E 3510-07-P

DEPARTMENT OF COMMERCE

Census Bureau

15 CFR Parts 60 and 70

[Docket No. 260903-0005]

RIN 0607-AA75

Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions

AGENCY: Census Bureau, Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The Census Bureau is proposing to add two new parts to the Code of Federal Regulations governing the decennial census of population and housing. First, the Census Bureau is proposing to add a part outlining the residence criteria used for identifying each person's "usual residence," as needed to determine whether and where to count them in the census of the population throughout the United States. Second, the Census Bureau is proposing to add a part establishing standards and restrictions for the inclusion of certain demographic questions on the decennial census short-form questionnaire and any other questionnaire used for the enumeration of the population. The Census Bureau is considering these two additions to better prioritize and fulfill its Constitutional mandate to count for apportionment the "whole number of persons in each State" based on the concept of "usual residence"—a process that factors in an element of allegiance but otherwise should be colorblind and should not be distorted in any way by questions about immaterial personal characteristics, such as race. Although these two parts are somewhat related and complementary, each is being proposed independently based on its own merits. These proposals are intended to ensure fidelity to the Constitution, improve and protect the core decennial census data, and promote efficiency.

DATES: To ensure consideration during the decision-making process, comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by FDMS Docket number USBC-2026-0628, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter USBC-2026-0628 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to 4600 Silver Hill Road, Designation: ADDEMO/FRN, Washington, DC 20746.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by Census. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be posted and publicly accessible. Census will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). However, comments containing offensive or threatening language will not be posted.

Electronic copies of the Regulatory Impact Analysis prepared for this action is available from *www.regulations.gov.* As required by the Administrative Procedure Act at 5 U.S.C. 553(b)(4), a plain language summary of the proposed rule is also available from *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Deputy General Counsel for Economic, Statistical, and Regulatory Affairs, Office of the General Counsel, Department of Commerce, at (301) 996-3533.

SUPPLEMENTARY INFORMATION:

I. Proposed Residence Criteria

For the decennial census, the Census Bureau is committed to counting every person who should be counted *once, only once, and in the right place*. The sole Constitutional purpose of the decennial census is to apportion the seats in the U.S. House of Representatives among the States based on the number of qualifying persons “in each State.” U.S. Const. Art. I § 2.[1] Under 13 U.S.C. 141, the Census Bureau is statutorily tasked with tabulating the total population of the States required for this apportionment. To determine the number of persons “in each State,” the Census Bureau evaluates each person’s “usual residence” as of April 1st of the decennial census year, which is the statutorily-designated date of the decennial census.

The concept of “usual residence” was established by the First Congress in the First Census Act on March 1, 1790. Specifically, section 5 of the First Census Act established that each person’s residence should be determined based on their “usual place of abode” and/or where they “usually reside[].” Act of Mar. 1, 1790, ch. 2, § 5, 1 Stat. 101, 103. The Census Bureau has therefore been guided by the general principle of “usual residence” since 1790. *See Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992) (“‘Usual residence’ was the gloss given the constitutional phrase ‘in each State’ by the first enumeration Act and has been used by the Census Bureau ever since to allocate persons to their home States.”). In order to consistently carry out the general principle of “usual residence” for any given decennial census, the Census Bureau has historically developed and applied more specific residence criteria for each decennial census—and those criteria have changed over time, depending on changing circumstances and operational decisions. Those changes are consistent with the “virtually unlimited discretion” the Constitution affords to Congress over the conduct of the census and with Congress’s delegation of “its broad authority over the census to the Secretary.” *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996); *see Franklin*, 505 U.S. at 806 (approving of a policy decision that was “consonant with, though not dictated by, the text and history of the Constitution”).

For example, prior to 1970, with a one-time exception for the 1900 decennial census, the Census Bureau did not allocate any Federal personnel who were stationed overseas as of the date of the census to any particular State for apportionment purposes. *See Franklin*, 505 U.S. at 792–93. Put differently, Federal personnel stationed overseas were historically not considered to be "usual residents" of any State or qualifying persons "in" any State. But then in 1970, against the backdrop of the Vietnam War, the Census Bureau introduced a new residence criterion that would allocate members of the Armed Forces stationed overseas to their "home of record" (*i.e.*, the State declared by each person upon entrance into military service). Twenty years later, the Census Bureau opted to apply the same approach for all overseas employees of the Department of War (at the time, the Department of Defense) for the 1990 decennial census. Several states then challenged the constitutionality of that approach, but the Supreme Court ultimately confirmed that it was within the agency's discretion to make such a residency determination. *See Franklin*, 505 U.S. at 803–06. In so doing, the Supreme Court explained as follows:

> The term ["usual residence"] can mean more than mere physical presence, and has been used broadly enough to include some element of allegiance or enduring tie to a place. . . . In this case, the Secretary of Commerce made a judgment, consonant with, though not dictated by, the text and history of the Constitution, that many federal employees temporarily stationed overseas had retained their ties to the States and could and should be counted toward their States' representation in Congress . . . .

