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RE: Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions [RIN 0607-AA75]

We submit this comment regarding the U.S. Census Bureau ("The Bureau")'s proposal to change several aspects of Decennial Census in advance of the 2030 iteration. *See* 91 Fed. Reg. 57524 (Sept. 10, 2026). We write to raise concerns with the Bureau regarding the consequences the proposed changes may have on the accuracy, usefulness, and reliability of the Decennial Census.

I. Introduction

The undersigned are scholars affiliated with the Williams Institute at the UCLA School of Law. The Williams Institute is dedicated to conducting rigorous and independent research on sexual orientation and gender identity ("SOGI"), including on the demographics and experiences of lesbian, gay, bisexual, and transgender ("LGBT") people. In addition to original data collection and analyses, Williams Institute scholars frequently produce research using data collected by the Bureau and other federal and state government agencies. We have also worked with federal agencies to improve data collection on the U.S. population. These efforts include producing widely cited best practices for the collection of SOGI information on population-based surveys.[1]

We have long relied on the invaluable data produced by the Census Bureau to produce high-quality, impactful research on the characteristics of LGBT communities in the U.S. For example, Census Bureau data have supported research that estimates the size and characteristics

[1] *See, e.g.*, GENDER IDENTITY IN U.S. SURVEILLANCE (GENIUSS) GROUP, WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS TO IDENTIFY TRANSGENDER AND OTHER GENDER MINORITY RESPONDENTS ON POPULATION-BASED SURVEYS 1 (Sept. 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Survey-Measures-Trans-GenIUSS-Sep-2014.pdf; SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS (Nov. 2009), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Best-Practices-SO-Surveys-Nov-2009.pdf.

of same-sex couples[2] and the LGBT population[3] including by geography,[4] race and ethnicity,[5] immigration status,[6] parenting status,[7] economic status,[8] climate change risk,[9] and the effects of policies such as marriage equality.[10]

Williams Institute scholars have worked directly with the Bureau to improve data collection on LGBT people. This includes efforts to improve the rigor, reliability, and accuracy of Decennial Census data, including by responding to the Bureau's earlier request for information on the 2030 Census.[11] In particular, research by former Williams Institute Research Director Dr.

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[2] JODY L. HERMAN & RAKSHA KOPPARAM, WILLIAMS INST., US CENSUS SNAPSHOTS 2020: SAME-SEX COUPLES 1 (Sept. 2025), https://williamsinstitute.law.ucla.edu/publications/us-census-snapshots/; Same-Sex Couples, WILLIAMS INST. (last visited Oct. 7, 2026), https://williamsinstitute.law.ucla.edu/subpopulations/same-sex-couples/ (2020 Decennial Census).

[3] ANDREW R. FLORES & KERITH J. CONRON, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES 1, 7 (Dec. 2023), https://williamsinstitute.law.ucla.edu/publications/adult-lgbt-pop-us/ (2023 ACS). KERITH J. CONRON & SHOSHANA K. GOLDBERG, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES (July 2020), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Jul-2020.pdf (2010 Decennial Projections).

[4] HERMAN & KOPPARAM, *supra* note 2 at 9 (2020 Decennial Census).

[5] SOON KYU CHOI, ET AL., WILLIAMS INST., BLACK LGBT ADULTS IN THE U.S.1, 42 (Jan. 2021), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Black-SES-Jan-2021.pdf (2010 Decennial Projections). Subsequent LGBT WELL-BEING AT THE INTERSECTION OF RACE reports used 2017 ACS data to estimate the population size. *See e.g.* BIANCA D.M. WILSON, ET AL., WILLIAMS INST., LATINX LGBT ADULTS IN THE U.S.1, 10, 66 (Sept. 2021) https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Latinx-SES-Sep-2021.pdf; BIANCA D.M. WILSON, ET AL., WILLIAMS INST., AMERICAN INDIAN AND ALASKA NATIVE LGBT ADULTS IN THE U.S. 1, 11 (Oct. 2021) https://williamsinstitute.law.ucla.edu/publications/aian-lgbt-adults-us/; SOON KYU CHOI, ET AL., WILLIAMS INST., AAPI LGBT ADULTS IN THE U.S.1, 10-11, 48 (May 2021), https://williamsinstitute.law.ucla.edu/publications/lgbt-aapi-adults-in-the-us/.

[6] SHOSHANA K. GOLDBERG & KERITH J. CONRON, WILLIAMS INST., LGBT ADULT IMMIGRANTS IN THE UNITED STATES 1, 4, 17 (Feb. 2021) https://williamsinstitute.law.ucla.edu/wp-content/uploads/Adult-LGBT-Immigrants-Feb-2021.pdf (2017 ACS).

[7] BIANCA D.M. WILSON & LAUREN J.A. BOUTON, WILLIAMS INST., LGBTQ PARENTING IN THE US 1, 8-58 (July 2024), https://williamsinstitute.law.ucla.edu/publications/lgbt-parenting-us/ (2020 Decennial and 2019-2021 ACS); HERMAN & KOPPARAM, *supra* note 2, at 4.

[8] BIANCA D.M. WILSON, ET AL., WILLIAMS INST., LGBT POVERTY IN THE U.S. (2023), https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/ (2020 – 2021 Household Pulse Survey); KERITH J. CONRON, ET AL., WILLIAMS INST., FOOD INSUFFICIENCY AMONG LGBT ADULTS IN THE U.S. (April 2022) https://williamsinstitute.law.ucla.edu/publications/lgbt-food-insufficiency/ (2021 Household Pulse Survey); BIANCA D.M. WILSON, KATHRYN K. O'NEILL, & LUIS A. VASQUEZ, WILLIAMS INST., LGBT RENTERS AND EVICTION RISK (2021), https://williamsinstitute.law.ucla.edu/publications/lgbt-renters-and-eviction-risk/ (2021 Household Pulse Survey)

[9] LINDSAY MAHOWALD & ARI SHAW, WILLIAMS INST., CLIMATE CHANGE RISK FOR LGBT PEOPLE IN THE UNITED STATES (2024), https://williamsinstitute.law.ucla.edu/publications/climate-change-risk-lgbt/ (2020 Decennial Census).

[10] BRAD SEARS, CHRISTY MALLORY & NATHAN CISNEROS, WILLIAMS INST., MARRIED SAME-SEX COUPLES IN THE UNITED STATES ON THE 10TH ANNIVERSARY OF *OBERGEFELL V. HODGES* (2025), https://williamsinstitute.law.ucla.edu/publications/married-ss-couples-obergefell-10/ (2024 ACS); CHRISTY MALLORY, BRAD SEARS, & NATHAN CISNEROS, WILLIAMS INST., THE ECONOMIC IMPACT OF MARRIAGE EQUALITY 10 YEARS AFTER *OBERGEFELL* (2025), https://williamsinstitute.law.ucla.edu/publications/econ-impact-obergefell/ (2024 ACS).

[11] WILLIAMS INST. SCHOLARS, PUBLIC COMMENT: SOLICITING INPUT OR SUGGESTION ON THE 2030 CENSUS PRELIMINARY RESEARCH (RIN 2022-17647) (Nov. 15, 2022), https://williamsinstitute.law.ucla.edu/wp-

Gary J. Gates, who also served on the Bureau's Scientific Advisory Committee,[12] was an impetus for the Bureau's efforts to investigate and remedy longstanding issues in how the Decennial Census and American Community Survey (ACS) capture household relationships, particularly couples.[13] Dr. Gates' analyses, conducted at the national, state, and local levels, produced some of the first detailed portraits of same-sex couples and their families.[14] Dr. Gates's research on same-sex couples and families in Census data, together with that of Williams Institute co-founder and Professor Emeritx of Economics Dr. M.V. Lee Badgett, has been foundational to LGBT research and policy.[15]

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content/uploads/Comment-2030-Census-Nov-2022.pdf. See also WILLIAMS INST. SCHOLARS: PUBLIC COMMENT FOR CENSUS HTOPS (Feb. 2025), https://williamsinstitute.law.ucla.edu/publications/htops-public-comment/ ; PUBLIC COMMENT FOR CENSUS ACS (May 2022) https://williamsinstitute.law.ucla.edu/publications/acs-prcs-comment/

[12] *See, e.g.*, U.S. Census Bur,, Census Scientific Advisory Committee Membership List 1, 2 (Aug. 2014), https://www2.census.gov/cac/sac/meetings/2014-09/20140918_csac_members_august2014.pdf; *see generally* Census Scientific Advisory Committee Archived Meeting Material, U.S. CENSUS BUR. (Mar. 7, 2025), https://www.census.gov/about/cac/sac/meetings.html.

[13] *Compare* Laura K. Yax, *Technical Note on Same-Sex Unmarried Partner Data From the 1990 and 2000 Censuses*, U.S. CENSUS BUR. (June 29, 2001), https://web.archive.org/web/20011019034549/http://www.census.gov/population/www/cen2000/samesex.html (explaining the 1990 and 2000 Census data collection methods) *with* Press Release, U.S. Census Bur., Census Bureau Releases Estimates of Same-Sex Married Couples (Sept. 27, 2011), https://www.ca1.uscourts.gov/sites/ca1/files/citations/Census%20Bureau%20Releases%20Estimates%20of%20Same-Sex%20Married%20Couples%20-%202010%20Census%20-%20Newsroom%20-%20U.S.%20Census%20Bureau.pdf (citing Dr. Gates' review of the 2020 Census methodology); *See also* Dan Black, Gary Gates, Seth Sanders & Taylor Lowel, *The Measurement of Same-Sex Unmarried Partner Couples in the 2000 U.S. Census,* CAL. CTR. FOR POPULATION RESEARCH (Sept. 2007), https://escholarship.org/uc/item/72r1q94b; Gary Gates & Michael D. Steinberger, *Same-Sex Unmarried Partner Couples in the American Community Survey: The Role of Misreporting, Miscoding and Misallocation*, POPULATION ASS'N. (last visited Oct. 7, 2026), https://web.archive.org/web/20240405062953/https://paa2009.populationassociation.org/papers/90814.

[14] *See, e.g.,* GARY J. GATES & JASON OST, THE GAY AND LESBIAN ATLAS (2004).

[15] *E.g.,* M.V. LEE BADGETT & GARY J. GATES, WILLIAMS INST., THE EFFECT OF MARRIAGE EQUALITY AND DOMESTIC PARTNERSHIP ON BUSINESS AND THE ECONOMY 1 (Oct. 2006), https://escholarship.org/uc/item/0f80z94t; GARY J. GATES & ABIGAIL M. COOKE, WILLIAMS INST., UNITED STATES CENSUS SNAPSHOTS: 2010 1 (Sept. 2011), https://escholarship.org/uc/item/4j23r1rx; GARY J. GATES, ET AL., WILLIAMS INST. & URBAN INST., ADOPTION AND FOSTER CARE BY GAY AND LESBIAN PARENTS IN THE UNITED STATES 1 (Mar. 2007) https://escholarship.org/uc/item/2v4528cx; GARY J. GATES, WILLIAMS INST., SAME-SEX COUPLES AND THE GAY, LESBIAN, BISEXUAL POPULATION: NEW ESTIMATES FROM THE AMERICAN COMMUNITY SURVEY 1 (Oct. 2006), https://escholarship.org/uc/item/8h08t0zf; GARY J. GATES, WILLIAMS INST. LGBT PARENTING IN THE UNITED STATES 1 (Feb. 2013), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting-Feb-2013.pdf; M.V. LEE BADGETT & ALYSSA SCHNEEBAUM, WILLIAMS INST., THE IMPACT OF A HIGHER MINIMUM WAGE ON POVERTY AMONG SAME-SEX COUPLES 1 (Apr. 2014) https://williamsinstitute.law.ucla.edu/publications/higher-min-wage-ss-couples/; M.V. LEE BADGETT, LAURA E. DURSO & ALYSSA SCHNEEBAUM, WILLIAMS INST., NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY 1 (June 2013), https://escholarship.org/uc/item/8dq9d947; M.V. LEE BADGETT, ET AL., WILLLIAMS INST., ESTIMATING THE ECONOMIC BOOST OF MARRIAGE FOR SAME-SEX COUPLES IN THE SOUTH 1 (MAY 2013), https://williamsinstitute.law.ucla.edu/publications/boost-ss-marriage-south/.

II. The Decennial Census is Uniquely Important

The Decennial Census fulfills the constitutional and statutory mandates to count the total population of the United States every 10 years for purposes of congressional apportionment and redistricting.[16] Historically, the Decennial Census has collected additional information beyond the population count, a constitutional prerogative fought for by James Madison to "enable [future legislators] to adapt the public measures to the particular circumstances of the community."[17] As a result, the Decennial Census also provides vital information about the characteristics of the country's population.[18] As explained by the National Academies of Sciences, Engineering and Medicine (NASEM), "the Census is unique among the statistical activities of the federal government in that it provides data on a range of topics that are reasonably accurate for small geographic areas and also small subgroups of the population."[19] The accuracy of the population data, made possible by the Decennial Census, in turn allows for the equitable allocation of approximately $2.8 trillion in federal funding.[20] The results of each Decennial Census also serve as the population and demographic baseline for most surveys of the U.S. population, providing essential information for all sectors of government and the economy.[21] For these reasons, the Decennial Census is uniquely important not only for its essential political function, but also as one of the few, if not the primary, benchmark statistical measures supporting the disbursement of federal dollars and vital research into American society.

