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March 5, 2026

Via Federal eRulemaking Portal, E-mail (addc.2030.census.paperwork@census.gov), and U.S. Mail

Sheleen Dumas
Departmental PRA Clearance Officer
Office of the Under Secretary for Economic Affairs
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: 2026 Operational Test in Support of the 2030 Census (FR Doc. USBC-2026-0034)

Dear Ms. Dumas,

We, the Attorneys General for the States of New York, New Jersey, California, Colorado, Connecticut, the District of Columbia, Delaware, Hawai‘i, Illinois, Maine, Maryland, the Commonwealth of Massachusetts, Michigan, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Vermont, Washington, and Wisconsin (the States) write to object to the Census Bureau Notice entitled “Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2026 Operational Test in Support of the 2030 Census” (the Notice), which was issued by the Census Bureau (the Bureau) and published in the Federal Register on February 3, 2026.¹

The 2026 Operational Test (the 2026 Test or the Test) is being carried out to “help the Census Bureau prepare for the 2030 Census.”² But the new changes it effects, including the use of the American Community Survey (ACS) questionnaire, inclusion of a citizenship question, reliance on the United States Postal Service (USPS), and elimination of more than half of the previously planned test sites, will not serve that goal. As explained in further detail below, these

¹ *Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2026 Operational Test in Support of the 2030 Census*, 91 Fed. Reg. 4864 (Feb. 3, 2026).

² *Id.*

proposed changes stand to undermine 2030 Census preparations—ultimately increasing the likelihood of undercounts, inaccuracies, and other material problems that will compromise the integrity of the decennial census. The decennial census, which must be an enumeration of *all* persons, serves as the basis of allocation of, among other things, billions of dollars in federal resources and congressional representation for the States. A decennial census that is not based on an actual enumeration of all people would thereby harm the States, their residents, and the general public more broadly.

1. The Notice is procedurally deficient.

The Notice does not comply with procedural requirements under the Administrative Procedure Act (APA).³ In presenting the changes as a notice, rather than as a proposed rule, the Bureau bypasses the notice and comment procedures required by the APA. This circumvention of the APA is not proper.

First, the actions described in the Notice exceed the scope of the Paperwork Reduction Act (PRA), the purpose of which is to “minimize the *paperwork burden* ... resulting from the *collection of information* by or for the Federal Government.”⁴ Various aspects of the proposed testing changes described in the Notice, including but not limited to the new use of USPS workers as enumerators, *see infra* Part 3, implicate concerns that go well beyond the consideration of paperwork burdens resulting from the collection of information, and are therefore inappropriate for consideration under the PRA alone.

The actions set forth in the Notice collectively constitute a “rule” under the APA because they are “agency statement[s] of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.”⁵ The changes described in the Notice are statements of future effect, designed to prescribe new policies for conducting the 2026 Test. Moreover, the Notice is a legislative rule, not an interpretive one: Rather than a mere restatement of existing rights or duties, the changes contained in the Notice—including the novel use of USPS workers—go directly to the Bureau’s implementation decisions around preparations for the 2030 Census. As a rule, the Notice is required to undergo notice and comment procedures under the APA.⁶ The Bureau’s failure to provide a proper comment period for the actions set forth in the Notice contravenes the APA’s requirements.⁷

The difference between the comment period requirements of the PRA and the APA is substantive, and stems from the statutes’ related but distinct purposes. As described above, the PRA’s focus is the paperwork burdens that would be created by the collection of information by the federal government. Its purpose is to examine those burdens and, where possible, to consider whether such burdens may be minimized.⁸

³ 5 U.S.C. §§ 551 *et seq.*

⁴ 44 U.S.C. § 3501(1) (emphasis added).

⁵ 5 U.S.C. § 551(4).

⁶ *See* 5 U.S.C. § 553(b)-(d).

⁷ 5 U.S.C. § 706(2)(A),(D).

⁸ 44 U.S.C. § 3506(c)(2)(A).

By contrast, the focus of the APA is broader, prioritizing a different set of questions from the PRA. The purpose of the APA’s notice and comment requirement is “(1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.”⁹ This substantially more probing purpose means that the scope of parties’ comments for an APA notice and comment period entails examination of, *inter alia*, which alternatives were before the agency, whether and how the agency considered these alternatives, which tradeoffs between competing objectives may have been made, and how the promulgating agency ultimately reached its decision. This purpose also means, conversely, that the agency will take into consideration public comments about a proposed rule, including those going to questions of fairness to impacted parties and those that surface objections to a proposed rule for any number of reasons, including that it may be arbitrary and capricious, beyond a promulgating agency’s statutory authority, or contrary to law.¹⁰ Ultimately, the purposes of a notice and comment period under the APA versus the PRA are distinct.