Id. Accordingly, in every decennial census since 1990, the Census Bureau has exercised its discretion to count some overseas Federal personnel as qualifying persons "in" their home States for apportionment purposes.

Consistent with this history, every ten years, the Census Bureau must settle on and apply a set of residence criteria to determine each person's "usual residence." In recent history, it is typical for that set of residence criteria to contain specific rules for, among other groups, college students,[2] incarcerated individuals, overseas military personnel, and foreign citizens present in the United States.

For example, in the lead up to the 2020 decennial census, the Census Bureau settled on the following residence criterion for foreign citizens who were present in the United States as of April 1, 2020, and who were not members of any foreign diplomatic staff:

- Foreign citizens "*living in*" the United States were to be counted at the U.S. residence where they live and sleep most of the time for apportionment purposes; and
- Foreign citizens "*visiting*" the United States, "such as on a vacation or business trip," were not to be counted in the census for apportionment purposes.[3]

Notably, that residence criterion did not call for any difference in treatment between foreign citizens present in the United States legally and those present illegally—a category of individuals sometimes referred to as "removable aliens." *See, e.g.*, 8 U.S.C. 1229a; *see also id.* 1227 (addressing the subclass of "deportable aliens"); *id.* 1182 (addressing "inadmissible aliens"). That criterion has been the subject of multiple legal challenges brought by States, particularly with respect to its application to illegal aliens.[4] (This notice incorporates for consideration, without necessarily endorsing, the arguments raised in those challenges.) The counting of illegal aliens for apportionment purposes has also been heavily criticized within the Federal government itself. *See* Memorandum of July 21, 2020, *Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679 (July 23, 2020); *see also Equal Representation Act*, H.R. 151, 119th Cong. (2025); *COUNT Act*, H.R. 5156, 119th Cong. (2025); *Correct the Count Act*, H.R. 4884, 119th Cong. (2025) *Count Only Citizens Act*, H.R. 6942, 118th Cong. (2024); *No Representation Without Legal Immigration Act*, H.R. 6520, 118th Cong. (2023).

One of the primary legal arguments against including illegal aliens in the apportionment count is rooted in the understanding that the term "persons," as used in the Apportionment Clause of Article I, Section 2, was deliberately chosen instead of "citizens" to reflect the Three-Fifths Compromise but nonetheless was largely informed by (and synonymous with) the term "inhabitants," which was historically understood to refer to members of the body politic.

See Wesberry v. Sanders, 376 U.S. 1, 13–14 (1964) ("The debates at the Convention make at least one fact abundantly clear: that when the delegates agreed that the House should represent 'people' they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State's inhabitants. The Constitution embodied Edmund Randolph's proposal for a periodic census to ensure 'fair representation of the people,' an idea endorsed by Mason as assuring that 'numbers of inhabitants' should always be the measure of representation in the House of Representatives." (footnotes omitted)); *see also* Timothy Farrar, *Manual on the Constitution of the United States of America* 55–56 (1867) (identifying various descriptors in the Constitution of members of the body politic, including the phrase "inhabitants of a State"); *Potter v. Ross*, 23 N.J.L. 517, 520 (Sup. Ct. 1852) (interpreting the term "inhabitant," as used in a New Jersey statute and "in the popular acceptation of the phrase," to mean "something more than a person having a mere temporary residence" and to "import[] citizenship and municipal relations"); Letter from John Adams to the President of Congress (Nov. 3, 1784), in 16 *Papers of John Adams* 362 (Gregg L. Lint et al. eds., 2012) (Adams) (Although "[b]oth Citizens and Inhabitants have a Right to Protection, . . . every Stranger who has been in the United States, or who may be there at present, is not an Inhabitant," and "different States have different Definitions of this Word."). At a minimum, an alien could not qualify as an "inhabitant," at the time of the Founding, without establishing a residence within a jurisdiction and an intent to remain there indefinitely. *See, e.g.*, Adams 362 (noting that "[t]he Domicil and the animus habitandi is necessary in all" definitions); *Bas* v. *Steele*, 2 F. Cas. 988, 993 (C.C.D. Pa. 1818) (No. 1088) (Washington, Circuit Justice) (concluding that a Spanish subject who had remained in Philadelphia as a merchant for four months "was not an inhabitant of this country, as no person is an inhabitant of a place, but one who acquires a domicil there"); 1 Emmerich de Vattel, *The Law of Nations* § 213, at 92 (1760) (defining "inhabitants, as distinguished from citizens," as "strangers, who are permitted to settle and stay in the country"). And, although the Fourteenth Amendment subsequently repealed the Three-Fifths Compromise and rightly rejected the view that individuals of African ancestry are not full and equal "persons" under the Constitution, the Fourteenth Amendment did *not*—so the legal argument goes—otherwise change the meaning of the term "persons," as used in Article I, Section 2, and its associations with the term "inhabitants" and with the concept of the body politic. Proponents of this legal argument therefore understand the term "persons," as used in Article I, Section 2, and in the Fourteenth Amendment, to denote *who* counts for purposes of apportionment (*i.e.*, "inhabitants," members of the body politic), and understand the phrase "in each State," as used in the Fourteenth Amendment, to denote *where* to count such individuals.