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[16] *E.g., Why We Conduct the Decennial Census of Population and Housing*, U.S. CENSUS BUR. (Sept. 23, 2026), https://www.census.gov/programs-surveys/decennial-census/about/why.html; U.S. Const. Art. 1 § 2; *Redistricting Data Program Management*, U.S. CENSUS BUR. (Feb. 10, 2026), https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html.

[17] AMERICAN COMMUNITY SURVEY INFORMATION GUIDE, ACS–331(C), U.S. CENSUS BUR. 1, 1 (2017), https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS_Information_Guide.pdf, *citing* Census Bill, House of Representatives, 25–26 Jan., 2 Feb. 1790 and THE FOUNDERS' CONSTITUTION Vol. 2, Art. 1, § 2, Clause 3, Doc. 19 (Philip B. Kurland and Ralph Lerner, eds., 1987).

[18] *E.g.*, *2020 Census Results*, U.S. CENSUS BUR. (Aug. 21, 2024), https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census-results.html. *See also Decennial Census of Population and Housing Questionnaires & Instructions*, U.S. CENSUS BUR. (NOV. 23, 2021), https://www.census.gov/programs-surveys/decennial-census/technical-documentation/questionnaires.2020_Census.html (2020 Census Questionnaire).

[19] NAT'L. ACAD. OF SCI'S., ENG'G., & MED., MODERNIZING THE U.S. CENSUS: THE ROLE OF THE CENSUS 22 (1995), https://doi.org/10.17226/4805.

[20] CECI VILLA ROSS, U.S. CENSUS BUR., USES OF DECENNIAL CENSUS PROGRAMS DATA IN FEDERAL FUNDS DISTRIBUTION: FISCAL YEAR 2021 1, 2 (June 2023) https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf.

[21] Spencer Shanholtz, *Census Data: Indispensable Intelligence for the Nation*, WELDON COOPER CTR. FOR PUB. SERV., UNIV. OF VA. (Mar. 25, 2019), https://www.coopercenter.org/research/census-data-indispensable-intelligence-nation; *A Primer on Census Data: Most Public and Private Statistics Rely on Accurate Census Data*, NAT'L CONF. ON CITIZENSHIP, https://ncoc.org/a-primer-on-census-data/ (last visited Oct. 8, 2026).

III. The Proposed Regulations for Demographic Questions Will Undermine Accuracy and Reliability of the Census

The Proposed Regulations would prohibit a "question about race, ethnicity, or sexual orientation" from appearing "on the short form decennial census questionnaire or any questionnaire used for the enumeration of the population."[22] The Proposed Regulations' reference to sexual orientation data collection is unclear, because the Decennial Census does not currently include a question about sexual orientation, nor has it ever included one to date. It is not clear whether the Bureau is proposing to change the household relationship question. However, doing so would undermine accuracy, because the recent adjustment to allow for spouses and unmarried partners to identify themselves as either same-sex or opposite-sex was made to correct for a longstanding issue with household data accuracy. Furthermore, the proposal to remove the planned race/ethnicity question from the 2030 Census would substantially undermine the accuracy and usefulness of Census data. We address each of these points below.

A. The Proposed Regulations' Reference to Sexual Orientation Data Collection is Unclear

The Proposed Regulations would prohibit questions about sexual orientation.[23] However, the Decennial Census does not include a question about "sexual orientation," and no measure of "sexual orientation" is proposed for inclusion. It is unclear what the Bureau is referring to when it proposes to prohibit questions about sexual orientation.

The term "sexual orientation" can refer to a range of characteristics. There are at least three dimensions of sexual orientation that can be measured: self-identification, sexual behavior, and sexual attraction.[24] Rigorous research has gone into developing reliable statistical measures of these characteristics. For example, several of the undersigned scholars participated in the Sexual Minority Assessment Research Team (SMART), a multidisciplinary and multi-institutional collaboration that developed specific recommendations for collecting data on each of these three distinct dimensions.[25] Additionally, in 2022, NASEM produced a consensus report about measurement of sexual orientation, gender identity, and intersex status that provided recommendations for federal agencies on how best to capture sexual orientation.[26] These reports

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[22] 91 Fed. Reg. 57530.
[23] *Id.*
[24] SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS 6-7 (2009), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Best-Practices-SO-Surveys-Nov-2009.pdf.
[25] *Id.* at 7-12.
[26] *See, generally,* NAT'L ACADS. OF SCIS., ENG'G & MED., MEASURING SEX, GENDER IDENTITY, AND SEXUAL ORIENTATION (Tamara Becker, Margaret Chin & Nancy Bates eds., 2022).

outline multiple reasons why inclusion of one or more direct measures of sexual orientation on federal surveys would be beneficial from a statistical perspective.[27]

Yet, the Bureau has never made a public commitment to including any element of sexual orientation in the 2030 Decennial Census.[28] If the Bureau intended to add a "sexual orientation" question to the Decennial Census, this would typically follow years of study, consideration, testing and careful implementation, which might include an opportunity for the public to comment on the proposed action.[29] For example, at the request of several federal agencies,[30] the Bureau tested sexual orientation and gender identity measures in 2024 for potential inclusion in the ACS.[31] However, the results of those tests have yet to be released to the public,[32] and the Bureau has declined to pursue their implementation.[33]

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[27] Most directly, "[t]he lack of data collection on sexual orientation, gender identity, transgender experience, and intersex status as demographic measures in the [D]ecennial [C]ensus or other large-scale federal population surveys, such the American Community Survey, means there is no 'gold standard' against which data collections can perform weighting adjustments or assess data quality and nonresponse bias for LGBTQI+ populations." Existing data sources are simply inadequate for this purpose. *See* NAT'L ACADS. OF SCIS., ENG'G & MED., MEASURING SEX, GENDER IDENTITY, AND SEXUAL ORIENTATION 47, *supra* note 26 (Ch. 3, "The Role of Measurement Context;" SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INST., BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS, *supra* note *24.*

[28] Steve Pierson et al., *2026 Midyear Update: Resources and Leadership Supporting Federal Statistics*, AM. STAT. ASS'N. 22 (July 28, 2026, amended Sept. 10, 2026), https://www.amstat.org/docs/default-source/amstat-documents/FedStatHealth_MidYearUpdate.pdf.

[29] *See, e.g., How a Question Becomes Part of the ACS,* U.S. CENSUS BUR. (Dec. 2023), https://www.census.gov/content/dam/Census/library/visualizations/2017/comm/acs-questions.pdf (Adding a question to the Decennial is rare; however would likely follow and even more rigorous process, such as the one followed for refining household relationship questions, described below); *See also Questions Planned for the 2020 Census and American Community Survey*, U.S. CENSUS BUR. 1 (2018), https://www2.census.gov/library/publications/decennial/2020/operations/planned-questions-2020-acs.pdf ("The Census Act requires that the questions to be included in the next census be submitted to Congress no later than 2 years before the census date.")).

[30] These include the Department of Justice, The Department of Housing and Urban Development, The Centers for Medicaid and Medicare Services, and the Environmental Protection Agency. *See* Hansi Lo Wang, *Census Bureau Caught in Political Mess over LGBT Data*, NPR (July 18, 2017), https://www.npr.org/2017/07/18/536484467/census-bureau-found-no-need-for-lgbt-data-despite-4-agencies-requesting-it; Letter from Julián Castro, Sec., U.S. Dep't of Housing & Urban Dev., to John H. Thompson, Director, U.S. Census Bureau (June 30, 2016), https://s3.documentcloud.org/documents/3892167/DOJ-to-Census-Bureau-2016-11-04-Edit.pdf ("Valid, reliable, and nationally representative data on sexual orientation and gender identity are essential to HUD fulfilling its mission.").

[31] *See* TAYLOR R. KNOEDL, CONG. RSCH. SERV., PROPOSED EXPANDED COLLECTION OF STATISTICS ON SEXUAL ORIENTATION AND GENDER IDENTITY BY THE FEDERAL GOVERNMENT (April 2, 2024), https://www.congress.gov/crs-product/IN12342; Stephanie Galvin, Assistant Div. Chief for Social Characteristics in the Social, Econ., and Housing Stat. Div., U.S. Census Bur., Testing and Implementing Sexual Orientation and Gender Identity (SOGI) Questions in the American Community Survey (ACS), Presentation for the Nat'l Advisory Comm. Fall Meeting (Nov. 7-8, 2024), https://www2.census.gov/about/partners/cac/nac/meetings/2024-11/presentation-testing-implementing-sogi.pdf.

[32] *See* Freeman v. U.S. Census Bureau, 1:25-cv-07834, (S.D.N.Y. 2025).

[33] *See American Community Survey (ACS) Panel Test: Non-substantive Change Request*. U.S. CENSUS BUR. (April 17, 2025), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202503-0607-001.

The Decennial Census does include questions about household relationships that provide opposite-sex and same-sex couple response options. These data are necessary for ensuring accurate information about households in the U.S., as described below. However, household relationship data is not a proxy for sexual orientation.[34] Because the questionnaire does not ask direct questions about any of the key elements of sexual orientation, the sexual orientations of individuals in either same-sex or opposite-sex couples cannot be directly measured. Additionally, the questionnaire does not provide any information at all about the sexual orientations of heterosexual, lesbian, gay, or bisexual individuals who are not cohabitating or in partnerships. For these reasons and more, scholars of sexual orientation data collection, including the SMART team, have recommended for decades that in survey design, "…sexual orientation be asked separately from marital status and cohabitation."[35] In short, household relationship data, even when it distinguishes between opposite-sex and same-sex couples, is not the same thing as sexual orientation data.

B. Measurement of Same-Sex Couples is Important for Accuracy of Household Data

The Proposed Regulations suggest continued inclusion of mandatory questions about sex and household relationships.[36] In the 2020 Census,[37] for example, after identifying how many people live in a household, the questionnaire required designation of a "householder"[38] and then asked how each remaining person in the household is related to that person.[39] Household relationship information allows the Bureau to track current household and family compositions over time,[40] which the Interagency Working Group on Measuring Relationships in Federal

[34] *See* Akiesha Anderson, *The Census Will Officially Count Same-Sex Couples for the First Time Ever – But That's Not Enough*, WILLIAMS INST. & THE CONVERSATION (Apr. 2018), https://williamsinstitute.law.ucla.edu/publications/census-ss-couples-opinion/; *Improved Measurement of Household Relationships in Federal Surveys, Paper 1: Measuring Same-Sex Co-Residential Relationships,* INTERAGENCY WORKING GRP. ON MEASURING RELATIONSHIPS IN FED. HOUSEHOLD SURVEYS 3 (Working Paper Sept. 2014), p. 18-19, https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/MRFHS_StatisticalPolicyWorkingPaper201408.pdf.

[35] Sexual Minority Assessment Research Team (SMART), Williams Inst., Best Practices for Asking Questions about Sexual Orientation on Surveys, 13 (2009), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Best-Practices-SO-Surveys-Nov-2009.pdf.

[36] 91 Fed. Reg. 57530.

[37] 2020 Census Questionnaire, *supra* note 18. Other household surveys also use a similar process, such as the American Community Survey.

[38] 2020 Census Questionnaire, *supra* note 18 ("If there is someone living here who pays the rent or owns this residence, start by listing him or her as Person 1. If the owner or the person who pays the rent does not live here, start by listing any adult living here as Person 1").

[39] *Id.* ("How is this person related to Person 1?").

[40] *Why We Ask Questions About Family / Relationship to Householder*, U.S. CENSUS BUR., https://www.census.gov/acs/www/about/why-we-ask-each-question/relationship/ (last visited Oct. 9, 2026). *See also* ROSE M. KREIDER, YERÍS MAYOL-GARCÍA, & R. CHASE SAWYER, U.S. CENSUS BUR., 206 AMERICAN COMMUNITY SURVEY CONTENT TEST EVALUATION REPORT: RELATIONSHIP 1 (2017), https://www.census.gov/content/dam/Census/library/working-papers/2017/acs/2017_Kreider_01.pdf ("The relationship question has been asked on the decennial census since

Household Surveys (MRFHS) noted, "are the cornerstone of many Federal projects and processes."[41] Among the 16 relationship types, partnership options include opposite-sex husband/wife/spouse, opposite-sex unmarried partner, same-sex husband/wife/spouse, and same-sex unmarried partner.[42] This means that the sexual orientation of some respondents may be inferred from household relationship data, even though there is no question directly asking about sexual orientation and therefore no reliable measure thereof. The Proposed Regulations do not explicitly address whether the Bureau intends to remove response options distinguishing between same-sex and opposite-sex couples in the household relationship questions. However, the inclusion of same-sex relationship options is essential for the accuracy of the Decennial Census.

Same-sex partnership verification was adopted as a means of correcting for a known measurement problem with household relationship data. In 1990, when the "unmarried partner" response option was introduced to the Decennial Census "to measure the growing complexity of American households,"[43] it became clear that some opposite-sex married couples were accidentally misreporting the sex of one spouse, making them appear to be same-sex married couples.[44] The problem was exacerbated in the 2000 Census when the federal government was

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1880. In 1990, the category unmarried partner was added to the relationship item in the decennial census to measure the growing complexity of American households and the increasing tendency for couples to live together before getting married. The unmarried partner category was also added to the Current Population Survey (CPS) in 1995, the Survey of Income and Program Participation (SIPP) in1996, and has been on the ACS since it went into full implementation in 2005.")

