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Michael Berning
Assistant Division Chief for Data Acquisition and Curation
U.S. Census Bureau
4600 Silver Hill Road
Room 5H151
Washington, DC 20233

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Washington Legislative
Office
915 15th St. NW, 6th FL
Washington, D.C. 20005
aclu.org

Susan Herman
President

Anthony Romero
Executive Director

Ronald Newman
*National Political
Director*

**Re: Proposed Information Collection; Comment Request;
Generic Clearance for Collection of State Administrative
Records Data; Docket Number USBC-2019-0008**

The American Civil Liberties Union (“ACLU”) writes to comment on the Proposed Information Collection Request as detailed in the 2020 Census Federal Register Notice published at 84 FR 48582 (Sept. 16, 2019).

The Proposed Information Collection seeks to acquire person-level program participating records from state administrative records to support the decennial census program. While this Proposed Information Collection provides only general information, recent public statements issued by the U.S. Census Bureau indicate that this work involves expanding ongoing research by the Bureau about the use of state administrative records to supplement or improve the quality and coverage of the Census Bureau’s surveys, including the decennial census.¹

The ACLU has serious concerns about the Census Bureau’s plans to expand this effort given the Census Bureau’s likely plans to use these newly collected state administrative records to support racially and politically motivated redistricting efforts, issues with the accuracy of some of the data that will be collected, and the lack of transparency about the specifics of these plans. Specifically, the ACLU urges the Census Bureau to abandon efforts to collect person-level citizenship data from state administrative records.

¹ See U.S. Census Bureau, Statement on State Data Sharing Agreements (Oct. 15, 2019), available at <https://www.census.gov/newsroom/press-releases/2019/state-data-sharing-agreements.html>.

USE OF THE RECORDS:

Among other things, the Census Bureau has requested comments on whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility and will enhance the quality, utility, and clarity of information to be collected. While the data from some types of state administrative records may be useful for quality and coverage purposes when it comes to the decennial census, it is not clear what utility collecting person-level citizenship information from state administrative records serves. And it is not clear that collecting this data will even enhance the quality, utility, and clarity of the block-level citizenship voting-age population (“CVAP”) data product that the Census Bureau currently plans to release as part of the Bureau’s 2020 Census Redistricting Data Program.²

As an initial matter, the Census Bureau has not identified a legitimate purpose for collecting additional citizenship data from state administrative records or publishing the block-level CVAP data product. The single, well-understood purpose of block-level CVAP data is to make this data available in the redistricting process for states to dilute Hispanic political power by excluding non-citizens—many of whom live in largely Hispanic communities.³ As the ACLU has previously stated in related public comments, it strongly urges the Census Bureau against facilitating this discriminatory and unlawful goal.⁴

In addition to concerns about the discriminatory purpose of collecting this data and publishing this new data product, the Census Bureau has an obligation to determine, before attempting to collect additional state administrative records, if

² Paperwork Reduction Act Program, Information Collection Request 2020 Census – Evaluations and Experiments OMB Control No. 0607-1006, Department of Commerce and U.S. Census Bureau, Supporting Statement A for Information (Sept. 9, 2019), at 41, available at <https://www.documentcloud.org/documents/6396201-Supporting-Statement-A-for-Information.html>.

³ The fact that the goal of obtaining block-level CVAP data is to dilute Hispanic political power was confirmed in a report released recently by the House of Representatives’ Committee on Oversight and Reform. See Memorandum to Members of the Committee on Oversight and Reform (Nov. 12, 2019) (finding that “evidence also indicated that [the] Administration and Transition Team office had been in contact with a Republican gerrymandering expert, Thomas Hofeller, [who] argued that adding a citizenship question to the 2020 Census was a necessary step to excluding immigrants from legislative redistricting”), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-11-12.Memo%20to%20COR%20Members%20re.%20Census.pdf>.

⁴ See ACLU Comment Re: 2020 Census – Evaluations and Experiments (OMB Control No. 0607-1006, Docket No. OMB-2018-0004) (Oct. 9, 2019), available at https://www.aclu.org/sites/default/files/field_document/2019.10.09_aclu_census_comment_sept_9_icr.pdf.

this effort complies with its own standards of utility.⁵ The Census Bureau Statistical Quality Standards defines “utility” as “usefulness of the information for its intended users.”⁶ Usefulness of information products must be assessed “from the perspective of policy makers, subject-matter users, researchers, and the public. . . [and] utility [is achieved] by continual assessment of customers’ information needs, anticipation of emerging requirements, and development of new products and services.”⁷ There is nothing in the Proposed Information Collection that explains why state administrative records will be useful in creating the new block-level citizenship data product or why such a product is desirable or necessary. Based on this notice, therefore, this expanded collection and use of state administrative records may not comply with the Census Bureau’s own Quality Standards.

