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November 2, 2026

Re: Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (15 CFR Parts 60 and 70; Docket No. 260903-0005; RIN 0607-AA75)

Submitted via regulations.gov [Docket ID USBC-2026-0628]

Secretary Lutnick and Deputy Under Secretary Cook,

Thank you for the opportunity to provide public comment on the proposed regulations outlined in 15 CFR Parts 60 and 70. On behalf of the Education and Work Programs at New America, we write to oppose the Census Bureau's proposed rule changes in the Code of Federal Regulations (CFR) concerning the form for the 2030 Census and future decennial data-gathering efforts. New America is a nonpartisan think tank located in Washington, DC. We have broad expertise in education research and policy, including the use and analysis of data to understand and improve policies and public programs. We work to ensure America's most fundamental systems—education and work, democracy, family well-being, security, and technology—work for everyone.

We are deeply concerned about the proposed decennial census changes in the CFR. Our work, and that of many others, relies on accurate and detailed federal data. These changes imperil the collection of that data. They would make it more difficult for federal programs to adequately and accurately target resources, including education funding, to communities who need them most.

15 C.F.R. § 60 (2026)

We oppose Section 60 in its entirety. These residency rule changes are unconstitutional, will necessarily lead to the under-counting of already hard-to-count populations, reduce the reliability of small-geography population counts, and reduce federal dollars available to

students, families, and communities in a school funding landscape already under extraordinary strain.

§ 60 is Unconstitutional and Excludes Contributing Members of the Body Politic

The residency changes outlined in § 60.2 and § 60.4 are explicitly designed to exclude undocumented people residing in the United States from the decennial census count for apportionment purposes. The new 'lawful permanent resident' standard established by § 60.4 will also necessarily exclude many immigrants with legal status, including refugees, asylum-seekers, Deferred Action for Childhood Arrivals (DACA) recipients, international students, Temporary Protected Status (TPS) recipients, workers with visas, and others.

The 14th Amendment to the Constitution requires apportionment to be based on "the whole number of persons in each State," regardless of legal status. This legal standard has been recently reaffirmed by the Supreme Court of the United States in *Evenwel v. Abbott* (2016) and *Department of Commerce, et al v. New York* (2019). The Supreme Court already forbade President Trump from adding a citizenship question to the decennial census. The proposed rule seeks to achieve the same ends by new means: by establishing a new "lawful permanent residence" standard for being counted, with the explicit intention to exclude undocumented people and those here legally with temporary status from the count for the purpose of apportionment, in direct violation of the Enumeration Clause.

The proposed rule asserts that undocumented persons are not "members of the body politic" for apportionment purposes since the United States is not their "usual place of residence." However, research has shown that 85 percent of undocumented people in the United States have resided here for more than five years and two-thirds have resided in the United States for over a decade.[1] The United States is indeed the "usual place of residence" for the vast majority of people without legal status. Moreover, undocumented people residing in the United States are important and significant contributors to states' and localities' economies and communities. Collectively, undocumented people paid more than $96.7 billion in federal, state and local taxes in 2022.[2]

§ 60 Will Lead to Undercounting of Hard-to-Count Populations and Jeopardize Federal Resource Distribution

[1] Taylor, Paul, Hugo Lopez, Mark, S. Passel, Mark, and Motel, Seth. 2011. "Unauthorized Immigrants: Length of Residency, Patterns of Parenthood." Pew Research Center. https://www.pewresearch.org/race-and-ethnicity/2011/12/01/unauthorized-immigrants-length-of-residency-patterns-of-parenthood/.

[2] Davis, Carl, Guzman, Marco, and Sifra, Emma. 2024. Tax Payments Made by Undocumented Immigrants. Institute on Taxation and Economic Policy. https://itep.org/undocumented-immigrants-taxes-2024/

The exclusion of undocumented residents and residents with green cards, visas, and other lawful status short of citizenship would significantly impair the data utilized for federal grant distribution formulas. This will jeopardize funds for states and localities.The accurate and reliable accounting of the total number of people residing in states and localities is crucial for communities to get resources that match their population size.

The intentional undercount of local residents under the proposed rule would aggravate an existing problem: communities are already at risk for accidental undercounting.[3] The Bureau has noted that Hispanic or Latino families, the vast majority of whom do have legal status in the United States, are already consistently undercounted and that adding a lawful permanent residence standard for the purpose of enumeration will create a chilling effect, particularly for mixed-status households, decreasing census responses within this community writ large.[4]

The undercounting issues presented by § 60 will be exacerbated by another recent Census policy change: the banning of the use of differential privacy,[5] a statistical technique used to protect the privacy of individuals while preserving data quality. This will necessarily reduce the level of population data detail we will be able to obtain for rural and sparsely populated areas.[6] Accurate population counts are particularly important for rural, sparsely populated, and low-wealth school districts, which tend to receive more of their education funding from federal sources.[7]

In the 2020 Census Post-Enumeration Survey, five out of six states that the Bureau found to have been undercounted were Southern states.[8] The South has the lowest per-pupil education

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[3] Stempowski, Deborah. 2023. "Counting Every Voice: Understanding Hard-to-Count and Historically Undercounted Populations." *Random Samplings* (blog), U.S. Census Bureau, November 7, 2023. https://www.census.gov/newsroom/blogs/random-samplings/2023/10/understanding-undercounted-populations.html.

