

NISKANEN C E N T E R

Regulatory Comment

Comments submitted to the U.S. Census Bureau, Department of Commerce, in the Matter of:

2020 Decennial Census

83 FR 26643

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Submitted: August 7, 2018
Docket Number: USBC-2018-0005

EXECUTIVE SUMMARY

On March 26, 2018, Secretary of Commerce Wilbur Ross ordered that the 2020 Decennial Census include a question about the citizenship of all U.S. households for the first time since 1950. Contrary to the Secretary's rationale, asking a citizenship questions on the census is not critical to enforcing the Voting Rights Act and enforcement of the right to vote has never depended on the collection of citizenship data via the census. Thus, the Secretary did not provide adequate reasoning or justification for the decision as is required by the Administrative Procedure Act.

The Niskanen Center believes that the collection of information is necessary for the proper functioning of the Department of Commerce and the U.S. Census Bureau. However, because the addition of a citizenship question is unrelated to the function of the agency and the information itself does not have any practical utility for the agency, the question should be removed.

An accurate count of every living person in the United States is required to adhere to our constitutional requirements. The purpose of the decennial census is to enumerate the total U.S. population; enumeration includes both citizens and noncitizens. Citizenship is immaterial to the goal of enumerating the population. Adding the citizenship question, therefore, bears no reasonable relationship to the goal of the taking the census — and may in fact harm efforts — and runs contrary to the Constitution. Furthermore, there is no practical utility in re-administering the *exact* proposed citizenship question already used in the American Community Survey, supplemented in precisely the same information and in the same manner the Department of Commerce proposes to use census, in which populations are difficult to quantify. This is because the population targeted by the citizenship question—the undocumented population—is less likely to respond to the more formal and intimidating inquiry of census takers than the ACS survey, which is targeted at fewer individuals.

PART I: ADDING A CITIZENSHIP QUESTION IS UNRELATED TO THE PROPER PERFORMANCE OF THE FUNCTION OF THE AGENCY

Adding a question on the citizenship status of individuals in the United States to the census does not bear a reasonable relationship to the accomplishment of actual enumeration of the population. The purpose authorized by law to establish an actual enumeration of the U.S. population is not furthered — and may in fact be hindered — by the inclusion of a citizenship question.

The U.S. Constitution requires the federal government to conduct a census once every ten years that counts the total number of persons — regardless of citizenship — residing in each state.¹ The Census Act assigned the responsibility to the Secretary of Commerce and created the Census Bureau to establish related procedures to accurately enumerate the population.² The Secretary of Commerce is charged with the responsibility of establishing an actual enumeration of the U.S. population while remaining consistent with the constitutional goals of equal representation, using methods that bear “a reasonable relationship to the accomplishment of an actual enumeration of the population.”³

The actual enumeration of the population includes citizens and noncitizens,⁴ and is used to apportion seats in the U.S. House of Representatives, the number of electoral votes each state has in the Electoral College, and to draw congressional, state, and local legislative districts.

Adding a question on the citizenship status of individuals in the United States does not bear a “reasonable relationship to the accomplishment of an actual enumeration of the population.” The citizenship question will likely harm the accomplishment of an actual enumeration of the population. It will likely produce a significant and systemic undercount of certain groups within “the population” of the United States, including Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color.

The 2010 census, the most accurate to date, overcounted white residents by nearly 1 percent while failing to count 1.5 million people of color.⁵ Demographic analysis and Post-Enumeration Surveys both show that the census misses racial and ethnic minorities, low-income households (indicated by the proxy of homeowner vs. renter), and children (especially ages 0-4), at disproportionately high rates. In 2000 and 2010, non-Hispanic Whites were actually overcounted, according to the bureau’s analysis. The gap between census accuracy for non-Hispanic Whites and for all other race groups, between low- and high-income households, is called the differential undercount. In conjunction with the Administration’s crackdown on legal and illegal immigration, the addition of the question will most assuredly intimidate mixed-status households from accurately reporting residents.

It is this disparity that deprives underserved communities of political power, government resources and, often, private sector investment.⁶

¹ 13 U.S.C. §§ 2, 4, 141(a).

² 13 U.S.C. §§ 2, 4, 5, 141(a).

³ *Wisconsin v. City of New York*, 517 U.S. 1 (1996).

⁴ *Evenwel v. Abbott*, 136 S. Ct. 1120, 1128-29 (2016).

⁵ Ari Berman, *Hidden Figures: How Donald Trump is Rigging the Census*, May/June 2018, <https://bit.ly/2lgd8LX>.

⁶ Funder Census Initiative 2020, 2020 Census Fact Sheet, <<https://bit.ly/2niWtz3>>.

Additionally, inquiring into the citizenship status of individuals in the United States likely violates the Administrative Procedures Act. The APA prohibits federal agencies from taking any action that is arbitrary, unconstitutional, and contrary to statute.⁷ The decision to add a citizenship question is contrary to the Census clause as well as the Fifth Amendment, and therefore violates the APA as an unconstitutional agency action.