LIMITATIONS OF STATE ADMINISTRATIVE RECORDS:

Putting aside the improper motives behind the Trump administration’s desire for this data, there are known limitations to the accuracy of state administrative records regarding citizenship status that also raise questions about this data’s utility. For example, the Census Bureau has expanded its acquisition of state administrative records to include state driver’s license administration records.⁸ But state driver’s licenses records are quite often not a reliable source of citizenship data. Among other things, driver’s license data is often out of date, particularly for individuals who were legal permanent residents and then become naturalized. In most states, individuals are not required to update their citizenship status with their state departments of motor vehicles (“DMVs”) and individuals often do not do so until their current driver’s license must be renewed, which can be as infrequently as every 8 to 10 years.

Recent examples from Texas and Kansas illustrate this principle. Officials in these states attempted to use records from the state DMVs to determine if noncitizens were registered to vote. In both circumstances, the records from the state DMVs were not sufficiently accurate to be used for this purpose.

⁵ See U.S. Census Bureau, Statistical Quality Standards (July 2013), available at www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/quality/statistical-quality-standards/Quality_Standards.pdf.

⁶ *Id.*

⁷ *Id.*

⁸ See *supra* n.1; see also Mike Schneider, *Census Bureau seeks state data, including citizenship info*, AP News (Oct. 14, 2019), available at <https://apnews.com/0b9e5ca716514d0eab593109b8eda71e>.

In January of this year, Texas Attorney General Ken Paxton claimed that state officials had identified nearly 100,000 registered voters in Texas who were supposedly noncitizens, via a comparison to data held by the Texas Department of Public Safety, which maintains driver's license records. Yet after the list of supposed noncitizens who had registered to vote was disseminated to Texas counties, "the number of registered voters flagged by the state began to plummet on just a cursory inspection, as many of the flagged registrants were naturalized citizens who had already confirmed their citizenship."⁹

Former Kansas Secretary of State Kris Kobach also relied on evidence of supposed noncitizen registration developed from Kansas's driver's license data. But in litigation related to this practice, the state's own expert acknowledged that some of the identified alleged noncitizens may have naturalized before registering to vote and that persons are not necessarily noncitizens just by virtue of having one particular type of driver's license.¹⁰ Kansas was ultimately unsuccessful in its efforts.¹¹

LACK OF TRANSPARENCY:

The lack of transparency and specifics of both the Census Bureau's plans to expand its collection of state administrative records, and how it will use any citizenship data collected through this process to create the new contemplated block-level CVAP product, also raises major concerns. As noted, the current Federal Register notice is quite general and does not provide details about all the types of state administrative records the Bureau intends to acquire. Nor does it indicate the specific uses of the data that might be obtained from these records.

For example, the Supporting & Related Material document released with this notice does not discuss in detail the specific types of state administrative records that the Census Bureau is seeking to obtain other than records from state agencies related to the Supplemental Nutrition Assistance Program ("SNAP") and the Special

⁹ Alex Ura, 'Someone did not do their due diligence': How an attempt to review Texas' voter rolls turned into a debacle, Texas Tribune (Feb. 1, 2019), available at <https://www.texastribune.org/2019/02/01/texas-citizenship-voter-roll-review-how-it-turned-boondoggle/>.

¹⁰ See *Fish v. Kobach*, 309 F. Supp. 3d 1048, 1103 (D. Kan. 2018).

¹¹ See *id.*

Supplement Nutrition Program for Women, Infants, and Children (“WIC”).¹² And none of the other current information publicly released by the Census Bureau provides any specific details about all the records that are being collected or the specific uses of the data from those records once collected.¹³

While 13 U.S.C. § 6 provides the Census Bureau general authority to collect administrative data, it should be more transparent about these efforts. At the very least, the Census Bureau should provide the public an updated list of all of the specific state agencies for which it currently has data-sharing agreements, what records it is collecting, and for what purposes it is planning to use any data obtained from those records. It should update this list regularly. According to the Census Bureau, such agreements are required because the federal agencies do not own the state data records requested by the Census Bureau.¹⁴ The public should not have to learn the details about the Census Bureau’s efforts to collect citizenship information from state departments of motor vehicles from press reports.