[4] J. David Brown and Misty L. Heggeness, "Citizenship Question Effects on Household Survey Response," CES Working Paper 24-31 (Center for Economic Studies, U.S. Census Bureau, June 2024), https://www2.census.gov/library/working-papers/2024/adrm/ces/CES-WP-24-31.pdf.

[5] DAO 216-26. https://www.commerce.gov/opog/disclosure-avoidance-statistical-products.

[6] Amanda Gold and Yipeng Su. 2019. "Rural Communities Aren't Immune from a Census Undercount. Here's How They Can Prepare for 2020." Urban Institute.https://www.urban.org/urban-wire/rural-communities-arent-immune-census-undercount-heres-how-they-can-prepare-2020

[7] Stadler, Zahava and Abbott, Jordan. 2025. "A District-by-District Accounting of the $6.2 Billion the U.S. Department of Education Has Held Back from Schools." New America.https://www.newamerica.org/insights/a-district-by-district-accounting-of-the-62-billion-the-us-department-of-education-has-held-back-from-schools/

[8] America Counts Staff. 2022. "2020 Census Undercounts in Six States, Overcounts in Eight." U.S. Census Bureau. https://www.census.gov/library/stories/2022/05/2020-census-undercount-overcount-rates-by-state.html

expenditures of any region, and its states draw an especially large percentage of their total education funding from federal dollars.[9] Federal dollars comprised 11.6% of all public education revenue nationally in 2024.[10] By comparison, Arkansas, which had the highest Census undercount of any state, was reliant on the federal government for 14.5 percent of its total revenue. In Mississippi and Tennessee, which were undercounted by 4.11 and 4.78 percent, respectively, federal sources comprised 22.7 and 15.9 percent of education revenue.[11] The proposed rule, by exacerbating undercounting problems for hard-to-count populations and geographies, does a disservice to students in a time of tightening education budgets.

Moreover, the share of Hispanic or Latino populations who are undocumented or reside in mixed-status households[12] in rural areas of the U.S. is increasing; these families are likely to be undercounted under the proposed rules on two fronts. This would have very negative consequences for the public school districts that serve students from these families, or that serve undocumented students—as they are constitutionally obligated to do, per *Plyler v. Doe* (1982). These communities need and deserve the federal resources meant for their students' diverse needs. For instance, our organization has profiled Russellville City School District in Alabama, whose Latino population has grown nearly 30 percentage points between the 2000 and 2020 Census.[13] This small school district has been innovative in leveraging federal dollars to support English Learner students in gaining the skills that they need. If these rule changes go into effect and these families and children are less accurately represented in the Census count, school districts just like Russellville across the country will be underfunded by federal formulas and will have a harder time meeting the needs of children and families.

15 C.F.R. § 70 (2026)

We oppose § 70 in its entirety and support the reinstatement of the race and ethnicity questions from the 2020 decennial census and the implementation of the 2024 OMB Statistical Policy Directive No. 15. We oppose § 70.2 (a), the exclusion of race/ethnicity and sexual orientation questions, as it would significantly damage the federal data collection we rely on to understand and measure inequities in our nation's social systems, and would

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[9] U.S. Census Bureau. 2026. *2024 Annual Survey of School System Finances (F-33)*. Washington, DC: U.S. Census Bureau. Accessed October 14, 2026. https://www.census.gov/programs-surveys/school-finances.html.
[10] Ibid.
[11] Ibid.
[12] Johnson, Kenneth M. 2012. "Rural Demographic Change in the New Century: Slower Growth, Increased Diversity." Durham, NH: Carsey Institute, University of New Hampshire. https://scholars.unh.edu/cgi/viewcontent.cgi?article=1158&context=carsey.
[13] Villegas, Leslie. 2023. "Piecing Together Funding to Support English Learners in Rural Alabama." New America.https://www.newamerica.org/insights/piecing-together-funding-to-support-english-learners-in-rural-alabama/

render civil rights enforcement, particularly for the Voting Rights Act, Fair Housing Act, and Community Reinvestment Act, nearly impossible.

§ 70 Will Not Make Race Matter Less in Policy Outcomes

The United States decennial Census has collected race data since its inception in 1790. The justification provided in § 70 for breaking with this longstanding norm cites *Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.,* 600 U.S. 181, 276-77 (2023) (Thomas, J., concurring), which describes race as a "social construct" based on "ephemeral, socially constructed categories." This does not mean, however, that these socially constructed categories are unimportant. In fact, they have been central to the way government policies have determined inequality of opportunity and outcome, both historically and presently.

