



October 31, 2016

Katherine K. Wallman
Chief Statistician
Office of Management and Budget
1800 G St., 9th Floor
Washington, DC 20503
Race-ethnicity@omb.eop.gov

Submitted via e-mail

Re: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (Document Citation: 81 FR 67398)

Dear Ms. Wallman:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we appreciate this opportunity to provide comments in response to the Office of Management and Budget's Request for Public Comment. The Leadership Conference provides a powerful unified voice for the various constituencies of the coalition: persons of color, women, children, individuals with disabilities, gays and lesbians, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations. We are pleased to offer for the record a report from our sister organization, The Leadership Conference Education Fund, "[Race and Ethnicity in the 2020 Census](#)," which examines the potential implications of proposed revisions to the 2020 census race and ethnicity questions for continued, effective implementation, monitoring, and enforcement of civil rights protections. We also submit for your consideration our specific comments in response to the *Federal Register* Notice of OMB's intent to review ("Notice") the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity ("Standards"). Finally, we share our deep concern about the timeline for engaging the public in the process of reviewing and finalizing any revisions to the Standards.

The Leadership Conference views an accurate and fair census, and the collection of useful, objective data about our nation's people, housing, economy, and communities generally, to be among the most important civil rights issues of our day. We have a long record of first-hand experience working in support of previous censuses. For the 2010 Census, we undertook the most comprehensive and extensive effort by a stakeholder organization to promote participation in historically hard-to-count communities and to mobilize local advocates in support of a fair and accurate census by highlighting the civil rights and social justice implications and community benefits. In addition, The Leadership Conference conducts advocacy on various data-related issues, such as sufficient funding resources for the American Community Survey (ACS).

I. *Race and Ethnicity in the 2020 Census*, A Report by The Leadership Conference Education Fund.

Officers

Chair

Judith L. Lichtman
National Partnership for
Women & Families

Vice Chairs

Jacqueline Pata
National Congress of American Indians
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hilary Shelton
NAACP

Treasurer

Lee A. Saunders
American Federation of State,
County & Municipal Employees

Board of Directors

Barbara Arnwine
Lawyers' Committee for
Civil Rights Under Law
Cornell William Brooks
NAACP
Lily Eskelsen Garcia
National Education Association
Marcia D. Greenberger
National Women's Law Center
Chad Griffin
Human Rights Campaign
Linda D. Hallman
AAUW
Mary Kay Henry
Service Employees International Union
Sherrilyn Ifill
NAACP Legal Defense and
Educational Fund, Inc.
Jo Ann Jenkins
AARP
Michael B. Keegan
People for the American Way
Elisabeth MacNamara
League of Women Voters of the
United States
Marc Morial
National Urban League
Mee Moua
Asian Americans Advancing Justice |
AAJC
Janet Murguía
National Council of La Raza
Debra Ness
National Partnership for
Women & Families
Mary Rose O'Carroll
American-Arab
Anti-Discrimination Committee
Terry O'Neill
National Organization for Women
Priscilla Ouchida
Japanese American Citizens League
Mark Perrillo
American Association of
People with Disabilities
Anthony Romero
American Civil Liberties Union
Shanna Smith
National Fair Housing Alliance
Richard L. Trumka
AFL-CIO
Randi Weingarten
American Federation of Teachers
Dennis Williams
International Union, UAW

Policy and Enforcement

Committee Chair

Michael Lieberman
Anti-Defamation League

President & CEO

Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

The measurement of race, ethnicity, and national origin in the decennial census, the ACS, and other Census Bureau and federal agency surveys and data collection activities is of particular importance to The Leadership Conference and its members. As a threshold matter, we support the collection of detailed data that illuminate the diversity within racial and ethnic groups; these data give public and private sector policymakers the tools necessary to understand and address the disparate needs of all communities.

We have followed closely the 2010 Census Alternative Questionnaire Experiment Program, subsequent analysis and research efforts, and the 2015 National Content Test (NCT). While we applaud OMB for recognizing the need to reexamine the Standards that govern the collection of race/ethnicity data at a time of ongoing demographic change, we also want to be sure that any modifications facilitate the collection and publication of data that are, above all, useful in the implementation, enforcement, and monitoring of this nation's civil rights laws.

