reach the 12 Million Non-Filers Eligible for Stimulus Payments*, Ctr. on Budget & Pol'y Priorities (Oct. 14, 2020), <https://www.cbpp.org/research/federal-tax/aggressive-state-outreach-can-help-reach-the-12-million-non-filers-eligible>.

¹⁰⁶ See Gabriel Zucker, *Opportunities and Limitations of Using Data to Reach Non-Filers with the CTC*, New America (Aug. 20, 2021), <https://www.newamerica.org/insights/data-and-non-filers/>; Gabriel Zucker & Lindsey Wagner, *Talking to Non-Filers: Evidence from Qualitative Research with Families Who Don't Regularly File Taxes*, New America (July 16, 2021), <https://www.newamerica.org/insights/talking-to-non-filers/>; Geoffrey Gee, et al., *The Claiming of Children on U.S. Tax Returns*, Nat'l Bureau of Econ. Rsch., Working Paper No. 33277 (2024), <https://www.nber.org/papers/w33277>.

¹⁰⁷ J. David Brown & Misty L. Heggeness, *Citizenship Question Effects on Household Survey Response*, 45(1) J. Pol'y Analysis & Mgmt. 70004 (published online Mar. 20, 2025), <https://doi.org/10.1002/pam.70004>.

Service Act.¹⁰⁸ These undercounts also threaten to compound the economic insecurity that already falls hardest on women of color, who face poverty rates well above those of white women.¹⁰⁹ A Census that undercounts communities of color while refusing to ask about race leaves policymakers, courts, and advocates unable to identify—let alone remedy—discrimination in housing, employment, lending, health care, and voting.

D. Immigrant families and their U.S.-citizen children would be driven out of the count, shrinking resources where need is greatest.

The undercount risk is sharpest for immigrant families and everyone connected to them, including spouses and children who are U.S. citizens in mixed-status households, as well as whole neighborhoods with large immigrant populations. More than one in four (26.5%) children in the United States lives with an immigrant parent according to 2024 data.¹¹⁰ Children of all backgrounds are already among the Census’s most-missed groups: the 2020 Census had a net undercount of 0.84% for children ages 0–17 and 2.79% for children under five.¹¹¹ The Proposed Rule’s reliance on tax records would worsen those inaccuracies because children in complex households—those raised by grandparents or other relatives, in shared custody, or in families that do not file taxes—are the least likely to be matched to a tax return where they actually live.¹¹² Census Bureau research comparing California birth records to federal tax returns found that children in lower-income families, children of Black and Hispanic mothers, and children whose parents have lower English proficiency are the least likely to appear as dependents on tax returns.¹¹³

Pairing a citizenship-status question with the redefined residence standard would chill participation among mixed-status, visa-holder, and non-LPR households—households that include U.S. citizens who would go uncounted alongside their noncitizen family members. The potential undercount is significant. In 2023, about 5.3 million U.S.-citizen children lived with at least one unauthorized immigrant parent, and roughly 14 million U.S. citizens, green card

¹⁰⁸ U.S. Census Bureau, *2020 Census Race and Ethnicity FAQs*, <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/faqs-race-ethnicity.html> (discussing the various uses of Census Race and Ethnicity data).

¹⁰⁹ National Women’s Law Center, *NWLC Resources on Poverty, Income, and Health Insurance in 2025* (2026), <https://nwlc.org/resource/nwlc-resources-on-poverty-income-and-health-insurance/>.

¹¹⁰ Migration Pol’y Inst., *Children in U.S. Immigrant Families: Fast Facts* (2024), <https://www.migrationpolicy.org/data-tool/children-immigrant-us-born-families>.

¹¹¹ U.S. Census Bureau, *2020 Post-Enumeration Survey Estimation Report*, tbl. 10 (2022), <https://www.census.gov/programs-surveys/decennial-census/about/coverage-measurement/pes.html>.

