

Re: Docket No. 260903-0005 (Regulations.gov ID USBC-2026-0628); RIN 0607-AA75; Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57524 (September 10, 2026)

I. Interest of Kindred Futures and Summary of Recommendations

Kindred Futures is a nonprofit organization based in Atlanta, Georgia, that invests in Black Wealth Solution Providers in the South, redefining wealth so that Black people have the opportunity to contribute to and accelerate a just and inclusive economy. Our policy and research work depends on decennial census data to measure wealth, displacement, and economic conditions in communities across the South. We write to oppose the proposed residence criteria (15 CFR part 60) and the proposed restrictions on demographic questions (15 CFR part 70). The proposed changes, if adopted, would be a significant departure from previous decennial collections. These changes could impact how populations are counted, shift electoral representation, reorganize federal, state, and local funding formulas, and eliminate the only complete, publicly available count of the population by race and ethnicity.

Kindred Futures recommends that the Bureau:

1. Withdraw proposed § 60.2 and retain the 2020 standard that counts each person where they live and sleep most of the time as of Census Day, without a tax-records test or a one-hour-per-day threshold.
2. Withdraw proposed § 60.4 and count every person residing in each state regardless of immigration status, consistent with Section 2 of the Fourteenth Amendment.
3. Withdraw proposed § 70.2(a) and retain the race and ethnicity questions on the 2030 Census questionnaire.
4. Before issuing any final rule, publish a regulatory impact analysis that estimates, by state and by race and ethnicity, the undercount, apportionment, and federal funding effects of each provision, as Executive Order 12866 and OMB Circular A-4 require.

II. The Proposal Would Deepen an Undercount That Is Already Concentrated in the South

Kindred Futures submits this comment from the region that stands to lose the most under the proposal. The South is home to more than half (56 percent) of the nation's Black population.¹ In the 2020 Census, the Bureau's own Post-Enumeration Survey found a statistically significant net undercount of the Black population of 3.30 percent nationally. Five of the six states with statistically significant net undercounts were Southern: Arkansas (5.04 percent), Tennessee (4.78 percent), Mississippi (4.11 percent), and Florida (3.48 percent).² In fiscal year 2021, 353 federal programs distributed \$2.8 trillion using census-derived data; Georgia alone received \$23.8 billion in fiscal year 2016 through 55 census-guided programs,

¹ Pew Research Center, "Facts About the U.S. Black Population" (2024) (reporting that 56 percent of the Black population lives in the South).

² U.S. Census Bureau, "U.S. Census Bureau Releases 2020 Undercount and Overcount Rates by State and the District of Columbia" (May 19, 2022).

including \$6.9 billion in Medicaid and \$2.7 billion in SNAP.³ The proposal would deepen the undercount and disinvestment where it is already most severe.

III. Proposed Part 60: Residence Criteria

The Census Bureau (Bureau) grounds the rationale for its proposed changes in the original intent of the 1790 decennial census. It argues that these new recommendations nullify decisions made during the 1970 and 2020 enumerations and return us to the purpose of the 1790 Census, which was administered at a time when slavery was legal, enslaved people were counted as three-fifths of a person, and White land-owning men were the only citizens eligible to vote. The Bureau notes that the original census was commissioned for the sole purpose of apportioning seats to the House of Representatives according to the number of “qualifying persons” in each state. It argues that the criteria used to identify people as “qualified persons,” and thus counting them as part of the electorate, have departed significantly from its original intent. This reasoning omits the operative constitutional text. Section 2 of the Fourteenth Amendment replaced the 1790 formula with a direction to count “the whole number of persons in each State,” and the Bureau’s preamble does not reconcile its proposal with that language.⁴

Nor are the proposed residence criteria a return to 1790. The First Census Act defined residence by a person’s “usual place of abode.”⁵ It did not define residence by tax records, by a thirteen-week enumeration period running from January 3 to April 1, or by a rule that credits a day of residence to anyone physically present for one hour.⁶ This new recommendation would make it difficult for military personnel, students who spend significant time abroad, and transient citizens to establish a “usual residency” during that timeframe.

IV. Proposed Part 70: Demographic Questions

The Bureau cites the original census and recent Supreme Court rulings on admissions and voting as its rationale for removing demographic questions on race, ethnicity, and sexual orientation from the 2030 decennial Census. It asserts that respondents could be wrongfully emotionally disturbed by being forced to answer race, gender identity, and sexual orientation-based questions. They also cite data-privacy concerns in a loosely held argument that omitting these questions could reduce the likelihood that a respondent’s personal information would be exposed in a data leak.

None of these claims is quantified in the notice. The Bureau offers no estimate of the response-rate effect of a race question that has appeared on every census since 1790, and it concedes the gap by asking commenters to supply the “respondent burden reduction estimates” that the Bureau itself has not

³ Andrew Reamer, *Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds*, George Washington Institute of Public Policy (reporting that 353 federal programs distributed \$2.8 trillion in fiscal year 2021 using census-derived data, and that Georgia received \$23.8 billion in fiscal year 2016 through 55 census-guided programs).

⁴ U.S. Const. amend. XIV, § 2 (“counting the whole number of persons in each State, excluding Indians not taxed”); see also *Evenwel v. Abbott*, 578 U.S. 54 (2016).

