NATIONAL ACADEMY of EDUCATION

November 2, 2026

Acting Director Cook
U.S. Census Bureau
U.S. Department of Commerce
4600 Silver Hill Road
Washington, DC 20746

Re: Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (RIN 0607-AA75; Docket No. USBC-2026-0628)

Dear Acting Director Cook:

The National Academy of Education (NAEd) appreciates the opportunity to comment on the Census Bureau's Notice of Proposed Rulemaking (NPRM), "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions." The NPRM proposes to add two new parts to Title 15 of the Code of Federal Regulations. Proposed Part 60 would establish new residence criteria for the decennial census, including criteria that would exclude from the apportionment count every foreign citizen who is not a lawful permanent resident. Proposed Part 70 would prohibit any question about race, ethnicity, or sexual orientation on the decennial census questionnaire.[1]

The NAEd is a nonpartisan, nonprofit organization that advances high-quality research to improve education policy and practice. Founded in 1965, the NAEd has

[1] Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57,524 (proposed Sept. 10, 2026) (to be codified at 15 C.F.R. pts. 60 and 70), https://www.federalregister.gov/documents/2026/09/10/2026-18481/decennial-census-of-the-population-of-americans-proposed-residence-criteria-and-proposed-regulations.

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approximately 350 members and international associates elected on the basis of their distinguished scholarship in education. The NAEd membership includes some of the most distinguished scholars and leaders in education, such as current and former university presidents, provosts, and deans; directors of research think tanks; presidents of foundations; presidents and members of distinguished scientific societies; and members of White House commissions. Among other things, the NAEd undertakes research studies to address pressing educational issues and provide research-based recommendations and guidance on such matters and administers professional development programs to enhance the preparation of the next generation of education scholars. Research by NAEd members and other scholars relies heavily on data from the decennial census and the American Community Survey (ACS), and this comment draws on that body of work.

For more than two centuries, the decennial census has given the nation its most complete and most trusted account of who lives in the United States. Every census since the first in 1790 has asked about race. Moreover, since 1980, every household has been asked about Hispanic origin.[2] Additionally, the census has provided the most reliable counts of children and adults living within the United States. The NPRM would remove the race and ethnicity questions from the census and would adopt residence criteria that would exclude certain children and adults and would likely depress the response among some families with children. Federal, state, and local governments rely on the census data to distribute federal education funds, to enforce civil rights protections, and to plan for the students they serve. Researchers rely on these data to determine whether those public investments reach children of every background and whether every child has a fair opportunity to learn and to thrive. The NPRM, however, would eliminate the race and ethnicity questions and exclude some residents from the apportionment count without analyzing the consequences for education, for the federal surveys that depend on the census, or for the children whom the census already counts least well.

The NAEd respectfully urges the Census Bureau to withdraw the proposed rule in its entirety. Part I explains that federal education programs and statistics depend on census race and ethnicity data, as does education research. Part II shows that no other source can replace the census race and ethnicity questions: administrative records are least complete for children, and the ACS depends on census benchmarks. Part III shows that the proposed residence criteria and a legal-status question would deepen the existing undercount of children and distort the allocation of federal education funds. Finally, Part IV explains that the NPRM does not reflect the reasoned decision-making

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[2] Pratt, B. M., Hixson, L., & Jones, N. A. (2015, November 2). *Measuring race and ethnicity across the decades: 1790–2010* [Blog post]. U.S. Census Bureau. https://www.census.gov/newsroom/blogs/random-samplings/2015/11/measuring-race-and-ethnicity-across-the-decades-1790-2010.html; U.S. Census Bureau. (2020, September). *History and the census: National Hispanic Heritage Month*. https://www.census.gov/about/history/stories/monthly/2020/september-2020.html; U.S. Census Bureau. (2020). *Sample copy of the 2020 Census questionnaire* (Questions 8–9). https://www.census.gov/programs-surveys/decennial-census/technical-documentation/questionnaires/2020.html; *see also* 91 Fed. Reg. at 57,527 (quoting *Dep't of Com. v. New York*, 588 U.S. 752, 769 (2019) ("demographic questions have been asked in every census since 1790")).

that the Administrative Procedure Act (APA) requires, because it ignores the uses of these data, rests on unsupported rationales about response burden and disclosure risk, and disregards Congress's direction in Public Law 94-311 to collect and publish statistics on Americans of Spanish origin or descent.

I. Census Race and Ethnicity Data Are Essential to Federal Education Programs and to Research on Educational Opportunity

The NPRM declares that "[t]he sole Constitutional purpose of the decennial census is to apportion the seats in the U.S. House of Representatives among the States," and it asserts that collecting demographic data "does not, by itself, advance the fundamental, Constitutional purpose of the decennial census."[3] The Constitution, however, establishes the minimum that the census must accomplish, not the limit of what it may do. As the NPRM itself acknowledges, "demographic questions have been asked in every census since 1790," and Congress has authorized the Secretary of Commerce to "obtain such other census information as necessary."[4] Congress has also assigned the census purposes beyond apportionment. It requires the Bureau to provide every state with the population counts it needs for redistricting, which the Bureau supplies by race and Hispanic origin,[5] and it directs the Director of the Census to determine, on the basis of the number of voting-age citizens who belong to a single language-minority group (persons who are "American Indian, Asian American, Alaskan Natives, or of Spanish heritage") and who have limited English proficiency, which jurisdictions must provide election materials in languages other than English.[6] Congress has also directed the Department of Commerce, of which the Bureau is a part, to "collect, and publish regularly, statistics which indicate the social, health, and economic condition of Americans of Spanish origin or descent."[7] The NPRM does not explain how the Bureau would meet these statutory obligations without the race and ethnicity questions. For education, these data are equally indispensable. Census race and ethnicity data allow researchers and policymakers to identify where children's opportunities differ, to measure how large those differences are, and to determine whether policies narrow them. No other data source offers comparable coverage of every community in the nation.

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[3] 91 Fed. Reg. at 57,524, 57,527.

[4] *Id.* (quoting *Dep't of Com. v. New York*, 588 U.S. 752, 769 (2019), and 13 U.S.C. § 141(a)).

[5] Pub. L. No. 94-171, 89 Stat. 1023 (1975) (codified at 13 U.S.C. § 141(c)); U.S. Census Bureau. (n.d.). *Decennial census P.L. 94-171 redistricting data*. https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html

[6] 52 U.S.C. § 10503(b)(2)(A), (e); Voting Rights Act Amendments of 2006, Determinations Under Section 203, 86 Fed. Reg. 69,611 (Dec. 8, 2021).

