

**TALKING POINTS ON WHITE HOUSE PROPOSAL TO ABANDON REQUEST
TO EXTEND REPORTING DEADLINES FOR CENSUS APPORTIONMENT & REDISTRICTING DATA,
AND TO ALLOCATE \$1 BILLION (IN THE COVID RELIEF BILL) TO RUSH REMAINING CENSUS OPERATIONS**

BACKGROUND: In the coming days, Congress will try to pass a new COVID-19 relief bill. The House of Representatives passed its version of the next COVID bill, called the HEROES Act (H.R. 6800), in May. That bill includes a provision to modify the statutory deadlines for reporting apportionment and redistricting data from the 2020 Census, *as the administration requested in May*. It also allocates an additional \$400 million for the 2020 Census to address unanticipated costs as a result of the coronavirus pandemic, which stakeholders support. The administration made its request to push back the December 31, 2020 deadline for transmitting the state population totals used for congressional apportionment to the president, to April 30, 2021, in light of significant delays and disruptions to 2020 Census operations due to the public health crisis. The adjusted census schedule extends household counting operations to October 31, with operations to count people experiencing homelessness, transitory locations (such as RV parks), group facilities, and Remote Alaska also delayed to late summer and fall. So far, the national self-response rate is the lowest in history, which will require census takers to collect responses in person from more people than ever before.

Senate Republicans unveiled their COVID relief package this week (HEALS Act). It includes \$448 million for the 2020 Census. It is unclear how Republicans determined this amount; according to authorizing committee staff, the Census Bureau believed the administration would request \$1 billion, reportedly to enable the Bureau to rush remaining census operations, even in the middle of the pandemic, *rather than follow the detailed contingency plans developed by the agency's experts and scientists*. One explanation for the different numbers is that OMB requested \$1 billion, but Senate Republicans decided to "apply" the remaining \$500 million cushion in the 2020 Census contingency fund to that request. (The Bureau already said it will use \$1.5 billion of its contingency fund to address pandemic related challenges.)

Whatever the rationale for the funding level, the Senate provision is a **red herring** because the White House also **has decided to abandon its request to extend the reporting deadlines**, thereby forcing the Census Bureau to **rush** not only the remaining counting operations, but also critical data review, processing, and tabulation activities. The administration's change of heart and legislative position could be driven, in part, by the president's July 21, 2020, Memorandum, setting forth a "policy" to exclude undocumented immigrants from census numbers used for congressional apportionment, and directing the Commerce Secretary to provide information, when reporting the state populations to him under the Census Act (Title 13, U.S.C. §141(b)), that would allow him to carry out this goal. This Memorandum, *which most legal experts believe is unconstitutional*, is in line with President Trump's July 11, 2019 Executive Order, directing the U.S. Census Bureau to compile statistics on the number of citizens, noncitizens, and undocumented residents in the U.S. — an action that followed the administration's failed attempt to add an untested citizenship question to the 2020 Census at the 11th hour. (Several legal challenges to the new Memorandum have already been filed.)

To carry out the new policy, however, Trump would have to be in office when the Commerce Secretary transmits the apportionment data to the president. *That could be problematic under the administration's own request to delay the deadline for reporting the apportionment numbers*. If Congress modifies the reporting deadlines, and if the president loses the election in November, he would not be in office when the Census Bureau finishes counting and quality check activities, and then processing and tabulating the data, under the adjusted operational schedule recommended by senior, career Census Bureau staff.

THE "ASK": To ensure a complete census, Congress should adopt the Bureau's recommendation to extend statutory reporting deadlines for apportionment and redistricting in the next COVID relief bill and allocate \$400 million to address continued 2020 Census challenges brought about by the coronavirus pandemic. Census

operations must continue in a manner that facilitates a fair and accurate count, without cutting corners that inevitably will lead to a significant undercount.

“TOP LINE” TALKING POINTS

- The administration’s suggestion that the Census Bureau can rush remaining 2020 Census operations with an additional \$1 billion (\$500 remaining in the contingency fund + \$448 in new funding) is a *red herring*. Throwing more money at the census will not ensure high quality data collection and processing, retention of sufficient qualified field workers to get the job done, or the safety of both census workers and the public. (The House bill allocates additional funds to carry out enhanced operations under the COVID-adjusted schedule, while still leaving contingency funding for the inevitable new challenges the Bureau will face in the coming months.)
- The president is asking Americans to spend considerably more money on an incomplete census to achieve a political goal. Congress has a constitutional responsibility to ensure an accurate census, and we won’t let that happen.
- The administration wants to *rush* 2020 Census operations, even though the most difficult work lies ahead. If the Census Bureau doesn’t have the time it needs for a thorough enumeration of households that didn’t respond on their own, people experiencing homelessness, and people who live in transitory locations such as RV parks, the historic undercount of harder-to-reach populations — including rural communities, low-income households, people of color, American Indians living on tribal lands, immigrants, and young children — will get worse.

PROTECTING THE 2020 CENSUS FROM POLITICAL INTERFERENCE

The plan to complete the 2020 Census amidst continued COVID-19 surges and lagging household response rates should be driven by experts and scientists at the Census Bureau, not White House and OMB staff.

