

November 14, 2022

Fair Lines America Foundation  
2308 Mount Vernon Avenue, #716  
Alexandria, Virginia 22301

**WRITTEN COMMENT RE: 2030 CENSUS PRELIMINARY RESEARCH**

Fair Lines America Foundation submits this written comment in response to the U.S. Census Bureau’s notice, published in the Federal Register on August 17, 2022, soliciting input or suggestions on 2030 Census Preliminary Research (87 FR 50599).<sup>1</sup>

Fair Lines America Foundation is a Section 501(c)(3) non-profit organization committed to educating the public on fair and legal apportionment and redistricting through comprehensive data gathering, processing, and deployment; dissemination of relevant news and information; and strategic investments in academic research and litigation. To further this mission, it also files FOIA requests to help promote open and transparent government regarding the federal government’s decisions and actions taken regarding enumeration and apportionment.

As stated in the 2020 Census Operational Plan, the fundamental, constitutional purpose of the decennial census is to conduct a nationwide, accurate “actual enumeration” of population and disseminate those results to the President, the states, and the American people, which are then used to reapportion seats in the U.S. House of Representatives and to redraw congressional, state legislative, and other electoral districts.<sup>2</sup> In preparing its 2030 Census Operational Plan, the Census Bureau must address the glaring reality that the 2020 Census failed to achieve this goal.

The Census Bureau could not complete its 2020 Census operations in time and, as a result, both the 2020 Apportionment Report and redistricting data were produced months after their respective statutory deadlines, throwing many states’ time-sensitive redistricting processes

---

<sup>1</sup> <https://www.federalregister.gov/documents/2022/08/17/2022-17647/soliciting-input-or-suggestions-on-2030-census-preliminary-research>.

<sup>2</sup> U.S. DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, 2020 CENSUS OPERATIONAL PLAN V5.0 at 5 (Feb. 4, 2022) (<https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan5-and-memo.pdf>).

into chaos. The Post-Enumeration Survey revealed the 2020 Census was estimated to have statistically significant undercounts and overcounts in 14 States ranging from +6.79% to -5.04%.<sup>3</sup> These errors materially impacted the 2020 congressional apportionment and distorted political representation for the decade.<sup>4</sup> The implementation of the Bureau’s new differential privacy protection system undermined the entire constitutional command of an “actual enumeration” in the decennial census by scrambling all of the states’ redistricting data to an unknown degree, forcing state and local lawmakers to try and draw districts in compliance with federal and state requirements using essentially fictitious population and demographic data.

It's well known the Census Bureau encountered significant and unique challenges in administering the last census. The coronavirus pandemic substantially impacted the Bureau’s 2020 Census operations and its standard count resolution procedures as millions of Americans were not in their ordinary living situations on Census Day. The Bureau and the census were also embroiled in numerous political and legal challenges over the potential inclusion of a citizenship question on the 2020 Census Questionnaire.

The Bureau cannot blame the litany of issues with the 2020 Census entirely on these unprecedented circumstances. Rather, the 2020 Census’s issues – its delays, counting errors, and distorted datasets – were primarily caused by the Bureau’s own operational decisions. The fact that these issues were of the Bureau’s own design makes resolving them prior to the 2030 Census possible. To aid in this effort, Fair Lines America Foundation makes the following recommendations for the 2030 Census operational design and urges the Bureau to adopt them.

## A. TECHNOLOGY

After conducting what it hails as the “most automated, modern, and dynamic decennial census in our nation’s history,”<sup>5</sup> the Bureau now says it is interested in technological

---

<sup>3</sup> U.S. CENSUS BUREAU, Press Release: *U.S. Census Bureau Releases 2020 Undercount and Overcount Rates by State and the District of Columbia* (May 19, 2022) (<https://www.census.gov/newsroom/press-releases/2022/pes-2020-undercount-overcount-by-state.html>).

<sup>4</sup> THE AMERICAN REDISTRICTING PROJECT, *2020 Census Count Errors & Congressional Apportionment* (June 13, 2022) (<https://thearp.org/blog/apportionment/2020-census-count-errors/>).

<sup>5</sup> U.S. CENSUS BUREAU, 87 FR 50599, *supra* note 1.

advancements and developments that could improve the various avenues for responding to the census and help facilitate the Bureau’s in-person collection of data when necessary. The Bureau would be remiss, however, to rush towards the development and adoption of new technologies for the 2030 Census, particularly ones focused on accessibility and response methods, without addressing the momentous issues with the 2020 Census caused by the Bureau’s problem-laden implementation of its latest “technological” innovation – disclosure avoidance based on differential privacy.