[7] Joint Resolution Relating to the Publication of Economic and Social Statistics for Americans of Spanish Origin or Descent, Pub. L. No. 94-311, §§ 2, 4–5, 90 Stat. 688 (1976) (codified in part at 15 U.S.C. § 1516a), https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg688.pdf

A. The federal government relies on census race and ethnicity data to enforce the law, administer programs, and measure the nation's well-being

Federal agencies are among the most important users of census race and ethnicity data. The Census Bureau itself explains that federal agencies need these data "to monitor compliance with anti-discrimination provisions, such as the Voting Rights Act and the Civil Rights Act,"[8] and that they are "[r]equired to enforce against discrimination in education, employment, voting, financial assistance, and housing."[9] The government-wide standards that govern how the census and every other federal data collection classify race and ethnicity arose "in large part from new Federal responsibilities to enforce civil rights laws."[10]

Census race and ethnicity data also support the enforcement of federal employment discrimination law; the calculation of birth and death rates by race and ethnicity; the enforcement of fair housing law; and the allocation of funds for American Indian and Alaska Native housing and health programs.[11] The NPRM does not acknowledge any of these uses, much less explain how the federal government would carry out these responsibilities without the census race and ethnicity questions. That omission is itself a serious deficiency, as Part IV explains. While all of these areas raise important concerns with the NPRM, given the NAEd's mission, this comment focuses on the consequences for education. Consistent with Congress's directive in Public Law 94-311, the decennial census has asked every household about Hispanic origin since 1980.[12]

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[8] U.S. Census Bureau. (2019). *Why we ask* [Fact sheet D-FS-GP-EN-136]. https://www.census.gov/content/dam/Census/library/factsheets/2019/dec/why-we-ask-each-question.pdf

[9] U.S. Census Bureau. (2020). *Understanding and using American Community Survey data: What federal agencies need to know* (ch. 2). https://census.gov/content/dam/Census/library/publications/2020/acs/acs_federal_handbook_2020_ch02.pdf

[10] Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22,182 (Mar. 29, 2024), https://www.govinfo.gov/content/pkg/FR-2024-03-29/html/2024-06469.htm. OMB has since extended the compliance deadlines for the 2024 revisions, and the Census Bureau has announced that the 2027 American Community Survey will use the 1997 standards. *See* Jones, L. A. (2026, June 26). Census Bureau quietly scraps plan for improved data collection on race and ethnicity. *Talking Points Memo*. https://talkingpointsmemo.com/news/census-bureau-quietly-scraps-plan-for-improved-data-collection-on-race-and-ethnicity

[11] *See, e.g.*, U.S. Census Bureau. (2020). *Understanding and using American Community Survey data: What federal agencies need to know* (ch. 2). https://census.gov/content/dam/Census/library/publications/2020/acs/acs_federal_handbook_2020_ch02.pdf (enforcement of nondiscrimination in employment and housing); U.S. Census Bureau. (n.d.). *About the Equal Employment Opportunity Tabulation*. https://www.census.gov/topics/employment/equal-employment-opportunity-tabulation/about.html; 5 U.S.C. § 7201(a)(1), (c); Centers for Disease Control and Prevention. (n.d.). *Single race resident population estimates* [CDC WONDER help]. https://wonder.cdc.gov/wonder/help/single-race.html (Census Bureau population estimates used as denominators for birth and death rates); 24 C.F.R. § 1000.330 (2025); U.S. Census Bureau. (n.d.). *Why we ask: Race*. https://www.census.gov/acs/www/about/why-we-ask-each-question/race

[12] U.S. Census Bureau. (2020, September). *History and the census: National Hispanic Heritage Month*. https://www.census.gov/about/history/stories/monthly/2020/september-2020.html

The Census Bureau lists the enforcement of nondiscrimination in education among the core uses of its race and ethnicity data.[13] The federal government's own annual report on the condition of American education relies on these data. The National Center for Education Statistics (NCES) reports status dropout rates by race and ethnicity using ACS data, and it reports, for example, that in 2022 about 30 percent of American Indian and Alaska Native children and of Black children lived in poverty, compared with about 10 percent of White children.[14] NCES also produces custom ACS tabulations describing the school-age children and families in school districts nationwide,[15] and its national and state enrollment projections rely on Census Bureau population estimates and projections.[16] Census counts also guide the distribution of federal education funds, including Title I grants to local educational agencies, special education grants, and the National School Lunch Program, as Part III explains.

Census data are also essential to the federal government's trust responsibility to American Indians and Alaska Natives. The United States has "a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions,"[17] and the obligations that flow from that relationship engage nearly every federal department. In fiscal year 2024, more than 35 federal agencies reported a combined $37.5 billion in enacted funding for programs that benefit American Indians and Alaska Natives, including about $8 billion through the Department of Education.[18] Congress has declared that "[i]t is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children."[19] Census data help the federal government meet these obligations in two ways. First, decennial census data serve as the main source for the funding formulas of federal programs that serve American Indian and Alaska Native communities, including the Indian Housing Block Grant Program and the Native American Workforce Programs

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[13] U.S. Census Bureau. (2020). *Understanding and using American Community Survey data: What federal agencies need to know* (ch. 2). https://census.gov/content/dam/Census/library/publications/2020/acs/acs_federal_handbook_2020_ch02.pdf; *see also* U.S. Census Bureau. (n.d.). *Why we ask: Race*. https://www.census.gov/acs/www/about/why-we-ask-each-question/race

[14] National Center for Education Statistics. (2024). Status dropout rates. In *Condition of Education*. U.S. Department of Education, Institute of Education Sciences. https://nces.ed.gov/programs/coe/indicator/coj; National Center for Education Statistics. (2024). Characteristics of children's families. In *Condition of Education*. U.S. Department of Education, Institute of Education Sciences. https://nces.ed.gov/programs/coe/indicator/cce

[15] National Center for Education Statistics. (n.d.). *American Community Survey–Education Tabulation (ACS-ED)*. Education Demographic and Geographic Estimates. U.S. Department of Education, Institute of Education Sciences. https://nces.ed.gov/programs/edge/Demographic/ACS

[16] Irwin, V., Bailey, T. M., Panditharatna, R., & Sadeghi, A. (2024). *Projections of education statistics to 2030* (49th ed., NCES 2024-034, p. iii). U.S. Department of Education, National Center for Education Statistics. https://nces.ed.gov/pubs2024/2024034.pdf

[17] Exec. Order No. 13,175, § 2(a), 65 Fed. Reg. 67,249, 67,249 (Nov. 9, 2000).