Here, where many of the changes the agency seeks to implement go beyond information collection, a notice and comment period under the APA is required. The Notice provides that USPS workers will be used for the first time in the 2026 Test as census enumerators.¹¹ The Notice also provides that the 2026 Test will now feature only two sites,¹² rather than the six sites previously identified.¹³ Both of these changes go far beyond paperwork or information collection, instead “effect[ing] a substantive change in existing ... policy.”¹⁴ The Bureau may not substitute a PRA notice period for a notice and comment period under the APA.

2. Use of the ACS questionnaire (which includes a citizenship question) is not appropriate.

The Notice states that the Bureau proposes to use the ACS Methods Panel,¹⁵ which includes the ACS questionnaire, for the 2026 Test.¹⁶ The ACS questionnaire, however, is a poor substitute for the decennial census questionnaire. The questions asked by the ACS are meaningfully different, and require significantly more time to answer, than those in the decennial census questionnaire. Given these differences, the results of a 2026 Test that uses the ACS questionnaire rather than the decennial census questionnaire are unlikely to generate any useful

⁹ *Envtl. Integrity Project v. Envtl. Prot. Agency*, 425 F.3d 992, 996 (D.C. Cir. 2005) (citation omitted).

¹⁰ See 5 U.S.C. § 706(2).

¹¹ 91 Fed. Reg. 4864; *see also, infra* Part 3.

¹² 91 Fed. Reg. 4864 at 4865.

¹³ U.S. Census Bureau, *2026 Census Test: Site Selection*, 2030 Webinar Series, (Jul. 22, 2024), <https://perma.cc/XU9Z-TFZW> (hereafter “2026 Test Site Selection”).

¹⁴ *Children’s Hospital of the King’s Daughters, Inc. v. Azar*, 896 F.3d 615, 620 (4th Cir. 2018) quoting *Mendoza v. Perez*, 754 F.3d 1002 (D.C. Cir. 2014); *see also Fagan v. HHS*, 2025 WL 1837402 at *7, Civ. No. TJS-23-2095 (D. Md. Jul. 2, 2025) (“[T]o read the PRA as authorizing an agency to promulgate new regulations that impose legal obligations on regulated entities without being subject to the APA would greatly go beyond the statute’s scope.”).

¹⁵ The ACS Methods Panel allows the Census Bureau to “test ACS and decennial census methods for reducing survey cost, addressing respondent burden, and improving survey response, data quality, and survey efficiencies for housing units and group quarters.” See U.S. Census Bureau, *U.S. Census Bureau Releases 2019-2023 ACS 5-Year Estimates*, American Community Survey Updates (Dec. 12, 2024), <https://perma.cc/YY7F-428H>.

¹⁶ 91 Fed. Reg. 4864 (Feb. 3, 2026).

lessons regarding the operations of the 2030 Census and will therefore fail to serve its purpose: preparing the Bureau to conduct the 2030 Census.

Moreover, the use of the ACS questionnaire newly imports a citizenship question into the 2026 Test. Numerous tests and studies, including those conducted by the Bureau itself, demonstrate that the inclusion of a citizenship question on the decennial census questionnaire is likely to reduce response rates, particularly for noncitizen,¹⁷ Hispanic, and Asian communities. The use of the ACS questionnaire for the 2026 Test is likely to do the same and risks preemptively depressing response rates for the 2030 Census as well.

a. The ACS and decennial census questionnaires are meaningfully distinct, and the use of the ACS questionnaire will undermine the utility of the 2026 Test.

The proposal to use the ACS questionnaire is a substantial divergence from established Bureau practice. And, because of the content and length of the ACS questionnaire, that substantial change is likely to undermine the utility of the 2026 Test as an operations test for the 2030 Census.

The ACS and decennial census questionnaires are not interchangeable. While the Bureau has used the ACS and lessons learned from conducting the ACS to better prepare for a decennial census, as far as the States are aware, decennial census field tests have not been administered using the ACS questionnaire. For example, neither the 2018 “dress rehearsal,” the Bureau’s most comprehensive decennial census test in the 2020 cycle, nor the 2015 National Content Test were administered using the ACS questionnaire.¹⁸

There is good reason for this. The two surveys, and, more specifically, their questionnaires, serve specific and discrete purposes. While, as the Bureau has reported, “the main function of the U.S. decennial census is to provide counts of people for the purpose of congressional apportionment, the primary purpose of the [ACS] is to measure the changing social and economic characteristics of the U.S. population—our education, housing, jobs, and

¹⁷ This includes mixed-status households—those with both citizens and noncitizens—who will be similarly affected.

