



March 15, 2019

Sheleen Dumas  
Departmental PRA Lead  
Office of the Chief Information Officer  
14th and Constitution Avenue NW  
Washington, DC 20230

Submitted via email: [2020\\_Census\\_Comments@omb.eop.gov](mailto:2020_Census_Comments@omb.eop.gov)

RE: Proposed Information Collection for the 2020 Census, Comments on the Department of Commerce submission to the Office of Management and Budget for clearance, Docket # OMB-2018-0004

Dear Ms. Dumas:

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, and its Census Task Force co-chairs, Asian Americans Advancing Justice | AAJC and NALEO Educational Fund, we appreciate this opportunity to comment on the Department of Commerce's proposal for collecting information in the 2020 Census, as set forth in the *Federal Register* Notice. The department seeks clearance for its proposal from OMB under the Paperwork Reduction Act (PRA).

The Leadership Conference provides a powerful unified voice for the many constituencies of the coalition: persons of color, women, children, individuals with disabilities, LGBTQ individuals, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations. Our coalition 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. As a coalition representing a broad, diverse set of communities, The Leadership Conference and its members are best positioned to offer a civil rights perspective on whether the proposed 2020 Census operational plan and, more specifically, the proposed questions to be asked in the census, meet the PRA requirements, as well as broader standards governing the quality of federal statistics and the work of federal statistical agencies that OMB is charged with overseeing.

We note the two previous sets of comments<sup>1</sup> we submitted last year, in response to the initial publication of the proposed 2020 Census operational plan. The Leadership Conference and its

---

<sup>1</sup>Comments on Proposed Information Collection on 2020 Census, Docket # USBC-2018- 0005, available at <http://civilrightsdocs.info/pdf/policy/LCCHR-FRN%20comments-2020%20Plan-08%2006%20FINAL.pdf>; Comments on Proposed Information Collection on 2020 Census, Docket #

**Officers**

**Chair**

Judith L. Lichtman  
National Partnership for  
Women & Families  
**Vice Chairs**  
Thomas A. Saenz  
Mexican American Legal  
Defense and Educational Fund  
Hillary Shelton  
NAACP  
**Secretary/Treasurer**  
Lee A. Saunders  
American Federation of State,  
County & Municipal Employees

**Board of Directors**

Helena Berger  
American Association of  
People with Disabilities  
Kimberly Churches  
AAUW  
Kristen Clarke  
Lawyers' Committee for  
Civil Rights Under Law  
Lily Eskelsen Garcia  
National Education Association  
Fatima Goss Graves  
National Women's Law Center  
Chad Griffin  
Human Rights Campaign  
Mary Kay Henry  
Service Employees International Union  
Sherrilyn Ifill  
NAACP Legal Defense and  
Educational Fund, Inc.  
David H. Inoué  
Japanese American Citizens League  
Gary Jones  
International Union, UAW  
Derrick Johnson  
NAACP  
Virginia Kase  
League of Women Voters of the  
United States  
Michael B. Keegan  
People for the American Way  
Samer E. Khalaf  
American-Arab  
Anti-Discrimination Committee  
Marc Morial  
National Urban League  
Janet Murguía  
UnidosUS  
Debra L. Ness  
National Partnership for  
Women & Families  
Rabbi Jonah Pesner  
Religious Action Center  
Of Reform Judaism  
Lisa Rice  
National Fair Housing Alliance  
Anthony Romero  
American Civil Liberties Union  
Ahnwaka Rose  
National Congress of American Indians  
Richard L. Trumka  
AFL-CIO  
Toni Van Pelt  
National Organization for Women  
Randi Weingarten  
American Federation of Teachers  
John C. Yang  
Asian Americans Advancing Justice |  
AAJC

**Policy and Enforcement**

**Committee Chair**

Michael Lieberman  
Anti-Defamation League  
**President & CEO**  
Vanita Gupta

Census Task Force co-chairs also submitted separate comments to OMB last year that addressed other key aspects of the 2020 Census operational plan and highlighted the importance of prioritizing accuracy and reducing the historic, persistent undercount of certain population subgroups, as the Census Bureau finalizes that plan. While the Census Bureau has taken some steps to address the concerns we raised in those comments (such as modifying its Nonresponse Follow-up plan with respect to vacant and nonexistent housing units), we believe the bureau must continue to refine all of its operations to ensure that the hardest-to-reach communities and populations are counted as well as all others.

These additional comments are focused exclusively on the Commerce Department's request for OMB clearance of a 2020 Census questionnaire that includes a citizenship question.