[18] Office of Management and Budget. (2024). FY 2025 Native American funding crosscut (pp. 13, 38). https://bidenwhitehouse.archives.gov/wp-content/uploads/2024/12/2025-Native-American-Funding-Crosscut-Report_508.pdf

[19] 20 U.S.C. § 7401.

established under the Workforce Innovation and Opportunity Act.[20] Second, because the census identifies American Indian and Alaska Native people through self-reported race, including the tribe in which they are enrolled or with which they principally identify, it provides the most complete count of Native children and families, both on and off tribal lands. That count matters for education because most Native students attend public schools, not schools operated or funded by the Bureau of Indian Education. In fall 2022, about 449,000 American Indian and Alaska Native students were enrolled in public elementary and secondary schools and about 46,000 American Indian and Alaska Native students were served by the Bureau of Indian Education (BIE) in 183 schools (about two-thirds of these schools are operated by Tribes and one-third by the BIE).[21] Without the census race question, the federal government could not reliably determine whether it is meeting its responsibility for the education of these children. Yet, the NPRM does not mention the trust responsibility at all, much less explain how the federal government would meet it without these data.

B. Research using census data is critical to assessing educational opportunity

Some of the most influential social science of the past decades rests directly on the race and ethnicity questions that the NPRM would ban. The examples that follow represent only a few of the many ways that scholars use these data to understand children's opportunities and to inform policy and practice.

Raj Chetty, Nathaniel Hendren, Maggie Jones, and Sonya Porter linked census and tax records covering nearly the entire U.S. population from 1989 to 2015 to trace how children's adult outcomes vary by race and by the neighborhoods in which they grow up. They found that, even among children whose parents had the same income, "black boys have lower incomes in adulthood than white boys in 99% of Census tracts," and that "less than 5% of black children grow up in" the rare areas where the gap is small.[22] The authors explain how they identify race: "We assign race and ethnicity to children using the information they report on the 2010 Census short form, 2000 Census short form or the ACS."[23] The resulting Opportunity Atlas reports children's long-term outcomes by race, gender, and parental income for every census tract in the country.

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[20] 24 C.F.R. pt. 1000, app. A, ¶ 5(a)(vii) (2025); Falkenstern, C., & Rochat, A. (2021). Better data for supporting American Indian/Alaska Native students (WICHE Insights). Western Interstate Commission for Higher Education. https://www.wiche.edu/wp-content/uploads/2021/02/BetterDataforSupportingAIANStudents.pdf

[21] National Center for Education Statistics. (2024). Racial/ethnic enrollment in public schools. In Condition of education. U.S. Department of Education, Institute of Education Sciences. https://nces.ed.gov/programs/coe/indicator/cge/racial-ethnic-enrollment; U.S. Government Accountability Office. (2025). Bureau of Indian Education: Greater progress needed to address remaining challenges in supporting and overseeing schools (GAO-25-108103). https://files.gao.gov/reports/GAO-25-108103/index.html

[22] Chetty, R., Hendren, N., Jones, M. R., & Porter, S. R. (2020). Race and economic opportunity in the United States: An intergenerational perspective. *Quarterly Journal of Economics, 135*(2), 711–783. https://doi.org/10.1093/qje/qjz042

[23] *Id.*; *see also* Chetty, R., Friedman, J. N., Hendren, N., Jones, M. R., & Porter, S. R. (2018). *The Opportunity Atlas: Mapping the childhood roots of social mobility* (NBER Working Paper No. 25147). National Bureau of Economic Research. https://doi.org/10.3386/w25147

Public agencies have used it to target resources to the places where children's prospects are weakest. For example, the housing authorities of Seattle and King County used the Atlas to identify high-opportunity neighborhoods, and a randomized evaluation found that their program raised the share of participating families who moved to those neighborhoods from 15 percent to 53 percent.[24] Without the census race question, neither the original research nor its future updates would be possible at this scale.

Sean Reardon and his colleagues built the Stanford Education Data Archive (SEDA), which measures academic achievement in nearly every school district in the United States. To explain why racial and ethnic achievement gaps are larger in some communities than in others, Reardon and his colleagues have drawn on ACS estimates of parental income, educational attainment, and related characteristics, reported separately for White, Black, and Hispanic families in each district.[25] Using these data, Reardon, Demetra Kalogrides, and Kenneth Shores found that racial and ethnic differences in parental income and education, together with racial and ethnic segregation, are the strongest correlates of local achievement gaps.[26] Subsequent work has shown that segregation is associated both with larger Black-White and Hispanic-White gaps in third grade and with faster growth in those gaps through eighth grade.[27]

Residential segregation, which shapes school enrollment in many districts, can be measured only with census counts by race at the tract and block levels.[28] The Segregation Tracking Project at Stanford and UCLA, for example, uses decennial census and ACS data to measure residential segregation by race over five decades, including among children.[29] Research using census data has found that White children are more segregated from children of color than White adults are from adults of color, and that school district boundaries account for a larger share of children's segregation than of adults' segregation.[30] Findings like these are possible only because the census

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[24] Bergman, P., Chetty, R., DeLuca, S., Hendren, N., Katz, L. F., & Palmer, C. (2024). Creating moves to opportunity: Experimental evidence on barriers to neighborhood choice. *American Economic Review, 114*(5), 1281–1337. https://doi.org/10.1257/aer.20200407

[25] Fahle, E. M., Chavez, B., Kalogrides, D., Shear, B. R., Reardon, S. F., & Ho, A. D. (2021). *Stanford Education Data Archive: Technical documentation (Version 4.0)*. Stanford University. https://stacks.stanford.edu/file/druid:vb140hd2862/seda_documentation_4.0.pdf; *see also* Reardon, S. F., Kalogrides, D., & Shores, K. (2019). The geography of racial/ethnic test score gaps. *American Journal of Sociology, 124*(4), 1164–1221. https://doi.org/10.1086/700678 (describing race-specific socioeconomic measures built from ACS tabulations for each district).

[26] Reardon, S. F., Kalogrides, D., & Shores, K. (2019). The geography of racial/ethnic test score gaps. *American Journal of Sociology, 124*(4), 1164–1221. https://doi.org/10.1086/700678

[27] Reardon, S. F., Weathers, E. S., Fahle, E. M., Jang, H., & Kalogrides, D. (2024). Is separate still unequal? New evidence on school segregation and racial academic achievement gaps. *American Sociological Review, 89*(6), 971–1010. https://doi.org/10.1177/00031224241297263

[28] Iceland, J., Weinberg, D. H., & Steinmetz, E. (2002). *Racial and ethnic residential segregation in the United States: 1980–2000* (Census 2000 Special Reports, CENSR-3). U.S. Census Bureau. https://www.census.gov/content/dam/Census/library/publications/2002/dec/censr-3.pdf

[29] Educational Opportunity Project at Stanford University. (n.d.). *Segregation Tracking Project: Methods*. https://edopportunity.org/segregation

[30] Owens, A. (2017). Racial residential segregation of school-age children and adults: The role of schooling as a segregating force. *RSF: The Russell Sage Foundation Journal of the Social Sciences,*

reports race by age for every neighborhood. Without those data, no one could tell that children are more segregated than the adults around them.