¹⁸ See U.S. Census Bureau, *Mem. 2018.02: Using Two Separate Questions for Race and Ethnicity in 2018 End-to-End Census Test and 2020 Census*, Inf. Questionnaire for the 2018 Census Test (Jan. 26, 2018), <https://perma.cc/9MLL-BKE2>, and Nicholas Jones, et al., U.S. Census Bureau, *2020 Research and Testing: 2015 National Content Test Study Plan - Race & Ethnicity*, 191-98 (Nov. 4, 2016), <https://perma.cc/J28X-G8XQ>, (detailing the questionnaires used for the 2015 National Content Test, none of which are the ACS).

The proposed use of the ACS questionnaire also appears to be a break from the previously established plan for the 2026 Test. Despite public planning for the 2026 Test dating at least back to 2023, the Census Bureau did not indicate an intent to use the ACS questionnaire until the Notice. See, e.g., 90 Fed Reg. 1952 (Jan. 10, 2025) (describing the 2026 Test with no mention of the ACS Methods Panel). Indeed, a Census Bureau presentation on July 22, 2025, announcing the 2026 Test’s original six sites, indicated just the opposite by stating that the 2026 Test would not include a citizenship question: “[C]urrently, citizenship is not in the content for the ’26 test, but content for the 2030 Census is far down the road for those decisions. So, those decisions have not been made yet for 2030, but for ’26, no.” Jennifer Reichert, Chief of the Decennial Census Mgmt Div., U.S. Census Bureau, “Transcript of 2026 Test Site Selection Webinar,” at 21 (July 22, 2024), <https://perma.cc/4H7Z-WEK6>.

more.”¹⁹ To this end, the two surveys ask for different information from respondents. The ACS asks more questions, which are more detailed and span across a broader range of topics, than the decennial census questionnaire. As described above, the ACS collects responses to a whole host of questions about housing, employment, income and education, while the decennial census asks only a few questions about residency and demographics. Even where there is crossover, the way in which the two surveys ask for similar information can differ. For example, while both the ACS and decennial census ask about residency, they do so in functionally different ways. The decennial census has historically asked for a respondent’s “usual residence,” defined as “the place where a person lives and sleeps most of the time.”²⁰ By contrast, the ACS asks about respondents’ “current residence.”²¹ These distinctions reflect different priorities²² and can produce meaningfully different results. For example, per the Bureau’s own research, for areas where people are likely to spend only a few months out of the year—for example, locations where vacationers or migrant labor forces are seasonal residents—these terms can prompt substantially different responses.²³

Additionally, the ACS questionnaire is much longer and therefore more burdensome on respondents than the typical decennial census questionnaire. The proposed questionnaire for the 2026 Test, as detailed in the Notice, is 48 pages in total, with any given respondent asked to complete 71 questions across 13 pages. By contrast, the typical decennial census questionnaire is just two pages and asks only 7 questions of any single respondent. Indeed, likely in light of the sheer length of the ACS questionnaire, the Notice now estimates 40 minutes for each respondent²⁴—four times the allocation of time in the previous notice for the 2026 Test.²⁵ Even assuming the Notice does not meaningfully underestimate the time needed to complete the survey,²⁶ the proposed ACS questionnaire is substantially more burdensome than the typical decennial census questionnaire. Indeed, the Bureau has recognized that the ACS questionnaire, in large part because of its length, can burden respondents and so reduce response rates as compared to the decennial census.²⁷ Many respondents, especially those with additional work or care obligations, may have difficulty dedicating the necessary time to filling out the

¹⁹ See U.S. Census Bureau, *Understanding and Using American Community Survey Data: What All Data Users Need to Know*, 68 (Sept. 2020), <https://perma.cc/83BA-7D7D>.

²⁰ Albert E. Fontenort, Jr., U.S. Census Bureau, *Memo. 2018.04: 2020 Census Residence Criteria and Residence Situations*, 1 (Feb. 5 2018), <https://perma.cc/82MU-EBR9>.

²¹ See U.S. Census Bureau, *Understanding and Using American Community Survey Data*, at 68.

²² The decennial census asks about “usual residence” in line with its “focus ... on the requirements of congressional apportionment and state redistricting.” The ACS is intended to produce “estimates based on data collected over a period of time, rather than a single point in time,” and so looks to “current residence.” See *id.*

²³ See *id.*

²⁴ See 91 Fed. Reg. 4864,4865 (Feb. 3, 2026).

²⁵ See 90 Fed. Reg. 1952,1956 (Jan. 10, 2025).

²⁶ Moreover, there is reason to suspect that this estimate is understated. For the questionnaire to take only 40 minutes, a respondent would need to have all the necessary information at hand and answer each question—many of which have several parts—in roughly 30 seconds.

²⁷ One report notes that lower response rates for the ACS as compared to the 2010 Census, “presumably reflecting the higher burden of the ACS.” J. David Brown, *et al.*, Center for Economic Studies (CES), U.S. Census Bureau, *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census*, CES 18-38R at 33 (June 2019), <https://perma.cc/ZTQ4-59J8>.

questionnaire. The onerous nature of the ACS questionnaire may exacerbate these issues for the 2026 Test resulting in diminished response rates and distorted results.