The Leadership Conference Education Fund's report, "[Race and Ethnicity in the 2020 Census](#)," describes specific uses of census race and ethnicity data for these purposes in a number of important arenas. The report is the culmination of The Leadership Conference and The Education Fund's year-long project to examine the Census Bureau's research and testing program from the perspective of civil rights stakeholders and to ensure that any revisions to the 2020 census race and ethnicity questions continue to yield data that support the advancement of fairness and equity in all facets of American life.

The report also outlines civil rights stakeholder goals and concerns with respect to the collection and reporting of race and ethnicity data in the next decennial census. It concludes with a set of recommendations for both the Census Bureau and OMB, encompassing suggestions for further research and testing, ways to strengthen the partnerships between these agencies and the civil rights community, and principles to guide final decision-making on this critical aspect of the 2020 census.

II. Recommendations for Revising Selected Components of the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.

The *Federal Register* Notice identifies "four particular areas where further revisions to the standard might improve the quality of race and ethnicity information collected and presented to Federal agencies." These four areas include: (1) use of separate versus combined questions to measure race and ethnicity; (2) the classification of persons of Middle Eastern and North African (MENA) origin; (3) the description of how federal agencies should use minimum reporting categories; and (4) the salience of terminology used to describe the classifications and other language in the standards. At this stage of the review process, "OMB is seeking comments from the public on: (1) The adequacy of the current standard in the areas identified for focused review; (2) specific suggestions for the identified areas that have been offered; and (3) principles that should govern any proposed revisions to the standards in the identified areas."ⁱ The Leadership Conference is pleased to offer the following comments with respect to the issues outlined above.

A. *Question Format & Nonresponse*: A combined question format for collecting race and ethnicity data should be considered only if publicly available analysis of research and testing demonstrates that such an approach would produce data of equal or better quality and accuracy than data collected through a separate question format.

The Notice highlights findings from Census Bureau research starting with the 2010 Census AQE, which suggests that “a combined question design [to measure race and ethnicity] (rather than the current standard of separate questions) yielded a substantially increased use of OMB standard categories among Hispanic or Latino respondents, signaling that a combined question approach may better reflect how Hispanic or Latino respondents view themselves.”ⁱⁱⁱ While the civil rights community is open to supporting a combined question format for collecting race and ethnicity data, OMB should propose such an approach only if publicly available analysis of research and testing demonstrates clearly that a combined question would produce data of equal or better quality for all race groups and ethnicities than data collected through separate questions. We note that under the broader possible revisions to the Standards OMB is considering, Hispanic or Latino respondents would not be the only ethnicity potentially included in a combined question. We also are concerned about the potential loss of race data for persons who identify with both a race and ethnicity, such as Afro-Latinos.

The Census Bureau’s preliminary results from the 2015 NCT suggest that “[t]he combined question format appears to elicit higher quality data on race and ethnicity.”ⁱⁱⁱ We are encouraged by this initial conclusion, but we do not believe it is appropriate to support a significant change in the OMB Standard on the preferred method for collecting race and ethnicity data until we have seen full results from the NCT. The Leadership Conference will be prepared to offer a more definitive view after the Census Bureau releases the complete findings from the 2015 NCT.

If the Census Bureau’s research demonstrates conclusively that a combined race and ethnicity question will yield the highest quality data in the 2020 census, OMB should consider revising the current policy to favor the collection of data using that approach. However, any such change must be accompanied by clear guidelines that ensure: (1) comparability of data over time (bridging); (2) consistent tabulations of data, by federal agencies and federally funded programs, collected through a combined question with respect to both race and ethnicity; and (3) clear protocols and guidance for data users to follow in comparing race and ethnicity data collected through a combined question with data collected earlier in time using separate questions on race and Hispanic origin. Furthermore, and perhaps most significantly, if OMB revises the Standards to favor a combined question approach, it also must clarify the relationship between race and ethnicity, which will be altered considerably and blurred if respondents using a combined question are not required or encouraged to select both a race and ethnicity.