- The new plan, as envisioned in the McConnell COVID relief package, to throw money at a rushed door-knocking operation (Nonresponse Follow-up) and finish field operations earlier than the pandemic-adjusted, widely-promoted end date of October 31, in order to ensure that President Trump is still in office when the Commerce Secretary reports apportionment data, was hastily developed by the White House and OMB, *not by the expert career staff at the Census Bureau*.
- The administration’s politically-driven plan, embedded in Leader McConnell’s COVID relief bill, drops the administration’s own request for Congress to delay the reporting deadlines for apportionment and redistricting data from the 2020 Census, in light of pandemic-related disruptions to the census. *It was expert, career Census Bureau staff who advised that they needed the additional time to complete the census well in all communities, and to process and tabulate the data in accordance with the Bureau’s critical quality standards.*

The coronavirus pandemic has already disrupted every 2020 Census operation. The administration’s new proposal to *rush major census operations* and ensure that apportionment data are ready by the current statutory deadline of December 31, 2020, would throw the complex census contingency plan into turmoil, confusing local officials, partner organizations, and the public across the country. We must give all communities and census workers the time needed to produce a complete count.

- Census operations taking place this summer and fall are designed to reach historically undercounted and low self-response population groups – including people of color, immigrants, low income households (in both urban and rural areas), American Indians living on tribal lands, and young children. Rushing forward with hastily developed new plans will result in *incomplete data* that will undermine the ability of Congress

and state leaders to allocate trillions of dollars in resources for vital services and infrastructure improvements wisely and effectively in the coming years.

- In fact, significant COVID relief funds currently are allocated based on 2010 Census data (updated annually by the Census Bureau's population estimates program). We have to get the 2020 Census right to direct pandemic recovery funding and other resources (such as medical equipment) prudently in the coming years.

Rushing the census while *also* issuing an executive Memorandum that is likely to be struck down in court and that will frighten immigrants will suppress the count even further.

- The U.S. Constitution's enumeration clause (Article I, sec. 2, as amended by the 14th Amendment) is clear: congressional apportionment must be based on a count of *all persons* living in the U.S. The Justice Department under both Republican and Democratic administrations has repeatedly confirmed that the Constitution requires an apportionment based on *the number of persons* living in each state, without regard to citizenship or immigration status. There is no hidden meaning behind the constitutional phrasing: "persons" means persons.
 - In fact, Attorney General William Barr headed DOJ's Office of Legal Counsel when the department confirmed this position in writing to Congress in 1989.
- Rushing the census in order to transmit apportionment data to the president by December 31 would undermine the largest, most complex census operation, which must count more than 30 percent of households, as well as the postponed enumeration of people experiencing homelessness and those living in transitory locations.
- *Every state and every community* will be harmed by the White House directive to rush the census, inevitably resulting in an *unfinished count* that all Americans must live with for the next ten years. A poorly executed census would hurt a diverse range of rural and urban communities, leaving them underrepresented in Congress and cutting their federal funding for Medicaid, economic development, child care, schools, road and public transit improvements, home heating assistance for senior citizens, and many more vital services.

Taxpayers have already spent almost \$16 billion on the 2020 Census. Now is not the time to throw away that investment by rushing key census operations and forcing the Census Bureau to produce an *unfinished census of unacceptable quality*. States, localities, and the American people must live with the results for the next ten years, so we have to get the census right.

- Census Bureau Associate Director Al Fontenot said unequivocally at a July 8th press briefing that it was too late for the Census Bureau to finish census operations well and report initial results by the current statutory deadline of December 31, 2020.
- Suggestions that the Census Bureau can hire thousands of additional enumerators to speed up the door-knocking phase are not grounded in operational reality. The Bureau already had planned to expand the workforce for this major operation, based on the number of additional mobile devices (iPhones) available through its contract. Now it is already facing serious enumerator retention problems in communities where the door-knocking operation started early (a "soft launch" to make sure all systems work well), a harbinger of challenges to come when in-person visits start nationwide on August 11.
- The bureau has widely promoted the extended time period for both self-response and in-person visits under its adjusted schedule. Cutting off these major household counting operations early will cause widespread confusion and is unfair to the nearly 400,000 partner organizations who have modified their own materials and messaging in accordance with the previously adjusted plan.
- Cutting short the important data processing, review, and tabulation activities that occur after data collection operations end will almost certainly reduce the quality and accuracy of census results,

July 28, 2020

essentially leaving the country with skewed data to guide policymaking and resource allocation for the next decade. For example, the Bureau must unduplicate census responses, which is necessary to ensure that college students are counted in the right place. Failure to do this well, after many students were sent home when classes shifted to remote learning, could leave “college towns” and cities that are home to higher education institutions with significant undercounts, depriving them of essential federal resources for the next decade.

For further information:

Corrine Yu, Senior Program Director, Special Projects, The Leadership Conference yu@civilrights.org

Terri Ann Lowenthal, Census Consultant, The Leadership Conference terriannlowenthal@gmail.com