[41] *Improved Measurement of Household Relationships in Federal Surveys, Paper 1: Measuring Same-Sex Co-Residential Relationships,* INTERAGENCY WORKING GRP. ON MEASURING RELATIONSHIPS IN FED. HOUSEHOLD SURVEYS 18-19 (Working Paper Sept. 2014), https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/MRFHS_StatisticalPolicyWorkingPaper201408.pdf ("By and large, the results from this qualitative study indicate that government agencies use household relationship and marital status data for descriptive, planning, and funding purposes. Descriptive purposes—seen largely in statistical agencies or offices such as the Bureau of Labor Statistics, the Census Bureau, and the Social Security Administration's Office of Research, Evaluation, and Statistics—include providing the public and other agencies with detailed information and analysis about the state of and trends in areas including household composition and derivative measures (such as poverty). Planning purposes—exemplified below by the USDA's Food and Nutrition Service, the Department of Commerce's National Telecommunications Information Administration, and the Department of Defense—include agencies using household composition and derivative data to develop strategy for future program tests, changes, and management. This type of use also includes the production of various analytic and policy reports that agencies release to Congress and the public. Lastly, funding purposes demonstrated by, for example, the Department of Housing and Urban Development's Section 8 Housing Assistance and Community Development Block Grant programs, the Department of Education's Title 3 funding program, and the Department of Health and Human Service's Administration for Children and Family's Community Service Block Grants program—use household composition and derivative data to allocate Federal funds to States, localities, and organizations.")

[42] Response options also include: "biological child," "adopted child," "stepchild," "sibling," "parent," "grandchild," "parent-in-law," "child-in-law," "other relative," "roommate/housemate," "foster child," and "other nonrelative." 2020 Census Questionnaire, *supra* note 18.

[43] *Frequently Asked Questions About Same-Sex Couple Households*, U.S. CENSUS BUR. (Aug. 2013), https://www2.census.gov/topics/families/same-sex-couples/faq/sscplfactsheet-final.pdf.

[44] Aviva Rutkin, *Your Guide to the 2020 Census Questionnaire*, THE CONVERSATION (May 1, 2020), https://theconversation.com/your-guide-to-the-2020-census-questionnaire-136113; Dan Black et al., *The*

prohibited from recognizing married same-sex couples as a result of the Defense of Marriage Act (DOMA).[45] As a result, the Bureau recoded same-sex married couples to unmarried partners, and "a nontrivial number" of opposite-sex married couples who had misreported a spouse's sex were miscoded as unmarried same-sex partners."[46] Conversely, research conducted prior to nationwide marriage equality found that same-sex couples reported their relationship type accurately on the Census at a high rate, and when they did not, it was because they were aligning their relationship type with the marriage laws of the state where they live.[47] Indeed, research, including studies from the Bureau itself, shows that opposite-sex couples mismarking the sex of a household member are the cause of ongoing data issues and result in an overcount of same-sex couples.[48] Studies have estimated that over 40% of same-sex unmarried partners in the 2000 Census were actually miscoded opposite-sex couples,[49] and almost 30% of same-sex couples, including over 60% of same-sex married couples, were miscoded as opposite-sex couples in the 2010 Census.[50] Misreporting and miscoding errors are particularly impactful for smaller populations like same-sex couples compared to larger populations like opposite-sex couples because a minor error within a majority group "can create a major problem for drawing inferences" about a minority group.[51]

Measurement of Same-Sex Unmarried Partner Couples in the 2000 U.S. Census, CAL. CTR. FOR POPULATION RSCH. (2007), https://escholarship.org/uc/item/72r1q94.

[45] Defense of Marriage Act, Pub. Law 104-199 (1996) ("§ 7. Definition of 'marriage' and 'spouse' -- In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.); See also https://academic.oup.com/poq/article/77/S1/145/1877806

[46] Aviva Rutkin, *Your Guide to the 2020 Census Questionnaire*, The Conversation (May 1, 2020), http://theconversation.com/your-guide-to-the-2020-census-questionnaire-136113; *See also*, Martin O'Connell & Daphne Lofquist, Counting Same-Sex Couples: Official Estimates and Unofficial Guesses, Presentation at the Annual Meeting of the Population Ass'n. of America (April 30-May 2, 2009), https://web.archive.org/web/20250413172222/https://www.census.gov/content/dam/Census/library/working-papers/2009/demo/counting-paper.pdf

[47] GARY J. GATES, WILLIAMS INST., SAME-SEX COUPLES IN US CENSUS BUREAU DATA: WHO GETS COUNTED AND WHY, (Aug. 2010), https://escholarship.org/uc/item/94w3q43m.

[48] Martin O'Connell & Sarah Feliz, *Same-Sex Couple Household Statistics from the 2010 Census, SEHSD Working Paper No. 2011-26*, U.S. CENSUS BUR. (Sept. 27, 2011), https://www.census.gov/library/working-papers/2011/demo/SEHSD-WP2011-26.html; Jamie M. Lewis, Nancy Bates & Matthew Streeter, *Measuring Same-Sex Couples: The What and Who of Misreporting on Relationship and Sex*, *SEHSD Working Paper No. 2015-12*, U.S. CENSUS BUR. (May 2015). https://www.census.gov/content/dam/Census/library/working-papers/2015/demo/SEHSD-WP2015-12.pdf; Theresa J. DeMaio, Nancy Bates & Martin O'Connell, *Exploring Measurement Error Issues in Reporting of Same-Sex Couples*, 77 PUB. OP. Q. 145 (2013), https://doi.org/10.1093/poq/nfs066.

[49] Dan Black et al., *The Measurement of Same-Sex Unmarried Partner Couples in the 2000 U.S. Census,* CAL. CTR. FOR POPULATION RSCH. 10 (2007), https://escholarship.org/uc/item/72r1q94.

[50] DeMaio et al., 2013, *supra* note 48 at 152; O'Connell & Feliz, 2011, *supra* note 48 at 27; See also, Rose M. Kreider & Daphne A. Lofquist, *Matching Survey Data with Administrative Records to Evaluate Reports of Same-Sex Married Couple Households*, SEHSD Working Paper No. 2014-36, U.S. Census Bureau (Feb. 12, 2015), p.6 https://www.census.gov/content/dam/Census/library/working-papers/2015/demo/kreider-lofquist-working-paper.pdf.

[51] Black et al., 2007, *supra note 49, at 2.*

The miscategorization of couples as same- or opposite-sex is a longstanding, and non-partisan, issue of measurement validity. Research has demonstrated that providing separate, explicit response options for cohabitating same- and opposite-sex spouses and partners reduces this error, improving data accuracy for all couples, regardless of sexual orientation.[52] After decades of research and testing, the Bureau implemented detailed response options for couples on the 2020 Decennial Census.[53] These changes have resulted in the most reliable count of cohabitating couples by sex ever produced, and the Bureau's research and development work has been central to its success.[54]

Maintaining the same-sex and opposite-sex response options adopted for the 2020 Decennial Census is essential to the continued accuracy of the Census. As the right to same-sex marriage is protected under the U.S. Constitution pursuant to the Supreme Court's decision in *Obergefell v. Hodges*,[55] and as states must respect the same-sex marriages of other states pursuant to the Respect for Marriage Act,[56] same-sex couples and the people living in their households will continue to comprise a notable population among Census respondents.[57] The Bureau may not, as it has in the past, assume that married same-sex respondents are mistaken unmarried respondents.[58] Nor should it—as demonstrated by years of study, relying merely on sex and household relationship questions without the specificity of same-sex or opposite-sex

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[52] Rose M. Kreider et al., *Working Paper No. SEHSD-WP2017-28*, *Improving Measurement of Same-Sex Couple Households in Census Bureau Surveys: Results from Recent Tests,* U.S. CENSUS BUR. 16 (2017), https://www.census.gov/library/working-papers/2017/demo/SEHSD-WP2017-28.html; Peter Brandon & Oleg Ivashchenko, *Counting Households Containing Same-Sex Couples: An Inclusive Approach*, 7 INT'L J. POPULATION DATA SCI. 1722 (2022).

[53] Danielle M. Taylor, *The Context and Evolution of Data Collection for Same-Sex Married Couple Households*, U.S. CENSUS BUR. (2020), https://www.census.gov/library/visualizations/2020/demo/the_context_and_evolution_of_data_collection_for_same_sex_marrie couple_households.html

[54] Since 1999, the Census Bureau has published hundreds of reports and other research results about same-sex couples. U.S. Census Bureau, Same-Sex Couple Library, https://www.census.gov/topics/families/same-sex-couples/library.html; U.S. Census Bureau, Same-Sex Couple Data Tables, https://www.census.gov/topics/families/same-sex-couples/data/tables.html

[55] Obergefell v. Hodges, 576 U.S. 644 (2015) (The Fourteenth Amendment to the U.S. Constitution prohibits states from denying marriage licenses to same-sex couples and requires that states recognize the marriage of two people of the same sex when the license was issued out of state).

[56] The Respect for Marriage Act, Pub. L. No: 117-228 (2022).

[57] In the 2020 Census, there were approximately 1.2 million same-sex couple households in the U.S., and 57% were married. *Same-Sex Couples*, WILLIAMS INST., https://williamsinstitute.law.ucla.edu/subpopulations/same-sex-couples/. Census data also showed that 3 million people lived in a same-sex couple household and approximately 1.9 million lived in a same-sex married couple household. *Majority of Household Population Lived in Coupled Households,* U.S. Census Bur. (Sept. 25, 2024), https://www.census.gov/library/stories/2024/09/sdhc-coupled-households.html.

[58] See Rutkin, *supra* note 46; O'Connell & Lofquist, *supra* note 46; Gates, *supra* note 47; O'Connell & Feliz, *supra* note 48; Lewis, Bates & Streeter, *supra* note 48; DeMaio, Bates & O'Connell, *supra* note 48.

response options could result in substantial errors, including an *overcount* of same-sex couples.[59] Should historical trends remain true, changes to the questionnaire which nullify the differentiation between same-sex and opposite-sex couples could erroneously and significantly inflate the number of same-sex couples and once again create unreliable data about same-sex couples and their families.

C. Measurement of Race and Ethnicity is Important for Historical Contextualization of Statistical Data

The Bureau also proposes to eliminate demographic questions about race and ethnicity.[60] The Bureau does not give meaningful consideration to the deeply rooted history and tradition of collecting these demographic items.[61] The Decennial Census has always included race and sex data—and the question of who is included and excluded from being counted requires the consideration of these elements.

As the Bureau notes, these data have been collected in some form since the very first census in 1790.[62] The first Census primarily enumerated free white men, then free white boys, followed by free white women and girls.[63] Non-white people who were counted[64] were distinguished by enslavement in the two final groups: "all other free persons" and enslaved people, who were counted as three-fifths of a person.[65] Over the centuries, Census inquiries into race (and later, ethnicity) evolved to reflect changing laws and cultural norms, which required continuing correction for bias and adjustment for populations that were intentionally excluded or undercounted.[66] Notable demographic changes include the shift to enumerating all individuals by

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[59] DAPHNE A. LOFQUIST & JAMIE M. LEWIS, U.S. CENSUS BUR., IMPROVING MEASUREMENT OF SAME-SEX COUPLES, SEHSD WORKING PAPER 2015-13 at 3 (June 2015), https://www.census.gov/content/dam/Census/library/working-papers/2015/demo/SEHSD-WP2015-13.pdf; Rose M. Kreider, Nancy A. Bates & Daphne Lofquist, Presentation at Am. Ass'c of Pub. Opinion Rsch., Improving Measurement of Same-Sex Couple Households in Census Bureau Surveys (May 13, 2016), https://www.census.gov/content/dam/Census/library/working-papers/2016/demo/AAPOR_Kreideretal.pdf

[60] 91 Fed. Reg. 57527.

[61] *See, generally,* Anna Brown & Ziyao Tian, *The Changing Categories the U.S. Has Used to Measure Race*, PEW RSCH. CTR. (Nov. 3, 2025), https://www.pewresearch.org/short-reads/2025/11/03/the-changing-categories-the-us-has-used-to-measure-race/.

[62] 91 Fed. Reg. 57527.

[63] *1790 Census Records*, NAT'L. ARCHIVES (Feb. 23, 2024), https://www.archives.gov/research/census/1790.

[64] U.S. CONST. art. 1 § 2 ("excluding Indians not taxed"); *Counting All Persons in the US Census*, NATIVE AM. RIGHTS FUND (Nov. 21, 2020), https://narf.org/trump-v-newyork/.

[65] *1790 Census Records*, NAT'L. ARCHIVES (Feb. 23, 2024), https://www.archives.gov/research/census/1790; U.S. CONST. art. 1 § 2.

[66] U.S. Decennial Census Measurement of Race and Ethnicity Across the Decades: 1790–2020, U.S. CENSUS BUR. (Aug. 3, 2021), https://www.census.gov/data-tools/demo/race/MREAD_1790_2010.html; *U.S. Census Race Categories, 1790-2010*, MIXED RACE STUDIES, https://mixedracestudies.org/wp/?page_id=4590 (last visited Oct. 12, 2026); Anna Brown & Ziyao Tian, *The Changing Categories the U.S. Has Used to Measure Race*, PEW RSCH. CTR. (Nov. 3, 2025), https://www.pewresearch.org/short-reads/2025/11/03/the-changing-categories-the-us-has-used-to-measure-race/.