These differences in content and respondent burden between the ACS and decennial census undermine the purpose of the 2026 Test, which is to assess the impact of potential operational changes on the 2030 decennial census.²⁸ Use of an entirely different survey questionnaire will compromise the usefulness of the 2026 Test in evaluating the impacts of changes in operational design, as such impacts are likely to be skewed by differences in the content of the survey questionnaire. This is especially problematic because the 2026 Test is one of only two field tests the Bureau plans to conduct before the 2030 Census. Using the ACS questionnaire leaves the Bureau with only one other opportunity to run a large-scale test using the specific and particular features of the decennial census—running the risk that the Bureau will be inadequately prepared for the 2030 Census and potentially compromising its accuracy and integrity.

b. The ACS questionnaire’s inclusion of a citizenship question is likely to reduce response rates, undermining the utility of the 2026 Test and operational planning for the 2030 Census.

In addition to the problems described above, use of the ACS questionnaire for the 2026 Test is particularly concerning because it asks respondents for their citizenship status. It is well-documented, including by the Bureau itself, that requests for citizenship information depress response rates, especially in areas with large noncitizen, Hispanic, and Asian populations, ultimately resulting in less accurate survey response data. This effect on response rates could skew the 2026 Test in ways that lead the Bureau to draw inaccurate lessons about the operational design of the 2030 Census. Further, using a citizenship question in a test run for the decennial census could cause concerns that the 2030 Census itself will be used to collect citizenship information, increasing the risk that certain respondents will be unwilling to participate in the 2030 Census.

The likely impact of including a citizenship question on the decennial census questionnaire has been studied on several occasions and is well-known to the Bureau. As early as November 2017, the Bureau observed respondents providing incorrect or incomplete information, breaking off interviews and looking “visibly nervous” when asked questions about their citizenship.²⁹ Subsequently, in December 2017 and January 2018, the Bureau’s chief scientist, Dr. John Abowd, conducted extensive analysis which demonstrated that the inclusion of a citizenship question in the 2020 Census would not only depress the initial response rates for

²⁸ As an operations test, the 2026 Test is designed to test the methods by which the Census Bureau conducts the decennial census, not the content of what is asked on the decennial census questionnaire. See Deborah Stempowski, U.S. Census Bureau, *Testing Our Innovations*, Random Samplings Blog (Apr. 30, 2024), <https://perma.cc/U5ZL-BR77>; and Kelly Mathews, et al., U.S. Census Bureau, *2015 National Content Test: Race and Ethnicity Analysis Report*, ix (Feb. 28, 2017), <https://perma.cc/6MNS-URLS>, (“The 2015 National Content Test (NCT) provides the U.S. Census Bureau with empirical research that contributes to the planning for the content of the 2020 Census race/ethnicity question(s).”).

²⁹ See Mikelyn Meyers, Nat’l Advisory Comm. on Racial, Ethnic, and Other Pop., U.S. Census Bureau, *Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census*, 7 (Nov. 2, 2017), <https://perma.cc/5GH8-BNS2>.

all households, but would have a more significant effect on households that include at least one noncitizen, decreasing their self-response rates by *at least* 5.1 percentage points.³⁰ This estimate was described as “cautious,” meaning that the actual depressive effects would likely be much greater.³¹ Indeed, the Bureau later increased this estimate to 5.8%.³² Additional testing by Dr. Abowd determined that these effects could not be fully ameliorated by subsequent contact from Census enumerators,³³ what the Notice calls “In-Field Enumeration,” or the use of external administrative records.³⁴ These findings were later credited by a federal court in the Southern District of New York in a challenge to the inclusion of the citizenship question in the 2020 Census.³⁵

The 2019 Census Test (the 2019 Test), designed specifically to test the impact of including a citizenship question in the decennial census questionnaire, likewise confirmed that a citizenship question would likely depress response rates among certain sub-groups.³⁶ The 2019 Test specifically demonstrated that in census tracts with greater than 4.9% noncitizens, greater than 49.1% Hispanic or between 5.0 and 20.0% Asian residents, the citizenship question had a statistically significant depressive effect on response rates.³⁷ Additionally, the 2019 Test demonstrated that “the proportion of those who identified as Hispanic ... was statistically significantly lower” in the respondent population when a citizenship question was included.³⁸

These analyses show that including a citizenship question on the 2026 Test will likely diminish the utility of the 2026 Test itself by increasing nonresponse rates among certain communities and therefore yielding misleading results. As described *infra* Part 4, these concerns are exacerbated by the selection of two test sites without substantial Hispanic and immigrant

³⁰ See Memo. from John M. Abowd, Chief Scientist and Assoc. Dir. of Research and Methodology, U.S. Census Bureau to Wilbur L. Ross, Sec. of Comm., 4 (Jan. 19, 2018).