### Summary of Recommendation

After carefully reviewing the Commerce Department's justification for including a citizenship question on the 2020 Census — an explanation meant to address the tens of thousands of public comments submitted in response to the initial Notice setting forth the plan for most major census operations — **we urge OMB to reject the request for clearance of a 2020 Census questionnaire that includes a question on citizenship.**

The justification is based on misleading, irrelevant, and even false statements about the evidence supporting the Commerce Secretary's decision to add a new, untested question to the census. At the same time, it omits objective, relevant information that does not support the decision. As the agency charged with overseeing the objectivity and quality of federal statistics, and with ensuring the integrity of the federal statistical system, OMB must not allow the administration's political goals to color its judgment as an objective reviewer of proposed information collections in relation to the goals and requirements of the PRA. Failure to hold the Commerce Department's request to the same standards governing all other data collection activities would further diminish public confidence in the nation's data infrastructure and the integrity of our federal statistical agencies.

The citizenship question will unnecessarily and, perhaps significantly, increase the cost of the 2020 Census, while collecting data at the census block level for which there is no credible or widely-accepted evidence of utility. It also clearly lacks public support, putting the success and, ultimately, accuracy of the census and usefulness of census data in serious jeopardy.

### Analysis

1. ***Failure to meet the "practical utility" standard and to demonstrate federal agency need:*** *There is no evidence to support the Justice Department's need for block level citizenship data to enforce the Voting Rights Act.*

As The Leadership Conference noted in the public comments it submitted on August 1, 2018, the Census Bureau has set forth guidelines to determine whether it should collect data in the decennial census and ACS

(previously the census “long form”). OMB itself helped develop those guidelines in the post-1990 Census era, when numerous members of Congress expressed concern about the scope of the census long form and the public’s willingness to answer a large number of questions that some people viewed as intrusive. The modern protocols are meant to ensure that the census only collects data “required by federal programs.” More specifically, the census and ACS will include topics because “federal law or regulation specifically mandates their inclusion in the census, the legal system requires that the data be collected, or federal law requires it for program implementation and the census is the only source for the information.”<sup>2</sup>

The Commerce Secretary’s decision to add a citizenship question to the 2020 Census allegedly was based on a December 12, 2017 request<sup>3</sup> from the Department of Justice (DOJ) to the Census Bureau to “reinstate a citizenship question on the decennial census to provide census citizenship voting age population (“CVAP”) data that are not currently available from government survey data (“DOJ request”),” according to the March 26, 2018 memorandum from Secretary of Commerce Wilbur Ross to Under Secretary for Economic Affairs Karen Dunn Kelley.

However, the administrative record in *State of New York, et al. v. U.S. Department of Commerce, et al.* (and related cases in California and Maryland)<sup>4</sup> clearly established that the Justice Department’s request for a citizenship question on the 2020 Census, in order to produce block level citizenship data to help it enforce section 2 of the Voting Rights Act (VRA), was pretext for Secretary Ross’ decision almost a year earlier to add this question to the census, for reasons still not entirely clear or known. Numerous experts in Voting Rights Act compliance and litigation told the Court that neither the DOJ nor VRA litigators representing protected minority communities have ever sought or needed block level citizenship voting age population (CVAP) data to enforce the VRA.<sup>5</sup> Furthermore, and equally important, former Acting Assistant Attorney General for Civil Rights John Gore acknowledged in a deposition in *State of New York* that the Justice Department could adequately enforce the VRA without the block level citizenship data it claimed was essential in its letter to the Census Director.

This indisputable evidence that block level citizenship data are *not* needed by the Justice Department for its stated purpose, or by any other federal agency, removes the most important justification under both the PRA and the Census Bureau’s and OMB’s own guidelines for adding this question to the census. The Commerce Department simply cannot continue to claim that it is adding a new question to meet the statutory data needs of a federal agency that have now been shown not to exist. And OMB cannot accept this rationale without violating its own responsibility to uphold the goals and provisions of the PRA on behalf of the American people.

---

<sup>2</sup> “A Compass for Understanding and Using American Community Survey Data: What Congress Needs to Know,” U.S. Census Bureau, November 2008, pg. 2, available at <https://www.census.gov/content/dam/Census/library/publications/2008/acs/ACSCongressHandbook.pdf>

<sup>3</sup> Letter to Dr. Ron Jarmin, Acting Census Director, U.S. Census Bureau, from Arthur E. Gary, General Counsel, Justice Management Division, Department of Justice, December 12, 2017, available at <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html>

<sup>4</sup> See *California v. Ross and City of San Jose v. Ross* (N.D. Cal.); *Kravitz v. U.S. Dept. of Commerce and LUPE v. Ross* (D. Md).

