United States Senate

WASHINGTON, DC 20510

November 2, 2026

Joyce Y. Meyer
Under Secretary of Commerce for Economic Affairs
Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

George M. Cook
Deputy Under Secretary, Performing the Non-Exclusive Functions and Duties of the Director
U.S. Census Bureau
4600 Silver Hill Road
Suitland, MD 20746

Dear Under Secretary Meyer and Deputy Under Secretary Cook,

We write to urge that you rescind your proposed rule that would exclude certain non-citizens from decennial census counts and omit questions about race and ethnicity from the decennial census (Fed. Reg. Vol. 91, No. 57524, Thursday September 10, 2026). The proposed rule violates the clear meaning of the Constitution, which requires that the Census Bureau count the "whole number of persons in each state." The proposed rule would also cause communities across the country to be counted inaccurately, jeopardizing their fair representation in Congress and access to billions of federal dollars for education, health care, and public safety services. The proposed rule would also undermine the enforcement of civil and voting rights laws by eliminating the only appropriate data used for compliance. We request that you rescind this proposed rule to ensure the decennial census complies with the Constitution and allows civil and voting rights laws to be enforced.

I. The Bureau's Proposal to Exclude Certain Non-Citizens from Census Counts Violates the Constitution

The proposal to exclude certain non-citizens, including those who are legal immigrants, from apportionment counts violates the Constitution. The Fourteenth Amendment is clear: the Census Bureau must count the "whole number of persons in each state" in the United States, including non-citizens.[1]

This interpretation of the Constitution has been accepted from the founding of our nation to the present, by our founders, courts, members of Congress, and leaders of the Census Bureau from both parties, including Secretary Howard Lutnick.[2] In 1788, James Madison wrote in Federalist No. 54 that the apportionment was to be "founded on the aggregate number of

[1] U.S. Const. art. I, § 2, cl. 3.

[2] Congressional Research Service, *Constitutionality of Excluding Aliens from the Census for Apportionment and Redistricting Purposes* (R41048) (2012).

inhabitants," recognizing no distinctions among types of persons to be counted except for those explicitly excluded in the text of the Constitution itself.[3] During consideration of the Fourteenth Amendment, Congress debated and expressly rejected proposals to change the "persons" counted for apportionment to "voters" or "citizens."[4] During the first half of the twentieth century, Congress considered and rejected proposals to pass statutes to exclude non-citizens from apportionment counts on the basis that it would take a constitutional amendment to change the requirement.[5] In 1929, the Senate's Legislative Counsel concluded that excluding certain non-citizens from apportionment counts would be unconstitutional.[6] In 1980, a court rejected a lawsuit seeking that the Bureau exclude certain non-citizens from apportionment counts.[7] Even current Secretary of Commerce Lutnick testified to Congress in February that "citizenship is not in the Constitution for the [Census] apportionment... that is not a necessary factor".[8] This unbroken history of our reading of the Constitution, including courts, Congress, and Census Bureau leaders, is clear: the Census Bureau must count *every* person.

II. The Bureau's Proposed Methods to Exclude Certain Non-Citizens Would Cause Undercounts and Errors in Census Counts

The Bureau has proposed two methods for carrying out its unconstitutional exclusion of certain non-citizens: directly asking every person detailed questions about their immigration status and relying on administrative records. Both proposed methods would cause undercounts of both citizens and non-citizens and errors in the population counts.

First, the Bureau proposes asking each person their legal immigration status so that it can exclude certain non-citizens, but such a question would cause both citizens and non-citizens to not answer the census. This would likely lead to undercounts and errors in census counts. The Bureau has never asked detailed questions about legal immigration status on any nationwide survey before, let alone the decennial census, because of concerns about privacy and accuracy.[9] The Bureau's own research before the 2020 Census showed that including even a question about citizenship status on the decennial census, itself a less complicated question than immigration status, would cause fewer citizens and non-citizens to complete the census.[10] In addition, the Government Accountability Office previously found that if statistical agencies directly asked

---

[3] THE FEDERALIST No. 54 (James Madison).

[4] *Cong. Globe*, 39th Cong., 1st Sess. 6,10,141,434 (1866).

[5] *See e.g.,* 86 Cong. Rec. 4372 (1940).

[6] 71 Cong. Rec. 1821 (1929).

[7] *Federation for Am. Imm. Reform v. Klutznick*, 486 F. Supp. 564 (D.D.C. 1980).