Consistent census race and ethnicity data also allow the nation to measure trends over time. The federal government's annual report on children's well-being uses Current Population Survey data, which the Census Bureau collects, to track high school completion by race and ethnicity. It shows, for example, that completion among Hispanic young adults rose from 64 percent in 2000 to 90 percent in 2021.[31] Using census and ACS race data linked to tax records, Chetty and colleagues found that for children born between 1978 and 1992, racial gaps in educational attainment, test scores, and earnings narrowed, even as gaps by family income widened.[32] Without consistent data over time, these trends would not be visible.

The racial and ethnic composition of the nation's children has changed substantially over the past half century, and schools must plan for those changes. The National Research Council's Panel on Hispanics in the United States, chaired by Marta Tienda, drew on decennial census and Current Population Survey data, which the Census Bureau collects, to document the growth of the Hispanic population and the educational trajectories of Hispanic children and youth.[33] Rubén Rumbaut and Golnaz Komaie used Current Population Survey data to show how educational attainment differs by national origin and immigrant generation. Among Mexican-origin young adults, for example, college completion rises from about 4 percent in the first generation to about 15 percent in the second.[34] Patricia Gándara has likewise drawn on Census Bureau survey data to document growing gaps in bachelor's degree completion between Latino students and their peers.[35] More recent research by Francisca Antman, Brian Duncan, and Stephen Trejo, drawing on decennial census, ACS, and Current Population Survey data, shows that U.S.-born Hispanics have nearly closed the high school completion gap with non-Hispanic Whites even as the gap in college completion has widened.[36] Research of this kind informs how states prepare teachers, design programs for English learners, and

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3(2), 63–80. https://doi.org/10.7758/RSF.2017.3.2.03 (using Summary File 1 of the 2000 and 2010 decennial censuses).

[31] Federal Interagency Forum on Child and Family Statistics. (2023). *America's children: Key national indicators of well-being, 2023* (Indicator EDU4: High school completion). https://stacks.cdc.gov/view/cdc/140490

[32] Chetty, R., Dobbie, W. S., Goldman, B., Porter, S. R., & Yang, C. S. (2026). Changing opportunity: Sociological mechanisms underlying growing class gaps and shrinking race gaps in economic mobility. *Quarterly Journal of Economics, 141*(2), 1137–1210. https://doi.org/10.1093/qje/qjaf057

[33] Tienda, M., & Mitchell, F. (Eds.). (2006). *Hispanics and the future of America*. The National Academies Press. https://doi.org/10.17226/11539

[34] Rumbaut, R. G., & Komaie, G. (2010). Immigration and adult transitions. *The Future of Children, 20*(1), 43–66. https://files.eric.ed.gov/fulltext/EJ883078.pdf

[35] Gándara, P. (2010). The Latino education crisis. *Educational Leadership, 67*(5). https://www.ascd.org/el/articles/the-latino-education-crisis

[36] Antman, F. M., Duncan, B., & Trejo, S. J. (2023). Hispanic Americans in the labor market: Patterns over time and across generations. *Journal of Economic Perspectives, 37*(1), 169–198. https://doi.org/10.1257/jep.37.1.169

project enrollment. It depends on population data that identify ethnicity consistently across communities and time.

Census data are especially important for American Indian and Alaska Native children. Because this population is relatively small and many members live in rural and remote communities, survey estimates for this population are especially susceptible to sampling error. The census identifies American Indian and Alaska Native people through the race question, which in 2020 asked respondents to report the name of an enrolled or principal tribe.[37] Because American Indian identification can change over time and across contexts, research on Native students depends on consistent self-reported data across censuses. For example, C. Matthew Snipp and his colleagues used census data from 1970, 1980, and 1990 to show that part of the apparent rise in American Indian educational attainment between 1970 and 1980 reflected changes in who identified as American Indian on the census, not only gains in schooling among American Indian students. Without consistent self-reported race data across censuses, researchers could not have distinguished between these explanations.[38] Even with that question, the 2020 Census undercounted American Indians and Alaska Natives living on reservations by 5.64 percent,[39] and, as Part II explains, administrative records match the self-reported race of American Indians and Alaska Natives only about three-quarters of the time. The NPRM observes that "[q]uestions about tribal membership are not necessarily questions about race and/or ethnicity,"[40] but it does not propose any such question or explain how the Bureau would otherwise count American Indian and Alaska Native people. Tribal enrollment and self-identification also measure different things, so a question about tribal membership alone could not replace the data that the census now collects. At its October 2026 tribal consultation, the Bureau asked whether tribes would contribute their own enrollment records, but tribal leaders explained that such records "cannot capture the full Native population, including descendants, citizens of multiple Tribal Nations, and Native peoples otherwise not formally enrolled."[41]

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[37] U.S. Census Bureau. (2020). *Sample copy of the 2020 Census questionnaire* (Question 9 for Person 1; Question 7 for Persons 2–6). https://www.census.gov/programs-surveys/decennial-census/technical-documentation/questionnaires/2020.html

[38] Eschbach, K., Supple, K., & Snipp, C. M. (1998). Changes in racial identification and the educational attainment of American Indians, 1970–1990. *Demography, 35*(1), 35–43. https://doi.org/10.2307/3004025; *see also* Snipp, C. M. (2003). Racial measurement in the American census: Past practices and implications for the future. *Annual Review of Sociology, 29*, 563–588. https://doi.org/10.1146/annurev.soc.29.010202.100006

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

[40] 91 Fed. Reg. at 57,527 & n.11, 57,529.

[41] National Congress of American Indians. (2026, October). Summary: U.S. Census Bureau tribal consultation regarding the NPRM: Decennial census of the population of Americans; proposed residence criteria and proposed regulations for demographic questions [Consultation summary]. https://cdn.sanity.io/files/raa5sn1v/production/ad77c4b503f1dba6ea16f842ac711d52a03ab7ae.pdf

II. No Other Source Can Replace the Census Race and Ethnicity Questions

The NPRM suggests that the Bureau can obtain race and ethnicity data elsewhere, either from administrative records or from the ACS.[42] Neither can substitute for the census data.

A. Administrative records cannot replace self-reported race and ethnicity, least of all for children

The NPRM states that the Bureau "is not proposing any restrictions on its ability to receive demographic data from administrative records and other sources" and that administrative records "can fill information gaps."[43] The NPRM does not, however, identify any administrative source that could replace the census race and ethnicity questions, and it does not evaluate the quality of any such source.