<sup>5</sup> See, for example, this amicus brief, submitted by more than 150 knowledgeable organizations in *State of New York*, at <http://civilrightsdocs.info/pdf/census/Census-Amicus-Brief-2018-06-18.pdf>.

**2. *The Department of Commerce justification includes misleading, disingenuous, and even false statements, while omitting key information that does not support the department's position.***

Putting aside the department's false narrative about the December 2017 Justice Department request for a citizenship question, its justification continues to rely on misleading and even false arguments, while ignoring key factors that counter the Secretary's pre-determined decision to add the question. Here are a few examples:

- a. The department's statement that Secretary Ross "consulted extensively with the Census Bureau and a broad array of stakeholders" is woefully misleading and belies the history of such consultation. The breadth of the Secretary's "consultation" with stakeholders was minimal and selective compared to historical practices and procedures for considering new or even modified questions on a census. Traditionally, debates over census topics and questions play out over the course of years, not months, and far more transparently than the Secretary's secretive effort to add a citizenship question to the census well before senior Census Bureau officials, not to mention the public, were aware of this process. Previous decisions on census content have been the product of lengthy, open discussion at congressional hearings, advisory committee meetings, briefings and meetings between the Census Bureau and a large number of key stakeholders, and National Academy of Sciences workshops, among other public forums.
- b. In describing factors the Secretary viewed in considering DOJ's "request" for a citizenship question, the department pointed to a Census Bureau estimate that the Nonresponse Follow-up (NRFU) workload could increase by 630,000 households if the question were added. For reasons unknown, the department completely ignores and omits any reference to a *subsequent* analysis by the same Census Bureau research team, suggesting that at least 2 million additional households would require an in-person visit — an estimate that researchers describe as "cautious."<sup>6</sup>
- c. Similarly, the department suggests that the Census Bureau easily could cover any cost increase associated with the lower estimate for increased NRFU workload. Again, this statement ignores the subsequent, more thorough analysis just cited, in which researchers also estimated a much greater potential cost increase associated with the citizenship question: "at least" \$91 million, described as a "lower bound" estimate. The public is entitled to ask why the department continues to hide or ignore information that is less supportive of its decision to add the citizenship question — a pattern that only serves to undermine public confidence in the reasons for the decision and in the census itself. (We address this lack of public confidence in the next section.)
- d. The department counters concerns that the citizenship question is untested by noting that the decision to add the question was made too late to include it in the 2018 End-to-End Census Test (a dress rehearsal of sorts). This statement is flatly disingenuous. We now know from the administrative record that the Secretary had already made his decision to add the question early in 2017, and then spent a year creating a false record of agency need, stakeholder consultation, and thorough Census Bureau review, before announcing his decision on March 26, 2018. Had the Secretary informed the Census Bureau and

---

<sup>6</sup> J. David Brown & Misty L. Heggeness & Suzanne M. Dorinski & Lawrence Warren & Moises Yi, 2018. "Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census," [Working Papers](https://ideas.repec.org/p/cen/wpaper/18-38.html) 18-38, Center for Economic Studies, U.S. Census Bureau, available at <https://ideas.repec.org/p/cen/wpaper/18-38.html>

Congress of his decision to add a new topic to the 2020 Census by April 1, 2017, as the law requires,<sup>7</sup> the Census Bureau undoubtedly would have had sufficient time to include the question in the dry run in Providence County, Rhode Island.