³¹ *Id.* at 6.

³² See *Dept. of Comm. v. New York*, 588 U.S. 752, 775 n. 2 (2019).

³³ Another memo from Abowd to Ross describes a hybrid approach using both a citizenship question and administrative records as “hav[ing] all the negative cost and quality implications” of adding the citizenship question—including a decrease in self-response rates—while “result[ing] in poorer quality citizenship data than” using administrative records alone. See Memo. from Abowd to Ross, 5 (Mar. 1, 2018).

³⁴ Similar results were reported in an August 2018 report: “[t]he implication is that adding a citizenship question to the 2020 Census would lead to lower self-response rates in households potentially containing noncitizens, resulting in more nonresponse follow-up (NRFU) fieldwork, more proxy responses, and a lower-quality population count.” J. David Brown, *et al.*, CES, U.S. Census Bureau, *Understanding the Quality of Alternative Citizenship Data*, 53 (Aug. 2018), <https://perma.cc/ZTQ4-59J8>.

³⁵ See *New York v. Dept. of Comm.*, 351 F. Supp. 3d 502, 516 (S.D.N.Y. 2019) (“Defendants’ own documents and expert witness confirm that adding a citizenship question to the census will result in a significant reduction in self-response rates among noncitizen and Hispanic households. And expert testimony ... [indicated] that hundreds of thousands — if not millions — of people will go uncounted in the census if the citizenship question is included.”) relative to others). While the Supreme Court ultimately reversed in part the district court’s order, it did not overturn the lower court’s factual finding that the inclusion of a citizenship question in the 2020 Census was likely to depress response rates. See *Dept. of Commerce*, 588 U.S. at 768 (“The evidence at trial established that noncitizen households have historically responded to the census at lower rates than other groups, and the District Court did not clearly err in crediting the Census Bureau’s theory that the discrepancy is likely attributable at least in part to noncitizens’ reluctance to answer a citizenship question.”).

³⁶ See Elizabeth A. Poehler, *et al.*, U.S. Census Bureau, *2019 Census Test Report*, 2 n.5 (Jan. 3, 2020), <https://perma.cc/8VK9-AXFZ>.

³⁷ *Id.* at x.

³⁸ *Id.*

populations. As a result, these results are likely to mislead the Bureau as to how best to conduct the 2030 Census, further exacerbating the undercount of hard-to-count populations.

Moreover, including a citizenship question in a test run for the decennial census may increase concerns that the 2030 Census itself will seek such information. These concerns are especially acute at the current moment, as the Executive Branch is engaged in aggressive immigration enforcement, has sought to amass central repositories of sensitive information, including citizenship and immigration status, and has routinely aimed harmful rhetoric at immigrants and noncitizens. In this climate, noncitizens—documented and undocumented—as well as those with noncitizen family members, are likely to be fearful about the collection of citizenship data by the federal government. This is likely to increase the risk of nonresponses among already hard-to-count communities both for the 2026 Test and the 2030 Census—a risk that will be substantially heightened if the 2030 Census itself includes a citizenship question.

Use of the ACS survey is not an appropriate predicate in testing for the 2030 Census, especially in light of the ACS questionnaire’s inclusion of a citizenship question. Furthermore, the States remain concerned that the use of the ACS questionnaire may both undermine the operation of the 2026 Test and in turn impact the 2030 Census. We strongly recommend that the Bureau reverse course and return to using the existing decennial census questionnaire.

3. The use of United States Postal Service staff as enumerators raises significant practical concerns that the Notice does not address.

The Notice also states that “the Test will evaluate and assess the use of [USPS] staff to increase efficiency in various capacities typically performed by temporary Census Bureau field workers.”³⁹ The Notice, however, fails to explain the source and nature of these efficiencies, and is silent as to some of the problems that the plan to use USPS staff will cause.

As an initial matter, the Notice does not provide any support for the suggestion that engaging Postal staff as enumerators will “increase efficiency.” Consistent with PRA requirements, the Notice provides estimated response times and burden hours for the 2026 Test, but it does not contain any information on how the use of Postal staff impacts those times or burdens. It similarly does not contain any data showing that the use of Postal workers rather than traditional enumerators will result in cost savings. Beyond stating that “the Test will evaluate and assess the use of [Postal] staff to increase efficiency in various capacities typically performed by temporary Census Bureau field workers,” there is no additional information. The Notice is unclear on how the use of Postal staff may lead to any such efficiencies. Moreover, without a dedicated control test site where Postal staff are not being used, it is unclear what the comparator for assessing “increased efficiency” will be. Indeed, the most recent publicly available study on the matter found that, while there were potential benefits of increased collaboration between USPS and the Census Bureau, “using mail carriers to conduct census field operations at USPS pay rates would not be cost-effective.”⁴⁰ The report also found that “it would not be practical for mail carriers to perform census duties in lieu of census workers because of the higher costs and

³⁹ 91 Fed. Reg. 4864.

