

Comment for the Center for Renewing America

Docket No. 260903-0005

RIN 0607-AA75

Docket ID: USBC-2026-0628

The Center for Renewing America (“CRA” or “the Center”) submits this comment in strong support of the Census Bureau’s proposed rule, *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, 91 Fed. Reg. 57,524 (Sept. 10, 2026).

The proposed rule is an important step toward de-weaponizing the decennial Census. For too long, the Census has been treated as an all-purpose statistical product rather than as a distinct constitutional function that determines the allocation of political representation in the United States. That drift has consequences. The 2020 Census saw a weaponized enumeration with a disclosure-avoidance system called differential privacy that intentionally introduced uncertainty and data falsification into granular population data, even though those data are used to draw the districts through which Americans elect their representatives. At the same time, the Census increasingly became a vehicle for demographic and statistical objectives that blurred the reason the Constitution requires an enumeration every ten years.

The Census Bureau now recognizes the need to change course. Its Preliminary Regulatory Impact Analysis identifies a “regulatory failure”: existing regulations “did not properly prioritize the population count” or adequately protect it from potential distortions associated with disclosure avoidance and unnecessary demographic questions. The proposed rule responds by returning the Census to first principles. It establishes substantive residence criteria, prioritizes the accuracy of the population count, and directs other statistical needs to tools better suited to those purposes.

CRA strongly supports that direction. But the final rule should go further in making the reform durable. In particular, Census and the Department of Commerce should expressly recognize that the constitutional enumeration and the population counts used to allocate political representation are different in kind from ordinary federal “statistical products.” Ending noise infusion and the widespread data falsification that follows is an important correction. Correcting the regulatory architecture that allowed a constitutionally mandated count to be treated like an ordinary statistical product is the necessary next step.

I. Restoring the Census to Its Constitutional Purpose.

The Constitution does not require a decennial survey. It requires an “actual Enumeration” because the resulting count apportions political power among the states. That distinction has blurred as the constitutional headcount has been folded into a broader statistical apparatus built to collect and publish information about group characteristics, rather than to perform the singular constitutional task of counting the people for representation. CRA has consistently argued that accuracy must therefore be the lodestar of the decennial Census: demographic research, funding formulas, and statistics cannot subordinate or distort the count itself. The proposed rule takes an important step toward separating the actual enumeration from ancillary demographic collection and puts the accuracy of apportionment and redistricting data first. That is also central to de-weaponizing the Census and restoring trust in a process that ultimately gives citizens their political representation. The problem is not simply one methodology or one administration; it is an architecture that allowed a constitutional headcount to be treated like an ordinary statistical product and, in 2020, subjected representational data to deliberate statistical distortion in the name of competing objectives. The Census rule restores the actual enumeration to its proper place: an accurate count of persons upon which the Constitution permits political power to turn.

II. The Proposed Residence Criteria Restore Meaning to “Usual Residence.”

The proposed residence criterion change likewise returns the Census to first principles by rejecting the fiction that physical presence alone determines who is properly counted as an inhabitant of a state. In *Franklin v. Massachusetts* (1992), the Supreme Court recognized that usual residence has long supplied the governing meaning of the constitutional phrase “in each State” and that residence can encompass more than physical presence, including an element of allegiance or enduring tie to a place. That principle already explains why Americans stationed overseas may remain attributable to their home states despite being physically absent on Census Day, and it supports the converse proposition as well: mere presence does not automatically create the durable legal relationship necessary for representation. The proposed rule therefore draws a principled line by retaining citizens and lawful permanent residents, whose status reflects lawful domicile and an enduring connection to the United States, while excluding those whose presence is unlawful, manifestly untethered to the constitutional order, or materially more temporary. The final rule should preserve that framework and strengthen the enduring connection of being in the United States lawfully.

III. Census Should Complete the Reform by Separating the Constitutional Enumeration from Ordinary “Statistical Products.”

The Center has identified an additional problem with the Census (see attached paper, *Primer: An Actual Enumeration Means Actual*): the constitutional headcount continues to be treated as a “statistical product.” Census still applies that designation to the 2030 Census, even though the regulatory definition of a statistical product is written around estimates, projections, analyses, and descriptions of group characteristics. An “actual Enumeration” is different. It is the count the Constitution requires to determine representation. CRA agrees that Commerce was right to prohibit noise infusion, and the new proposed rule builds on that reform. Proposed § 70.3 in the rule would require Census to prioritize the accuracy of population counts used for apportionment and redistricting and would bar the publication of demographic data when doing so requires introducing uncertainty into national or state population counts. But the proposal does not resolve the larger question of whether the constitutional enumeration should be treated as a statistical product at all. The final rule should make clear that the actual enumeration and the counts used for apportionment and redistricting are different in kind from ordinary statistical products.

IV. The Rule Should Be Finalized as Part of a Broader De-weaponization of the Census.

CRA strongly supports the proposed rule and applauds the Bureau for beginning the work of returning the Census to its constitutional purpose. The rule gives real meaning to residence, expands the use of administrative records, and puts accuracy in apportionment and redistricting first. These are important steps toward restoring civic trust in a critical constitutional process and de-weaponizing an institution whose numbers carry enormous constitutional consequences. But the work should continue. The constitutional count should no longer be treated as an ordinary statistical product, and the data captured in the census should never be altered to serve competing statistical objectives. Importantly, de-weaponization and restoring trust in the decennial census do not mean producing a preferred partisan outcome. It means building durable rules that keep the Census focused on its constitutional task. The 2030 Census should count the people, count them accurately, and let the constitutional consequences follow.

Respectfully submitted,
Benjamin Osborne
Legal Fellow
Center for Renewing America