¹¹² See U.S. Census Bureau, *Investigating the 2010 Undercount of Young Children—Examining Coverage in Demographic Surveys* (Jan. 15, 2019), https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-report-2010-undercount-children-examining_coverage_demo.pdf.

¹¹³ Gloria G. Aldana, *Comparison of Child Reporting in the American Community Survey and Federal Income Tax Returns Based on California Birth Records*, U.S. Census Bureau, Ctr. for Econ. Stud., Working Paper No. CES-24-55 (2024), <https://www.census.gov/library/working-papers/2024/adrm/CES-WP-24-55.html>; Gee et al., *supra* note 11 (finding that unclaimed children are concentrated in lower-income households and in Black and Hispanic neighborhoods); see also U.S. Census Bureau, *Investigating the 2010 Undercount of Young Children—Examining Coverage in Demographic Surveys* (Jan. 15, 2019), https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-report-2010-undercount-children-examining_coverage_demo.pdf.

holders, and temporary visa holders lived in a household with at least one unauthorized immigrant.¹¹⁴ And the evidence of a chilling effect is strong.

Census Bureau economists have found that self-response rates already ranged from 70.4% in households of U.S.-born non-Hispanic white residents to 27.5% in households with at least one likely undocumented member, and that including a citizenship question further widened that gap.¹¹⁵ Among responding households, those with undocumented members were 6.0 times more likely than all-citizen households to leave people off the roster—and 10.4 times more likely when a citizenship question was asked.¹¹⁶ Adding DHS and IRS record matching to this already distrusted inquiry would deepen fears that Census infrastructure could be repurposed for immigration enforcement—the very use the Census Act’s confidentiality protections were designed to prevent.¹¹⁷ This is especially likely when the administration is already facing accusations of illegally using tax records, medical records, and voting records to conduct immigration enforcement.¹¹⁸

The result is a perverse mismatch between need and resources. Communities with large immigrant populations often need more public investment, not less—for example, language services in schools and hospitals, community health centers for uninsured patients, transit that carries workers to jobs, and infrastructure for a growing population. Children of immigrants make up roughly a quarter of school-aged children.¹¹⁹ An undercount in these communities would shrink federal funds for schools, health care, transit, and infrastructure just where demand is highest, shifting costs onto local taxpayers or forcing cuts to services every resident depends upon.

E. The severe undercounting of border communities would be exacerbated by the Proposed Rule, draining funding from communities least able to absorb the loss.

Border communities show how these harms converge: they combine nearly every condition that makes a community hard to count with conditions that would make reliance on administrative data unreliable, resulting in severe undercounting of communities primarily comprised of U.S. citizens. About 8 million people live in the 44 counties along the U.S.-Mexico border.¹²⁰ Across the four border states, more than 80% of residents of border and non-border counties alike are U.S. citizens; noncitizens make up roughly one in ten residents of Arizona and Texas border counties, 13% of residents of California border counties, and 6% of residents of New Mexico

¹¹⁴ Julia Gelatt, Ariel G. Ruiz Soto & James D. Bachmeier, *Changing Origins, Rising Numbers: Unauthorized Immigrants in the United States*, Migration Pol’y Inst. (Oct. 2025), <https://www.migrationpolicy.org/system/files/2026-08/mpi-unauthorized-immigrants-fact-sheet-2025-final.pdf>.

¹¹⁵ J. David Brown & Misty L. Heggeness, *Citizenship Question Effects on Household Survey Response*, 45(1) J. Pol’y Analysis & Mgmt. 70004 (published online Mar. 20, 2025), <https://doi.org/10.1002/pam.70004>.

¹¹⁶ *Id.*

¹¹⁷ 13 U.S.C. § 9(a).

¹¹⁸ Patricia Caro, *Leaks of Private Data for Use in Trump’s Anti-Immigration Campaign Raises Alarms*, El Pais (May 9, 2026), <https://english.elpais.com/usa/2026-05-09/leaks-of-private-data-for-use-in-trumps-anti-immigration-campaign-raises-alarms.html>.