"color" in 1850;[67] the removal of the distinction between "free" and "slave" in 1870;[68] the addition of "Chinese" and "Indian" categories in 1870 (with full inclusion for indigenous individuals implemented in 1900);[69] the addition of an "Other" category in 1910;[70] and the inclusion of a Hispanic/Spanish origin question in 1980.[71] The evolution of this question continues: a modernized and combined version of the race/ethnicity questions was planned for inclusion in 2030 that would streamline responses, allow multiple selections, and add a new Middle Eastern/North African category.[72]

Although the Bureau asserts that the purpose of the Census has only ever been the apportionment of representation in Congress and all other uses are ancillary,[73] the implementation of the Decennial Census has always reflected cultural bias that affects its implementation.[74] Inclusion of race and ethnicity questions lays bare the assumptions about who is counted and provides information to the Bureau that can be used to ensure representativeness of all residents. For example, the Bureau wrote in its 2022 request for suggestions for the 2030 Census, "Our Post-Enumeration Survey and Demographic Analysis estimates indicate that we may have had undercounts of certain populations, in particular the Black or African American population, the American Indian and Alaska Native population living on the reservations, the Hispanic or Latino population, and young children aged 0-4."[75] Yet the Bureau now proposes to remove the category entirely rather than improving upon it as originally proposed. Excluding these questions doesn't merely eliminate our ability to observe a demographic characteristic, it also eliminates our ability to reflect on how cultural values may produce the population characteristics themselves – as they have throughout American history.

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[67] *1850 Census Records,* NAT'L. ARCHIVES (May 13, 2024), https://www.archives.gov/research/census/1850.
[68] *1870 Census Records,* NAT'L. ARCHIVES (MAY 13, 2024), https://www.archives.gov/research/census/1870.
[69] *Id.; American Indians in the Federal Decennial Census, 1790-1930,* NAT'L. ARCHIVES (June 26, 2017), https://www.archives.gov/research/census/native-americans/1790-1930.html.
[70] *1910 Instructions to Enumerators*, U.S. CENSUS BUR. (Feb. 11, 2025), https://www.census.gov/programs-surveys/decennial-census/technical-documentation/questionnaires/1910/1910-instructions.html.
[71] *Decennial Census of Population & Housing Questionnaires & Instructions*, U.S. CENSUS BUR. (Nov. 23, 2021), https://www.census.gov/programs-surveys/decennial-census/technical-documentation/questionnaires.1980_Census.html (1980 Questionnaire).
[72] *Updates to Race/Ethnicity Standards for Our Nation*, U.S. CENSUS BUR. (Dec. 20, 2024), https://www.census.gov/about/our-research/race-ethnicity/standards-updates.html.
[73] 91 Fed. Reg. 57527.
[74] *Id.*; *About OMB's Interagency Technical Working Group on Race and Ethnicity Standards*, OFF. OF MGMT. & BUDG. & U.S. CENSUS BUR. (April 7, 2026), https://spd15revision.gov/content/spd15revision/en/history/2024-standards/about.html; *Improvements to the 2020 Census Race and Hispanic Origin Question Designs, Data Processing, and Coding Procedures,* U.S. CENSUS BUR. (Aug 3, 2021), https://www.census.gov/newsroom/blogs/random-samplings/2021/08/improvements-to-2020-census-race-hispanic-origin-question-designs.html.
[75] Soliciting Input or Suggestions on 2030 Census Preliminary Research, 87 Fed. Reg. 50599 (Aug. 17, 2022).

IV. The Bureau's Asserted Reasons for the Proposed Removal of Demographic Data are Unsupported by Evidence

The Bureau asserts that removal of demographic questions is necessary because more questions in general lower the response rate; demographic data increase disclosure risk; and demographic questions are of a sensitive nature.[76] The Bureau further asserts that there is a there is a "reduced need" for these data and that they are of limited "usefulness."[77] Each of these assertions is discussed below. Additionally, we describe how Decennial Census data on same-sex couples—which has demonstrated few, if any, of the risks asserted by the Bureau—has provided measurable benefits throughout U.S. society.

A. The Hypothesis that the Challenged Demographic Questions Lower Census Response Rates Lacks Empirical Support

First, the Bureau asserts that the inclusion of demographic questions lowers the response rate for the Census.[78] The Bureau cites two sources in support of this proposition: a white paper from the Congressional Research Service (CRS) on the history and purpose of the ACS and a study comparing the response rates of the 1990 Census form with a "respondent friendly designed" form and three other shortened versions of the 1990 form.[79] Neither study provides support for the Bureau's proposal to remove demographic questions.

The CRS report cited by the Bureau describes reducing respondent burden by moving the Decennial long form questionnaire to the ACS; it does not suggest removing demographic questions to boost response rates.[80] It does describe removing "low benefit" questions from the ACS such as "a person's major field of study for their bachelor's degree" and when and how many times a person has been married, divorced, or widowed,[81] and further notes that media reports on public perception describe the ACS as asking "too much detail" on topics such as income, disability, and home plumbing facilities.[82] It is important to consider the modality of the survey in determining the relevance of the analysis: statistics provided regarding response rate

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[76] 91 Fed. Reg. 57527.
[77] *Id*.
[78] *Id.* ("…the more questions that are included in the decennial census questionnaire, the lower the overall response rate.").
[79] 91 Fed. Reg. 57527, 57528-9 at note 8; JENNIFER D. WILLIAMS, CONG. RSCH. SERV., THE AMERICAN COMMUNITY SURVEY: DEVELOPMENT, IMPLEMENTATION, AND ISSUES FOR CONGRESS, R41532 (Dec. 19, 2014), https://www.congress.gov/crs_external_products/R/PDF/R41532/R41532.20.pdf; Don Dillman, et al., Mail-back Response Rates for Simplified Decennial Census Questionnaire Designs, U.S. Census Bur. 776 (1992), http://www.asasrms.org/Proceedings/papers/1992_131.pdf.
[80] JENNIFER D. WILLIAMS, CONG. RSCH. SERV., *supra* note 79.
[81] *Id.* at 8.
[82] *Id.* at 13.

declines were measuring enumerator follow ups and mail-in response, rather than internet response which now comprise the majority of the Census submissions.[83] Additionally, one Government Accountability Office study the report cites, comparing the response rates of the long form and short form Census questionnaire, ultimately concluded that the "overall effect on the response rate estimate was small.... "[84]

The other study cited by the Bureau concluded that though there was "modest[]" improvement in the response rate by asking fewer questions, the length of the form was not a significant factor among areas with historically low response rates.[85] Instead, "respondent-friendly design" (internal quotations omitted) was the reason for the better response rates, and "a very promising avenue to pursue for improving census forms."[86] Most relevant to the Proposed Rule, the study tested using a questionnaire that removed race, ethnicity, and gender questions, and no significant difference was found between the form that removed these demographic questions and the short form that kept it.[87] The study authors did not conclude that there was a meaningful benefit to shortening the form to even the 5-question form or less.[88]

While these sources do offer some support for the hypothesis that shorter form Census questionnaires may improve response rate, all sources provided the caveats that the observed changes in survey response could be explained by multiple other factors and that existing research is of mixed certainty.[89] Therefore, there is little direct support for the proposal to remove the planned race/ethnicity question from the Decennial Census questionnaire as a means of improving survey response. Considering that demographic questions have been successfully included in the Decennial Census for over 250 years, the evidence provided by the Bureau is scant for the assertion that removal of these questions would significantly impact response rate.

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[83] *E.g.*, CONG. RSCH. SERV., THE DECENNIAL CENSUS OF POPULATION AND HOUSING: AN OVERVIEW 2 (Mar. 9, 2026), https://www.everycrsreport.com/reports/IF12909.html ("The 2020 decennial census was the first time internet-based responses were available. The Census Bureau found that nearly 80% of households responded online, 18% responded by mail, and 2% responded by phone… Overall, 67% of households self-responded.").
[84] *Id.* at 3; UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, 2010 CENSUS: CENSUS BUREAU NEEDS PROCEDURES FOR ESTIMATING THE RESPONSE RATE AND SELECTING FOR TESTING METHODS TO INCREASE RESPONSE RATE 1, 13 (Sept. 2008), https://www.gao.gov/assets/gao-08-1012.pdf.
[85] Don Dillman, et al., *supra* note 79 at 780.
[86] *Id.* at 776, 780.
[87] *Id.* at 780.
[88] *Id.* at 780.
[89] JONATHAN EGGLESTON, U.S. CENSUS BUR., THE IMPACT OF HOUSEHOLD SURVEYS ON 2020 CENSUS SELF-RESPONSE (CES 22-24) 1, 12-14 (JULY 2022), https://www2.census.gov/ces/wp/2022/CES-WP-22-24.pdf; Jessica Holzberg, et al., *Measuring Respondents' Perceptions of Burden in the American Community Survey (ACS)*, SURVEY METHODOLOGY #2021-04, U.S. CENSUS BUR. RES. REPORT SERIES at 1, 6-7, 86-88 (Sept. 30, 2021), https://www2.census.gov/adrm/CBSM/rsm2021-04.pdf; John L. Czajka & Amy Beyler, *Declining Response Rates in Federal Surveys: Trends and Implications*, 1 MATHEMATICA POL'Y RES. iii, 34-36, (June 15, 2016), https://aspe.hhs.gov/sites/default/files/private/pdf/255531/Decliningresponserates.pdf.

B. The Bureau Does Not Substantiate Its Claim that Removal of Demographic Questions Is Necessary (or Appropriate) to Mitigate Risk of Identifiability

The Bureau asserts "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."[90] The Bureau does not explain how demographic data such as race and sex, which have been collected since the 1790 census, pose a *new* problem for disclosure avoidance. The Bureau has historically taken its obligation to protect data very seriously, demonstrated by continual innovation and adoption of new strategies to protect against vulnerabilities.[91] Under previous administrations, including the first Trump Administration, the Bureau introduced new methods to protect against the risk of publicly available data being used to identify specific individuals. These methods include "differential privacy," a disclosure avoidance method employed by the Bureau on the 2020 Census.[92] One simulated attack study found that differential privacy methods used in the 2020 Census conclusively protected against the reconstruction of Census data using race and ethnicity information.[93] In other words, the methods developed and used by the Bureau to protect the privacy of Census demographic data against vulnerability to sophisticated and evolving attacks have been found to be effective.[94] Yet the Bureau notes in the Proposed Rule that differential privacy has been subject to "numerous lawsuits."[95] It cites two, both of which had already been dismissed prior to the promulgation of the Proposed Rule, although an application for certiorari is pending before the Supreme Court in one.[96] The Proposed Rule does not mention that the Department of Commerce recently issued an administrative order prohibiting the use of differential privacy and narrowing the use of other disclosure avoidance methods, choosing to limit rather than expand the tools at its disposal to

[90] 91 Fed. Reg. 57527 (emphasis in original).
[91] 13 U.S.C. § 1, *et seq*.; *Title 13 - Protection of Confidential Information*, U.S. CENSUS BUR., https://www.census.gov/about/policies/privacy/data_stewardship/title_13_-_protection_of_confidential_information.html (Feb. 3, 2025); *Statistical Safeguards*, U.S. CENSUS BUR., https://www.census.gov/about/policies/privacy/statistical_safeguards.html (Sept. 1, 2026); *see also* Baldridge v. Shapiro, 455 U.S. 345, 361 (1982) ("[T]he Census Act embod[ies] explicit congressional intent to preclude all disclosure of raw census data reported by or on behalf of individuals").
[92] *Understanding Differential Privacy*, U.S. CENSUS BUR., https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/process/disclosure-avoidance/differential-privacy.html (June 18, 2026); WILLIAMS INST., 2020 CENSUS SNAPSHOT METHODOLOGY REPORT 1, 4 (Sept. 2025), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census-Snapshot-Methodology-Sep-2025.pdf
[93] John M. Abowd, et al., *A Simulated Reconstruction and Reidentification Attack on the 2010 U.S. Census* (Sept. 18, 2025), 7 HARV. DATA SCI. REV. 1, 41-43 https://hdsr.mitpress.mit.edu/pub/ntchx9im/release/4.
[94] *Id.*; Buxin Su, Weijie J. Su, Chendi Wang, *The 2020 US Decennial Census is More Private Than You (Might) Think,* 122 PNAS e2500337122 (Nov. 2025) https://pmc.ncbi.nlm.nih.gov/articles/PMC12625972/.
[95] 91 Fed. Reg. 57527.
[96] *Id.*; *See* Univ. of S. Fla. College Republicans v. Lutnick, 2026 WL 321256, No. 8:25-cv-2486-WFJ-TGW (M.D. Fla. Feb. 3, 2026) (dismissing challenge to the Bureau's imputation method in the 2020 Census), *cert. pending*, Univ. of S. Fla. College Republicans v. Lutnick, No. 26-205 (U.S. 2026); Alabama v. U.S. Dep't of Com., 546 F.Supp.3d 1057 (M.D. Ala. 2021) (dismissing a challenge to the Bureau's implementation of differential privacy in the 2020 Census).

protect privacy.[97] In a joint statement about the recent changes to differential privacy protocols issued prior to this Proposed Rule, five professional associations of statisticians warned that these actions will result in either "less privacy for our personal information, less useable data, or both."[98] In sum, emerging privacy risks to demographic data asserted by the Bureau, if they exist, may be due as much to policy choices made by the administration as to any other factor.