Considering all of the above, the Census Bureau now proposes to formalize, by regulation, the residence criteria found below for decennial census enumeration moving forward. This proposed set of criteria is different from—and excludes certain criteria that were included in—the set of residence criteria for 2020. These proposed criteria reflect the Census Bureau's interpretation of the applicable laws as well as various operational and practical considerations.

In particular, the Census Bureau finds merit in the interpretive argument outlined above and has preliminarily determined that, under the best reading of the Constitutional mandate, illegal aliens (among others) should not be included in the apportionment count, as they are not true inhabitants, members of the body politic, or persons with a "usual residence" in the United States due to their lack of a sufficient tie and allegiance to the United States. Additionally and/or in the alternative, the Census Bureau has preliminarily determined, after revisiting and reviewing the applicable law, that excluding illegal aliens (among others) from the apportionment count is a lawful and appropriate exercise of the Census Bureau's discretion under 13 U.S.C. 141, *Franklin v. Massachusetts*, and all other applicable law. Given the historical meaning of "usual residence" as tied to allegiance, durable permission from the sovereign to settle within the United States, and establishment of domicile within the United States, the Census Bureau proposes to include lawful permanent residents within the apportionment base, while excluding from the apportionment base illegal aliens and aliens whose legal status is less durable and indefinite in length than lawful permanent resident status.[5] The Census Bureau invites comments on whether other forms of legal status are materially similar to lawful permanent resident status.

The Census Bureau is considering how best to distinguish between foreign citizens in the United States who are counted for apportionment and those who are not counted for apportionment. In particular, the Census Bureau is considering utilizing its enormously broad access to administrative records to determine an individual's legal status. The Census Bureau has access to a vast and expanding universe of records and information that includes, but is not limited to, Department of Treasury records; Department of Health and Human Services records; Department of Homeland Security records; Department of State records; Department of War records; U.S. Postal Service records; certain state, local, and tribal records; and third-party commercial data. The Census Bureau's administrative record holdings is nearly exhaustive of the civilian Federal government's holdings, and the Census Bureau is continually searching for new sources of information and routinely entering into and/or updating agreements with other Federal agencies, state and local governments, and other entities to expand its access to information.[6] The Census Bureau therefore now has access to substantially more information than it did when it conducted the 2020 Census, and the Census Bureau expects to continue obtaining additional information moving forward. The Census Bureau also has a highly-advanced data linkage infrastructure—one that has only improved in recent years as the Census Bureau has continued to develop and integrate new technologies.

The Census Bureau could, in addition, include a question about legal status on the short-form decennial census questionnaire. The Enumeration Clause "permits Congress, and by extension the Secretary, to inquire about citizenship on the census questionnaire." *Dep't of Com. v. New York*, 588 U.S. 752, 770 (2019). Including a question about legal status would accord with substantial past practice. *See id.* at 760. It would likewise accord with the Census Bureau's reliance on the census questionnaire to gather other information. The Census Bureau welcomes comments on the inclusion of a legal-status question on the short-form decennial census questionnaire.

The Census Bureau is also proposing to define the relevant "census enumeration period" to run from January 3 to April 1 during decennial census years. January 3 is the start of the congressional term during odd-numbered years under the Twentieth Amendment and, thus, the half-way point of the congressional term during even-numbered years. April 1 is the reference date for the decennial census under 13 U.S.C. 141(a). The Census Bureau has preliminarily determined that considering information pertaining to this period would be sufficient and appropriate for purposes of making a holistic determination about a person's "usual residence" as of April 1, and that clearly defining a relevant period leading up to April 1 is preferable to leaving the issue open-ended and uncertain. To be clear, however, this definition of the "census enumeration period" would not restrict the Census Bureau from collecting information after April 1 *about* the relevant period. For example, the Census Bureau intends to consider tax records filed after April 1 insofar as they are probative of persons' "usual residence" from January 3 to April 1.[7]

The Census Bureau is making this overall proposal regarding the residence criteria independent of the proposal regarding demographic questions, which is discussed in greater detail below. If any provision of either proposal is stayed or determined to be invalid or unenforceable as applied to any person or circumstance in any jurisdiction, such stay or determination shall not affect the remainder of that proposal or any provision of the other proposal.