¹¹⁹ Migration Pol’y Inst., *Children in U.S. Immigrant Families: Fast Facts* (2024) <https://www.migrationpolicy.org/data-tool/children-immigrant-us-born-families>.

¹²⁰ Drishti Pillai & Samantha Artiga, *Health and Health Care in the U.S.-Mexico Border Region*, KFF (Nov. 21, 2022), <https://www.kff.org/racial-equity-and-health-policy/health-and-health-care-in-the-u-s-mexico-border-region/>.

border counties.¹²¹ Many border residents also face economic and digital barriers that make them harder to reach. In Texas border counties, which are 76% Hispanic, a quarter of households earn less than \$25,000 a year (compared with 16% in the state’s non-border counties), 26% of nonelderly residents are uninsured, and 23% of households lack a computer.¹²² These conditions are most acute in the Rio Grande Valley, where an estimated 188,000 people live in roughly 1,200 colonias—unincorporated settlements, often lacking basic infrastructure, whose residents are more than 93% Hispanic.¹²³ In 2020, self-response rates in the counties that make up the Rio Grande Valley were under 50%, compared with more than 60% nationally.¹²⁴ Nontraditional addresses, limited internet access, mixed-status households, and family and work ties that cross the border are exactly the conditions that make a community hard to count—and that greater reliance on administrative records would worsen.¹²⁵ A residence rule that requires each person’s address to be “evidenced by” tax records, and that counts only days of “lawful” presence during a three-month window, would systematically miss these residents: families in colonias whose informal addresses do not match federal files, workers whose seasonal jobs take them across state or national lines, and mixed-status households whose members fall on different sides of the Proposed Rule’s categories.¹²⁶ An undercount along the border would drain funding from hospitals, schools, roads, and emergency services that border towns already struggle to support—and the people who would pay that price are overwhelmingly U.S. citizens.

F. Survivors of domestic violence and trafficking, already subject to significant undercounting, would be even more difficult to count accurately.

Survivors of domestic violence and trafficking are already historically reluctant to participate in the Census because of legitimate concerns that their information or location could be exposed to an abuser.¹²⁷ They are also especially likely to be miscounted under the new residence test. A survivor who moves to escape violence during the January-to-April enumeration period may not have spent the “greatest number of days” at any one address. Many survivors also lack current tax records at their actual address for a myriad of reasons: they moved to leave an abusive situation, an abuser controls the household’s finances, or the disruption has left them unable to work. Meanwhile, existing services are already strained: on a single day in September 2024, domestic violence programs nationwide served more than 79,000 victims, while 14,095 requests for services went unmet due to a lack of resources.¹²⁸ Much of the funding behind those programs depends on an accurate count; in fiscal year 2025, the Victims of Crime Act Victim Assistance formula grants alone distributed more than \$1.26 billion to states allocated largely by

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Andrik Gonzalez & Tonantzin Carmona, *As Border Enforcement Expands, ‘Colonia’ Communities Are Left Without Basic Infrastructure*, Brookings Inst. (Apr. 30, 2026), <https://www.brookings.edu/articles/as-border-enforcement-expands-colonia-communities-are-left-without-basic-infrastructure/>.

¹²⁵ See Pillai & Artiga, *supra* note 122 (household computer and broadband access in border counties); Gonzalez & Carmona, *supra* note 124.

¹²⁶ Gonzalez & Carmona, *supra* note 124.

¹²⁷ See Nat’l Network to End Domestic Violence, Safety Net Project, *2020 US Census: Considerations for Survivors of Domestic Violence* (2020), <https://www.techsafety.org/2020-us-census-considerations-for-survivors-of-domestic-violence>.