According to the Notice, OMB is particularly concerned that many respondents, especially respondents of Hispanic or Latino origin, do not identify with the current categories for race.^{iv} Civil rights advocates are cautiously optimistic about the possibility of more accurate data on the Latino population from revised 2020 census race and ethnicity question(s), but remain concerned about the possible loss of race data through a combined race and Hispanic origin question, the diminished accuracy of detailed Hispanic subgroup data, and the ability to compare data over time to monitor trends. We recommend that OMB work with the Census Bureau to conduct additional research on the consequences of not assigning a race to respondents who identify as Hispanic or Latino only, or (potentially) MENA only, in a combined question. According to preliminary research presented in October 2016, “[c]ombined Question approaches more easily allow Hispanics to report their Hispanic identity” and “[o]ther categories have similar levels of reporting regardless of question format, consistent with 2010 AQE findings.”^v While this research is illuminating, it is also *preliminary*. OMB and the Census Bureau should continue examining the implications of a combined question format for the maintenance, collection, and presentation of data on race, in particular, especially with respect to persons reporting as Hispanic/Latino and MENA. As always, before proposing revisions to the Standards, OMB and the Census Bureau should discuss these concerns with civil rights stakeholders to ensure compatibility with civil rights laws. Our goal should be

to ensure that a combined question yields the most accurate, detailed data possible for *all* race and ethnic groups and represents an improvement over the currently preferred separate question format.

B. *Middle Eastern or North African category:* OMB should consider revising the Standards to ensure that persons of Middle Eastern or North African origin are classified accurately and appropriately in all federal data collection activities.

The Leadership Conference shares OMB's commitment to gathering fair and accurate data for respondents of Middle Eastern or North African (MENA) origin, and agrees that the current Standards can be improved. In our comments responding to 79 FR 71377 in January 2015, we urged the Census Bureau to test, as soon as practicable, the possibility of adding a new category for persons of Middle Eastern and North African descent in the 2020 Census and American Community Survey. Accurate and clear measurement of the nation's Middle Eastern and North African (MENA) population is of vital importance to the civil rights community. Civil rights advocates consistently cite the lack of detailed data on the Black and MENA populations as a significant weakness of census and other federal data, making it difficult (if not impossible) to assess disparate treatment and access, as well as opportunities, in education, employment and business, for example, for all diverse communities. Detailed data on race and ethnicity (that is, data on subgroups or national origins) are necessary to advance effectively the civil rights of all race and ethnic populations in the United States.

According to the Notice, OMB is concerned that the current definition of "White race" might be overbroad because it includes people with origins in Europe, the Middle East, and North Africa.^{vi} At the same time, we know that many Americans of Middle Eastern or North African (MENA) ancestry do not consider themselves to be "White," as the current Standards contemplate. We know that OMB would like to reach consensus regarding how to better classify respondents of Middle Eastern or North African (MENA) origin, and we are encouraged by the significant progress of research into the feasibility of adding a new category for Americans of MENA origin.^{vii}

The 2015 NCT's preliminary results suggest that "[t]he use of a distinct Middle Eastern or North African category appears to elicit higher quality data for people who would identify with MENA."^{viii} Therefore, we believe it is appropriate for OMB to consider revising the way persons of MENA origin are classified. We urge OMB to work closely with community advocates and experts to develop an acceptable, appropriate definition for any new category. We also believe the complete findings from the 2015 NCT, not scheduled for public release until early 2017, will offer more substantive data on which to base final decisions on the best way to collect high quality information on this growing segment of the population.

However, as this process moves forward, it is incumbent upon OMB, in proposing any revisions to the Standards that establish a new category, to make clear whether MENA origin will be classified as a race or an ethnicity. Furthermore, if OMB determines that MENA will be considered an ethnicity, it must set forth guidance on whether or how persons identifying as MENA will be classified by race, if at all, in future data tabulations and publications. Finally, OMB must provide ample opportunity for meaningful, additional public comment on a proposed definition for any new MENA category.

C. *Intent of Minimum Categories:* OMB should strengthen language in the Standards to ensure that federal agencies collect detailed subgroup data on race and ethnicity whenever possible and that the minimum or principal race and ethnicity categories should be used exclusively only as a last resort.

The Leadership Conference shares OMB's concern that "the minimum reporting categories as described in the current standard are often misinterpreted as the only permissible reporting categories."^{ix} We believe that the Standards should adopt a posture that favors the collection of detailed subgroup data on race and ethnicity and views the minimum reporting categories as a last resort for data collection if the venue does not allow for reasonable opportunity to elicit fine-grained responses.