The Census Bureau invites the public to comment on these proposed residence criteria.

II. Proposed Restrictions on the Inclusion of Certain Demographic Questions in the Decennial Census Operation

As discussed above, the fundamental purpose of the decennial census, as prescribed by the Constitution, is to conduct a population count for the apportionment. The Secretary of

Commerce is also required, by statute, to share final census population tabulations with participating States for purposes of (re)districting. Pub. L. No. 94-171, 89 Stat. 1023 (1975).

Separate from these aforementioned mandates, the decennial census questionnaires historically have also been used as a vehicle for collecting demographic information about the population of the United States. Indeed, "demographic questions have been asked in *every* census since 1790." *Dep't of Com.*, 588 U.S. at 769. For instance, past censuses have included questions asking about race, ethnicity, sex, age, citizenship, health, education, occupation, housing, military service, radio ownership, age at first marriage, and native tongue. *See id.* at 760. Congress has, at times in the past, required the collection of certain demographic information through the decennial census, and Congress has also generally authorized the Secretary of Commerce to "obtain such other census information as necessary" in connection with the decennial census. 13 U.S.C. 141(a). The Supreme Court has held that this statutory delegation lawfully permits the Census Bureau to at least inquire about citizenship on the census questionnaire, *see Dep't of Com. v. New York*, 588 U.S at 770, but the Supreme Court has not specifically decided the constitutionality of any other particular demographic question.

Whether generally authorized or specifically required (as it has been at times in the past) by Congress, the collection of such data does not, by itself, advance the fundamental, Constitutional purpose of the decennial census, which is to conduct an enumeration to ascertain the population count for apportionment. *See Carey v. Klutznick*, 653 F.2d 732, 736 (2d Cir. 1981) ("Although the census is the delight of statisticians and sociologists and serves as a convenient measuring stick for the dispensing of federal funds, it was not created for these purposes. Its purpose under the Constitution was to determine the apportionment of Representatives among the States. . . . [I]t is important that we keep this basic constitutional purpose in mind."). To the contrary, in general, the more questions that are included on the decennial census questionnaire, the lower the overall response rate.[8]

Furthermore, each demographic question that is included on the decennial census increases the likelihood that the data of certain people who *do* respond will be identifiable in the resulting published data, in violation of their privacy and the law.[9] Under 13 U.S.C. 9(a)(2), the Census Bureau and the Department of Commerce are statutorily prohibited from "mak[ing] any publication whereby the data furnished by any particular establishment or individual under this title can be identified." The Census Bureau implements this prohibition against disclosure by applying "disclosure avoidance" techniques, which effectively introduce uncertainty into the overall data to reduce the likelihood that the data of any particular respondent will be identifiable. The more data that the Census Bureau publishes, the higher the risk that a particular respondent's data can be identified, and the more uncertainty the Census Bureau must introduce into the data to reduce risk. The publication of personal demographic data is no exception. For example, at least in 2020, the publication of demographic data posed potential disclosure risks that led the Census Bureau to introduce deliberate randomness and uncertainty to, among other data, population counts below the state level, which are meant to be used for (re)districting. In general, the Census Bureau's disclosure avoidance approach to the 2020 decennial census has been the subject of numerous lawsuits.[10]

In addition to disclosure risk, the Census Bureau also is considering the (potentially) sensitive nature of questions about race, ethnicity, and sexual orientation. Substantial doubts about the meaning, significance, and impact of attempting to categorize persons by race and ethnicity,[11] in particular, have featured prominently in our national discourse and have been reflected in shifts in the law. *See, e.g.*, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 276–77 (2023) (Thomas, J., concurring) (describing race as a "social construct" based on "ephemeral, socially constructed categories" that "are little more than stereotypes"); *Allen v. Milligan*, 146 S. Ct. 1377, 1380 (2026) (per curiam) (describing the Constitution as "colorblind"); *Louisiana v. Callais*, 146 S. Ct. 1131 (2026) (clarifying legal standards under the Voting Rights Act of 1965); *Ending Radical and Wasteful Government DEI*

Programs and Preferencing, Exec. Order No. 14151, 90 FR 8339 (Jan. 20, 2025) (ordering the termination of so-called "diversity, equity, inclusion, and accessibility" programs and activities in the Federal government, and calling for all Americans to be treated with "equal dignity and respect").[12] These evolving discussions and understandings of the law have prompted the Census Bureau to revisit and reconsider the continued need to collect certain demographic data on the short-form decennial questionnaire. The (potentially) sensitive nature of questions about race, ethnicity, and sexual orientation, when considered in light of the reduced need for or usefulness of this information, may be a particular encumbrance on response given that, under 13 U.S.C. 221, respondents are *legally required* "to answer, to the best of [their] knowledge, any of the questions . . . submitted to [them] in connection with any census," and the failure to do so constitutes a federal crime.