- e. Further, the department asserts that inclusion of a citizenship question on the American Community Survey substitutes for any dedicated testing of such a question as part of 2020 Census planning. This conclusion represents unsound scientific practice of the highest order. A new, controversial citizenship question likely will affect everything from response rates, to load capacity for Census Questionnaire Assistance (telephone assistance), to length and cost of paper forms, to recruitment and training of census takers, to effectiveness of messages and segmentation of target audiences (which were tested without a citizenship question in the mix). The last minute plan for a test this summer to evaluate the effect of a citizenship question on self-response rates comes too late to cure a decision that was made in the absence of any timely information on this one consequential factor, not to mention other factors for which there will be no direct understanding of consequence. Moreover, the department's explanation mysteriously but glaringly fails mention of a letter from six former Census Bureau Directors (January 26, 2018), who advised the Secretary that the environment in which questions are asked is a significant factor in determining the effects of a new question on census operations and the accuracy of census results. "There are sound reasons that the Census Act requires the Bureau to submit to Congress the topics and actual questions it will include, three and two years, respectively, before Census Day. It is highly risky to ask untested questions in the context of the complete 2020 Census design. There is a great deal of evidence that even small changes in survey question order, wording, and instructions can have significant, and often unexpected, consequences for the rate, quality, and truthfulness of response," the directors said.
- f. The justification inexplicably continues to ignore urgent concerns from the Census Bureau's Center for Survey Measurement, which described an "unprecedented" level of "deliberate falsification of the household roster and spontaneous mention of concerns regarding negative attitudes toward immigrants" in 2020 Census pretesting.<sup>8</sup> Because respondents in the pretesting surveys had participated in other bureau surveys and were being paid to participate in the pretests, research staff warned that people asked to participate in the actual census (the "production survey") might have an even greater level of fear and reluctance to respond. The staff recommended scientifically robust research on the significant fears about confidentiality of census responses — driven by respondents' perception of anti-immigrant policies — that field employees documented in pretesting.

Census Bureau research staff conducted subsequent qualitative evaluations of the 2017 multilingual pretesting studies and additional studies done in 2018 (including in-language focus groups).<sup>9</sup> Notably,

---

<sup>7</sup> 13 U.S.C. §141(f)(1)

<sup>8</sup> Memorandum for Associate Director for Research and Methodology prepared by the Center for Survey Measurement on "Respondent Confidentiality Concerns," September 20, 2017.

<sup>9</sup> "Respondent Confidentiality Concerns in Multilingual Pretesting Studies and Possible Effects on Response Rates and Data Quality for the 2020 Census," by Mikelyn Meyers and Patricia Goerman, U.S. Census Bureau, presented at the annual conference of the American Association for Public Opinion Research, Denver, CO, May 2018, available at <https://census.gov/content/dam/Census/newsroom/press-kits/2018/aapor/aapor-presentation-confidentiality.pdf>

the phenomenon of fear census employees encountered occurred *before* public discussion of adding a citizenship question to the census form. Preliminary message testing found that many Spanish speakers appeared to be reassured that the 2020 Census would not ask questions related to immigration status, a finding that now must be considered unreliable. Furthermore, other Spanish-speaking respondents were not swayed by statements that, by law, the Census Bureau could not share their answers with immigration enforcement agencies. And researchers noted that confidentiality concerns “may have a disproportionate impact on an already ‘hard to count’ population: immigrants.”

- g. Last, but certainly not least, the department asserts that the Census Bureau has found “no credible quantitative evidence that the addition of a citizenship question would impact the net undercount of [sic] the 2020 Census.” However, that statement has no basis in fact *and* ignores standard agency practices for adding or modifying survey questions. Standard and historical statistical agency protocols apply the opposite burden of proof, to wit: an agency must demonstrate, to the best of its ability, that a modification to a survey will *not* adversely affect data quality and accuracy. The *absence* of information to counter the Secretary’s proposal to add the citizenship question would not be grounds for validating such a decision in any responsible scientific setting. That untenable burden of proof aside, however, the Census Bureau’s own Chief Scientist and research staff warned the Commerce Department several times that adding a citizenship question would, in fact, result in a lower self-response rate (which, analyses show, often correlates to higher net undercounts), increased costs, and diminished accuracy — which means a higher undercount. Therefore, the department’s statement with respect to the absence of evidence that a citizenship question could affect or increase the undercount in 2020 is simply false.

***3. The Commerce Department’s flawed and misleading justification for the citizenship question will diminish public confidence in the census and census data, which violates well-established principles that guide the work of federal statistical agencies. The decision also violates OMB’s standards and guidelines for statistical surveys.***

The Commerce Department’s justification for including a citizenship question in the 2020 Census failed to consider that the weight of public opinion, as expressed through 99 percent of the tens of thousands of public comments (with hundreds of thousands of signers) submitted in response to the first *Federal Register* Notice in 2018, is strongly opposed to the inclusion of a citizenship question in the 2020 Census. This oversight is glaring and contrary to several well-established standards set forth in the Committee on National Statistics *Principles and Practices for a Federal Statistical Agency* (6th Edition, 2017).<sup>10</sup>

Specifically, Principle 2 calls for statistical agency decisions to be credible to data users, in part by ensuring that an agency’s work is “free from political and other undue external influence.” The judicial and public comment records clearly establish a widespread belief that the decision to add the citizenship question was made for political reasons and not to meet any demonstrated policy or programmatic need for a new dataset on

---

10

[http://sites.nationalacademies.org/DBASSE/CNSTAT/Principles\\_and\\_Practices\\_for\\_a\\_Federal\\_Statistical\\_Agency/index.htm](http://sites.nationalacademies.org/DBASSE/CNSTAT/Principles_and_Practices_for_a_Federal_Statistical_Agency/index.htm)

citizenship. In other words, the Secretary's decision has no credibility.

