November 2, 2026

Submitted via *www.regulations.gov*

Daniel Sweeney
Deputy General Counsel for Economic, Statistical, and Regulatory Affairs
Office of the General Counsel, Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: State Legislators' Comment on Notice of Proposed Rulemaking on Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (RIN 0607-AA75, Docket No. 260903-0005)

Dear Mr. Sweeney:

We, the undersigned state legislators from across the country, write to express our strong opposition to the proposed rule published by the Department of Commerce and the Census Bureau on September 10, 2026 (the "Proposed Rule").[1] As a matter of gender, racial, and economic justice, an accurate Census is essential: women, low-income families, and historically marginalized communities rely on fair representation and critical public programs funded by Census-driven data. As officials responsible for drawing legislative and congressional districts, writing state budgets, and administering the programs our residents depend on, we see every day how Census data shape our work. By redefining "usual residence" to exclude most noncitizens from the count and barring the Census from asking about race or ethnicity,[2] the Proposed Rule would make the Census less accurate, undermine our ability to draw fair maps and balance our budgets, and override state authority. We urge the Department to withdraw the Proposed Rule in full.

I. The Proposed Rule would undermine states' authority to draw our own districts.
Redistricting is among the most consequential constitutional duties our state legislatures perform, and total population counts delivered under Public Law 94-171 from the Census are its foundation.[3] The U.S. Constitution mandates that House seats are apportioned according to "the whole number of persons in each State,"[4] and state legislatures possess inherent constitutional

[1] Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57524 (proposed Sept. 10, 2026) (to be codified at 15 C.F.R. pts. 60 & 70), Docket No. USBC-2026-0628, RIN 0607-AA75, https://www.federalregister.gov/d/2026-18481.
[2] Proposed Rule at 57524.
[3] 13 U.S.C. § 141(c); Pub. L. No. 94-171, 89 Stat. 1023 (1975).
[4] U.S. Const. amend. XIV, § 2.

authority to select the population baselines for their own representative governments.[5] This is a practice the Supreme Court has noted states have followed "for decades, even centuries."[6]

The Proposed Rule directly threatens state redistricting by removing excluded residents from primary Census files while offering no guarantee that states will receive usable supplemental data. Instead of committing to publish complete statistics in the official P.L. 94-171 redistricting data files, the Proposed Rule says only that the Bureau "expects" to publish uncounted residents in separate secondary population publications.[7] Furthermore, the Proposed Rule would make the count itself impossible for states to verify. It replaces a transparent, self-reported count with an algorithm that links records across multiple state agencies and commercial data vendors[8]—and it offers no standard for resolving conflicts between those records, saying only that their use "will necessarily be situation dependent."[9]

By unilaterally altering how individuals are counted and categorized without explicit statutory authorization from Congress or prior consultation with state officials, the Proposed Rule raises fundamental federalism concerns under the Tenth Amendment.[10] Federal administrative agencies should not dictate or restrict the dataset choices sovereign states rely upon to govern.

How states choose to apportion their state legislatures is firmly a decision for the states themselves. Yet the Department asserts that the Proposed Rule has "no federalism implications,"[11] and it has allowed only 53 days for comment, contrasting sharply with the multi-year public engagement and consultation with states[12] conducted for prior Census changes.[13] Independent demographic models demonstrate that the proposed methodology shifts would trigger arbitrary shifts in congressional representation and federal resources allocations across both urban and rural states, regardless of political alignment.[14] States cannot plan for representation that turns on which federal records happen to match.