Segregation, exclusion, and subsequent race-based inequality of opportunity in the United States has been the result of many policies, including explicitly race-based federal policies.The body of literature on the persistent impacts of Home Owners' Loan Corporation (HOLC) redlining and racially discriminatory mortgage lending—a chief example of policy-driven segregation[14]—on American neighborhoods is extensive.[15] A recent study even found that schools located in communities that were once redlined (graded C or D) by the HOLC had lower present per-pupil spending than those in communities that had been graded more highly, and these schools also experienced worse student outcomes.[16]

Schools and school districts are more racially segregated today than they were thirty years ago,[17] a fact we might not know without census race/ethnicity data. This segregation is not the result of families' undirected decisions about where to enroll their children; research has shown that declining court oversight accounts almost entirely for school re-segregation,

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[14] Rothstein, Richard. 2017. *The Color of Law: A Forgotten History of How Our Government Segregated America*. New York: Liveright Publishing.

[15] See for example, Aaronson, Daniel, Daniel Hartley, and Bhashkar Mazumder. 2021. "The Effects of the 1930s HOLC 'Redlining' Maps." *American Economic Journal: Economic Policy* 13 (4): 355–92. https://doi.org/10.1257/pol.20190414. Swope, Casey B., Diana Hernández, and Lara J. Cushing. 2022. "The Relationship of Historical Redlining with Present-Day Neighborhood Environmental and Health Outcomes: A Scoping Review and Conceptual Model." *Journal of Urban Health* 99 (6): 959–83. https://doi.org/10.1007/s11524-022-00665-z. Hoffman, Jeremy S., Vivek Shandas, and Nicholas Pendleton. 2020. "The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas." *Climate* 8 (1): 12. https://doi.org/10.3390/cli8010012.

[16] Cleveland, C., and D. Lukes. 2026. "The Lingering Legacy of Redlining on School Funding, Diversity, and Performance." *Educational Evaluation and Policy Analysis*. Published online ahead of print. https://doi.org/10.3102/01623737261477103.

[17] Spector, Carrie. 2024. "70 Years after *Brown v. Board of Education*, New Research Shows Rise in School Segregation." Stanford Graduate School of Education, May 6, 2024. https://ed.stanford.edu/news/70-years-after-brown-v-board-education-new-research-shows-rise-school-segregation.

making this a governmental choice, not a collection of individual ones.[18] Persistent racial segregation in our nation's schools, the racial wealth gap, and inequitable property valuation across the country and school districts mean that districts composed primarily of students of color were found in 2016 to receive $23 billion dollars less in school funding than primarily white school districts.[19] Our work at New America relies on accurate race and ethnicity data to understand the full picture of continued racial segregation in the United States and how it contributes to unequal educational opportunities, even between neighboring communities. The erasure of these data in future decennial censuses mandated by § 70.2 (a) would severely hamper our ability to study these disparities and recommend targeted policy remedies.

§ 70 Will Not Enhance Confidentiality and Response Rates, Leading to Undercounting

We also oppose § 70.2 (c), which removes the obligation for long-form decennial census responders to answer key demographic questions (race/ethnicity included), which has been justified in the proposed rule under the guise of confidentiality. Allowing voluntary responses will likely lead to the same kinds of undercounting issues impacting federal resource distribution we've raised in our concerns and opposition to § 60. To support the Census Bureau's privacy obligations, we support the Census Bureau utilizing differential privacy methodology pioneered in the 2020 decennial census. The lawsuits cited by the proposed § 60 regulations concerning this methodology have all been dismissed.

Several racial and ethnic groups are already persistently undercounted in the decennial census. They are therefore already likely underrepresented in apportionment counts, jeopardizing both their fair democratic representation and their lawfully required receipt of federal resources. If past and present racial inequities are to be rectified, we must be able to see them in data and address them in policy. The rule changes proposed in § 70, while ostensibly race-neutral, would have a disproportionately negative impact on those who, by virtue of their race, have had less access to economic opportunity, high-quality public education, and democratic representation.

Accurate Census Demographic and Enumeration Data are Crucial to Education Funding Equity

New America's Education and Work Programs, like many institutions focused on educational quality, equity, and effectiveness, rely on having accurate population counts and accurate

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[18] Ibid.
[19] Meckler, Laura. "Report Finds $23 Billion Racial Funding Gap for Schools." *Washington Post*, February 25, 2019. https://www.washingtonpost.com/local/education/report-finds-23-billion-racial-funding-gap-for-schools/2019/02/25/d562b704-3915-11e9-a06c-3ec8ed509d15_story.html.

racial demographic data to conduct accurate analyses on how education resources are distributed. Without reliable data, we will be less able to understand the patterns of modern-day economic and racial segregation that lead to educational inequality.

Over $32 billion in federal education funding flows directly to school districts every year,[20] a total that requires accurate Census data to be fairly distributed according to law. Though our primary work is in education, inaccurate enumeration could also jeopardize communities' receipt of their fair share of the $1.8 trillion in federal funds distributed for healthcare, food assistance, transportation, planning infrastructure, and community development funds every year.[21] All of these funding streams together help communities have the resources they need, deserve, and pay for as taxpayers.

Signed,

The Education and Work Programs at New America

[20] Villa Ross, Ceci. 2023. *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021.* https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf.
[21] Ibid.