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*Submitted by e-mail to OIRA\_Submission@omb.eop.gov*



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**Re: 2020 Census - Proposed Collection of State Administrative Records Data; Submission for OMB Review; Comment Request (OMB Control No. 0607-0995; Docket No. 2019-27477)**

The American Civil Liberties Union (“ACLU”) submits this comment to express its serious concerns about certain aspects of the Census Bureau’s recent efforts to expand the state administrative records it collects for use in the decennial census program. *See* 84 FR 70146 (Dec. 20, 2019). While this Submission to OMB provides only general information about the Census Bureau’s plans to integrate and link state administrative records with Census Bureau data (and potentially provide tabulated data collected from this process to partners), recent statements from the Census Bureau indicate that this work involves the collection of additional, personally identifiable information about citizenship status.<sup>1</sup>

As noted in related comments,<sup>2</sup> the Census Bureau likely plans to use data from these newly collected state administrative records to support

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<sup>1</sup> *See* U.S. Census Bureau, Statement on State Data Sharing Agreements (Oct. 15, 2019) (noting that “the Census Bureau requested the use of state administrative records that include information such as date of birth, address, race, Hispanic origin and *citizenship status* for the 2020 Census and ongoing Census Bureau surveys, including the American Community Survey”) (emphasis added), available at <https://www.census.gov/newsroom/press-releases/2019/state-data-sharing-agreements.html>.

<sup>2</sup> *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](https://www.aclu.org/sites/default/files/field_document/2019.10.09_aclu_census_comment_sept._9_icr.pdf); ACLU Comment Re: Proposed Information Collection; Comment Request; Generic Clearance for Collection of State Administrative Records Data, Docket Number USBC-2019-0008 (Nov. 15, 2019), available at <https://www.aclu.org/letter/aclu-2020-census-state-administrative-records-comment>.

racially and politically motivated redistricting efforts. The Bureau also fails to account for significant problems with the accuracy of some of the data that will be collected or to provide adequate transparency about the specifics of these plans. The ACLU again urges the Census Bureau to abandon efforts to collect person-level citizenship data from state administrative records. We recommend that OMB condition any clearance provided to the Census Bureau's efforts to expand its collection of state administrative data on a specific exclusion from this process of any state administrative records containing person-level citizenship data.

### USE OF THE RECORDS:

The Census Bureau currently plans to release a block-level citizenship voting-age population ("CVAP") data product as part of the Bureau's 2020 Census Redistricting Data Program.<sup>3</sup> The Census Bureau, however, has not identified a legitimate purpose for collecting additional citizenship data from state administrative records or publishing the new block-level CVAP data product.

The single, well-understood purpose of producing this block-level CVAP data product 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.<sup>4</sup> Indeed, the architect of this Administration's plan explained that the strategy—which he described as a "radical departure" from redistricting norms—would allow mapmakers to pack more Hispanic voters into drawn districts to dilute the voting clout of heavily Hispanic areas.<sup>5</sup> The ACLU strongly urges the Census Bureau against facilitating this discriminatory and unlawful goal.

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<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> See Ex. A to Letter Motion to Show Cause at 55–63, *State of New York v. Dep't of Commerce*, No. 1:18-cv-2921-JMF, Dkt. No. 587-1 (S.D.N.Y. May 30, 2019), available at <https://www.documentcloud.org/documents/6077735-May-30-2019-Exhibit.html#document/p63/a504019>.

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 this effort complies with its own utility standards.<sup>6</sup> The Census Bureau Statistical Quality Standards defines “utility” as “usefulness of the information for its intended users.”<sup>7</sup> 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.”<sup>8</sup>

The expanded collection and use of citizenship data from state administrative records may not comply with the Census Bureau’s own Quality Standards. This concern has been raised in public comments,<sup>9</sup> but the Census Bureau has still failed to provide a legitimate purpose for collecting additional citizenship data from state administrative records or even why the block-level CVAP data product is desirable or necessary. The failure to articulate a purpose only further suggests that the true rationale is the understood discriminatory and unlawful goal.

#### LIMITATIONS OF STATE ADMINISTRATIVE RECORDS:

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 recently expanded its acquisition of state administrative records to include state driver’s license administration records.<sup>10</sup> But as previously raised, state driver’s licenses records are quite often not a reliable source of citizenship data.<sup>11</sup>

For one, 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

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<sup>6</sup> 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](http://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/quality/statistical-quality-standards/Quality_Standards.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *supra* n.2.

<sup>10</sup> 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>.

<sup>11</sup> See ACLU Comment Re: Proposed Information Collection, Docket Number USBC-2019-0008, *supra* n.2.

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.<sup>12</sup> In Texas's case, its false claim that almost 100,000 registered voters in the state were noncitizens provides a good illustration of these issues.<sup>13</sup>

The Census Bureau has failed to address these concerns—it has not explained the utility of obtaining unreliable, outdated DMV citizenship data. Before OMB gives clearance to this effort, the Census Bureau should be required to explain why this DMV administrative data regarding citizenship would be useful.

### LACK OF TRANSPARENCY:

Despite concerns raised in several previous public comments,<sup>14</sup> the Census Bureau continues to fail to provide transparency about the specifics of 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.

While 13 U.S.C. § 6 provides the Census Bureau general authority to collect administrative data, the Bureau should be more transparent about its efforts. In this notice, the Census Bureau asserts that any of the state administrative data that is tabulated and provided to partners will be subject to disclosure review prior to release. It also notes that this data is solely for statistical purposes and not for program enforcement. But this is not sufficient given the sensitivity of this data, and that the Bureau has not released any specific details about the records that are being collected or the specific uses of the data from those records once collected.<sup>15</sup>

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<sup>12</sup> 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/>; see also *Fish v. Kobach*, 309 F. Supp. 3d 1048, 1103 (D. Kan. 2018).

<sup>13</sup> Alexa Ura, *Texas will end its botched voter citizenship review and rescind its list of flagged voters*, The Texas Tribune (Apr. 26, 2019), <https://www.texastribune.org/2019/04/26/texas-voting-rights-groups-win-settlement-secretary-of-state/>.

<sup>14</sup> See *supra* n.2.

<sup>15</sup> See *supra* n.1; see also 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>; U.S. Census Bureau, Frequently Asked Questions Administrative Records Data Acquisitions, available at

The Census Bureau’s Statistical Quality Standards obligate the Bureau to ensure the integrity of the data it collects.<sup>16</sup> 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.<sup>17</sup> Furthermore, several federal statutes govern the protection of personal information, including the Privacy Act and the E-Government Act of 2002.<sup>18</sup> The Census Bureau has clear obligations to protect the integrity and privacy of the person-level data it is collecting. It has not provided any detailed information about how it plans to do this for the additional state administrative data it is proposing to collect.

Before OMB gives clearance to this effort, it should, at a minimum, require the Census Bureau to provide the public with 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. The Bureau should also be required update this list regularly.

## **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. OMB should not give the Census Bureau clearance to continue with any part of this effort.

Putting the unlawful and discriminatory purpose aside, the ACLU also 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. OMB should condition any clearance on better transparency from the Census Bureau about its plans, including by:

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

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<https://www.census.gov/content/dam/Census/about/about-the-bureau/adrm/data-linkage/Data%20Acquisitions%20Frequently%20Asked%20Questions.pdf>.

<sup>16</sup> *See supra* n.6.

<sup>17</sup> *See id.*

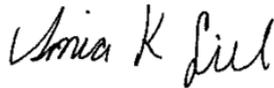
<sup>18</sup> *See* 5 U.S.C. § 552a; 44 U.S.C. § 3501.

- 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 account 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,



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