⁴⁰ U.S. Government Accountability Office, *Census Bureau and Postal Service Should Pursue Opportunities to Further Enhance Collaboration*, GAO-11-874 at 2 (Sept. 2011), <https://perma.cc/SV4F-JPFV>.

disruption it would cause to U.S. mail service.”⁴¹ The Notice fails to provide any reason to suggest that the facts underpinning these prior findings have changed such that a different conclusion would be expected now.

Next, the Notice does not explain how the strict confidentiality requirements for Census enumerators will be squared with laws authorizing Postal staff to disclose personal data to coordinate with other agencies, including law enforcement. The Bureau, on the one hand, is governed by Title 13, which provides that the Bureau may use temporary staff, “including employees of Federal, State, or local agencies or instrumentalities ... to assist the Bureau in performing the work authorized by this title, but only if such temporary staff is sworn to observe the limitations imposed by section 9 of this title.”⁴² Section 9, in turn, provides that Bureau officers and employees may not be used for purposes beyond the statistical determinations of the survey, may not publish any identifiable data provided by any person or business to the Census, and may not share individual Census reports with “anyone other than the sworn officers and employees of the Department or bureau or agency thereof.”⁴³ Section 9, moreover, prohibits other federal agencies (including officers and employees of those agencies) from requiring the Bureau to share individual census reports with them.⁴⁴ The Bureau’s own public-facing materials state that the Bureau “collects information to produce statistics. Personal information *cannot be used against respondents by any government agency or court.*”⁴⁵ Simply put, census workers are strictly prohibited from sharing individuals’ data with any entity or person for any reason beyond the statistical objectives of the census.

By contrast, Postal workers are not legally required to maintain confidentiality of individual data and are indeed permitted to share such information with a broad range of recipients under many different scenarios. For example, Postal workers and the USPS may disclose personal information maintained by USPS, *inter alia*, pursuant to Freedom of Information Act (FOIA) requests, for law enforcement purposes, or if requested by Congress.⁴⁶ Title 39’s implementing regulations likewise authorize USPS to share lists of the “names or addresses (past or present) of postal patrons or other persons” with other government agencies “[a]s required by the terms of a legally enforceable interagency agreement entered into by the Postal Service ... and when subject to a valid non-disclosure agreement.”⁴⁷ Regulations concerning the USPS and Postal workers’ sharing of individual data contemplate many different circumstances under which the sharing of persons’ data is permissible.

The conflict between the Census statute’s confidentiality requirements and the ability to share data under USPS regulations was the precise impediment to recent efforts to enlist USPS workers in census enumeration. In 2017, the Bureau proposed the USPS Letter Carriers as Bureau Enumerators Pilot as part of the 2018 end-to-end Census test.⁴⁸ The pilot would have

⁴¹ *Id.* at 10.

⁴² 13 U.S.C. § 23 (c).

⁴³ 13 U.S.C. §§ 9(a)((1)-(3).

⁴⁴ *Id.* at § 9(a)(3).

⁴⁵ U.S. Census Bureau, *Agency History and Timeline: Title 13, U.S. Code*, (Aug. 3, 2023), <https://perma.cc/6GGN-452A> (emphasis added).

⁴⁶ See 39 C.F.R. §§ 266.3(b)(2)(i), (b)(2)(viii).

⁴⁷ *Id.* at § 266.3(b)(3)(iii).

⁴⁸ 82 Fed. Reg. 43934 *et seq.* (Sep. 20, 2017).

entailed using Postal workers as enumerators within two ZIP codes nearby to the location of the 2018 test site location, and was intended to “test and observe the feasibility of the use of Postal Carriers as enumerators in the context of an existing Census Test.”⁴⁹ But ultimately, “it was determined that the pilot could not be implemented because of irreconcilable differences between the requirements of 13 U.S.C. (Census Bureau) and 18/39 U.S.C. (USPS) [sic], as well as various regulations enacted thereunder.”⁵⁰ The Bureau determined that USPS workers could lawfully participate as enumerators in the future *only if* the two agencies achieved a legislative exemption from Title 13 requirements for Postal workers, or if Postal workers became Census workers who are governed by Title 13’s requirements.⁵¹ But such a legislative exemption has not been created by Congress, and the Notice does not suggest that Postal workers who act as enumerators will leave Postal employment and instead become Census workers governed by Title 13’s requirements alone.

The Notice makes no attempt to address whether and how the provisions regarding confidentiality of data that were determined to be “irreconcilable” in 2018 can now be reconciled in the 2026 Test. Nor does the Notice provide any explanation for how USPS workers serving as enumerators would be able to discharge their responsibilities consistent with both Title 13 and Title 39 if, for example, they were called upon to provide information in furtherance of immigration enforcement actions. This concern is aggravated by the new inclusion of a citizenship question in the proposed 2026 Test. *See supra* Part 2.