**Differential Privacy.** The Bureau has been working on numerous mathematical algorithms to implement differential privacy since 2006, but the decision to implement it for the 2020 Census was not made until 2017.<sup>6</sup> Despite it being in the works for over ten years and greenlit for use in less than three, the Bureau was far from finalizing how its differential privacy model would work and the extent to which it would impact data quality and usability. In the months leading up to the Census Act’s deadline for releasing 2020 Census data, and even beyond that deadline, the Bureau was still hastily troubleshooting their model and making changes to its parameters in response to significant flaws and methodological concerns identified by stakeholders in the Bureau’s demonstration datasets.<sup>7</sup> The Bureau didn’t even establish the final parameters for its differential privacy model until June 9, 2021,<sup>8</sup> meaning it couldn’t start its final data processing phase until *months after* the Census Act’s deadline for delivering census data to the states.

The Bureau has publicly blamed the delayed release of the 2020 Census results on the COVID-19 pandemic,<sup>9</sup> but the fact that other 2020 Census products like the Demographic and Housing Characteristics File have had their releases delayed by two years or more<sup>10</sup> shows that the Bureau’s failure to meet its statutory obligations stem not only from the pandemic, but rather

---

<sup>6</sup> U.S. CENSUS BUREAU, *A History of Census Privacy Protections* (Oct. 10, 2019)

(<https://www.census.gov/library/visualizations/2019/comm/history-privacy-protection.html>).

<sup>7</sup> U.S. CENSUS BUREAU, Press Release: *Census Bureau Sets Key Parameters to Protect Privacy in 2020 Census Results* (June 9, 2021) (<https://www.census.gov/newsroom/press-releases/2021/2020-census-key-parameters.html>).

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

<sup>9</sup> U.S. CENSUS BUREAU, *Redistricting Data: What to Expect and When* (July 28, 2021)

(<https://www.census.gov/newsroom/blogs/director/2021/07/redistricting-data.html>); U.S. CENSUS BUREAU, *2020 Census Operational Adjustments Due to COVID-19* (<https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/operational-adjustments.html>).

<sup>10</sup> Michael Wines, N.Y. TIMES, *What Did the 2020 Census Teach Us? We Might Not Know Until 2023* (Apr. 29, 2022) (<https://www.nytimes.com/2022/04/29/us/2020-census-release.html>).

from ongoing complications in applying its new, highly complex differential privacy model. The Bureau has effectively reduced these delayed 2020 Census products to live-test runs of their still not perfected model, a model which could very well be made obsolete by technological advancements in the lead up to the 2030 Census. Given that the 2030 Census will likely face a similarly constrained fiscal environment as the 2020 Census, it would be unwise to waste the Bureau's resources yet again on a haphazard and costly endeavor that poses more risks of failure than success. Moreover, timeliness and transparency are both critical to stakeholders. One of the most active groups of these, those interested in apportionment and redistricting, was not even made generally aware of the Bureau's abandonment of the disclosure avoidance techniques used in previous censuses until spring of 2019. This did not provide sufficient time for feedback from the user community.

Differential privacy's impacts on the 2020 Census schedule and the Bureau's ability to comply with its statutory obligations pale in comparison, however, to the Pandora's box of issues raised by its implementation. By injecting an unspecified amount of "noise" and scrambling all population and demographic data for all geographies lower than the state level, the Bureau has effectively transformed the 2020 Census results into a statistical fantasy, distorting the political representation of Americans and incorrectly distributing billions in federal funding to an unknown degree. It runs contrary to and undermines the constitutional purpose for which the Census was established, a purpose the Census Bureau itself recognizes: to conduct a nationwide "actual enumeration" of population and disseminate those accurate counts to the President and the states so that the decennial rituals of congressional reapportionment and electoral redistricting can be completed.<sup>11</sup>

Redistricting is a burdensome but essential decennial undertaking of the American political system. Requirements of both the U.S. Constitution and 50 state constitutions must be complied with along with arcane sections of the U.S. Code and state law – chief amongst these is the one person, one vote constitutional requirement that members of representational bodies, state and local, must represent approximately the same number of persons. Derived from Article I, § 2 for congressional districts and the 14<sup>th</sup> Amendment for legislative and local government

---

<sup>11</sup> 2020 CENSUS OPERATIONAL PLAN V5.0, *supra* note 1, at 5.