In the enforcement of civil rights laws, detailed data that users can aggregate to larger categories is far more useful than aggregated data for which greater detail is not available. Less detailed data can mask the true effects of programs and policies in housing, health care, education, and other sectors. For example, accurate, detailed data on the Asian-Pacific American population are essential for studying trends in incarceration rates, poverty, access to health care, and other key indicators, which often show less favorable conditions and outcomes for some subgroups than others. For the 2020 Census, we are encouraged by the possibility that an Internet response option will allow the Census Bureau to solicit more detailed data on race and ethnicity subgroups and to provide more examples of subgroup identification that represent a broader spectrum of diverse national origins and self-identities. We trust that other federal agencies might benefit from the flexibility that electronic data collection modes offer with respect to eliciting more detailed measurement of race and ethnicity. Nevertheless, the digital divide persists for many communities, including many people of color, low-income and rural households, and older Americans, making it necessary for agencies to ensure that traditional data collection instruments and avenues also offer clear directions and adequate space for reporting detailed information on race and ethnic subgroups.

Finally, in considering revisions to the current Standards, OMB should provide as much guidance as possible to agencies to facilitate the collection and publication of detailed subgroup data, including effective, scientifically valid question formats and wording that will elicit accurate subgroup responses. The Standards also should clarify that federal agencies should permit reporting of multiple races, ethnicities, and/or national origins in their data collection activities and should publish those data in a way that does not diminish the diversity of responses.

D. *Terminology:* OMB should submit for public comment an alternative approach to the "Principal Minority Race" designation and requirements for presenting race and ethnicity data, to ensure that publicly available data on race and ethnicity accurately describes the breadth of diversity in the nation's population.

OMB is concerned that the designation of "principal minority race" may no longer be appropriate or accurate, especially considering "certain definitions of 'minority' as including Hispanic (i.e., HR 4238; see <https://www.congress.gov/bill/114th-congress/house-bill/4238>), and the relative prevalence of the Hispanic or Latino population compared with the Black or African American population."^x The Notice also questions the "utility of presenting a category of 'All Other Races,' given the diversity of experience among other race/ethnicity groups."^{xi}

We concur that it is appropriate for OMB to reexamine the current policy that sets forth a "principal minority race" and allows for reporting of data beyond the White and Black or African American race categories in an "All Other Races" category. The current policy does not reflect the diversity of the nation's population and, therefore, results in the publication of data that are not useful for most, if not all, purposes for which the data are used to implement, enforce, and monitor civil rights laws. We look forward to reviewing OMB's proposal for revising this component of the Standards and recommend, as a

threshold matter, that the Standards should require agencies to report data for all primary race and ethnicity categories (if statistically reliable data are available) at a minimum.

III. The Need to Provide Adequate Opportunity for Informed Public Comment on Revisions to the Standards.

The Leadership Conference believes that OMB's schedule for reviewing and finalizing any revisions to the Standards on race and ethnicity is unnecessarily accelerated, unwise, and potentially damaging to the usefulness of and confidence in the data necessary to support the nation's civil rights goals. We therefore urge OMB to issue a second *Federal Register* Notice setting forth proposed revisions to the Standards *only after* the Census Bureau has released complete results and analysis of the 2015 NCT. Furthermore, that Notice should provide for a 120-day comment period, to ensure thoughtful, meaningful engagement with knowledgeable stakeholders. OMB should issue final proposed Standards by or before Fall 2017.

The first *Federal Register* Notice, "Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity," was published on September 30 of this year with only a 30-day comment period. It is our understanding that OMB hopes to have revised Standards finalized by the end of 2016 or early 2017. This expedited timeline is in stark contrast to a similar effort in the 1990s, which began in 1994 and was not completed until 1997. We recognize that the scope of the review is somewhat narrower this time and that much of the research to support potential revisions to the Standards has already been conducted. Nevertheless, the timeline OMB is currently contemplating risks producing hasty and uninformed guidelines on an issue of vital importance. A compressed review schedule also would undermine public confidence in the integrity of the process and objective, informed rationale for any revisions. We explain these concerns in greater detail below.

First, the Census Bureau released preliminary findings from the 2015 National Content Test (NCT) only a few weeks ago. The results of this test will provide empirical data addressing several of the topics open for comment in the Notice published on September 30, yet full results from the 2015 NCT will not be available until January 2017, according to Bureau staff. If OMB continues to follow its currently proposed timeline, public stakeholders will be asked to comment on proposed revisions to the Standards *without even seeing* the full results from the 2015 NCT. While the high level information available from the summary findings is informative, the public should have the benefit of the complete study results before being asked to draw final conclusions about the prudence of seminal changes in federal policy governing race and ethnic classifications and appropriate data collection and presentation methods. Only then will OMB be able to propose final policies that capitalize on a strong, scientific foundation *and* robust public input from experts and stakeholders.