4. The reduction of test sites from six to just two is also likely to hinder the efficacy of the 2026 Test.

Finally, the Notice proposes to reduce the number of sites surveyed in the 2026 Test from six to just two. Not only does this generally narrow the scope, and therefore utility, of the 2026 Test, but the two sites chosen—Spartanburg, South Carolina and Huntsville, Alabama—meet few of the Bureau’s stated criteria for test sites. In particular, the remaining two sites are poorly suited to test the Bureau’s operational efforts to improve response rates among hard-to-count populations. These limits raise serious questions about the efficacy of the 2026 Test in preparing the Bureau to conduct the 2030 Census.

As originally planned, the Bureau selected six sites for the 2026 Test. Each was chosen to complement the core goals of the 2026 Test, which include getting a “complete count of historically undercounted and hard-to-count populations.”⁵² To that end, sites were selected to fulfill 13 discrete criteria across four broad categories: geography, living quarters characteristics, staffing and technical characteristics.⁵³ No single site was sufficient to meet all these criteria. Rather, taken together, the six sites were sufficiently comprehensive and covered all the Bureau’s stated requirements. In particular, the six proposed sites provided opportunities to test

⁴⁹ *Id.* Compare Notice at 4865 (“The purpose of the USPS Pilot is to study the feasibility of using Postal Participants in the capacity of Census Bureau enumerators during the Test.”).

⁵⁰ U.S. Census Bureau, *2020 Research and Testing: Proposed Postal Carriers as Census Bureau Enumerators Pilot*, 3 (Sept. 4, 2019), <https://perma.cc/Y6BZ-NQTO>.

⁵¹ *Id.* at 9.

⁵² See Press Release, U.S. Census Bureau, *U.S. Census Bureau Announces Sites for 2026 Census Test*, (July 22, 2024), <https://perma.cc/HY3H-2MV6> (hereafter “2026 Test Site Announcement”).

⁵³ See *id.*

survey programs in areas with historically undercounted and hard-to-count populations such as rural and Tribal geographies and areas with large group quarters.

Unfortunately, by reducing the number of surveyed sites from six to two, the Notice undermines these plans for the 2026 Test. As an initial matter, by dropping four sites, the Notice substantially reduces the overall scope of the 2026 Test. As initially proposed, the 2026 Test would have surveyed 631,850 households.⁵⁴ As currently constructed, this number would drop to just 154,600 households.⁵⁵ This substantial reduction raises questions as to whether the scope of the 2026 Test is sufficiently robust to properly test the Bureau's survey operations.⁵⁶

Moreover, the specific sites selected fail to meet a majority of the Bureau's selected criteria. When combined, Spartanburg and Huntsville meet only five of the 13 stated criteria.⁵⁷ Spartanburg meets just three,⁵⁸ all of which are already covered by Huntsville.⁵⁹ Moreover, of the four broad categories of criteria, the two selected sites wholly fail to meet any criteria in two of those categories: geography and technical characteristics.⁶⁰ Spartanburg and Huntsville are both mid-sized, largely metropolitan areas and, as such, they lack the important capacity to test operations in the areas these two categories were designed to cover—namely rural areas, colonias,⁶¹ Tribal lands, and other areas with hard-to-count populations.

These concerns are exacerbated by the demographic makeup of Spartanburg and Huntsville. While both cities contain sizeable non-Hispanic white and Black populations, they have limited Hispanic and immigrant communities.⁶² Notably, these communities have been historically undercounted and are already considered hard-to-count by the Bureau.⁶³ Again, as one of only two potential field tests, neglecting to properly test programs for historically undercounted and hard-to-count communities may mean that these communities are undercounted in the 2030 Census.

This is exacerbated by the Bureau's proposal to provide testing materials only in English. Previously, the Bureau planned to produce materials for the 2026 Test in multiple languages, including Spanish.⁶⁴ In prior cycles, the Bureau tested multiple languages during decennial

⁵⁴ See 90 Fed. Reg. 1952, 1956 (Jan. 1, 2025).

⁵⁵ See 91 Fed. Reg. 4864, 4865 (Feb. 3, 2026).

⁵⁶ The seeming removal in the Notice of the prior plan to mail materials to a nationally representative sample of households further exacerbates these concerns by further reducing the number of survey respondents. See 91 F.R. 4864; and 2026 Test Site Announcement.

⁵⁷ 2026 Test Site Selection, at 20-23.