In addition to the concerns about the accuracy of citizenship data collected from state administrative records discussed above, legitimate issues around protecting the integrity and privacy of the person-level data within those records are not addressed in the Census Bureau’s proposal. The Census Bureau’s Statistical Quality Standards obligate the Bureau to ensure the integrity of the data it collects.¹⁵ Integrity refers to the security of information—protection of the information from unauthorized access or revision—to ensure that the information is not compromised through corruption or falsification.¹⁶ Furthermore, several federal statutes govern the protection of personal information, including the Privacy Act and the E-Government Act of 2002.¹⁷

Because of the lack of transparency about the Census Bureau’s efforts to expand the State administrative records it collects and how it will use this data to create the

¹² See U.S. Census Bureau, Generic Clearance for Collection of State Administrative Records Data, Supporting Statement A (Sept. 17, 2019), available at <https://www.regulations.gov/document?D=USBC-2019-0008-0002>.

¹³ See *supra* n.1; see also U.S. Census Bureau, Frequently Asked Questions Administrative Records Data Acquisitions, available at <https://www.census.gov/content/dam/Census/about/about-the-bureau/adrm/data-linkage/Data%20Acquisitions%20Frequently%20Asked%20Questions.pdf>.

¹⁴ U.S. Census Bureau, Frequently Asked Questions Administrative Records Data Acquisitions.

¹⁵ See *supra* n.5.

¹⁶ See *id.*

¹⁷ See 5 U.S.C. § 552a, 44 U.S.C. § 3501.

new block-level CVAP data product, it is not clear what plans the Census Bureau has in place to comply with its obligations to protect the privacy of the data.

For example, the Census Bureau has not provided any public information about what steps it has taken to comply with the E-Government Act.¹⁸ This Act directs an agency to conduct a Privacy Impact Assessment (“PIA”) in certain situations. The PIA must describe the information to be collected, the reason for its collection, its “intended use,” “with whom the information will be shared,” and the “notice or opportunities for consent.”¹⁹ The state administrative records the Census Bureau plans to collect will implicate personal records and data within the scope of the PIA requirement.²⁰

Moreover, there is an inherent tension between the integrity and utility of census data that requires balancing. As privacy researchers note, “a fundamental tension at the heart of every statistical agency’s mission” is the reality that reducing disclosure risk decreases the utility of the data.²¹ The unanswered questions about what steps the Census Bureau has taken to protect the integrity of data it collects from these new state administrative records, therefore, add to concerns about whether the Census Bureau has even determined if the new data is fit for the proposed purpose of creating the unprecedented block-level CVAP product.

Conclusion

Because the only known use for this new CVAP data product is unlawful and discriminatory, the ACLU urges the Census Bureau to abandon its attempt to create such a file and thus to pursue person-level citizenship information from state administrative records. Putting the unlawful and discriminatory purpose aside, the ACLU urges the Bureau to be wary of the quality of the data it collects from state administrative records, which in many cases will likely not provide up-to-date citizenship information. Finally, the Census Bureau must be more transparent about its plans, including by:

- Providing and regularly updating a list of all the specific state agencies for which it has data-sharing agreements;

¹⁸ E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 § 208(a) (codified at 44 U.S.C. § 3501).

¹⁹ *Id.* § 208(b)(2)(B)(ii).

²⁰ *See supra* n.12.

²¹ Pat Doyle, et al., Confidentiality, Disclosure and Data Access, at 337-345 (2011).

- Reporting each specific data source it intends to use in creating the block-level CVAP data product, and providing a detailed explanation for why each data source is fit for this use; and
- Providing a detailed accounting of what steps the Census Bureau is undertaking to ensure the integrity and privacy of all citizenship data it collects, including what steps are being taken to comply with the Privacy Act and the E-Government Act of 2002.

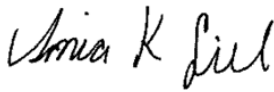
Sincerely,




Ronald Newman
National Political Director



Sarah Brannon
Managing Attorney
Voting Rights Project



Sonia Gill
Senior Legislative Counsel



Davin Rosborough
Staff Attorney
Voting Rights Project