C. Research Has Shown that Demographic Questions Are Not Especially Sensitive, Compared to Other Types of Information

The Bureau asserts that race, ethnicity, and sexual orientation are of a "(potentially) sensitive nature,"[99] without further explanation of the sensitivity of such data, other than the disclosure avoidance concerns described above. However, evidence shows that neither race and ethnicity nor sexual orientation data are uniquely sensitive when properly protected by disclosure avoidance protocols. NASEM's review concluded that the item non-response rate for sexual orientation questions "appears more than acceptable."[100] Bureau testing has shown that most respondents do not find SOGI questions sensitive and questions about sexual orientation were less difficult than questions about income or disability.[101] Furthermore, research has found that LGB people are more likely to respond to surveys, including the Decennial Census,[102] and same-sex couples, which are currently identifiable in the Decennial Census, want their relationships to be visible in the data.[103] Similarly, the inclusion of questions about race has not been found to

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[97] Disclosure Avoidance for Statistical Products, DAO 216-26 (June 4, 2026), https://www.commerce.gov/opog/disclosure-avoidance-statistical-products.

[98] Joint Statement on Commerce's Disclosure Avoidance for Statistical Products, Ass'n. of Public Data Users, the Ass'n. of Population Centers, the Council of Professional Ass'ns. on Federal Statistics, The Population Ass'n. of America, and the ICPSR (June 17, 2026), https://apdu.org/joint-statement-on-commerces-disclosure-avoidance-for-statistical-products/.

[99] 91 Fed. Reg. 57527.

[100] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 26 at 79.

[101] *See* RENEE ELLIS, ET AL., OFFICE OF SURVEY METHODS RESEARCH, ASSESSING THE FEASIBILITY OF ASKING ABOUT SEXUAL ORIENTATION AND GENDER IDENTITY IN THE CURRENT POPULATION SURVEY: RESULTS FROM COGNITIVE INTERVIEWS i, ii, 9, 29-31 (SEPT. 29, 2017), https://www.bls.gov/osmr/research-papers/2017/html/st170210.htm; *See also* Rory P. O'Brien & John R. Blosnich, *Refusal Rates to Sexual Orientation and Gender Identity Items in the Behavioral Risk Factor Surveillance System, 2014-2019*, 112 AM. J. OF PUB. HEALTH 443, 445-451 (Nov. 2021), https://doi.org/10.2105/AJPH.2021.306625.

[102] Nancy Bates, et al., *Are Sexual Minorities Hard to Survey? Insights From The 2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey*, 35 J. OF OFF. STATS. 709, 718-20 (Dec. 2019), https://doi.org/10.2478/jos-2019-0030; Sunghee Lee, (2018). *Are Sexual Minorities Less Likely to Participate in Surveys? An Examination of Proxy Nonresponse Measures and Associated Biases with Sexual Orientation in a Population-based Health Survey*, 30 FIELD METHODS 208, 219-221 (June 2018), https://doi.org/10.1177/1525822X18777736.

[103] U.S. CENSUS BUREAU, FREQUENTLY ASKED QUESTIONS ABOUT SAME-SEX COUPLE HOUSEHOLDS (Aug. 2013), https://www2.census.gov/topics/families/same-sex-couples/faq/sscplfactsheet-final.pdf ("In 2010, as part of the interagency group on Measuring Relationships in Federal Household Surveys led by the Office of Management and Budget (OMB), the Census Bureau conducted focus groups and cognitive interviews to see how respondents viewed the relationship question categories. Key findings from this research included: 1) respondents desire new categories to reflect legal unions for same-sex couples (e.g., civil unions and domestic partnerships); 2) respondents desire to move the unmarried partner category next to spouse in the list; and 3) while some persons

significantly affect response.[104] Measurement of Hispanic origin has shown varying levels of success, though question design has improved through ongoing methodological research.[105] The proposal to combine race and ethnicity into one question for the Decennial Census was designed, among other purposes, to mitigate risk of breakoff due to a separate Hispanic origin question.[106]

D. Demographic Data are Essential for Numerous Administrative, Statistical and Policymaking Purposes

The Bureau justifies its proposed removal of demographic questions such as race, ethnicity, and sexual orientation by arguing there is a "reduced need" for these data and that they are of limited "usefulness."[107] In support of this position, the Bureau cites recent case law from the Supreme Court where it found that states or other governed entities did not have a compelling interest in advancing race-conscious remedies.[108] However, the Bureau fails to meaningfully

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interpreted the term partner to apply more to same-sex intimate relationships, opposite-sex unmarried couples were generally comfortable selecting unmarried partner as their relationship category").

[104] JESSICA DEJESUS & SARAH KONYA, U.S. CENSUS BUR., 2020 CENSUS ITEM NONRESPONSE AND IMPUTATION ASSESSMENT REPORT 31 (Feb. 7, 2013), https://www2.census.gov/programs-surveys/decennial/2020/program-management/evaluate-docs/EAE-2020-item-nonresponse-assessment.pdf ("Overall, 2020 had higher item nonresponse rates than 2010 for all person-level items. Self-response 2020 returns had lower item nonresponse rates than 2010 for sex, Hispanic origin, and race. Lower self-response [item nonresponse] rates in 2020 compared to 2010 are likely, in part, because of the introduction of the internet mode of response… 2020 Self-Response [item nonresponse] rates were generally low, ranging from 1.2 percent for sex to 2.6 percent for race."). All items in the basic demographic section (relationship, age, sex, race, ethnicity) of the survey have low item nonresponse rates for both mail and Internet; however, the rates are lower for Internet than mail (ranging from about 1 to about 6 percentage points lower); James B. Treat, *2013 American Community Survey Research and Evaluation Report Memorandum Series #ACS14-RER- 04* (Mar. 11, 2014), https://www.census.gov/content/dam/Census/library/working-papers/2014/acs/2014_Clark_01.pdf; DANIEL HARWELL, TESTING OF DEMOGRAPHIC QUESTIONS IN AN ACASI FORMAT 1, (Jan, 2012), https://wwwn.cdc.gov/qbank/report/Harwell_NCHS_2012_ACASI.pdf ("Overall, the question performed well with the majority of respondents. Most respondents had minimal problems answering the question."); Myoungock Jang & Allison Vorderstrasse, *Socioeconomic Status and Racial or Ethnic Differences in Participation: Web-Based Survey*, 8 JMIR RES. PROTOCOLS e11865 (Apr. 2019) ("There was no racial or ethnic difference with respect to the completion of demographic questions or completion of a partial survey"); *See also* Ziyao Tian, et al., *Counting Race: How the Census Measures Identity and What Americans Think About It*, PEW RES. CTR. (Nov. 3, 2025), https://www.pewresearch.org/race-and-ethnicity/2025/11/03/counting-race-how-the-census-measures-identity-and-what-americans-think-about-it/.

[105] *See Research to Improve Data on Race and Ethnicity*, U.S. CENSUS BUR. (Dec. 20, 2024), https://www.census.gov/about/our-research/race-ethnicity.html; Nicholas Jones & Michael Bentley, 2015 National Content Test: Preliminary Results on Race and Ethnicity, Presentation for the Nat'l, Advisory Comm. on Racial, Ethnic, and Other Populations, U.S. Census Bur. (Oct 3, 2016), https://www.census.gov/content/dam/Census/newsroom/press-kits/2017/2015nct_presentation_jones.pdf

[106] KELLY MATHEWS, ET AL., U.S. CENSUS BUREAU, 2015 NATIONAL CONTENT TEST: RACE AND ETHNICITY ANALYSIS REPORT xii (Feb. 28, 2017), https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2015nct-race-ethnicity-analysis.pdf ("The combined question with detailed checkboxes design supported the research objectives of increasing reporting within the current standard OMB categories, decreasing item nonresponse, improving accuracy and reliability, and achieving similar or higher levels of detailed reporting for all major groups. The results of this research indicate that the optimal question format is combined question with detailed checkboxes.").

[107] 91 Fed. Reg. 57527.

[108] 91 Fed. Reg. 57527.

consider the usefulness of these data for allocation of funding and other government planning and services, myriad statistical purposes, and public policymaking.

First, demographic data in the Decennial Census provide empirically useful information for the administration of federal, state, tribal, and local governments.[109] For example, federal entities use Decennial Census demographic data to ensure compliance with nondiscrimination laws and to allocate federal funds.[110] States use the data to assist with allocating state funding, drawing of congressional maps, and ensuring compliance with federal laws.[111] State, local, and tribal entities along with community-based organizations use Decennial Census data for a wide range of activities, such as choosing locations for hospitals, schools, government agency locations, and other services.[112] The Bureau acknowledges in the preamble to the Proposed Rule that demographic research and analysis using Census data are relied on in allocating federal funds to address the needs of the U.S. population,[113] and it is estimated that 2.8 trillion in federal funds were allocated using Census data in 2021.[114] Yet, dismissing this purpose as discretionary, the Bureau does not propose another method by which these funds would be allocated.[115]

Second, Decennial Census demographic data are of singular importance for research on the U.S. population. Foundationally, Decennial Census demographic data[116] allow for reliable

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[109] *See* U.S. CENSUS BUR., SUBJECTS PLANNED FOR THE 2020 CENSUS AND AMERICAN COMMUNITY SURVEY *(2017),* https://www2.census.gov/library/publications/decennial/2020/operations/planned-subjects-2020-acs.pdf. *See also System of Records Notices – Commerce—Census-5*, U.S. DEP'T. OF COMMERCE (July 22, 2020), https://www.commerce.gov/opog/privacy-privacy-act/system-records-notices/system-records-notices-commerce-census-5 ("The primary uses of decennial census data include: apportioning the representation among states as mandated by Article I, Section 2 of the United States Constitution; drawing congressional and state legislative districts, school districts and voting precincts; enforcing voting rights and civil rights legislation; providing data for federal, state, local and tribal governments to use in distributing federal dollars to states; informing federal, tribal, state, and local government planning decisions; informing business and nonprofit organization decisions (e.g., where to locate and size of the market); and, providing population benchmarks for nearly every other U.S. survey.").

[110] *How Congress Uses ACS Data,* U.S. CENSUS BUR., https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_congress_handbook_2020_ch01.pdf (last visited Oct. 8, 2026) (Describing uses of both ACS and Decennial Census data by Congress); VILLA ROSS*, supra* note 20*,* at 6.

[111] *See, e.g.* William P. O'Hare, *Many States Use Decennial Census Data to Distribute State Funds*, THE CENSUS PROJ. (Jan. 9, 2020), https://thecensusproject.org/2020/01/09/many-states-use-decennial-census-data-to-distribute-state-money/ (state funding); *Redistricting and Use of Census Data,* NAT'L. CONF. OF STATE LEG. (Oct. 30, 2025), https://www.ncsl.org/redistricting-and-census/redistricting-and-use-of-census-data (redistricting); *See also,* Mark Mather & Paola Scommegna, *Why Is the U.S. Census So Important?*, POPULATION REF. BUR. (MARCH 15, 2019) (https://www.prb.org/news/importance-of-u-s-census/ (General overview of uses of Decennial Census Data).

[112] *See, generally, Policy Insight: The Decennial Census*, THE POL. CIRCLE, https://www.thepolicycircle.org/minibrief/the-decennial-census/ (last visited Oct. 8, 2026).

[113] VILLA ROSS*, supra* note 20.

[114] *Id.*

[115] 91 Fed. Reg. 57527.

[116] *See, e.g.* Rachel Marks & Nicholas Jones, *Plans for Producing Detailed Racial, Ethnic and Tribal Data from the 2020 Census*, U.S. CENSUS BUR. (April 27, 2022), https://www.census.gov/newsroom/blogs/random-samplings/2022/04/2020-census-detailed-race-ethnic-tribal-data.html; *2020 Census Detailed Demographic and Housing Characteristics File A (Detailed DHC-A),* U.S. CENSUS BUR. (March 17, 2025),

observations about the characteristics of the U.S. population.[117] The unique scale and completeness of the Decennial Census also helps the Bureau test and address fundamental demographic challenges, such as undercounting and other disparities in enumeration.[118] Perhaps most importantly, these data establish a baseline for the entire interconnected federal statistical system, allowing researchers and policymakers to understand the economic stability, housing dynamics, and health and well-being of the population.[119] For example, the demographic data from the Decennial Census are essential for the following statistical purposes:

- **Denominators.** The Decennial Census provides a baseline estimate of the U.S. population.[120] Because the Census is an enumeration of the entire population rather than a sample, its design avoids "sampling error," allowing demographers to know with a high degree of certainty the basic demographic characteristics of the population, such as race, ethnicity, sex, and household composition (including same-sex couples).[121] Censuses also provide the baseline count needed to

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https://www.census.gov/data/tables/2023/dec/2020-census-detailed-dhc-a.html#about (Example of demographic data from the 2020 Decennial Census).