For all these reasons, the Census Bureau is re-evaluating the proper role of these demographic questions and proposes to establish, by regulation, the standards articulated below, which would prohibit the inclusion of questions about race and ethnicity or sexual orientation on the decennial census short-form questionnaire or any questionnaire used for purposes of the enumeration. Excluding such questions from the decennial census in this manner would reduce response burden as well as the risk of disclosure.[13] Reducing response burden is expected to increase response rate and thus improve the Census Bureau's record linkage efforts and also enable the Census Bureau to obtain a more complete population count directly from respondents, which helps ensure fairer political representation. Simplifying the short-form questionnaire in this manner conforms to the Census Bureau's responsibilities under the Privacy Act,[14] the Paperwork Reduction Act,[15] and The Census Act.[16]

Simplifying the short-form questionnaire in this manner also reflects the Census Bureau's plans to increase its use of administrative records for conducting the decennial census. Data from administrative records can fill information gaps, thereby reducing response burden and operational costs. Administrative records sourced from other governmental agencies—including certain tax-return information—can serve as reliable evidence for certain purposes.[17] The Census Bureau receives a substantial amount of demographic data from administrative records of other agencies. The Census Bureau is not proposing any restrictions on its ability to receive demographic data from administrative records and other sources. The Census Bureau also is not proposing any restrictions on its ability to ask demographic questions on the American Community Survey or other surveys that are not used for the enumeration of the population. The Census Bureau is proposing restrictions only for the short-form decennial census questionnaire.

The Census Bureau is making this proposal regarding demographic questions independent of the proposal regarding residence criteria, which is discussed in greater detail above. If any provision of either proposal is stayed or determined to be invalid or unenforceable as applied to any person or circumstance in any jurisdiction, such stay or determination shall not affect the remainder of that proposal or any provision of the other proposal.

The Census Bureau invites the public to comment on this proposal regarding demographic questions.

III. Classification

Executive Orders 12866, 13563, and 14192

Executive Orders (E.O.s) 12866 and 13563 direct federal agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This proposed rule has been determined to be a "significant regulatory action" under section 3(f) of E.O. 12866, although not economically significant under section 3(f)(1). Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB). Please see the Preliminary Regulatory Impact Analysis, posted together with this proposed rule, for additional information on the potential impacts of this rulemaking.

Executive Order 14192, Unleashing Prosperity Through Deregulation, requires that for "each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination." Executive Office of the President, Executive Order 14192 of January 31, 2025, *Unleashing Prosperity Through Deregulation*, 90 FR 9065–9067 (Feb. 6, 2025). Implementation guidance for E.O. 14192 issued by OMB (Memorandum M-25-20, Mar. 26, 2025) defines two different types of E.O. 14192 actions: an E.O. 14192 deregulatory action, and an E.O. 14192 regulatory action. Executive Office of the President, OMB, *Guidance Implementing Section 3 of Executive Order 14192, Titled "Unleashing Prosperity Through Deregulation*," Memorandum M-25-20 (Mar. 26, 2025).

A preliminary determination of whether a final rule here would be considered regulatory, deregulatory, or partially or fully exempt from the requirements of E.O. 14192 will be made when any final rule in this rulemaking is issued.

Regulatory Flexibility Act (RFA)

The Deputy General Counsel for Economic, Statistical, and Regulatory Affairs certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification follows. A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from regulations.gov (see **ADDRESSES**).

This proposed rule, if adopted, would govern the manner in which the Census Bureau collects data via the decennial census. No other public or private entity would be directly regulated. Although the proposed rule could impact the information available to some small entities, any resulting impacts would be indirect. To the extent that small governmental entities, as defined by the RFA, may use information collected by the decennial census to obtain funding, that information would remain available or could be obtained in other ways and/or the impact from any lack of information would be indirect.

Unfunded Mandates Reform Act of 1995

This proposal is not subject to the Unfunded Mandates Reform Act because it does not include a federal mandate that may result in the expenditure by State, local, and tribal governments, or by the private sector, of $100 million or more.

Executive Order 13132 – Federalism

This proposed rule does not have federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175 – Tribal Consultation

The U.S. Census Bureau plans to formally notify federally recognized and state recognized tribes and conduct a tribal consultation regarding the proposed regulations.