¹²⁸ National Network to End Domestic Violence, *19th Annual Domestic Violence Counts Report* 4–6 (2025).

each state's share of the population.¹²⁹ The Proposed Rule would push survivors further out of the count on two fronts. The new residence test and record matching would miscount them for the statistical reasons described above, and the prospect that their tax and other federal records would be pulled into the Census would make many survivors even more reluctant to respond. The result would shrink the population-based funding that already leaves thousands of requests for help unmet every day.

G. The Proposed Rule would hinder future collection of Sexual Orientation data and jeopardize existing data on same-sex couples.

While the decennial Census currently lacks a standalone sexual orientation question, the Proposed Rule would preemptively bar the Census Bureau from ever considering one, regardless of future research or federal data needs.¹³⁰ Any modification to demographic content demands a transparent, deliberative process—one grounded in rigorous testing, federal agency consultation, and direct engagement with affected communities. Instead, the Proposed Rule bypasses this essential protocol, foreclosing future consideration by administrative fiat. This creates a telling double standard; the agencies are willing to fast-track untested citizenship questions while ruling out sexual orientation questions before research can even begin.

Furthermore, the Proposed Rule jeopardizes decades of progress on same-sex couple data, which the Bureau has captured through the household relationship question since 1990.¹³¹ While not a substitute for broader sexual orientation data, these metrics provide vital insight into a distinct family demographic; in 2020, redesigned questions identified roughly 1.2 million same-sex couple households across all 50 states.¹³² These data are essential for guiding program design and evaluating key socioeconomic conditions, health access, and housing disparities. Restricting their collection would dismantle years of methodological improvements, reducing data quality and cementing statistical invisibility for LGBTQ+ people.

Conclusion

The decennial Census is the foundation of American representative democracy and of the federal statistical system. It determines how political power is shared, how trillions of federal dollars are distributed, and whether the country can see—and remedy—the disparities its people face.

¹²⁹ U.S. Dep't of Just., Off. for Victims of Crime, *2025 Crime Victims Fund Compensation and Assistance Allocations*, <https://ovc.ojp.gov/funding/2025-crime-victims-fund-compensation-and-assistance-allocations>; U.S. Dep't of Just., Off. for Victims of Crime, *FY 2025 VOCA Assistance Allocation*, <https://ovc.ojp.gov/funding/fy-2025-voca-assistance-allocation.pdf>; U.S. Dep't of Just., Off. for Victims of Crime, *FY 2025 VOCA Compensation Allocation*, <https://ovc.ojp.gov/funding/fy-2025-voca-compensation-allocation.pdf>.

¹³⁰ Proposed Rule at 57530.

¹³¹ Danielle Taylor, *The Context and Evolution of Data Collection for Same-Sex Married Couple Households*, U.S. Census Bureau (July 10, 2020), https://www.census.gov/library/visualizations/2020/demo/the_context_and_evolution_of_data_collection_for_same_sex_married_couple_households.html

¹³² Gary J. Gates, *Same-Sex Couples in US Census Bureau Data: Who Gets Counted and Why 2* (UCLA Cal. Ctr. for Population Rsch., Working Paper No. PWP-CCPR-2010-014, Aug. 2010), https://ccpr.ucla.edu/wp-content/uploads/2024/04/Same-sex-couples-in-US-Census-Bureau-Data_-Who-gets-counted-and-why.pdf.

Excluding noncitizens from the apportionment count violates the constitutional requirement to count the whole number of persons in each state. And eliminating or restricting direct demographic questions would undermine civil rights enforcement, equitable federal funding, representative democracy, and the accuracy of the federal statistical system on which all three depend. For these reasons, the agencies should withdraw the proposed changes to both 15 CFR Part 60 and 15 CFR Part 70 in their entirety.

Thank you for your consideration. If you have any questions about these comments please contact me at agill@nwlc.org.

Very truly yours,

A handwritten signature in black ink, appearing to read 'AG', with a long horizontal flourish extending to the right.

Alison Gill
Senior Director of Nominations & Democracy
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