[117] *See e.g.* William H. Frey, *New 2020 Census Results Show Increased Diversity Countering Decade-long Declines in America's White and Youth Populations*, BROOKINGS INST. (Aug. 13, 2021), https://www.brookings.edu/articles/new-2020-census-results-show-increased-diversity-countering-decade-long-declines-in-americas-white-and-youth-populations/ (diversity in general); Historical Census of Housing Tables: Homeownership By Race and Hispanic Origin, U.S. CENSUS BUR. (Oct. 8, 2021), https://www.census.gov/data/tables/2000/dec/coh-ownershipbyrace.html (home ownership).

[118] *See* Deborah Stempowski, *Counting Every Voice: Understanding Hard-to-Count and Historically Undercounted Populations*, U.S. CENSUS BUR. (Nov. 7, 2023, rev. March 12, 2025), https://www.census.gov/newsroom/blogs/random-samplings/2023/10/understanding-undercounted-populations.html (Note: this article previously listed LGBTQ people as a hard-to-count population, but that subpopulation was removed in 2025. Compare this snapshot of the same page from January 28, 2025: https://web.archive.org/web/20250124101704/https://www.census.gov/newsroom/blogs/random-samplings/2023/10/understanding-undercounted-populations.html); *See also* NATIONAL ADVISORY COMMITTEE ON RACIAL, ETHNIC, AND OTHER POPULATIONS, FINAL REPORT OF THE ADMINISTRATIVE RECORDS, INTERNET, AND HARD TO COUNT POPULATION WORKING GROUP 7-12, https://www2.census.gov/cac/nac/reports/2016-07-admin_internet-wg-report.pdf (last visited Oct 6, 2026); Eric Jensen & Timothy Kennel, *Who Was Undercounted, Overcounted in the 2020 Census?,* U.S. CENSUS BUR. (March 10, 2022), https://www.census.gov/library/stories/2022/03/who-was-undercounted-overcounted-in-2020-census.html ("These results showed statistically significant undercounts for the following populations: Black or African American alone or in combination, American Indian or Alaska Native alone or in combination, the Some Other Race alone or in combination, and Hispanic or Latino").

[119] NAT'L. ACAD. OF SCI'S., ENG'G., & MED., MODERNIZING THE U.S. CENSUS: THE ROLE OF THE CENSUS 23 (1995). https://doi.org/10.17226/4805.

[120] *See* Christine Hartley, Luke Rogers & Catherine Doren*, Population Estimates at the Start of the Decade*, U.S. CENSUS BUR. (Dec. 16, 2021), https://www.census.gov/newsroom/blogs/random-samplings/2021/12/population-estimates-start-of-the-decade.html ("The start of each decade at the U.S. Census Bureau is marked by the collection and release of census data, providing a fresh account of the size and characteristics of the U.S. population… the results of the census [are] a once-a-decade benchmark for gauging the quality of the annual population and housing unit estimates products").

[121] *See* Patrick J. Cantwell*, Census,* in ENCYCLOPEDIA OF SURVEY RESEARCH METHODS 90-19 (Paul J. Lavrakas ed., 2008), https://methods.sagepub.com/ency/edvol/encyclopedia-of-survey-research-methods/chpt/census; *Sampling Error,* in the SAGE ENCYCLOPEDIA OF SOCIAL SCIENCE RESEARCH METHODS 991-992 (Michael S. Lewis-Beck,

calculate vital statistics such as birth and death rates, as well as measures of population change such as migration rates.[122] For example, the most recent U.S. life expectancy estimates show that Asian (85.8 years) and Hispanic (81.8) populations have the highest life expectancy, followed by White (78.9), Black (74.8), and AIAN (71.1). [123] These estimates are calculated using age-specific death rates by race/ethnicity: the numerator is the total number of deaths during the year by race/ethnicity (provided by state death certificates), and the denominator is the mid-year population estimate which serves as the "average" number of people alive in that year (derived from Decennial Census data on race /ethnicity and updated with race/ethnicity-specific births, deaths, and migration).[124] These rates cannot be calculated without the Decennial Census population count by race/ethnicity.

- **Sample Design**. A "sample" is a subset of a population selected to participate in a survey.[125] Statisticians and survey methodologists rely on auxiliary information about a population to design a sample that best represents that population.[126] The Decennial Census is the baseline source of that information, providing population counts and core demographic characteristics researchers use to design their samples.[127] These data inform how a sample is designed to reduce sampling error[128] such as stratifying by geography or subgroups, and by oversampling smaller populations such as is common for racial minorities so that estimates of

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Alan Bryman, & Tim Futing Liao, ed. 2004), https://methods.sagepub.com/ency/edvol/the-sage-encyclopedia-of-social-science-research-methods/chpt/sampling-error#.

[122] E.g., NAT'L. ACAD. OF SCI'S., ENG'G., & MED. MODERNIZING THE U.S. CENSUS: THE ROLE OF THE CENSUS 23, 26 (1995). https://doi.org/10.17226/4805

[123] Elizabeth Arias, Jiaquan Xu & Betzaida Tejada-Vera, *United States Life Tables, 2024*, 75 NAT'L VITAL STAT. REPS., no. 5, at 2 (Aug. 25, 2026), https://www.cdc.gov/nchs/data/nvsr/nvsr75/nvsr75-05.pdf; *Methodology for the United States Population Estimates: Vintage 2024; Nation, States, Counties, and Puerto Rico – April 1, 2020 to July 1, 2024,* U.S. CENSUS BUR. (Dec. 2024), https://www2.census.gov/programs-surveys/popest/technical-documentation/methodology/2020-2024/methods-statement-v2024.pdf.

[124] *Id.*

[125] Michael W. Traugott, *Sample*, in the SAGE ENCYCLOPEDIA OF SOCIAL SCIENCE RESEARCH METHODS (Michael S. Lewis-Beck, Alan Bryman, & Tim Futing Liao, ed. 2004), https://chooser.crossref.org/?doi=10.4135%2F9781412950589.n878.

[126] *See, e.g., Sampling Frame*, in the SAGE ENCYCLOPEDIA OF SOCIAL SCIENCE RESEARCH METHODS 992-993 (Michael S. Lewis-Beck, Alan Bryman, & Tim Futing Liao ed. 2004), https://methods.sagepub.com/ency/edvol/the-sage-encyclopedia-of-social-science-research-methods/chpt/sampling-frame#.

[127] *See, generally,* FRANK DONNELLY, EXPLORING. THE U.S. DECENNIAL CENSUS (2020), https://methods.sagepub.com/book/mono/exploring-the-us-census/toc; *See, generally,* NAT'L. ACAD. OF SCI'S., ENG'G., & MED., MODERNIZING THE U.S. CENSUS: THE ROLE OF THE CENSUS 25-26 (1995). https://doi.org/10.17226/4805.

[128] IPUMS USA, Univ. of Minn., *Sampling Errors*, *in* IPUMS USA User's Guide ch. 3, https://usa.ipums.org/usa/chapter3/chapter3.shtm

them are more reliable.[129] Probability sampling, which uses these techniques and upon which the ACS is based, is the gold standard outside of full enumeration because all members of the population have a known chance of being selected.[130] These known chances (selection probabilities) are the starting point for survey weighting, allowing researchers to calculate the uncertainty of the estimates they produce.[131]

- **Weighting.** Weighting refers to "statistical adjustments that are made to survey data" to produce estimates that better represent the target population.[132] This process helps correct for biases common in raw survey data, such as the known tendency of some populations to be missed (coverage error) or less likely to respond (non-response error).[133] For example, 2024 ACS coverage rates show the survey captured a smaller proportion of the Black population than of the Hispanic and White population (82.1 vs. 91.4 and 98.5, respectively).[134] The Census Bureau's statistical quality standards require that survey estimates account for and attempt to reduce these types of errors, including through weighting procedures.[135] In the case of the ACS, the coverage rate, along with population benchmarks, may result in Black respondents receiving a different weight than White respondents, while also accounting for other dimensions such as age, sex, and geography, so that estimates are more proportionate to the population.[136]

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[129] *See, e.g. Survey of Income and Program Participation: Sampling,* U.S. CENSUS BUR. (Aug. 30, 2022), https://www.census.gov/programs-surveys/sipp/methodology/sampling.html; *State Oversampling in the National Survey of Children's Health: Feasibility, Cost, and FAQs* 1, U.S. CENSUS BUR (Apr. 30, 2026), https://www.census.gov/content/dam/Census/programs-surveys/nsch/NSCH_State_Oversample_Summary_Document.pdf

[130] *See* Erinn M. Hade & Stanley Lemeshow, *Probability Sample*, in ENCYCLOPEDIA OF SURVEY RESEARCH METHODS 621-622 (Paul J. Lavrakas ed., 2008), https://methods.sagepub.com/ency/edvol/encyclopedia-of-survey-research-methods/chpt/probability-sample; Eric Jensen et al., *Measuring Racial and Ethnic Diversity for the 2020 Census*, Random Samplings (U.S. Census Bureau) (Aug. 4, 2021), https://www.census.gov/newsroom/blogs/random-samplings/2021/08/measuring-racial-ethnic-diversity-2020-census.html.

[131] *See* TOMMY WRIGHT & JOYCE FARMER, U.S. CENSUS BUREAU, STATISTICAL RESEARCH REPORT SERIES NO. RR 2000/02: A BIBLIOGRAPHY OF SELECTED STATISTICAL METHODS AND DEVELOPMENT RELATED TO CENSUS 2000, at iii (Aug. 10, 2000), https://www.census.gov/content/dam/Census/library/working-papers/2000/adrm/rr2000-02.pdf

[132] Jelke Bethlehem, *Weighting*, in ENCYCLOPEDIA OF SURVEY RESEARCH METHODS 958, 958–60, n. 632 (Paul J. Lavrakas ed., 2008), https://doi.org/10.4135/9781412963947.n632.

[133] Bethlehem*, supra* note 132*; U.S. Census Bureau, Coverage Rates Definitions, American Community Survey (ACS)* (Dec. 8, 2022), https://www.census.gov/programs-surveys/acs/methodology/sample-size-and-data-quality/coverage-rates-definitions.html.

[134] U.S. Census Bureau, *Coverage Rates*, American Community Survey (ACS), https://www.census.gov/acs/www/methodology/sample-size-and-data-quality/coverage-rates/.

[135] U.S. Census Bureau, Statistical Quality Standards (rev. Sept. 29, 2026), https://www2.census.gov/about/policies/quality/quality-standards.pdf.

[136] U.S. Census Bureau, *American Community Survey and Puerto Rico Community Survey Design and Methodology* ch. 11, *Weighting and Estimation* (Version 4.0, Dec. 20, 2024) https://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/2024/acs_design_methodology_ch11_2024.pdf

> Thus, while oversampling addresses underrepresented or hard-to-reach populations during the sample design phase, weighting adjusts sample estimates during analysis after data collection is complete.[137] Because survey weights require accurate benchmarks and the Decennial Census is the only complete count of the U.S. population, many surveys are weighted using characteristics for which a reliable, Census-based benchmark exists, such as age, sex, race/ethnicity, and geography.[138]

Numerous interconnected components of the federal statistical system[139] rely on Decennial Census demographic data for these purposes. For example, the ACS, considered "the premier source of detailed information about the nation's people and housing,"[140] was implemented in 2005 to replace the long-form Census.[141] Only a sample of the population receives the ACS, rather than every household.[142] As described above, survey samples must be properly weighted to ensure that they are representative of the population as a whole. The Bureau uses housing unit (living quarters) and demographic information (age, sex, race, and ethnicity), benchmarked to the Decennial Census, to weight the ACS.[143] The Preliminary Regulatory Impact Analysis for the proposed regulations itself states that "the ACS sampling weights, and therefore its population estimates, will become less reliable" as a result of the proposed regulations.[144] Other major

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[137] NAT'L. ACAD. OF SCI'S., ENG'G., & MED., MODERNIZING THE U.S. CENSUS: THE ROLE OF THE CENSUS 23-25 (1995). https://doi.org/10.17226/4805 (Decennial Census data are used to "reweight[] household sample surveys to more accurately reflect the distribution of the population (such surveys invariably have higher coverage errors than the census itself), [using] the basic census content on age, race, and sex.").

[138] *Id.*; *Decennial Census Resources*, ASSOC. OF PUB. DATA USERS, https://apdu.org/apdu-in-action/decennial-census-resources/ (last accessed Oct. 19, 2026) ("The census is the only complete count of the population, which makes it the source of the denominators behind public health rates and the demographic data used to weight nearly every federal, state, local, and private survey."); Andrew Mercer, Arnold Lau & Courtney Kennedy, *How Different Weighting Methods Work*, PEW RSCH. CTR. (Jan. 26, 2018), https://www.pewresearch.org/methods/2018/01/26/how-different-weighting-methods-work/.

[139] *See, generally,* FEDERAL DATA FIELD GUIDE, U.C. BERKELEY (2026), https://www.federaldatafieldguide.us/assets/documents/federal-data-field-guide.pdf (Describing the federal statistical system).

[140] *American Community Survey (ACS),* U.S. CENSUS BUR. (May 20, 2026), https://www.census.gov/programs-surveys/acs.html.