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[5] *See* U.S. Const. art. I, § 4, cl. 1; *Oregon v. Mitchell*, 400 U.S. 112, 124–25 (1970) (affirming state prerogative in establishing voter qualification and legislative districting structure).
[6] *Evenwel v. Abbott*, 578 U.S. 54, 73–75 (2016).
[7] Proposed Rule at 57528 & n.5
[8] Proposed Rule at 57526 & n.6 (noting which agencies would be involved with administrative data matching).
[9] Proposed Rule at 57526 & n.6, 57528 n.7.
[10] U.S. Const. amend. X. *See also Bond v. United States*, 564 U.S. 211, 221 (2011) (holding federalism protects the executive and legislative integrity of states from administrative overreach).
[11] Proposed Rule at 57528.
[12] U.S. Census Bureau, *State Data Center Program Guidelines* 1–5 (2014) https://www2.census.gov/about/partners/sdc/resources/guidelines.pdf (detailing the formal, permanent cooperative partnership structure established in 1978 between the Census Bureau and state governments for operational support and data consultation).
[13] *Compare* Proposed 2020 Census Residence Rule and Residence Situations, 81 Fed. Reg. 42577 (June 30, 2016), *with* Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525 (Feb. 8, 2018).
[14] Jeff Adelson and Albert Sun, *Trump's Census Proposal Could Cut House Seats From Red States*, NY Times, (Sept. 18, 2026) https://www.nytimes.com/interactive/2026/09/19/us/trump-census-immigrants-red-states.html?unlocked_article_code=1.CVE.DWxY.b32N91NAwabY&smid=url-share.

II. The Proposed Rule would destabilize state budgets and the programs we administer for a decade or longer.

As state lawmakers, we know firsthand that building a balanced budget depends on predictable federal funding—and that funding relies entirely on accurate Census counts. In fiscal year 2021, over 353 federal programs used Census data to distribute more than $2.8 trillion, including Medicaid, Title I, Head Start, and Community Development Block Grants.[15] These formulas are based on population share. When a state's count shrinks, so does its share—regardless of the actual cost of serving the people who live there.

Because nearly all states operate under constitutional balanced-budget requirements,[16] incomplete population baselines force state revenues to bridge deficits for mandatory public services. For example, Federal Medical Assistance Percentage reimbursements for Medicaid rely on state per capita income, calculated using Census population data as the denominator, relative to the national average. This calculation produces a wide range in the federal share of Medicaid spending across states, from 50 percent in wealthier states to as much as 83 percent in poorer ones.[17] If our population is undercounted, our per capita income looks artificially high, and our states lose federal reimbursement to which they are entitled.

We have seen this happen to devastating effect. The 2020 Census missed an estimated 548,000 Texans, a net undercount of 1.92 percent; demographers estimate that error will cost Texas $19.18 billion in federal funds over the decade,[18] forcing state taxpayers to make up the difference for essential public services. Every federal dollar lost is a dollar our legislatures must replace with state revenue or cut from services that our constituents depend upon.

The Proposed Rule's requirement that each person's residence be "evidenced by" tax records and assigned based on where a person spent the most days between January 3 and April 1

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[15] U.S. Census Bureau, *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021* (2023), https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf.

[16] Nat'l Conference of State Legislatures, *State Balanced Budget Requirements* (2020), https://docs.house.gov/meetings/JU/JU00/20170727/106327/HHRG-115-JU00-20170727-SD002.pdf (noting that 49 states operate under strict constitutional or statutory balanced-budget requirements).

[17] Cong. Rsch. Serv., R43847, *Medicaid's Federal Medical Assistance Percentage (FMAP)*, https://fas.org/sgp/crs/misc/R43847.pdf; Federal Matching Shares for Medicaid, CHIP, and Aid to Needy Aged, Blind, or Disabled Persons, Fed. Reg. (Nov. 21, 2017), https://www.federalregister.gov/documents/2017/11/21/2017-24953/; EconoFact, *Why Does the Census Matter for State and Local Governments?*, https://econofact.org/why-does-the-census-matter-for-state-and-local-governments-updated.

[18] U.S. Census Bureau, *2020 Census Undercounts in Six States, Overcounts in Eight* (May 19, 2022), https://www.census.gov/library/stories/2022/05/2020-census-undercount-overcount-rates-by-state.html; Lesley Henton, *Texas Will Lose over $19 Billion in Federal Funding and 1 U.S. House Seat Due to Census Undercount*, Texas A&M Stories, (May 31, 2022), https://stories.tamu.edu/news/2022/05/31/texas-will-lose-over-19-billion-in-federal-funding-and-1-us-house-seat-due-to-census-undercount/.

exacerbates undercounts.[19] That approach threatens to severely undercount residents across all of our districts who do not file tax returns—an estimated 30 million Americans overall,[20] including low-income families, seniors relying solely on Social Security, and dependents—and would compound existing undercounts, such as the 2.79 percent of children under five the 2020 Census already missed.[21]

This reliance on tax records poses distinct hazards for our rural communities, agricultural producers, and lower-income households who have less digital access and less frequently file taxes.[22] Record matching failures in rural or low-density jurisdictions would directly reduce federal support for local infrastructure, rural hospital operations, emergency services, and county road maintenance.[23] The proposed changes would also count retirees who winter in other states, seasonal and agricultural workers, and families who split time between homes as living in other states, shifting population and funding between states in ways no legislature can anticipate.