The decision to add a citizenship question is contrary to the Census clause and is also arbitrary and capricious in violation of the APA. The Census Bureau failed to follow their own 2020 Census Operations plan, failed to consult with the vast majority of their advisory panels, failed to provide adequate reasoning for the decision, failed to clarify the need for enforcement of the Voting Rights Act, and failed to acknowledge any evidence contrary to feeble rationale for the addition of a question that was absent for nearly 70 years.

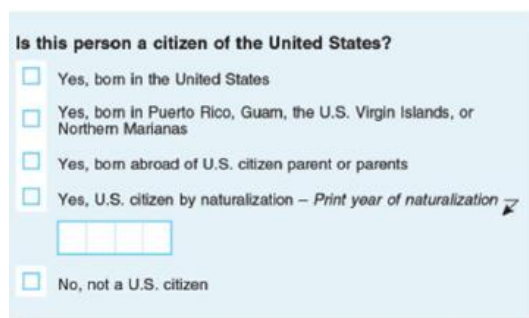
PART II: THERE IS NO PRACTICAL UTILITY TO ADDING THE CITIZENSHIP QUESTION BECAUSE THE ACS ALREADY SURVEYS CITIZENSHIP

The Department of Commerce proposes using the exact question used by the American Community Survey (“ACS”) survey and to supplement missing/inadequate information in exactly the same manner as the current ACS survey does, making the question an unnecessary, redundant question that is provided by another reliable survey conducted by the U.S. Census Bureau.

Conducted on an annual basis, the ACS surveys approximately 2 percent of households across the United States, totaling about 3.5 million households, and generates a statistical estimate of information about the social and economic needs of communities.⁸

It uses four different methods of contacting households: internet, mail, telephone, and in-person interviews. ACS surveys continue throughout the year, every year, and randomly samples addresses in every state, the District of Columbia, and Puerto Rico, and use data to create up-to-date statistics.⁹

A question concerning citizenship status is currently one of more than 50 questions on the 28-page ACS questionnaire. The ACS citizenship question appears as follows:



The image shows a screenshot of a questionnaire question titled "Is this person a citizen of the United States?". Below the title are five radio button options:

- Yes, born in the United States
- Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas
- Yes, born abroad of U.S. citizen parent or parents
- Yes, U.S. citizen by naturalization – Print year of naturalization →
[] [] [] [] []
- No, not a U.S. citizen

⁷ 5 U.S.C. § 706(2).

⁸ ACS and the 2020 Census, U.S. Census Bureau (last updated 12 Jan. 2018), <<http://bit.ly/2OBEwrl>>.

⁹ ACS Top Questions About the Survey, (last updated June 17, 2018), <<https://bit.ly/2vrHLdf>>.

The Department of Commerce intends to use this exact question on the 2020 census, and supplement responses with “data sets, protocols and statistical models to provide more complete and accurate data,” which the same statistical method used by the ACS survey to fill in data on similar or hard-to-count populations.¹⁰

Demographic groups that are often more difficult to count are labeled “hard-to-count” by the Census Bureau. Hard-to-count groups tend to include racial and ethnic minorities, immigrant populations, and non-English speakers. Recent Census Bureau data found that about one in three of the 56.5 million Latinos in the United States live in hard-to-count communities.¹¹

Not only is the census question redundant, the method of collection is less reliable when counting hard-to-count populations. ACS citizenship data is more reliable because collection of the data is constant and far less intimidating for hard-to-count populations. Early test surveys have found that some immigrants are afraid to provide information to U.S. Census workers because of fears about being deported, which could compromise the accuracy of the 2020 census.¹²

Because the ACS is adjusted statistically, it relies on a smaller representative population to make accurate estimates of the general population, which is helpful in measuring the hard-to-count populations. By nature, the less formal ACS survey also does not intimidate populations in the same way as does the required responses to the federal inquiry conducted by the Census Bureau.

Pervasive fear — particularly in the Latino community — about deportation and federal authorities is increasingly undermining the likelihood that individuals will report accurate citizenship information about their households.

CONCLUSION

Citizenship is immaterial to the goal of enumerating the population and adding the citizenship question bears no reasonable relationship to the goal of the taking the census, which calls into the question the rationale behind adding the question at all, other than to intimate a population of people that is already difficult to count. The likely effect will be to disrupt the accuracy of the census.

For the foregoing reasons, the Niskanen Center strongly supports removal of the citizenship question from the U.S. Census.

¹⁰ Secretary of Commerce Wilbur Ross, "Reinstatement of Citizenship Question on the 2020 Decennial Census Questionnaire," 26 March 2018, <http://bit.ly/ross_memo>.

¹¹ The Leadership Conference Education Fund, *Will You Count? Latinos in the 2020 Census*, April 2018, <http://bit.ly/will_you_count>.

¹² Mica Rosenberg, U.S. officials worry immigrant fears could make census inaccurate, November 30, 2017, <<https://reut.rs/2Oj0FtT>>.