⁵⁸ Only one other proposed site—tribal lands within Arizona—met only three criteria. See *id.*

⁵⁹ See *id.*

⁶⁰ See *id.*

⁶¹ Colonias are “historically defined as underdeveloped communities along the U.S.-Mexico border lacking basic infrastructure,” Fannie Mae, *Expanding Access to new Housing Opportunities in the Colonias*, last visited Mar. 5, 2026, <https://perma.cc/XLES-WBDG>. See also 7 C.F.R. § 1777.4.

⁶² See U.S. Census Bureau, *2026 Census Test Press Kit*, Spartanburg, S.C. and Huntsville, Ala. Data Profiles (July 2024), <https://perma.cc/NPZ2-SFRT>. Other proposed sites, especially Western Texas, the tribal lands in Arizona and Colorado Springs, Colorado, likely would have served these communities better.

⁶³ See Deborah Stempowski, U.S. Census Bureau, *Counting Every Voice: Understanding Hard-to-Count and Historically Undercounted Populations*, Random Samplings Blog (Nov. 7, 2023), <https://perma.cc/S25H-WG4C>.

⁶⁴ 90 Fed. Reg. 1952, 1954.

census testing,⁶⁵ reflecting the fact that the decennial census is typically conducted in numerous languages to ensure a comprehensive and accurate count.⁶⁶ Providing the 2026 Test only in English is, again, likely to exclude non-English speakers—including Hispanic and immigrant communities—limiting the efficacy of the 2026 Test as a planning vehicle for the 2030 Census.

Additionally, as described *supra* Part 2, Hispanic and immigrant communities are also among those whose self-response rates are likely to be depressed by the inclusion of a citizenship question in the decennial census. The 2026 Test is an operational test and should not be used to assess questionnaire content. To the extent the 2026 Test is nonetheless used to research the inclusion of a citizenship question in the 2030 Census, using only Spartanburg and Huntsville is likely to produce misleading results. Without sizeable Hispanic or immigrant communities, there is substantial reason to believe that any studied impact on responses will be skewed and potentially mischaracterize or hide the real impact of such a policy.

The Bureau’s stated goal for the 2026 Test was, in part, to test efforts to expand the count of historically undercounted and hard-to-count communities. However, the proposed reduction from six to just two survey sites works directly against this goal. And, as detailed, the two sites selected appear particularly inadequate to meet the Bureau’s stated purpose for the 2026 Test. The Bureau has made similar mistakes before. The planned 2018 “dress rehearsal” similarly cut sites down from three to just one and, in doing so, ended plans to test operations specifically in rural areas and on Tribal lands.⁶⁷ Because of these reductions, the Census Bureau was unable to test certain enumeration procedures in rural areas and on Tribal land⁶⁸ prior to the 2020 Census.⁶⁹ As proposed, the 2026 Test looks primed to repeat these same mistakes.

Conclusion

The decennial census is a bedrock of a fair and functioning democracy, and the reliability of the 2026 Test is a critical factor contributing to an accurate 2030 Census count. We urge the Census Bureau to conduct its 2026 Test using the decennial census questionnaire, with clarity that all enumerators will be bound by the strict confidentiality required under Title 13, and among the six sites initially selected.

⁶⁵ 82 Fed. Reg. 15486, 15489-90 (2017) (“For the 2018 End-to-End Census Test, Internet self-response and telephone assistance will be available in English, Spanish, Chinese, Vietnamese, Korean, Russian, Arabic, and Tagalog. Paper questionnaires, mailing materials, field data collection instruments and field data collection materials will be available in English and Spanish.”).

⁶⁶ See generally U.S. Census Bureau, *Memo. 2018.06: 2020 Census Non-English Language Support*, (Feb. 27, 2018), <https://perma.cc/QB69-44Y3> (describing efforts to provide 2020 Census materials in 12 non-English languages and other language assistance in 59 non-English languages).

⁶⁷ See Eric Katz, *Budget and Leadership Problems Plague 2020 Census, Raising Concern on Capitol Hill*, Government Executive (July 7, 2017), <https://perma.cc/XLE5-WBDG>.

⁶⁸ See U.S. Government Accountability Office, *2020 Census: Lessons Learned from Planning and Implementing the 2020 Census Offer Insights to Support 2030 Preparations*, GAO-22-104357, 7 (Feb. 2022), <https://perma.cc/X4SS-A6M9>.

⁶⁹ Perhaps because of these limitations, American Indian and Alaska Native populations living on Reservations saw an undercount rate of 5.64%. See Shadie Khubba, et al., U.S. Census Bureau, *2020 Post-Enumeration Survey Estimation Report: National Census Coverage Estimates for People in the United States by Demographic Characteristics*, 7 (Mar. 2022), <https://perma.cc/QB69-44Y3>.

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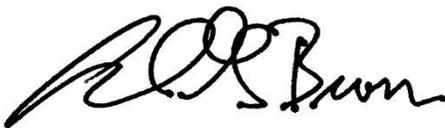
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