The Department has not grappled with any of this. In its own *Preliminary Regulatory Impact Analysis,* the agency acknowledges that Census data guide "trillions of dollars in federal funding" and concedes the Proposed Rule would make the Census less accurate—yet it "does not attempt to quantify benefits and costs," and the Department classified the rule as "not economically significant" despite the enormous impact on state economies and budgets.[24] Errors introduced in 2030 cannot be corrected by a later survey; our states would be forced to budget around them until at least 2040.

III. The Proposed Rule would strip away data we rely on to draw lawful maps and make sound policy.

As state lawmakers, we depend on self-reported race and ethnicity data to comply with the Voting Rights Act (VRA) when we draw districts, to direct public-health and other state

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[19] Proposed Rule at 57529.

[20] U.S. Dep't of the Treasury, Internal Revenue Serv., *The Individual Income Tax and Self-Employment Tax Nonfiling Gap Estimates for Tax Years 2014–2016*, IRS Pub. 5785 (Nov. 2023), https://www.irs.gov/pub/irs-pdf/p5785.pdf (estimating roughly 30–50 million potential individual tax non-filers across the U.S. population, including low-income households and non-taxable units).

[21] U.S. Census Bureau, *Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census* (Mar. 10, 2022), https://www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html.

[22] USDA Econ. Rsch. Serv., *Rural America at a Glance* (2023), https://doi.org/10.32747/2023.8134362.ers (highlighting lower administrative database link rates and connectivity challenges in non-metro communities).

[23] U.S. Census Bureau, *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021*, at 15–22 (2023), https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf (listing statutory population allocation formulas for Highway Planning and Construction, Formula Grants for Rural Areas, Rural Health Care Outreach, and USDA Community Facilities Direct Loans and Grants).

[24] U.S. Census Bureau, *Preliminary Regulatory Impact Analysis*, Docket No. USBC-2026-0628-0002, at 9, 15, 17 (Sept. 2026) (hereinafter "PRIA"), https://www.regulations.gov/document/USBC-2026-0628-0002; Proposed Rule at 57528.

programs to where they are needed, and to evaluate whether those programs are working.[25] Some form of race question has appeared on every Census since 1790.[26] Proposed Part 70 would end self-reported race and ethnicity data in favor of administrative inferences,[27] replacing accurate self-identification with unverified records and guesswork.

The Proposed Rule cites *Louisiana v. Callais* as part of an "evolving" legal landscape that supposedly reduces the need for race data.[28] In reality, *Callais* reaffirms that compliance with the VRA still depends on proving specific facts about local populations. Under federal law, courts still evaluate whether a minority community is large enough to form a majority in a district[29] and whether voting patterns follow racial lines.[30] Proving either of those facts requires precise, block-level counts of the voting-age population by race and ethnicity, data that only the Census provides. Without race information, legislatures would be drawing voting maps without the information needed to show those maps comply with federal law and would be forced to defend them in court without the evidence to do so.

State governments also rely on block-level demographic data to calculate public health statistics (e.g., cancer mortality rates),[31] allocate workforce and education resources,[32] and evaluate economic development initiatives.[33] The Proposed Rule assumes this information "could be obtained in other ways," but never identifies another source of block-level data.[34] The Department's suggested substitute, the American Community Survey, publishes one-year estimates only for areas with at least 65,000 people—leaving most of our smaller cities, towns, and rural counties without reliable figures.[35] Erasing this detailed demographic data severely