Paperwork Reduction Act

This proposed rule contains no information collection requirements under the Paperwork Reduction Act. This proposed rule would not impose recordkeeping or reporting requirements on State, local, or Tribal governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The Census Bureau is seeking public comment on respondent burden reduction estimates resulting from this proposal.

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[1] The Constitution expressly excludes "Indians not taxed."

[2] Up until the 1950 decennial census, "college students were enumerated as inhabitants of the states in which their parents maintained their homes." *Borough of Bethel Park v. Stans*, 449 F.2d 575, 579 (3d Cir. 1971); *see also id.* (discussing the history of where college students were counted up until, and including, the 1970 decennial census).

[3] *See* Final 2020 Census Residence Criteria and Residence Situations (83 FR 5525), Criterion 3, https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations.

[4] *See, e.g.*, *Missouri v. U.S. Dep't of Com.*, 26-cv-00131, ECF No. 1 (E.D. Mo. Jan. 30, 2026); *Louisiana v. U.S. Dep't of Com.*, 25-cv-00076, ECF No. 1 (W.D. La. Jan. 17, 2025); *see also* the

State of Florida's "Petition for Rulemaking to the Census Bureau, U.S. Department of Commerce" (Apr. 15, 2026), https://www.myfloridalegal.com/sites/default/files/florida-petition-for-rulemaking-to-census-bureau.pdf.

[5] The Census Bureau maintains and publishes statistics separate from those for apportionment, and the Census Bureau expects to continue doing so in the future.

[6] For example, the Census Bureau signed major agreements with both the Department of Homeland Security and the State Department in 2019, and the agreement with the former has been substantially expanded since then. The exchange of information facilitated by those agreements, among others, has equipped the Census Bureau with significantly more information pertaining specifically to foreign citizens present in the United States than was previously available in the lead up to 2020.

[7] In general, the Census Bureau's reliance on tax-return information and other administrative records to determine a person's usual residence (or some other piece of information) will necessarily be situation dependent. In assigning evidentiary weight to tax-return information and other administrative records, the Census Bureau will consider each particular data element's purpose, timing, and reliability.

[8] The Census Bureau observes this general relationship through its testing and operational metrics. *See, e.g.*, Cong. Rsch. Serv., R41532, *The American Community Survey: Development, Implementation, and Issues for Congress* (Dec. 19, 2014), n.11 https://www.congress.gov/crs_external_products/R/PDF/R41532/R41532.20.pdf; Dillman, D. *et al.*, *Mail-back Response Rates for Simplified Decennial Census Questionnaire Designs* (1992), https://www.academia.edu/53698749/Mail_Back_Response_Rates_for_Simplified_Decennial_Census_Questionnaire_Designs.

[9] *See* Hawes, M. B. *et al.*, *Toward a Principled Framework for Disclosure Avoidance*, Harv. Data Sci. Rev. § 3(Aug. 20, 2025) https://hdsr.mitpress.mit.edu/pub/bux70n5u/release/3 ("Every statistical product that an agency publishes that is derived from a confidential data source reveals or leaks confidential information in the process. Consequently, the more statistics an agency publishes (the *availability*, granularity, and relevance of the statistics), and the greater the *accuracy* of those statistics (the precision, validity, and reliability of the statistics, the higher the risk that they could permit *confidentiality*-violating disclosure." (citation omitted)); *id.* § 5.5 ("[E]very statistic that an agency releases that is derived from a confidential source carries a nonzero disclosure risk.").

[10] *See, e.g.*, *University of South Florida College Republicans v. Lutnick*, 25-CV-02486, ECF No. 43 (M.D. Fla. Nov. 12, 2025); *Alabama v. U.S. Dep't of Com.*, ECF No. 1 (M.D. Ala. Mar. 10, 2021).

[11] Questions about tribal membership are not necessarily questions about race and/or ethnicity. *See Constitutionality of Race-Based Department of Education Programs*, 49 Op. O.L.C. __ (Dec. 2, 2025), available at https://www.justice.gov/olc/media/1421576/dl ("Current equal-protection doctrine recognizes a difference between preferences based on Indian ethnicity and those based on affiliation (often membership or citizenship) in a federally recognized tribe."); *Morton v. Mancari*, 417 U.S. 535, 551–55 (1974) (discussing the "unique legal status of Indian tribes" and explaining how certain preferences for members of Indian tribes are not the same as preferences for discrete racial groups).

[12] The Department of Commerce has recognized the "arbitrary nature" of racial and ethnic categories and expressed skepticism and concern with placing undue weight and attention on

said categories. *See* Rescinding Portions of Department of Commerce Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281 (91 FR 20326, 20329), 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.