The Bureau's own research shows why such a substitution would fail. In a study of administrative and third-party records, Census Bureau researchers found that about 20 percent of individuals, roughly 69 million people, had no race information at all.[44] Where records did contain race, they often disagreed with how people identified themselves on the 2010 Census: the records matched self-reported race only 28.6 percent of the time for people who identified with two or more races, 57.6 percent of the time for Native Hawaiians and Other Pacific Islanders, and 74.3 percent of the time for American Indians and Alaska Natives.[45] Most important for education, children were the group least well covered. Individuals ages 0 to 17 were nearly 17 times more likely than adults ages 18 to 44 to lack race information in administrative records and 13 times more likely to lack Hispanic origin information.[46] An administrative-records approach would therefore leave the nation with the least information about precisely the population that schools serve.

History confirms that inferred classifications are no substitute for self-identification. The census first asked about Spanish origin in 1970, on the long form sent to a sample of households, and it asked every household about Hispanic origin for the first time in 1980.[47] Before self-identification became the standard, the Census Bureau relied on proxies such as birthplace, mother tongue, and Spanish surname, and a 1975 Bureau analysis found that surname-based classifications corresponded poorly with how people

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[42] 91 Fed. Reg. at 57,527–28, 57,530 (proposed 15 C.F.R. § 70.4).

[43] 91 Fed. Reg. at 57,527.

[44] Ennis, S. R., Porter, S. R., Noon, J. M., & Zapata, E. (2015). *When race and Hispanic origin reporting are discrepant across administrative records and third party sources: Exploring methods to assign responses* (CARRA Working Paper No. 2015-08). U.S. Census Bureau. https://www.census.gov/content/dam/Census/library/working-papers/2015/adrm/carra-wp-2015-08.pdf

[45] *Id.*

[46] *Id.*

[47] U.S. Census Bureau. (2020, September). *History and the census: National Hispanic Heritage Month*. https://www.census.gov/about/history/stories/monthly/2020/september-2020.html; Rumbaut, R. G. (2006). The making of a people. In M. Tienda & F. Mitchell (Eds.), *Hispanics and the future of America* (pp. 16–65). The National Academies Press. https://doi.org/10.17226/11539

identified themselves.[48] Scholars, including Marta Tienda, have documented how the measurement decisions made for the 1980 Census shaped the nation's understanding of its Hispanic population.[49] Inferring ethnicity from administrative records would return the nation to an approach that research evidence led it to abandon.

Federal standards reflect the importance of self-identification. The Office of Management and Budget's Statistical Policy Directive No. 15 provides that, "[w]herever possible, race and/or ethnicity data should be collected through self-report."[50] The Population Association of America and the Association of Population Centers have likewise explained that administrative records, "while promising, are not currently an adequate substitute," and that "[i]nformation recorded by an observer in a health care, education, or justice setting is fundamentally different from information provided directly by the individuals."[51]

B. The ACS cannot replace the census, because its race and ethnicity estimates depend on census benchmarks

Proposed § 70.4 states that nothing in Part 70 restricts the Bureau's ability to ask demographic questions on the ACS or other surveys.[52] The ACS, however, does not stand on its own. The Bureau weights ACS responses so that its estimates are consistent with official population estimates by age, sex, race, and Hispanic origin, and the Bureau rebuilds those population estimates from each new decennial census.[53] If the 2030 Census does not collect race and ethnicity, the ACS will lose the benchmark that anchors its race and ethnicity estimates. Every research and statistical product described in Part I that relies on ACS race and ethnicity estimates, from SEDA to the NCES district tabulations, would then rest on controls of unknown quality.

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[48] Rumbaut, R. G. (2006). The making of a people. In M. Tienda & F. Mitchell (Eds.), *Hispanics and the future of America* (pp. 20–21 & n.6). The National Academies Press. https://doi.org/10.17226/11539

[49] Tienda, M., & Ortiz, V. (1986). "Hispanicity" and the 1980 Census. *Social Science Quarterly, 67*(1), 3–20; Mora, G. C. (2014). *Making Hispanics: How activists, bureaucrats, and media constructed a new American*. University of Chicago Press.

[50] Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22,182, 22,195 (Mar. 29, 2024), https://www.govinfo.gov/content/pkg/FR-2024-03-29/html/2024-06469.htm

[51] Population Association of America & Association of Population Centers. (2026, September 29). *Comments on proposed residence criteria and proposed regulations for demographic questions* (Docket No. 260903-0005) [Public comment]. https://higherlogicdownload.s3.amazonaws.com/POPULATIONASSOCIATION/3e04a602-09fe-49d8-93e4-1dd0069a7f14/UploadedImages/GPAC/PAA_APC_comments_on_decennial_census_residence_rule_9-26.pdf

[52] 91 Fed. Reg. at 57,530 (proposed 15 C.F.R. § 70.4).

[53] U.S. Census Bureau. (2011, September 22). *American Community Survey research note: Change in population controls*. https://census.gov/content/dam/Census/programs-surveys/acs/guidance/2010_Change_Population_Controls.pdf

III. The Proposed "Lawful" Residence Standard and Legal-Status Inquiries Would Deepen the Undercount of Children and Distort Federal Education Funding

The NPRM would change who is counted in the census. First, it would define a person's "usual residence" as the place where the person "lawfully spent the greatest number of days" between January 3 and April 1, a determination that "should be consistent with, and evidenced by, their tax records," and it would exclude from the apportionment count every foreign citizen who is not a lawful permanent resident.[54] Second, it invites comment on adding a question about legal status to the census questionnaire itself.[55] Both changes would make the census less accurate, and children, whom the census already counts least well, would bear much of the harm.

Young children are the age group that the decennial census counts least accurately. The Bureau's Demographic Analysis estimates that the 2020 Census undercounted children ages 0 to 4 by 5.46 percent, about one million children.[56] The Bureau's Post-Enumeration Survey also found a statistically significant undercount of young children, as well as significant undercounts of the Black population (3.30 percent), the Hispanic population (4.99 percent), and American Indians and Alaska Natives living on reservations (5.64 percent).[57] The problem is longstanding. For instance, the 2010 Census missed almost one million children under age five.[58] Furthermore, the Bureau can identify and measure differential undercounts by race and ethnicity only because the census collects race and ethnicity. If the 2030 Census omits those questions, the Bureau will lose its ability to detect whether particular communities, and the children in them, have been missed.

Census counts of young children also anchor the nation's measures of access to early education. The National Institute for Early Education Research (NIEER), founded by W. Steven Barnett, calculates the share of each state's 3- and 4-year-olds enrolled in state preschool programs using "Census population data."[59] An undercount of young children would therefore overstate the share of children whom state preschool programs reach. NIEER also uses census counts of young children by race and ethnicity to calculate the share of children in each group who receive early intervention (EI) and early childhood special education (ECSE) under the Individuals with Disabilities Education Act. Using those data, NIEER found that "Asian, Hispanic, and Black children are less likely to

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[54] 91 Fed. Reg. at 57,529 (proposed 15 C.F.R. §§ 60.2(a), (c), 60.4(b)).