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[25] U.S. Census Bureau, *2020 Census Race and Ethnicity FAQs*, https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/faqs-race-ethnicity.html (noting uses for the Census data).
[26] Proposed Rule at 57527 (quoting *Dep't of Com. v. New York*, 588 U.S. 752, 769 (2019)); *see* U.S. Census Bureau, *Measuring Race and Ethnicity Across the Decades: 1790–2010* https://www.census.gov/data-tools/demo/race/MREAD_1790_2010.html.
[27] Proposed Rule at 57527—28, 57530.
[28] Proposed Rule at 57527.
[29] *Louisiana v. Callais*, 608 U.S. ___, 146 S. Ct. 1131 (2026) (slip op., at 26); *see Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986).
[30] *Callais*, slip op., at 29–30; *see also Allen v. Milligan*, 608 U.S. ___, 146 S. Ct. 1377 (2026) (per curiam) (applying *Callais*).
[31] Ctrs. for Disease Control & Prevention, *U.S. Cancer Statistics: Population Denominator Data Sources*, https://www.cdc.gov/united-states-cancer-statistics/technical-notes/population-denominator-data-sources.html.
[32] *U.S. Census Bureau,* About the Population Estimates Program: Uses of Population Estimates, https://www.census.gov/programs-surveys/popest/about.html*; see also Federal Committee on Statistical Methodology,* Equitable Data Toolkit, https://nces.ed.gov/fcsm/pdf/Master_File_FCSM_Equity_Toolkit_508c.pdf*; U.S. Department of Labor, Employment and Training Administration. (2024; see generally WIOA State Plan Guidelines: Strategic Planning Elements and Workforce Analysis,* https://wioaplans.dol.gov/.
[33] *Id.*; see also U.S. Dep't of Justice, Bureau of Justice Assistance, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program Formula Methodologies*, https://bja.ojp.gov/program/jag/overview (showing rely-on block and county-level Census population and demographic metrics).
[34] Proposed Rule at 57528.
[35] PRIA, *supra* note 17, at 10, 12–14.

hinders our ability to identify and address systematic racial and gender disparities in maternal healthcare, economic equity, and workforce participation in underserved communities.

Because the decennial count is the benchmark against which the American Community Survey and countless state surveys that we depend on for critical information are weighted, dropping these questions "would deteriorate the accuracy" of its population estimates, as the Department itself concedes.[36] Further, because inferred race and ethnicity values are not comparable to self-reported answers, we would also lose the ability to compare data before and after 2030—and with it, our ability to measure whether the policies we enact are working.

IV. Conclusion

As state leaders, we strongly oppose the Proposed Rule because it directly threatens our ability to draw fair and lawful districts, budget responsibly, and govern effectively. We urge the Department to withdraw the Proposed Rule—both 15 C.F.R. Part 60 and Part 70—in its entirety.

Thank you for your consideration of these comments.

Sincerely,

Alabama Senator Merika Coleman

Alaska Senator Elvi Gray-Jackson
Alaska Senator Scott Kawasaki
Alaska Representative Ashley Carrick
Alaska Representative Andi Story

Arizona Senator Rosanna Gabaldon
Arizona Senator Lauren Kuby
Arizona Representative Brian Garcia
Arizona Representative Nancy Gutierrez
Arizona Representative Mariana Sandoval
Arizona Representative Betty Villegas

Arkansas Representative Denise Ennett

California Senator Sasha Renée Pérez
California Assemblymember Alex Lee
California Assemblymember Christopher M. Ward

[36] *Id.* at 9, 15, 17.

Colorado Senator Julie Gonzales
Colorado Senator Cathy Kipp, President Pro Tempore
Colorado Senator Mike Weissman
Colorado Representative Lori Goldstein
Colorado Representative Sheila Lieder
Colorado Representative Brianna Titone
Colorado Representative Elizabeth Velasco

Connecticut Senator Matt Lesser
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Connecticut Representative Jillian Gilchrest
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Delaware Representative Frank R. Burns
Delaware Representative DeShanna Neal
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Florida Senator Lori Berman
Florida Senator Carlos Guillermo Smith
Florida Representative Anna V. Eskamani, PhD
Florida Representative Rita Harris

Georgia Senator Kim Jackson
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Hawaii Representative Amy Perruso

Illinois Senator Lakesia Collins
Illinois Senator Mary Edly-Allen
Illinois Senator Graciela Guzmán
Illinois Senator Celina Villanueva