[13] *See supra* note 9; *see also* Department Administrative Order 216-26, *Disclosure Avoidance for Statistical Products* https://www.commerce.gov/opog/disclosure-avoidance-statistical-products (explaining the categories of disclosure avoidance and prohibiting the use of noise infusion).

[14] The Privacy Act requires federal agencies to maintain only that information about an individual that is "relevant and necessary" for the agency to meet requirements established by statute or by Executive Order. 5 U.S.C. 552a(e)(1).

[15] The Paperwork Reduction Act requires federal agencies to justify the need for each collection of information from the public. The Paperwork Reduction Act also requires agencies to actively consider the utility of the information collected and the reduction of response burden. 44 U.S.C. 3506.

[16] The Census Act, specifically 13 U.S.C. 9, obligates the Census Bureau to protect all data its collects from wrongful disclosure. Reducing the amount of information collected and published, particularly data on individual characteristics, reduces the risk of disclosure and the identification of an individual's data.

[17] The Census Bureau will continue to obtain and use other agencies' administrative records consistent with applicable statutory authorities and the terms of the data sharing arrangements. For example, returns and return information obtained from the Internal Revenue Service may be obtained and used only as authorized under 26 U.S.C. 6103(j)(1) and 6103(p)(4), 26 CFR 301.6103(j)(1)-1, and applicable data-sharing arrangements and safeguard requirements; nothing in this proposed rule would alter those limitations. And, as noted above, the Census Bureau's reliance on administrative records will vary across particular situations and data elements. *See supra* note 7.

List of Subjects

15 CFR Part 60

Census, Decennial census, Residence criteria, Residence rules, Usual residence,

Enumeration, Data collection, Administrative practice and procedure.

15 CFR Part 70

Census, Decennial census, Demographic data, Race and ethnicity, Data collection,

Confidentiality, Privacy, Administrative practice and procedure.

Dated: September 8, 2026.

Howard Lutnick,
Secretary of Commerce.

For the reasons stated in the preamble, the Census Bureau proposes to add parts 60 and 70 to Subtitle B, Chapter I of Title 15 of the Code of Federal Regulations, to read as follows:

PART 60—RESIDENCE CRITERIA FOR THE DECENNIAL CENSUS OF THE AMERICAN POPULATION

Sec.

Authority: 13 U.S.C. 4 and 141.

§ 60.1 Purpose.

This part sets forth the criteria used by the Census Bureau to determine each individual's place of "usual residence," as needed to determine whether and where to count each individual as part of the decennial census for purposes of apportionment.

§ 60.2 General definition of "usual residence" for conducting the Decennial Census.

(a) A person's "usual residence" is the residence at which they have lawfully spent the greatest number of days during the census enumeration period. A person's "usual residence" should be consistent with, and evidenced by, their tax records (*e.g.*, tax returns, W-2 forms).

(b) A person is considered to have spent a day at a residence if he or she spent at least one hour physically and lawfully present there that day. A person may spend a certain day at more than one residence.

(c) The census enumeration period runs from January 3 to April 1 during decennial census years. April 1 is referred to as "Census Day."

§ 60.3 Dependents.

(a) *Dependents who have a consistent usual residence separate from their provider(s) for the census enumeration period.* Counted at that separate usual residence.

(b) *All other dependents.* Counted at the usual residence of their provider(s) at which they spend the most amount of days during the census enumeration period.

§ 60.4 Foreign citizens in the United States.

(a) *Citizens of foreign countries who are also either citizens or lawful permanent residents of the United States as of April 1 of a decennial census year.* Counted at their usual residence in accordance with § 60.2.

(b) *All other citizens of foreign countries as of April 1 of a decennial census year.* Not counted for apportionment.

§ 60.5 Persons living outside the United States (including certain federal personnel).

(a) *Persons living outside the United States on Census Day who are <u>not</u> military or civilian employees of the U.S. government and are not dependents living with military or civilian employees of the U.S. government.* Not counted in the stateside census.

(b) *Persons deployed outside the United States on Census Day (while stationed or assigned in the United States) who are military or civilian employees of the U.S. government.* Counted at their usual residence in the United States in accordance with § 60.2, using tax records and the administrative data provided by federal agencies.

(c) *U.S. military personnel assigned to U.S. military vessels with a U.S. homeport on Census Day.* Counted at their onshore usual residence in the United States in accordance with § 60.2, using tax records and the administrative data provided by the Department of War and other federal agencies.

(d) *U.S. military personnel assigned to U.S. military vessels with a homeport outside the United States on Census Day.* Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by the Department of War.

(e) *Persons stationed or assigned outside the United States on Census Day who are military or civilian employees of the U.S. government, as well as their dependents living with them outside the United States.* Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by the Department of War and other federal agencies.