Second, an accelerated, truncated process for inviting and reviewing public comments could jeopardize public confidence in revised Standards. The perception will likely be that OMB and the Census Bureau are not really interested in meaningful feedback from external data users and other stakeholders and have predetermined the outcome.

Third, OMB is issuing its proposed revisions and seeking comments during a lame duck Congress and a presidential transition, both of which span significant holiday periods. That timing does not provide an appropriate opportunity for interested stakeholders to consider the revisions and offer thorough, meaningful feedback.

Finally, it appears that the timeline is being driven by an unrelated deadline, which is the requirement in Title 13, U.S.C., §(f)(1) that the Census Bureau submit to Congress, by April 1, 2017, the topics (*not* actual questions) to be covered in the 2020 Census. We believe the Bureau can meet that obligation without final revisions to the current Standards. We note, for example, that the Bureau is not required to submit the race and ethnicity categories it plans to offer in the 2020 Census; it must indicate only that it will collect data on both race and ethnicity.

Therefore, in order to ensure a truly meaningful and productive comment process, we recommend several changes to the timeline currently being considered by OMB. First, we urge OMB not to issue a second *Federal Register* Notice until the Census Bureau releases the full results from the NCT. This will provide all interested parties – including members of Congress and the public – an adequate opportunity to review the results of the test and use those results to inform their comments and recommendations. Second, we urge OMB to offer a 120-day comment period on proposed revisions to the Standards. On a matter as significant as measuring our nation’s diverse population to ensure constitutional rights and inform public policy, there should be sufficient time for all interested parties to draft and submit well-developed, informed comments. Third, we recommend that OMB issue a third *Federal Register* Notice setting forth proposed final Standards by or before Fall 2017, in order to inform submission of final 2020 Census questions to Congress by April 1, 2018. We believe that this suggested timeline reflects a better balance between the need for timely, final Standards and for thorough review of the vital issues at hand.

We stand ready to work with you to ensure that the voices of the civil and human rights community are heard in this important, ongoing national conversation. If you have any questions about these comments, please contact Corrine Yu, Managing Policy Director, at 202-466-5670 or yu@civilrights.org.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

ⁱ “Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.” *Notice by the Management and Budget Office*. Sept. 30, 2016. <https://www.federalregister.gov/documents/2016/09/30/2016-23672/standards-for-maintaining-collecting-and-presenting-federal-data-on-race-and-ethnicity>.

ⁱⁱ See 81 FR 67400 (“Among [the 2010 Census Race and Hispanic Origin Alternative Questionnaire Experiment’s] most notable findings was that a combined question design (rather than the current standard of separate questions) yielded a substantially increased use of OMB standard categories among Hispanic or Latino respondents, signaling that a combined question approach may better reflect how Hispanic or Latino respondents view themselves”).

ⁱⁱⁱ Jones, Nicholas and Bentley, Michael. “2015 National Content Test Preliminary Results on Race and Ethnicity.” *Presentation for National Advisory Committee on Racial, Ethnic, and Other Populations*. Oct. 3, 2016. Page 24. <http://www2.census.gov/cac/nac/meetings/2016-10/2016-nac-jones.pdf>.

^{iv} See generally 81 FR 67400.

^v Jones, Nicholas and Bentley, Michael. “2015 National Content Test Preliminary Results on Race and Ethnicity.” *Presentation for National Advisory Committee on Racial, Ethnic, and Other Populations*. Oct. 3, 2016. Page 19. <http://www2.census.gov/cac/nac/meetings/2016-10/2016-nac-jones.pdf>.

^{vi} See generally 81 FR 67400.

^{vii} See 81 FR 67400.



^{viii} Jones, Nicholas and Bentley, Michael. “2015 National Content Test Preliminary Results on Race and Ethnicity.” *Presentation for National Advisory Committee on Racial, Ethnic, and Other Populations*. Oct. 3, 2016. Page 29.
<http://www2.census.gov/cac/nac/meetings/2016-10/2016-nac-jones.pdf>.

^{ix} 81 FR 67400.

^x 81 FR 67400.

^{xi} 81 FR 67400.