[8] Senate Committee on Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies; *A Review of Broadband Deployment Funding at the Department of Commerce* (Hearing) (Feb 10. 2026).

[9] Census Bureau, *200 Years of U.S. Census Taking: Population and Housing Questions, 1790-1990,* (Nov. 1989); Government Accountability Office, *Immigration Statistics: Information Gaps, Quality Issues Limit Utility of Federal Data to Policymakers* (GAO/GGD-98-164) (July. 31, 1998).

[10] Census Bureau, *Citizenship Question Effects on Household Survey Response* (CES-24-31) (Jun. 2024); Baum, et al., *Sensitive Questions, Spillover Effects, and Asking about Citizenship on the US Census,* Journal of Politics Vol. 84, No. 3 (Apr. 2, 2022).

about immigration status, they would create invalid, imprecise, and inaccurate estimates.[11] In 2006, the Government Accountability Office recommended that federal agencies should not pursue adding even indirect immigration questions to surveys, and the Census Bureau concurred with that recommendation.[12]

In addition, the Bureau alternatively proposes relying on administrative records acquired from federal agencies, state and local governments, and private data brokers to exclude certain non-citizens from apportionment counts. This approach would also lead to undercounts and inappropriately exclude citizens and non-citizens from census totals. The Bureau previously found that if it relied solely on administrative records the decennial census would misestimate the total population by over 1.3 million people, overcounting non-citizens and undercounting citizens.[13] It also found that relying on administrative records undercounted people in rural areas and group quarters, such as nursing homes and college campuses.[14] The Treasury Department commented on a draft of this very rule warning that using tax records to identify people's usual address would cause people to be counted in the wrong location.[15] This evidence shows that both of the Bureau's proposed methods to carry out this unconstitutional effort would cause errors and undercounts, denying people fair representation in Congress and jeopardizing the fair and full allocation of resources.

III. The Bureau's Proposal to Omit Demographic Questions Would Undermine Enforcement of Civil and Voting Rights Laws and Degrade the Quality of All Census Data

We also express our strong opposition to the Bureau's proposal to eliminate race and ethnicity questions from the decennial census, because it would harm the ability to enforce civil and voting rights laws and cause the quality of all census data to deteriorate. Only the decennial census provides the reliable demographic data necessary for compliance with civil and voting rights laws.[16] Congress has made clear that decennial census data should be used to enforce these laws, and the Trump Administration even recognized the legal need to collect this data for enforcing civil rights laws when it published its planned questions for the 2020 Census.[17]

---

[11] *Immigration Statistics, supra* note 8.

[12] Government Accountability Office, *Estimating the Undocumented Population: A "Grouped Answers" Approach to Surveying Foreign-Born Respondents* (GAO-06-775) (Sep. 2006).

[13] Census Bureau, *Real-Time 2020 Administrative Record Census Simulation* (May 5, 2023).

[14] *Id.*

[15] *Exclusive: Commerce Overruled Treasury Concerns in Push to Narrow Census Count,* Talking Points Memo (Sep. 17, 2026) (https://talkingpointsmemo.com/news/exclusive-commerce-overruled-treasury-concerns-in-push-to-narrow-census-count).

[16] Census Bureau, *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions* (Preliminary Regulatory Impact Analysis) (Docket No. 260903-0005) (Sep 10. 2026).

[17] Census Bureau, *Questions Planned for the 2020 Census and American Community Survey: Federal Legislative and Program Uses* (Mar. 2018).

For example, Congress enacted the Fair Housing Act, the Civil Rights Act of 1964, and the Public Health Service Act to ensure that individuals are not discriminated against on the basis of race or ethnicity in housing, employment, and health care, respectively.[18] The Supreme Court has held that statistical evidence using census data can be used to demonstrate violations and ensure compliance with these laws.[19] The Bureau admits in its own regulatory filing that no other federal survey that collects information about race and ethnicity, including the American Community Survey (ACS), can substitute for the decennial census, because other surveys like the ACS cannot create precise population estimates for areas smaller than 65,000 people.[20] This means there is no real alternative for all Americans to bring claims under civil rights laws if the Bureau eliminates collecting information about race and ethnicity on the decennial census. Similarly, Congress enacted Section 2 of the Voting Rights Act to prohibit voting practices or procedures that discriminate on the basis of race, including congressional redistricting.[21] While the Supreme Court narrowed the standards to bring a claim under the Voting Rights Act in *Louisiana v. Callais*, the Court maintained that the Voting Rights Act is violated "when the evidence supports a strong inference that the State intentionally drew its districts to afford minority voters less opportunity because of their race."[22] Such evidence requires the availability of decennial census data about race and ethnicity for enforcement, because the Voting Rights Act applies to even small political subdivisions where no other federal data is accurate.[23]