Illinois Representative Dagmara Avelar
Illinois Representative Kelly Cassidy
Illinois Representative Sonya M. Harper
Illinois Representative Maura Hirschauer
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Kentucky Representative Beverly Chester-Burton
Kentucky Representative Anne Gay Donworth
Kentucky Representative Sarah Stalker
Kentucky Representative Joshua Watkins, House Minority Whip
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Maine Representative Sharon Frost
Maine Representative Scott A. Harriman
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Maryland Delegate Dana Jones

Maryland Delegate Julie Palakovich Carr
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Michigan Representative Brenda Carter
Michigan State Representative Kara Hope
Michigan Representative Veronica Paiz

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Minnesota Representative Esther Agbaje
Minnesota Representative Kristin Bahner
Minnesota Representative Shelley Buck
Minnesota Representative Mary Frances Clardy
Minnesota Representative Emma Greenman
Minnesota Representative Athena Hollins
Minnesota Representative Katie Jones
Minnesota Representative Liish Kozlowski
Minnesota Representative Liz Lee
Minnesota Representative Xp Lee
Minnesota Representative Tina Liebling
Minnesota Representative Kelly Moller
Minnesota Representative María Isa Pérez-Vega
Minnesota Representative Dave Pinto
Minnesota Representative Kristi Pursell
Minnesota Representative Liz Reyer
Minnesota Representative Bianca Virnig

Mississippi Senator Hillman Frazier
Mississippi Representative Timaka James-Jones

Missouri Senator Tracy McCreery

Montana Senator Ellie Boldman
Montana Senator Mary Ann Dunwell
Montana Senator Jacinda Morigeau
Montana Senator Andrea Olsen
Montana Representative Bob Carter

Montana Representative Jill Cohenour

Nebraska Senator Ashlei Spivey

Nevada Assemblymember Erica Mosca, Assistant Majority Floor Leader

New Hampshire Senator Rebecca Perkins Kwoka, Senate Minority Leader
New Hampshire Representative Mary Jane Wallner

New Jersey Assemblymember Katie Brennan
New Jersey Assemblymember Chigozie Onyema

New Mexico Senator Elizabeth "Liz" Stefanics
New Mexico Representative Angelica Rubio
New Mexico Representative Elizabeth “Liz” Thomson

New York Senator Samra Brouk
New York Senator Liz Krueger
New York Senator Gustavo Rivera
New York State Assemblymember Jo Anne Simon

North Carolina Senator Sophia Chitlik
North Carolina Representative Pricey Harrison
North Carolina Representative Renée A. Price
North Carolina Representative Julie von Haefen

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Ohio Senator Willis E. Blackshear Jr.
Ohio Senator Hearcel F. Craig, Assistant Minority Leader
Ohio Senator William P. DeMora
Ohio Senator Kent Smith
Ohio Representative Beryl Brown Piccolantonio, Minority Whip
Ohio Representative Anita Somani

Oklahoma Senator Julia Kirt

Oregon Senator Mark Meek
Oregon Senator Khanh Pham

Oregon Senator Janeen Sollman
Oregon Representative Lisa Fragala
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South Dakota Representative Eric E. Emery

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Tennessee Representative Aftyn Behn, LMSW
Tennessee Representative Gloria Johnson
Tennessee Representative Bo Mitchell
Tennessee Representative Jason Powell
Tennessee Representative Gabby Salinas

Texas Representative Mary González
Texas Representative Lauren Ashley Simmons
Texas Representative Gene Wu, House Minority Leader

Utah Senator Nate Blouin

Utah Representative Jake Fitisemanu

Vermont Senator Tanya Vyhovsky
Vermont Representative Monique Priestley
Vermont Representative Larry Satcowitz

Virginia Senator Elizabeth Bennett-Parker
Virginia Senator Jennifer B. Boysko
Virginia Delegate Irene Shin

Washington Senator Noel Frame
Washington Senator Marko Liias
Washington Senator T'wina Nobles
Washington Senator Claire Wilson, Majority Assistant Whip
Washington Representative Gerry Pollet
Washington Representative Jamila Taylor

West Virginia Delegate Kayla Young

Wisconsin Senator Melissa Ratcliff
Wisconsin Senator Kelda Helen Roys