[55] *Id.* at 57,526.

[56] U.S. Census Bureau. (2024, April 11). *Census Bureau releases experimental estimates of state and county undercounts and overcounts of young children in the 2020 Census* [Press release]. https://www.census.gov/newsroom/press-releases/2024/undercounts-overcounts-children-2020-census.html

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

[58] O'Hare, W. P. (2015). *The undercount of young children in the U.S. decennial census*. Springer. https://doi.org/10.1007/978-3-319-18917-8

[59] National Institute for Early Education Research. (2025). Methodology. In *The state of preschool 2024*. Rutgers, The State University of New Jersey. https://nieer.org/yearbook/2024/methodology

receive both EI and ECSE services than are White non-Hispanic children," and that for Black children "the disparities in access to services are especially large and cannot plausibly be explained by differences in need."[60] The proposed rule would undermine both kinds of analysis. An undercount would distort the measures of access, and without the race and ethnicity questions, states could no longer tell whether eligible children of every background receive the services that federal law guarantees them.

A. The census should count everyone who lives in the United States

The census should count everyone who lives in the United States, regardless of citizenship or immigration status. The Constitution apportions representatives according to "the whole number of persons in each State,"[61] and every census since 1790 has sought, in the words of former Census Director Robert Groves, "a complete enumeration of all persons, residents, in the country."[62] Counting everyone is also a practical necessity. Every resident lives in a community whose schools, roads, hospitals, and other public services are planned and funded with census data, so a count that leaves out any group misstates the needs of the places where its members live. The NPRM would abandon that principle. It would exclude from the apportionment count not only "illegal aliens" but also "aliens whose legal status is less durable and indefinite in length than lawful permanent resident status,"[63] a category that on its face includes students, workers, and families who are lawfully present on temporary visas, among them many of the more than 1.1 million international students enrolled at U.S. colleges and universities in 2023–24.[64] Nor could the Bureau reliably determine each person's legal status. Census Bureau researchers have found that discrepancies between survey-reported citizenship and administrative records are "more pervasive" than earlier studies suggested,[65] and the many forms of temporary and pending legal status are more complex still.

Moreover, this proposal would fall especially hard on children. The NPRM does not define what it means for a person to spend a day at a residence "lawfully." It does not explain how the Bureau would apply that test to children, including the more than 6.3 million children (of whom over five million are U.S. citizens) who live with at least one

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[60] Friedman-Krauss, A. H., & Barnett, W. S. (2023). *The state(s) of early intervention and early childhood special education: Looking at equity* (pp. 5, 285). National Institute for Early Education Research. https://nieer.org/sites/default/files/2023-10/se_fullreport.pdf

[61] U.S. Const. amend. XIV, § 2.

[62] *Counting Every Person: Safeguarding the 2020 Census Against the Trump Administration's Unconstitutional Attacks: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. (July 29, 2020) (statement of Robert M. Groves), Serial No. 116-108. https://www.govinfo.gov/content/pkg/CHRG-116hhrg41984/html/CHRG-116hhrg41984.htm

[63] 91 Fed. Reg. at 57,526.

[64] Institute of International Education. (2024, November 18). *U.S. hosts more than 1.1 million international students at higher education institutions, an all-time high* [Press release]. https://www.iie.org/news/us-hosts-more-than-1-1-million-intl-students-at-higher-education-institutions-all-time-high/

[65] Brown, J. D., Heggeness, M. L., Dorinski, S. M., Warren, L., & Yi, M. (2018). *Understanding the quality of alternative citizenship data sources for the 2020 Census* (CES Working Paper No. 18-38R). U.S. Census Bureau, Center for Economic Studies. https://www.census.gov/library/working-papers/2018/adrm/ces-wp-18-38r.html

parent who lacks legal status.[66] Excluding some of them would create a mismatch between the students whom states and school districts must serve and the population that the census recognizes, and the NPRM does not explain whether excluded residents would remain in the population estimates on which Title I and other education funding formulas depend. The proposed reliance on tax records adds further problems. Children do not file tax returns, and many low-income households are not required to file. A standard keyed to legal status and tax filing is also likely to signal to immigrant families that answering the census carries risk, compounding the effect of a legal-status question, discussed below. Research on these families shows why that signal matters. Hirokazu Yoshikawa and Jenya Kholoptseva found that "children of unauthorized parents appear less likely to be enrolled in public benefit programs for which they are eligible," even though most of these children are U.S. citizens.[67] Parents who stay away from programs that would benefit their children are unlikely to answer a census that appears to probe their legal status.

B. A legal-status question should not be added to the census

A legal-status question would further suppress census response. Rigorous research, much of it conducted within the Census Bureau, shows that such inquiries reduce response among the very households in which many children live. Using administrative records, Census Bureau researchers predicted that a citizenship question would reduce self-response by 8.0 percentage points more in households that may contain noncitizens than in other households.[68] Linking the 2019 Census Test, a randomized controlled trial, to administrative records, Census Bureau researchers found that a citizenship question widened the self-response gap between households of U.S.-born non-Hispanic Whites and households with a likely undocumented member by 2.4 percentage points, and that it increased the omission of members from the rosters of households with a likely undocumented member.[69] Omissions of this kind are especially difficult to correct, because the Bureau treats the household as counted.

Children would bear much of the resulting undercount. When parents fear a census inquiry, their children go uncounted along with them. Five former Directors of the Census Bureau, including Robert M. Groves, warned the Supreme Court that "[t]he accuracy of the constitutionally-mandated population count should not be put at risk by

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[66] Migration Policy Institute. (2025). *Changing origins, rising numbers: Unauthorized immigrants in the United States* [Fact sheet]. https://www.migrationpolicy.org/research/unauthorized-immigrants-us-2025-fact-sheet

[67] Yoshikawa, H., & Kholoptseva, J. (2013). *Unauthorized immigrant parents and their children's development: A summary of the evidence*. Migration Policy Institute. https://www.migrationpolicy.org/research/unauthorized-immigrant-parents-and-their-childrens-development

[68] Brown, J. D., Heggeness, M. L., Dorinski, S. M., Warren, L., & Yi, M. (2019). Predicting the effect of adding a citizenship question to the 2020 Census. *Demography, 56*(4), 1173–1194. https://doi.org/10.1007/s13524-019-00803-4

[69] Brown, J. D., & Heggeness, M. L. (2026). Citizenship question effects on household survey response. *Journal of Policy Analysis and Management, 45*(1), e70004. https://doi.org/10.1002/pam.70004

an untested question."[70] Groves later testified that "the 2020 census must enumerate all persons resident in the U.S."[71] The legal-status questions contemplated here are more complex than a citizenship question and have never been tested.