⁵ Act of Mar. 1, 1790, ch. 2, § 5, 1 Stat. 101, 103.

⁶ 91 Fed. Reg. at 57524 (proposed 15 CFR 60.2) (residence must be “consistent with, and evidenced by, their tax records”; a person “is considered to have spent a day at a residence if he or she spent at least one hour physically and lawfully present there that day”).

produced.⁷ The disclosure-avoidance argument is also misdirected. The uncertainty the Bureau introduced into sub-state counts in 2020 was a methodological choice about how to publish data, not a necessary consequence of collecting them; the 1990, 2000, and 2010 censuses published block-level race data using disclosure methods that did not alter population counts. We disagree with the Bureau's notion of a post-racial society in which race no longer shapes economic outcomes, and we are strongly opposed to the Bureau's claims of emotional harm and data privacy as legitimate reasons to remove these items from the decennial Census.

The Bureau's recommendations could cause significant harm by restructuring how funding is allocated at all levels of government. First, restricting "qualified persons" to those with established residency during an arbitrarily chosen period between January 3rd and April 1st could reduce the number of "counted citizens" in hundreds of towns and cities that experience significant population shifts throughout the year. Because federal funding formulas are partially contingent on population counts, towns or cities with major educational institutions, or towns reliant on transient tourism during the Winter and Summer months or agricultural labor, would lose out on potential funding sources for their residents. Second, the tax-records test would disproportionately affect people who do not file. Households with incomes below the filing threshold, children claimed as dependents, and renters who moved during the enumeration period would have no record, and the 2020 Census already undercounted children under age five by 2.79 percent.⁸ Further, many families across the South, due to rising housing costs and infrequent employment, are more prone to being transient, making it difficult to establish a "usual residency." The Bureau should account for these experiences before recommending these policies.

The proposed changes could restructure how, and which persons count as "qualified residents" for eventual political apportionment and redistricting. For example, would a resident living in Arizona, attending an institution of higher education in Georgia, and spending the enumeration period in Florida between January 3rd and April 1st count as a Florida resident? The notice does not answer this question. The New York Times noted in a recent article that the proposed changes to the 2030 decennial Census could see states like Texas and Florida lose a Congressional seat.⁹ Complicating population counts by removing demographic questions would deepen the generational impact of systemic racism by diluting the franchise of millions of Black voters, which would lead to significant changes in patterns of future political representation. States draw districts from the block-level race tabulations the Bureau delivers under Public Law 94-171, and Section 2 of the Voting Rights Act cannot be enforced without them; the Alabama redistricting litigation the Bureau itself cites was litigated on decennial race data, and although *Louisiana v. Callais* significantly narrowed Section 2, it did not reduce the need for those data.¹⁰ Without these data, intentional discrimination in districting would become unprovable rather than absent, and no state would be able to demonstrate that race did not predominate in its own map.

⁷ 91 Fed. Reg. at 57524 ("The Census Bureau is seeking public comment on respondent burden reduction estimates resulting from this proposal.").

⁸ U.S. Census Bureau, *supra* note 3.

Jeff Anderson and Albert Sun. Trump's Census Proposal Could Cut House Seats From Red States, "The New York Times (September 19 .2026) https://www.nytimes.com/interactive/2026/09/19/us/trump-census-immigrants-red-states.html?eafs_enabled=false

¹⁰ Pub. L. 94-171, 89 Stat. 1023 (1975), codified at 13 U.S.C. 141(c); 52 U.S.C. 10301 (Section 2 of the Voting Rights Act).

V. The Bureau Has Not Met Its Obligations Under Executive Order 12866

Finally, the Bureau has not met its own analytical obligations. The notice certifies that the rule is not economically significant under Executive Order 12866, that it would not have a significant economic impact on small entities, and that it does not have federalism implications because it would not have substantial direct effects on the states.¹¹ A rule that changes which residents are counted, where they are counted, and whether they are counted by race will reallocate congressional seats and \$2.8 trillion in annual federal spending among the states. The notice contains no estimate of these effects, no distributional analysis by race, income, or region, and no comparison against the alternative of retaining the 2020 criteria, each of which the Office of Management and Budget's Circular A-4 requires. An agency that fails to consider an important aspect of the problem before it, or that reaches conclusions contradicted by the record, acts arbitrarily and capriciously under the Administrative Procedure Act. The Bureau's own Post-Enumeration Survey results prove this record.

VI. Conclusion

Kindred Futures and its many like-minded partners across the South oppose the proposed changes to the decennial Census. We ask the Bureau to withdraw proposed §§ 60.2, 60.4, and 70.2(a), to retain the 2020 Residence Criteria and the race and ethnicity questions, and to publish a complete regulatory impact analysis before taking any further action. The communities we serve cannot return to a status quo in which they are undercounted, and they cannot accept a rule that would make the undercount permanent and unmeasurable. We submit this letter in solidarity with all who oppose governmental infringement on residents' inalienable rights.

¹¹ 91 Fed. Reg. at 57524 (determinations under Executive Order 12866, the Regulatory Flexibility Act, and Executive Order 13132); Office of Management and Budget, Circular A-4 (2023).