[141] HISTORY OF THE AMERICAN COMMUNITY SURVEY, U.S. CENSUS BUR. (2024), https://www2.census.gov/library/publications/2024/acs/history-of-the-acs.pdf.

[142] Stacy Gimbel Vidal et al., *Understanding the 2024 American Community Survey 1-Year Estimates*, U.S. CENSUS BUR. (Sept. 11, 2025), https://www.census.gov/newsroom/blogs/random-samplings/2025/09/acs-1-year-estimates.html.

[143] *Population Controls for the 2023 ACS, User Notes*, U.S. CENSUS BUR. (Sept. 2024), https://www.census.gov/programs-surveys/acs/technical-documentation/user-notes/2024-02.html; AMERICAN COMMUNITY SURVEY AND PUERTO RICO COMMUNITY SURVEY DESIGN AND METHODOLOGY REPORT: 2024 §§ 3, 5, 11, U.S. CENSUS BUR. (2024), https://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/2024/acs_design_methodology_report_2024.pdf.

[144] Docket No. 260903-0005, PRELIMINARY REGULATORY IMPACT ANALYSIS: DECENNIAL CENSUS OF THE POPULATION OF AMERICANS; PROPOSED RESIDENCE CRITERIA AND PROPOSED REGULATIONS FOR DEMOGRAPHIC QUESTIONS at 12 (Sept. 2026), https://www.regulations.gov/document/USBC-2026-0628-0002.

national surveys requiring demographic data originating in or derived from the Decennial Census include:

- The Department of Housing and Urban Development's American Housing Survey (the official source for characteristics of the U.S. housing stock, and homeowners and renters, informing related policies and laws nationwide),[145]
- The Bureau of Labor Statistics' Current Population Survey (the official source of U.S. labor force statistics, including the unemployment rate)[146] and Consumer Expenditure Survey from which the Consumer Price Index is based,[147]
- Centers for Disease Control and Prevention's Behavioral Risk Factor Surveillance System (BRFSS) (the largest continuously conducted health survey in the world tracking health behaviors and conditions at the state level),[148]
- The Bureau's Survey of Income and Program Participation (leading source of data on individual and family economic health and government program participation),[149] and

[145] *Introduction and History of the AHS Survey*, U.S. CENSUS BUR. (Sept. 16, 2025), https://www.census.gov/programs-surveys/ahs/about/ahs-introduction-history.html; U.S. CENSUS BUR., DEP'T OF COMM., & DEP'T OF HOUSING & URBAN DEV., 2023 AHS METROPOLITAN SAMPLE: SAMPLE DESIGN, WEIGHTING, AND ERROR ESTIMATION A2 (Aug. 2024), https://www2.census.gov/programs-surveys/ahs/2023/2023%20AHS%20Metropolitan%20Sample%20Design,%20Weighting,%20and%20Error%20Estimation.pdf ("…household population and housing unit demographic analysis projections derived from the 2020 census.").

[146] *About the Current Population Survey*, U.S. CENSUS BUR. (Feb. 27, 2026), https://www.census.gov/programs-surveys/cps.html; *Current Population Survey: Weighting*, U.S. CENSUS BUR. (Jan. 12, 2022), https://www.census.gov/programs-surveys/cps/technical-documentation/methodology/weighting.html; *See also Guidance on Using Replicate Weights*, U.S. BUR. OF LABOR STAT., https://cps.ipums.org/cps/resources/repwt/Guidance_on_Using_Replicate_Weights_2020-2021.pdf (Describing weights used in the Current Population Survey (CPS) Annual Social and Economic Supplement (ASEC)).

[147] *Consumer Expenditure Survey (CE),* U.S. CENSUS BUR. (June 3, 2025), https://www.census.gov/programs-surveys/ce.html; *The Consumer Expenditure Survey Redesign Initiative*, U.S. BUR. OF LABOR STAT. (April 13, 2016), https://www.bls.gov/opub/mlr/2016/article/the-consumer-expenditure-survey-redesign-initiative.htm.

[148] *About BRFSS,* CTRS. FOR DISEASE CONTROL & PREVENTION (SEPT. 11, 2024), https://www.cdc.gov/brfss/about/index.htm; Behavioral Risk Factor Surveillance System: Weighting BRFSS Data, BRFSS 2025, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/brfss/annual_data/2022/pdf/2022-Weighting-Description-508.pdf. BRFSS weights to estimates of age, race/ethnicity, and sex purchased from Claritas, LLC. Claritas builds on Decennial demographic data to build their postcensal population estimates. *See* CLARITAS, LLC, CLARITAS DEMOGRAPHIC UPDATE 2023 METHODOLOGY 19, 21 (Aug. 2022), https://claritas360.claritas.com/knowledgecenter/help/content/gis/documents/claritas_demographic_update_2023_methodology.pdf.

[149] *Survey of Income and Program Participation (SIPP): About This Survey*, U.S. CENSUS BUR. (April 8, 2025), https://www.census.gov/programs-surveys/sipp/about.html; Memorandum from Anthony G. Tersine, Jr., Chief of the Demographic Statistical Methods Division, to Timothy R. Gilbert, Survey Director, Source and Accuracy Statement for The Survey of Income and Program Participation Calendar Year 2025 Data Collection Public Use Files 9 (S&A-30), June 9, 2026, https://www2.census.gov/programs-surveys/sipp/tech-documentation/source-accuracy-statements/2025/SIPP-2025-SA.pdf.

- The Bureau of Justice Statistics' National Crime Victimization Survey (the only national source for both police-reported and unreported victimization crimes).[150]

In this way, the already few questions asked as part of the Decennial Census are an essential bedrock for our nation's statistical ecosystem.[151] Demographics are a core part of what makes them so useful.

Demographic data are also used by countless non-government organizations to provide crucial information for market purposes.[152] For example, the market research organization Insight Association explained in a public statement regarding this Proposed Rule that demographic data from the Decennial Census are used for advertising, product testing, public opinion polling, among other purposes, and that the proposed changes will undermine trust and reliability of the data for market purposes and increase cost for businesses.[153]

Third, the Bureau underplays the importance of demographic analysis for effective public policymaking.[154] In 2019, President Trump signed the Foundations of Evidence-based Policymaking Act.[155] One of the core tenets of that law was that federal policy should be supported by reliable data.[156] In support of that effort, the Biden Administration sought to improve the quality of data on race and ethnicity,[157] sexual orientation, and gender identity.[158] Yet the second Trump Administration has undertaken an unprecedented initiative to remove federal

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[150] *See National Crime Victimization Survey*, BUR. JUST. STAT. (May 18, 2009), https://bjs.ojp.gov/data-collection/ncvs; *NCVS Sample Design and Redesign,* BUR. JUST. STAT. (Aug. 1, 2022), https://bjs.ojp.gov/ncvs-sample-design.
[151] PRINCIPLES AND PRACTICES FOR A FEDERAL STATISTICAL AGENCY, 7TH ED., NAT'L ACAD. OF SCI'S., ENG'G, & MED. (2021), https://nap.nationalacademies.org/resource/25885/interactive/.
[152] *Can Census Data Drive Business growth and Job Creation?* U.S. CENSUS BUR. (OCT 16, 2019), https://www.census.gov/library/stories/2019/10/can-census-bureau-data-drive-business-growth-job-creation.html.
[153] *Preserve Race & Ethnicity Data in the 20230 Census*, INSIGHT ASSOCIATION, https://www.insightsassociation.org/Portals/INSIGHTS/Docs%20to%20link/1pagers/IA_issue_paper_Race-Ethnicity-on-2030-Census-9-10-26.pdf (last visited Oct. 7, 2026).
[154] The preamble to the Proposed Rule cites Carey v. Klutznick, 653 F.2d 732, 736 (2d Cir. 1981) for the proposition that "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…" 91 Fed. Reg. 57527.
[155] Foundations for Evidence-Based Policymaking Act, Pub. L. No: 115-435 (2019).
[156] *Evidence-Based Decision-Making at the Census Bureau*, U.S. CENSUS BUR. (Feb. 26, 2024), https://www.census.gov/about/what/evidence-act.html.
[157] *See, e.g.,* Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Exec. Order 13985, 86 Fed. Reg. 7009 (Jan. 21, 2021); Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, Off. of Mgmt. & Budg., 89 Fed. Reg. 22182 (March 29, 2024).
[158] Advancing Equality for Lesbian, Gay, Bisexual, Queer, Transgender, and Intersex Individuals, Exec. Order 14075, 87 Fed. Reg. 37189 (June 21, 2022); Federal Evidence Agenda on LGBTQ+ Equity, NAT'L. SCI. & TECH. COUNCIL (Jan. 2023), https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf.

data about race and ethnicity,[159] sexual orientation, and gender identity[160] across all programmatic areas of the federal government. The Bureau's proposed rule must be understood in the context of the widespread deletion of data—without these sources of information, policymakers will not have tools to address the concerns of their constituents, such as disparities in health or housing. Removing the foundational demographic components of the Decennial Census will undermine the entire statistical paradigm of the Evidence Act. Prohibiting the documentation of problems will not make them go away – it will simply make them harder to solve.

E. Household Relationship Data on Same-Sex Couples in Particular Has Directly Informed Public Policy

The example of same-sex household data is illustrative of how demographic information from the Decennial Census can contribute to improved public policy. In the 2020 Decennial Census, there were approximately 1.2 million same-sex couples in the U.S.[161] The complete-count design of these data allows insight into the characteristics of same-sex couples at fine levels of geography, such as the county or municipal level, that no other data source can provide.[162] The Decennial Census alone provides "a broad range of information that can be cross tabulated for small geographic areas (and small subgroups)."[163] The Bureau has directly produced multiple reports examining the characteristics of same-sex couples using Decennial Census data,[164] and countless non-government researchers have relied on these data, including scholars affiliated with the Williams Institute.[165]

Research using same-sex couple data from the Decennial Census has had a measurable effect in public policy through the executive, legislative, and judicial branches. As stated by the Bureau, Census collections include relationship-to-householder questions because "[l]ocal, state,

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[159] Vi D. Le & Melanie Klein, *The Public Health Cost of Eliminating Race and Ethnicity Data*, FED'N AM. SCIENTISTS (Sept. 4, 2026), https://fas.org/publication/public-health-cost-eliminating-race-data/.
[160] LAUREN J.A. BOUTON & ELANA REDFIELD, WILLIAMS INST., REMOVAL OF SEXUAL ORIENTATION AND GENDER IDENTITY FROM FEDERAL DATA COLLECTIONS, (2026), https://williamsinstitute.law.ucla.edu/publications/sogi-data-collection-removal/.
[161] HERMAN & KOPPARAM, *supra* note 2. Using data from the American Community Survey, the U.S. Census Bureau estimated that there are 1.4 million as of 2024. *Number of Same-Sex Couple Households Nearly Doubled From 2005 to 2024*, U.S. CENSUS BUR., (Apr. 1, 2026), https://www.census.gov/library/stories/2026/04/same-sex-couples.html.
[162] HERMAN & KOPPARAM, *supra* note 2.
[163] MODERNIZING THE U.S. CENSUS: THE ROLE OF THE CENSUS, NAT'L. ACAD. OF SCI'S., ENG'G., & MED. 23 (1995). https://doi.org/10.17226/4805.
[164] *Same-Sex Couples*, U.S. CENSUS BUR., https://www.census.gov/topics/families/same-sex-couples.html (last visited Oct. 7, 2026).
[165] See e.g. BRAD SEARS, NATHAN CISNEROS & CHRISTY MALLORY, MARRIED SAME-SEX COUPLES IN THE UNITED STATES ON THE 10TH ANNIVERSARY OF OBERGEFELL V. HODGES, WILLIAMS INST. (June 2025), https://williamsinstitute.law.ucla.edu/publications/married-ss-couples-obergefell-10/; HERMAN & KOPPARAM, *supra* note 2.

tribal, and federal agencies use relationship data to plan and fund government programs that provide funds or services for families, people living or raising children alone, grandparents living with grandchildren, or other households that qualify for additional assistance."[166] Congress has relied on same-sex and interracial couple data from the Decennial Census, such as when it named the "millions of couples" who are in interracial or same-sex marriages as a justification for enacting the Respect for Marriage Act.[167] And so too the Supreme Court: Justice Kennedy cited research on same-sex families as the crucial factor in the Supreme Court's decision recognizing the Constitutional right to same-sex marriage.[168] The quality of information derived from the Decennial Census population data enables government to make accurate and effective policy.

V. The Proposed Regulations Will Introduce Additional Uncertainty, Risk, and Unreliability for the 2030 Census

The Proposed Rule raises several other concerns for the undersigned as social scientists, lawyers, and researchers who rely on high-quality and confidential data collection to understand social conditions in the U.S. These include the proposed change to the residency requirements for who is counted, the proposal to increase cross-referencing of administrative data to make up for the new changes, and the cumulative procedural issues that may undermine progress on the 2030 Census. We offer brief comment on each of those concerns below.