C. An undercount of children would misdirect federal education funds

The consequences of an undercount extend well beyond apportionment. In fiscal year 2021, more than $2.8 trillion in federal funds flowed through at least 353 federal assistance programs that used census-derived data to distribute funds.[72] Programs that rely on census-derived data include Title I grants to local educational agencies, special education grants under the Individuals with Disabilities Education Act, Title II grants for effective instruction, career and technical education grants, the National School Lunch Program, and Head Start.[73]

Title I illustrates the stakes. The Census Bureau's Small Area Income and Poverty Estimates (SAIPE) "are specifically designed for use in annual Title I allocations to school districts," and those estimates rest on population estimates built from decennial census counts.[74] Children missed in 2030 would therefore be missing from the denominators that guide school funding until the next census. The NPRM states that the Bureau will continue to publish statistics separate from those used for apportionment, but it does not explain whether persons excluded under proposed § 60.4 will remain in the population estimates base on which SAIPE and other funding formulas depend.[75]

IV. The Proposed Rule Does Not Reflect the Reasoned Decision-Making the APA Requires

The APA requires the Census Bureau to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts

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[70] Brief of Former Census Bureau Directors as Amici Curiae at 21, *Dep't of Com. v. New York*, 588 U.S. 752 (2019) (No. 18-966), https://www.sfcityattorney.org/wp-content/uploads/2019/04/Former-Census-Directors-Amicus.pdf

[71] *Counting Every Person: Safeguarding the 2020 Census Against the Trump Administration's Unconstitutional Attacks: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. (July 29, 2020) (statement of Robert M. Groves), Serial No. 116-108. https://www.govinfo.gov/content/pkg/CHRG-116hhrg41984/html/CHRG-116hhrg41984.htm

[72] U.S. Census Bureau. (2023, June 14). *Census Bureau data guide more than $2.8 trillion in federal funding in fiscal year 2021* [Press release]. https://www.census.gov/newsroom/press-releases/2023/decennial-census-federal-funds-distribution.html; Villa Ross, C. (2023). *Uses of decennial census programs data in federal funds distribution: Fiscal year 2021* [Working paper]. U.S. Census Bureau. https://www.census.gov/library/working-papers/2023/dec/census-data-federal-funds.html

[73] Reamer, A. (2019, January 30). *Counting for dollars 2020: The role of the decennial census in the geographic distribution of federal funds* (Report IPP-1819-3) [State profiles, FY2016]. George Washington Institute of Public Policy. https://gwipp.gwu.edu/counting-dollars-2020-role-decennial-census-geographic-distribution-federal-funds

[74] U.S. Census Bureau. (n.d.). *Small Area Income and Poverty Estimates (SAIPE): Frequently asked questions*. https://www.census.gov/programs-surveys/saipe/about/faq.html; U.S. Census Bureau. (n.d.). *2010–2024 overview of school district estimates*. https://census.gov/programs-surveys/saipe/technical-documentation/methodology/school-districts/overview-school-district.html

[75] 91 Fed. Reg. at 57,526 & n.5, 57,528.

found and the choice made."[76] Although an agency may change its policies, it must "display awareness that it is changing position," show "good reasons for the new policy," and provide "a more detailed justification" when "its new policy rests upon factual findings that contradict those which underlay its prior policy" or when "its prior policy has engendered serious reliance interests."[77] It must assess whether there were reliance interests, determine whether they were significant, and weigh them against competing policy concerns, and it must consider alternatives within the ambit of the existing policy.[78] And courts, not agencies, determine whether an agency has acted within its statutory authority.[79] The proposed rule falls short of these standards in at least six respects.

First, the NPRM fails to consider how removing the race and ethnicity questions and changing the residence criteria would affect the many federal, state, and local functions that depend on census data. It does not address the uses of census race and ethnicity data in education research, in federal education statistics, in civil rights enforcement, in redistricting and voting rights enforcement, in federal employment, health, and housing programs, or in meeting the federal government's trust responsibility to American Indians and Alaska Natives. It does not analyze the effect of the rule on the ACS population controls. And it does not consider the effect of the proposed residence criteria on the enumeration of children.

Second, the NPRM's response-burden rationale lacks evidentiary support and contradicts the Bureau's own research. The NPRM asserts that "the more questions that are included on the decennial census questionnaire, the lower the overall response rate."[80] The sources it cites for that proposition, a 2014 Congressional Research Service report on the ACS and a 1992 study of simplified mail questionnaires, do not evaluate the effect of the race and ethnicity questions on decennial census response.[81] Indeed, the 1992 study found no significant difference in response between a form that asked race and Hispanic origin and a form that asked only names and birth dates. Respondents have answered a race question on every census in the nation's history. Meanwhile, the NPRM contemplates adding a legal-status question, which the Bureau's own research indicates would reduce response far more than any brief demographic item. An agency cannot rely on response burden to remove one question while proposing to add another that the evidence shows would do greater harm.

Third, the NPRM's disclosure rationale does not justify the action proposed. The NPRM observes that, in 2020, the Bureau introduced "deliberate randomness and uncertainty" into population counts below the state level, and that its approach has been the subject

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[76] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[77] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

[78] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020).

[79] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[80] 91 Fed. Reg. at 57,527.

[81] *Id. at 57,527 & n.8, 57,528–29; Dillman, D. A., Sinclair, M. D., & Clark, J. R. (1992). Mail-back response rates for simplified decennial census questionnaire designs*. https://www.academia.edu/53698749/Mail_Back_Response_Rates_for_Simplified_Decennial_Census_Questionnaire_Designs

of litigation.[82] The NAEd recognizes that researchers, states, and other data users raised legitimate concerns about the method the Bureau adopted for 2020, and the National Academies panel that evaluated the 2020 Census found that the Bureau adopted its new approach "in the very late stages of 2020 Census planning" and that the approach "had not been tested, prototyped, or deployed in the population census context."[83] Those concerns, however, call for better disclosure avoidance methods, not for less data. Disclosure avoidance is neither new nor optional. Title 13 prohibits the Bureau from publishing data that identify any individual,[84] and the Bureau has applied disclosure avoidance techniques to every decennial census since at least 1970, including the swapping of household records across geographic areas in 1990, 2000, and 2010.[85]

Nor would removing race and ethnicity resolve the risk that the NPRM identifies. Census Bureau researchers and their collaborators demonstrated that, using only the tables published from the 2010 Census, an attacker could exactly reconstruct 97 million person records, covering every resident of 70 percent of census blocks.[86] Those records include age, sex, and block of residence, all of which the NPRM would continue to collect. As the article on which the NPRM itself relies explains, "every statistic that an agency releases that is derived from a confidential source carries a nonzero disclosure risk."[87] Disclosure risk arises from publishing detailed statistics of any kind, and deleting a single question cannot eliminate it.