§ 60.6 U.S. Military personnel inside the United States.

(a) *U.S. military personnel in the United States and* <u>*not*</u> *in military disciplinary barracks or jails on Census Day.* Counted at their usual residence in accordance with § 60.2, using tax records and the administrative data provided by the Department of War and other federal agencies.

(b) *U.S. military personnel in military disciplinary barracks and jails in the United States on Census Day.* Counted at the facility.

§ 60.7 Merchant Marine Personnel on U.S. Flag Maritime/Merchant Vessels.

(a) *Crews of U.S. flag maritime/merchant vessels docked in a U.S. port, sailing from one U.S. port to another U.S. port, sailing from a U.S. port to a foreign port, sailing from a foreign port to a U.S. port on Census Day, or engaged in U.S. inland waterway transportation on Census Day.* Counted at their onshore usual residence in the United States in accordance with § 60.2, using tax records and the administrative data provided by federal agencies.

(b) *Crews of U.S. flag maritime/merchant vessels docked in a foreign port or sailing from one foreign port to another foreign port on Census Day.* Counted at their onshore usual residence in the United States in accordance with § 60.2, using tax records and the administrative data provided by federal agencies.

§ 60.8 Persons who are born or who die around Census Day.

(a) *Babies born on or before Census Day.* Counted at their parent(s) or guardian(s)' usual residence at which they will spend the most amount of days during the census enumeration period, even if they are still in a hospital on Census Day.

(b) *Babies born after Census Day.* Not counted in the census.

(c) *Persons who die before Census Day.* Not counted in the census.

(d) *Persons who die on or after Census Day.* Counted at their usual residence as of Census Day.

§ 60.9 Persons confined at correctional or detention facilities.

Persons confined at correctional or detention facilities, including juvenile facilities. Counted at the facility.

§ 60.10 Persons in transitory locations.

Persons at transitory locations, such as recreational vehicle (RV) parks, campgrounds, marinas, hotels, and motels. Counted at their usual residence in accordance with § 60.2. If they do not have any usual residence, they are counted at the transitory location.

§ 60.11 Severability.

If any criterion or provision of this part is stayed or determined to be invalid or unenforceable as applied to any person or circumstance in any jurisdiction, such stay or determination shall not affect the remainder of this part or the application of the criterion or provision at issue to other persons or circumstances and/or in other jurisdictions. In the event of such a stay or determination, the remaining criteria and provisions of this part shall continue in effect to the maximum extent possible.

PART 70—RESTRICTIONS ON THE INCLUSION OF CERTAIN DEMOGRAPHIC QUESTIONS IN THE DECENNIAL CENSUS OPERATION

Sec.

Authority: 13 U.S.C. 4, 5, and 141.

§ 70.1 Purpose.

This part sets forth restrictions on the inclusion of certain demographic questions on the decennial census short-form questionnaire or any questionnaire used for the enumeration of the population. These restrictions are meant to ensure that certain demographic questions do not undermine or distort the fundamental, Constitutional purpose of the decennial census: to conduct a population count for purposes of congressional apportionment.

§ 70.2 Restrictions on the inclusion of certain demographic questions.

(a) No question about race, ethnicity, or sexual orientation shall appear on the short form decennial census questionnaire or any questionnaire used for the enumeration of the population.

(b) Questions about biological sex, date of birth, and household relationships may be included on the decennial census questionnaire for the sake of facilitating data verification for the enumeration of the population.

(c) With the exception of questions about biological sex, date of birth, and household relationships, no person shall be obligated to furnish a response to any demographic question as part of the decennial census.

(d) Questions that seek information related to the application of the residence criteria are not considered demographic questions subject to the restrictions of this part.

§ 70.3 Demographic data and disclosure avoidance.

(a) In conducting and furnishing the results of the decennial census, the Census Bureau shall at all times prioritize the accuracy of the population count for purposes of apportionment and (re)districting, subject to the confidentiality restrictions of 13 U.S.C. 9.

(b) The Census Bureau shall not disclose or publish any individual demographic data if such disclosure or publication necessitates introducing uncertainty into the population count data, at either the national or the state level.

§ 70.4 Other sources of demographic data.

Nothing in this part shall be construed to restrict the Census Bureau's ability to ask demographic questions on the American Community Survey or any other surveys that are not used for the enumeration of the population, or to receive demographic data from other sources.

§ 70.5 Severability.

If any provision of this part is stayed or determined to be invalid or unenforceable as applied to any person or circumstance in any jurisdiction, such stay or determination shall not affect the remainder of this part or the application of the provision at issue to other persons or circumstances and/or in other jurisdictions. In the event of such a stay or determination, the remaining provisions of this part shall continue in effect to the maximum extent possible.

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