A. Proposed Residency Requirements Will Create Uncertainty About the Size of the U.S. Population

There were 331,449,281 people in the U.S. according to the 2020 Decennial Census.[169] We know this, and have access to demographic characteristics about this population, because of the thoroughness and rigor of the collection of Census data and the strong confidentiality protections that make these data secure to provide. The Bureau now proposes changes that would limit the enumeration of people to U.S. citizens and a limited subset of permanent immigrants.[170]

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[166] *Why We Ask Questions About Family / Relationship to Householder*, U.S. CENSUS BUR., https://www.census.gov/acs/www/about/why-we-ask-each-question/relationship/ (last visited Oct. 7, 2026).
[167] Respect for Marriage Act, *supra* note 56, § 2 ("Findings… (3): Millions of people, including interracial and same-sex couples, have entered into marriages and enjoyed the rights and privileges of marriage. Couples joining in marriage deserve to have the dignity, stability, and ongoing protection that marriage affords to families and children.").
[168] Bloomberg Television, *Retired Justice Kennedy Says His Gay Marriage Ruling 'Surprised' Him*, YOUTUBE (Nov. 28, 2018), https://www.youtube.com/watch?v=v8Ja8JKVYsA; Brief for Gary J. Gates as Amicus Curiae in Support of Petitioners, Obergefell v. Hodges, 576 U.S. 644 (2015), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Amicus-Obergefell-Demographics-SCOTUS-Mar-2015.pdf.
[169] *United States,* U.S. CENSUS BUR., https://data.census.gov/profile/United_States?g=010XX00US (last visited Oct. 7, 2026) (U.S. Population data).
[170] 91 Fed. Reg. 57526.

Most explicitly, this limitation would exclude undocumented people from enumeration.[171] Pew Research Center estimated that at least 14 million people in the U.S. were undocumented in 2023.[172] However, the Proposed Rule would go further, to exclude "…aliens whose legal status is less durable and indefinite in length than lawful permanent resident status."[173] This could potentially apply to any of the estimated 3.6 million lawful temporary visitors in the U.S. and other categories of immigrants.[174] It could also worsen the existing undercount of children, a problem already known to the Bureau,[175] because more than one in four children live with an immigrant parent and one in four of those live with an undocumented immigrant parent.[176]

There are a number of problems with the Bureau's proposal to leave entire sub-populations unenumerated. First, it is possible that such a proposal is unconstitutional, as the Constitution explicitly requires that all "persons" be counted.[177] Additionally, it is likely that the proposed enumeration changes would materially affect apportionment, with one source estimating that Florida, Texas, and Rhode Island could all lose Congressional seats as a result of the 2030 Census based on this change alone.[178] A change with such tremendous social, political and economic ramifications might exceed the powers of the executive branch.[179] However, we leave those matters to other commenters. We write foremost to emphasize that this proposed change would mean that *we would no longer know how many people are residing in the United States*.

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[171] Terry Tang, *Under Trump, Census Eyes Sweeping Plan to Omit Immigrants, Race Data*, ASSOC. PRESS (Sept. 10, 2026), https://apnews.com/article/census-bureau-immigrants-race-ethnicity-0b00c9359fce10a101dbe0c2168ca4af.
[172] Jeffrey S. Passel & Jens Manuel Krogstad, U.S. *Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, PEW RSCH. CTR. (Aug. 21, 2025), https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/; see also HOLLY STRAUT, CONG. RSCH. SERV., CITIZENSHIP AND IMMIGRATION STATUSES OF THE U.S. FOREIGN-BORN POPULATION (Sept. 22, 2026), https://www.congress.gov/crs-product/IF11806.
[173] 91 Fed. Reg. 57526.
[174] HOLLY STRAUT, CONG. RSCH. SERV., CITIZENSHIP AND IMMIGRATION STATUSES OF THE U.S. FOREIGN-BORN POPULATION (Sept. 22, 2026), https://www.congress.gov/crs-product/IF11806.
[175] *See, e.g., Exploring the Undercount of Young Children in the 2020 Census By County,* U.S. CENSUS BUR. (April 11, 2024), https://www.census.gov/library/stories/2024/04/children-undercount.html.
[176] Mark Mather, *Children Are Already Undercounted in the Census. Proposed Changes Could Make It Worse.*, PRB (Sept. 30, 2026), https://www.prb.org/news/children-are-already-undercounted-in-the-census-proposed-changes-could-make-it-worse/; Randy Capps, et al., *Unauthorized Immigrants in the United States: Stable Numbers, Changing Origins*, MIGRATION POL'Y INST. (Dec. 2020), https://www.migrationpolicy.org/sites/default/files/publications/mpi-unauthorized-immigrants-stablenumbers-changingorigins_final.pdf.
[177] *About Congressional Apportionment*, U.S. CENSUS BUR., https://www.census.gov/topics/public-sector/congressional-apportionment/about.html (last visited Oct. 6, 2026); *Facts About the Census*, THE LEADERSHIP CONF. ON CIV. & HUM. RIGHTS, https://civilrights.org/resource/facts-about-the-census/ (last visited Oct. 6, 2026).
[178] Jeff Adelson & Albert Sun, *Trump's Census Proposal Could Cut House Seats From Red States*, N.Y. TIMES (Sept. 18, 2026), https://www.nytimes.com/interactive/2026/09/19/us/trump-census-immigrants-red-states.html.
[179] *See e.g*. KATIE R. BOWERS, CONG. RSCH. SERV., THE MAJOR QUESTIONS DOCTRINE (Nov. 2, 2022), https://www.congress.gov/crs-product/IF12077; *See also* SARAH J. ECKMAN, CONG. RSCH. SERV., APPORTIONMENT AND REDISTRICTING PROCESS FOR THE U.S. HOUSE OF REPRESENTATIVES, (May 20, 2026), https://www.congress.gov/crs-product/R45951.

The ramifications of this are enormous, because we would no longer know with any degree of certainty how many people are using roads and bridges, hospitals, police and fire services, seeking housing, utilizing food banks, or in the workforce. This could also undermine the statistical power of the Decennial Census as a benchmark collection, as described above. However, this is not merely a statistical problem, but also a practical one – affecting health, safety, and well-being, reaching perhaps even as far as national security, because resource allotment across all government functions is so deeply connected with our knowledge of populations. As researchers, this concerns us. The Bureau's proposal to add a "legal status" question to the Decennial Census,[180] which the Bureau estimated in 2019 could cause a 2.2% drop in response rate,[181] also concerns us, for the same reasons. By any means, excluding immigrants from enumeration is likely to undermine our ability to understand and study the complete U.S. population.

B. Proposed Administrative Database Cross-Referencing is Likely to Increase Risk of Disclosure and Misuse of Census Data

The Bureau acknowledges that it 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."[182] One proposed solution is to rely upon the Bureau's "enormously broad access to administrative records" to cross-link information about specific individuals that it retrieves from other federal data sources.[183] The Bureau also proposed to use "administrative records of other agencies" to "fill information gaps" such as demographic information.[184]

The Bureau's proposal raises substantial concerns about confidentiality and misuse of data, and the Proposed Rule does not reference the Bureau's own detailed policies regarding the matter or discuss how they would apply to this proposal.[185] First, the Census Bureau is governed by Title 13's restrictive confidentiality requirements, meaning that Census data is subject to the highest standard of protection against disclosure under the law and may generally only be used for statistical purposes.[186] How do these rules apply when "blending" data from other sources? National experts have documented the potential privacy risks of "blending" of federal data and

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[180] 91 Fed. Reg. 57526.
[181] J. David Brown, et al., *CES Working Paper No. 19-18: Predicting the Effect of Adding a Citizenship Question to the 2020 Census*, U.S. CENSUS BUR., (2019), https://www2.census.gov/ces/wp/2019/CES-WP-19-18.pdf.
[182] 91 Fed. Reg. 57526.
[183] 91 Fed. Reg. 57526.
[184] 91 Fed. Reg. 57526.
[185] *See e.g.* U.S. CENSUS BUR., STATISTICAL QUALITY STANDARDS (2026), https://www2.census.gov/about/policies/quality/quality-standards.pdf#page=46.13.
[186] 13 U.S.C. §§ 9, 214; *Data Collection and Privacy Policy,* U.S. CENSUS BUR., https://www.census.gov/about/policies/privacy.html (last visited Oct. 6, 2026).

have made recommendations to mitigate these risks.[187] However, the Bureau's Proposed Rule does not address the risks or explain whether and how its proposed data linkages would affect the confidentiality of information exchanged with other agencies. For example, will the facilitation of the proposed changes require the Census Bureau to share any confidential personally identifying information with agencies that are not subject to the stringent restrictions of Title 13? Could Census data – typically understood to be used only for statistical purposes-- be used to take adverse actions against individual Decennial Census respondents as a result of cross-linked information regarding immigration status, tax filings, or other data elements?

The proposal also raises substantial concerns about accuracy. Academic researchers[188] and migration policy experts[189] have pointed out concerns with classification errors due to administrative matching methods used by the Bureau. The latter organization, for example, estimates that 30 million people could be subject to mismatch using the Bureau's methods.[190] The Bureau's research has also shown that administrative matching did not necessarily improve enumeration of hard-to-count groups including racial and ethnic minorities, undocumented immigrants, those with limited English proficiency, and LGBTQ people.[191] These limitations undermine the utility of administrative matching. Indeed, one report explains that the 2020 Census used administrative records to enumerate only 4.59% of addresses since it was only needed for non-response households and only feasible where the available administrative data was considered "high-quality" enough.[192] If the Bureau seeks to employ administrative matching, it should provide evidence that it can be done with measurable benefit, without compromising privacy protections, and without introducing an untenable risk of error.

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[187] *See, generally,* , NAT'L. ACAD. OF SCI'S., ENG'G. & MED., TOWARD A 21ST CENTURY NATIONAL DATA INFRASTRUCTURE: MANAGING PRIVACY AND CONFIDENTIALITY RISKS WITH BLENDED DATA (2024), https://www.nationalacademies.org/read/27335.

[188] Beth Jarosz, Daniel Cork & James Hower, *What Are "Residence Criteria" and How Would They Be Used to Change Who "Counts?"* MASSIVE DATA INST., MCCOURT SCH. OF PUB. POL'Y, GEORGETOWN UNIV. (Sept. 2026), https://georgetown.app.box.com/s/phnyytjhgq71nkqvvujpt032i3j6994t.

[189] Randy Capps, Jennifer Van Hook & Julia Gelatt, *Millions of U.S. Citizens Could Be Excluded under Trump Plan to Remove Unauthorized Immigrants from Census Data*, MIGRATION POL'Y INST. (July 2020), 2https://www.migrationpolicy.org/commentary/millions-us-citizens-could-be-excluded-under-trump-plan-remove-unauthorized-immigrants.

[190] *Id.*

[191] NATIONAL ADVISORY COMMITTEE ON RACIAL, ETHNIC, AND OTHER POPULATIONS, FINAL REPORT OF THE ADMINISTRATIVE RECORDS, INTERNET, AND HARD TO COUNT POPULATION WORKING GROUP 7-12, https://www2.census.gov/cac/nac/reports/2016-07-admin_internet-wg-report.pdf (last visited Oct 6, 2026).

[192] MARY H. MULRY, ET AL., U.S. CENSUS BUR., USING ADMINISTRATIVE RECORDS FOR ENUMERATION IN THE 2020 U.S. CENSUS 51 (2025), https://www2.census.gov/library/working-papers/2025/adrm/csrm/RRS2025-02.pdf.

C. Proposed Changes Are Likely to Interrupt 2030 Census Timelines

Implementing the Proposed Rule would require major changes to the Decennial Census at a point long after the contents and methods of the Decennial Census are typically finalized, which is likely to cause substantial delays and increase the risk of errors. For example, the 2030 Census implementation is already well underway.[193] In the timeline hosted by the Census on its own website, substantial changes to Census content and methodology would most likely have taken place during the Design Selection Phase, which was between 2021 and 2024.[194] This allows proper time for testing and operational problem solving before the changes are implemented.[195] According to the Roadmap to the 2030 Census, a tracker maintained by government accountability organization the Leadership Conference, progress on the Decennial Census has already been delayed or disrupted, with substantial departure from planned activities in 2025 and 2026.[196] Changes of the magnitude proposed in the Proposed Rule would likely cause major delays and disruptions, or undermine the quality of the operation if implemented on time.

VI. Conclusion

The Bureau's proposed changes would introduce substantial risk of inaccuracy to the Nation's bedrock instrument of population information. This will almost certainly change apportionment of Congressional seats and put the entire system for allocation of federal funding into question. In no uncertain terms, the changes will have tremendous and likely deleterious effect for all other federal statistical instruments. These changes and their likely enormous economic and political repercussions are not substantiated by the information the Bureau provides in justification. Nor does the Bureau appear to possess the Constitutional power to make them. We urge the Bureau to reconsider each of these proposed changes, and instead, work toward strengthening an already-robust statistical system to ensure that it produces trustworthy, reliable information of maximum usefulness for evidence-based policymaking.

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[193] *2030 Census Research and Testing*, U.S. CENSUS BUR., https://www.census.gov/programs-surveys/decennial-census/decade/2030/planning-management/plan/research-and-testing.html

[194] *2030 Census Timeline*, U.S. CENSUS BUR., (July 27, 2023), https://www.census.gov/library/fact-sheets/2023/dec/2030-census-timeline.html.

[195] *Id.* (Development and Integration Phase).

[196] *Census Operations Tracker: Census Roadmap,* THE LEADERSHIP CONF. EDUC. FUND & CENSUS COUNTS, https://censusroadmap.org/census-operations-tracker/ (last visited Oct. 6, 2026).

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