Moreover, the 2020 approach did not alter the count that the Constitution requires. The Census Bureau has explained that differential privacy "is not applied to the apportionment count."[88] The NPRM's concerns about disclosure avoidance therefore provide no basis for changing either the apportionment base or the content of the questionnaire.

The proposed rule would, in fact, make the problem harder to solve. Proposed § 70.3(b) would bar the Bureau from publishing "any individual demographic data if such disclosure or publication necessitates introducing uncertainty into the population count

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[82] 91 Fed. Reg. at 57,527 & n.10.

[83] National Academies of Sciences, Engineering, and Medicine. (2023). *Assessing the 2020 Census: Final report*. The National Academies Press. https://doi.org/10.17226/27150

[84] 13 U.S.C. § 9(a)(2).

[85] McKenna, L. (2018). *Disclosure avoidance techniques used for the 1970 through 2010 decennial censuses of population and housing* (CES Working Paper No. 18-47). U.S. Census Bureau, Center for Economic Studies. https://www.census.gov/library/working-papers/2018/adrm/ces-wp-18-47.html

[86] Abowd, J. M., Adams, T., Ashmead, R., Darais, D., Dey, S., Garfinkel, S. L., Goldschlag, N., Hawes, M. B., Kifer, D., Leclerc, P., Lew, E., Moore, S., Rodríguez, R. A., Tadros, R. N., & Vilhuber, L. (2023). *A simulated reconstruction and reidentification attack on the 2010 U.S. Census* (arXiv:2312.11283). arXiv. https://doi.org/10.48550/arXiv.2312.11283

[87] 91 Fed. Reg. at 57,527 & n.9, 57,528 (quoting Hawes, M. B., et al., Toward a principled framework for disclosure avoidance, *Harvard Data Science Review* § 5.5 (Aug. 20, 2025)).

[88] U.S. Census Bureau. (2021, July). *Differential privacy and the 2020 Census* [Fact sheet D-FS-GP-EN-047]. https://www.census.gov/content/dam/Census/library/factsheets/2021/differential-privacy-and-the-2020-census.pdf

data, at either the national or the state level,"[89] and the NPRM notes that the Department of Commerce now prohibits the use of noise infusion in disclosure avoidance.[90] The NPRM does not explain how, under these combined restrictions, the Bureau would continue to publish the small-area counts by age on which states and school districts rely, including counts of school-age children, while also meeting its confidentiality obligations under 13 U.S.C. § 9. The appropriate response is for the Bureau to improve its disclosure avoidance methods for 2030, testing them well in advance with the scientific community, the states, and other data users, not to eliminate the data.

Fourth, the NPRM does not acknowledge or weigh reliance interests. States rely on census race and ethnicity data to draw districts that comply with federal law. School districts, state education agencies, and federal statistical agencies rely on them to plan and to allocate resources. Tribal nations and the federal agencies that serve them rely on census data to plan and fund programs for American Indian and Alaska Native communities, as Part I explains. Researchers have built longitudinal data infrastructure, including the work described in Part I, on the assumption that the census will continue to measure race and ethnicity consistently over time. A break in that series in 2030 would sever comparisons across decades that cannot be reconstructed later. The NPRM does not identify, much less weigh, any of these interests.

Fifth, the NPRM does not reflect the scientific independence on which the credibility of federal statistics depends. The National Academies has explained that federal statistical agencies must produce "relevant, credible, trusted, independent, and innovative" statistics and must have "the authority to make professional decisions concerning their programs."[91] The NPRM rests its proposal to remove the race and ethnicity questions largely on recent judicial opinions and an executive order concerning race-conscious government programs, together with general claims about response burden. It cites no testing of how these particular questions affect response.[92] Those authorities address how governments may use race in making decisions about individuals. They do not, however, address whether a statistical agency should measure the population. The nation cannot determine whether it is treating its children equally if it chooses not to count them accurately.

The proposed ban on any question about sexual orientation reflects the same departure from scientific practice. Proposed § 70.2(a) would permanently prohibit a question about sexual orientation, although no such question has ever appeared on the decennial census questionnaire and the Bureau has not tested one for that purpose. The NPRM offers no evidence that such a question would reduce response or increase disclosure risk. Decisions about questionnaire content have historically rested on testing and

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[89] 91 Fed. Reg. at 57,530 (proposed 15 C.F.R. § 70.3(b)).

[90] *Id. at 57,527 & n.13, 57,528* (citing Department Administrative Order 216-26).

[91] National Academies of Sciences, Engineering, and Medicine. (2025). *Principles and practices for a federal statistical agency* (8th ed.). The National Academies Press. https://doi.org/10.17226/27934

[92] 91 Fed. Reg. at 57,527.

professional judgment. A regulation that forecloses a question before any evaluation substitutes a policy preference for that judgment.

Sixth, the NPRM does not address the statutory framework within which the Bureau acts. Public Law 94-311 directs the Department of Commerce to "collect, and publish regularly, statistics which indicate the social, health, and economic condition of Americans of Spanish origin or descent," and it directed the Department to determine how to produce "creditable" estimates of "undercounts of Americans of Spanish origin or descent in future censuses."[93] The census has asked every household about Hispanic origin since 1980, and the Bureau's measurement of the Hispanic undercount, 4.99 percent in 2020, depends on that question.[94] The NPRM neither acknowledges this statute nor explains how the Department would meet its obligations without the census ethnicity question.

Conclusion

The decennial census is the foundation of the nation's statistical system and supports a wide range of education research and policy. The proposed rule would remove the race and ethnicity data on which the federal government, researchers, educators, and policymakers depend; would weaken the ACS and other data products that the NPRM claims to leave untouched; and would adopt untested residence criteria likely to deepen the undercount of children and to distort the allocation of federal education funds for a decade. The NPRM offers no evidence that any alternative source could replace what would be lost, and it does not engage the substantial body of research, much of it produced by the Census Bureau itself, that bears directly on these questions.

The NAEd and its members would welcome the opportunity to assist the Census Bureau in strengthening the 2030 Census. For now, however, the NAEd respectfully urges the Census Bureau to withdraw the proposed rule in its entirety. The NAEd requests that the full text of all cited materials, together with this comment, be included in the administrative record for this rulemaking.

Thank you for your consideration of these comments. If you have any questions about this comment, please contact Amy I. Berman, Deputy Director, National Academy of Education, aberman@naeducation.org.

Respectfully submitted,

National Academy of Education Board of Directors

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[93] Joint Resolution Relating to the Publication of Economic and Social Statistics for Americans of Spanish Origin or Descent, Pub. L. No. 94-311, 90 Stat. 688 (1976) (codified in part at 15 U.S.C. § 1516a), https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg688.pdf

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