Similarly, Principle 4 highlights the importance of trust in statistical agencies and programs. According to this principle, the agency collecting data from the public (in this case, the Census Bureau) must have "a widely acknowledged position of independence from political and other undue external influence in developing, producing, and disseminating statistics." Those influences include pressures from outside the agency "that seek to undermine its impartiality, nonpartisanship, and *professional judgment* (emphasis added)." The guidance goes even further to state that an agency "must avoid even the *appearance* that its collection, analysis, or dissemination processes might be manipulated for political or partisan purposes or that individually identifiable data collected under a pledge of confidentiality might be turned over for administrative, regulatory, or law enforcement uses (emphasis added)."

In addition, we again draw your attention to concerns we raised in our previous set of public comments on the proposed citizenship question. At that time, we noted two guidelines, in particular, that clearly suggest the need for dedicated testing before a decision to add new or modified content to the census.

#### **Survey Response Rates**

**Standard 1.3:** Agencies must design the survey to achieve the highest practical rates of response, commensurate with the importance of survey uses, respondent burden, and data collection costs, to ensure that survey results are representative of the target population so that they can be used with confidence to inform decisions. *Nonresponse bias analyses must be conducted when unit or item response rates or other factors suggest the potential for bias to occur (emphasis added).*

#### **Pretesting Survey Systems**

**Standard 1.4:** Agencies must ensure that all components of a survey function as intended when implemented in the full-scale survey and that measurement error is controlled by conducting a pretest of the survey components or by having successfully fielded the survey components on a previous occasion.

The inclusion of a citizenship question on the American Community Survey cannot substitute for the pre-production testing for the decennial census these principles envision, which would require testing of the question in the context of a completely redesigned 2020 Census and the contemporary environment of fear in many communities.

#### **Recommendation**

In summary, in seeking OMB's approval for the proposed 2020 Census questionnaire, the Commerce Department merely repeats assertions the Commerce Secretary made in his March 26, 2018 memorandum announcing his decision to add a citizenship question to the 2020 Census — assertions that have been thoroughly examined and rejected as unsound and in violation of federal law by two federal district court judges to date.<sup>11</sup>

---

<sup>11</sup> See *New York v. United States Dep't of Commerce*, No. 18-cv-2921 (S.D.N.Y. Jan. 15, 2019); *California v. Ross*, No.18-cv-01865 (N.D. Cal. March 6, 2019).

The Office of Management and Budget should not allow a decision to add the citizenship question based on such weak and misleading evidence to stand. The public is entitled to expect that federal agencies base such decisions on clear, factually correct, and unbiased evidence. OMB has a legal obligation to protect the public's interests under the Paperwork Reduction Act, as well as OMB statistical directives and information quality guidelines. **The agency should reject the Commerce Department's request to approve 2020 Census questionnaires that include a citizenship question.** Alternatively, if OMB is not prepared to reject the questionnaires outright, it should require the department to provide a justification that meets the criteria set forth in the Committee on National Statistics *Principles and Practices for a Federal Statistical Agency* (6<sup>th</sup> edition, 2017), OMB's own Statistical Directives and Information Quality Guidelines, and the Census Bureau's Statistical Quality Standards, in order to cure the federal district courts' findings that the Commerce Secretary's decision to add the citizenship question — a decision based on the same arguments set forth in the supporting documents to the department's request for clearance of the 2020 Census operational plan — was “arbitrary and capricious” in violation of the Administrative Procedure Act and was made in “bad faith.”

Thank you for the opportunity to offer final comments on the major elements of the 2020 Census operational plan and, in particular, the questionnaire, and to ensure that the voices of the civil and human rights community continue to be heard in this important ongoing national conversation. If you have any questions about these comments, please contact Corrine Yu, Senior Director, Special Projects, at 202-466-5670 or [yu@civilrights.org](mailto:yu@civilrights.org).

Sincerely,



Vanita Gupta  
President and CEO  
The Leadership Conference on Civil and Human Rights



John C. Yang  
President and Executive Director  
Asian Americans Advancing Justice | AAJC



Arturo Vargas  
Chief Executive Officer  
NALEO Educational Fund