The elimination of data about race and ethnicity would particularly undermine the federal government's ability to meet its responsibilities and obligations to tribal governments. By eliminating the collection of information about American Indian and Alaska Native identity, the Bureau makes it effectively impossible for the government to administer the Indian Housing Block Grant program, the Indian Community Development Block Grant program, and the Indian Health Service – each of which depend on accurate estimates of American Indian and Alaska Native populations to plan and allocate funding.[24] In its own regulatory filing, the Bureau admits that other federal surveys "may not be a suitable substitute for all federally recognized tribes," because other surveys do not provide accurate and precise estimates of American Indian and Alaska Native populations.[25] The Bureau previously told Congress that relying on alternative options to collect information about American Indian and Alaska Native populations, like asking about tribal enrollment or relying on administrative records, would cause inaccurate estimates and infringe on the private sovereign information of tribes.[26]

---

[18] *Civil Rights Act of 1968,* Pub. L. No. 90-284, Title VIII, 82 Stat. 73; *Civil Rights Act of 1964*, Pub. L. No. 88-352; 42 U.S.C. § 201 et seq.

[19] *Hazelwood School Dist. v. United States,* 433 U.S. 299, 307–308 (1977).

[20] *Preliminary Regulatory Impact Analysis, supra* note 16.

[21] *Voting Rights Act of 1965,* Pub. L. No. 89-110.

[22] *Louisiana v. Callais*, 608 U.S. No. 24-109 (Apr. 29, 2026).

[23] *Northwest Austin Municipal Utility District No. 1 v. Holder*, 557 U.S. 193 (2009).

[24] 24 CFR Part 1000; 24 CFR § 1003; 42 CFR Part 136.

[25] *Preliminary Regulatory Impact Analysis, supra* note 16.

[26] Senate Committee on Indian Affairs; *Making Indian Country Count: Native Americans and the 2020 Census* (Feb 14. 2018) (S.Hrg. 115-210).

In its attempt to undermine the data used for the enforcement of civil and voting rights laws, the Bureau will degrade the accuracy of *all other* federal survey data, particularly for small and rural geographic areas. The Bureau writes in its own regulatory filing that the proposed rule "deteriorates the accuracy" of "fertility/mortality rates, cancer rates, poverty rates, unemployment rates, [and] labor force participation" because the Bureau relies on accurate decennial census information to adjust and design other survey estimates.[27] The Bureau also admits in its filing that the proposal would hamper the usability of data for state and local governments who rely on precise and accurate population estimates for small geographic areas.[28] Businesses and local governments that depend on reliable and complete federal data have warned that the Census Bureau's proposal would increase costs as data is degraded.[29]

With these considerations in mind, we urge the Census Bureau to rescind its September 10 proposed regulation.

Sincerely,

Gary C. Peters
United States Senator

Andy Kim
United States Senator

Lisa Murkowski
United States Senator

Charles E. Schumer
United States Senator

Brian Schatz
United States Senator

Tammy Baldwin
United States Senator

[27] *Preliminary Regulatory Impact Analysis, supra* note 16.

[28] *Id.*

[29] Letter from Howard Feinberg, Senior Vice President of the Insights Association to Secretary Lutnick, Department of Commerce (Aug. 25, 2026) (https://www.insightsassociation.org/Portals/INSIGHTS/xBlog/uploads/2026/8/25/IA-SecLutnick-Census-RaceEthnicityQuestion-8-25-26.pdf).

Richard Blumenthal
United States Senator

Catherine Cortez Masto
United States Senator

Tammy Duckworth
United States Senator

John Fetterman
United States Senator

Ruben Gallego
United States Senator

Kirsten Gillibrand
United States Senator

Margaret Wood Hassan
United States Senator

Martin Heinrich
United States Senator

Mazie K. Hirono
United States Senator

Mark Kelly
United States Senator

Angus S. King, Jr.
United States Senator

Jeffrey A. Merkley
United States Senator

Patty Murray
United States Senator

Jack Reed
United States Senator

Jacky Rosen
United States Senator

Elissa Slotkin
United States Senator

Chris Van Hollen
United States Senator

Raphael Warnock
United States Senator

Elizabeth Warren
United States Senator

Ron Wyden
United States Senator