districts, the one person, one vote principle reflects a bedrock tenet of democracy that each person's vote be equally effective in electing their representatives.<sup>12</sup> Compliance with this principle is not merely a consideration; it is the constitutionally mandated, primary goal of the redistricting process<sup>13</sup>, in almost every instance, relying on what is expected to be an accurate federal census. Congress itself recognized the importance of the Census Bureau's duties in relation to the redistricting process when it passed Public Law 94-171 in 1975, imposing specific obligations on the Bureau to provide redistricting data from the latest decennial census to the states in a timely manner and using geographies specifically requested by each state.<sup>14</sup>

While there is no specified population deviation range deemed *per se* constitutional for each type of district, the equal population standard is more stringent for congressional districts than for legislative districts,<sup>15</sup> with the majority of congressional plans enacted having population deviations of +/- 1 person. States have increasingly set lower population deviation targets for their congressional and legislative districts,<sup>16</sup> utilizing census data down to the block level to balance populations and equalize the voting strength of their voters. Any population deviations in redistricting plans must be the result of a good-faith effort to achieve equality and need to be justified by a consistently applied rational state policy.<sup>17</sup> Advances in redistricting technology have driven down the range of population deviations that can be constitutionally justified. Differential privacy converts these population deviation minimization efforts to a Sisyphean task, an exercise in futility where redistricting plans are wholly detached from reality and the constitutional goal of equal representation becomes illusory. A redistricting plan that is equally populous on paper could in reality contain hidden, undiscoverable deviations beyond the anticipated range due to the Bureau's synthetic population data.

Due to the mechanisms of differential privacy, the equal population issues only become magnified as one gets to districts drawn using smaller geographic areas. Some states have legislative districts containing only a couple of thousand people each, and every state has local jurisdictions whose county or city council or school board districts are even smaller, meaning

---

<sup>12</sup> *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964), *Reynolds v. Sims*, 377 U.S. 533, 575-76 (1964).

<sup>13</sup> *Alabama Legis. Black Caucus v. Alabama*, 575 U.S. 254, 272-75 (2015).

<sup>14</sup> Pub. L. No. 94-171, 89 Stat. 1023 (Dec. 23, 1975).

<sup>15</sup> See *Evenwel v. Abbott*, 578 U.S. 54, 59-60 (2016).

<sup>16</sup> See, e.g., MO. CONST. art. III, § 3(b)(1); MONT. CODE ANN. § 5-1-115(2)(a).

<sup>17</sup> See *Evenwel*, 578 U.S. at 59.

even seemingly minor population discrepancies at the VTD or block level can result in deviations which are *per se* unconstitutional. Notably, many local government officials in these smaller communities could immediately recognize that the 2020 Census data did not accurately reflect their jurisdiction’s population. The Bureau’s response to them has effectively been “you’re right, we can’t say whether those are counting errors or differential privacy, you and your voters will just have to live with it.”<sup>18</sup>

In addition to equal population, redistricting authorities must also ensure their plans comply with all applicable provisions and protections for minority voting rights, including the federal Voting Rights Act, court precedents relating to the U.S. Constitution’s prohibitions on racial gerrymandering, and state constitutional or statutory provisions. These constitutional and statutory provisions impose highly complex and, at times competing, requirements on map drawers that generate the bulk of legal challenges to redistricting plans every decade. In these lawsuits, the question of whether a map impermissibly dilutes or abridges minority voting rights hinges largely on extensive factual evidence and demographical analyses of redistricting plans or electoral districts, both those challenged and those offered by plaintiffs to demonstrate the validity of their claims.

In racial gerrymandering claims, courts examine both the racial compositions of redistricting plans as a whole and district-specific placements or splitting of low-level geographies with substantial minority populations in deciding whether a map was drawn with race as its predominant consideration.<sup>19</sup> To even state a valid claim for minority vote dilution under § 2 of the VRA, the U.S. Supreme Court has ruled plaintiffs must show, among other requirements, that a minority population is sufficiently large and geographically compact enough to be drawn into a reasonably configured single-member district in which they comprise more than 50% of the voting population.<sup>20</sup> This becomes even more of a complexity with the growing

---

<sup>18</sup> See generally NAT’L CONF. OF STATE LEGISLATURES, *Differential Privacy for Census Data Explained* (Nov. 10, 2021) (<https://www.ncsl.org/research/redistricting/differential-privacy-for-census-data-explained.aspx>).

<sup>19</sup> See generally, e.g., *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 188-92 (2017); *Alabama Legis. Black Caucus v. Alabama*, 575 U.S. 254, 262-68 (2015).

<sup>20</sup> *Thornburg v. Gingles*, 478 U.S. 30, 48-51 (1986).

number of states which have enacted their own state-level Voting Rights Act, each with its own unique set of protections and requirements involving racial demographics and voting analyses.<sup>21</sup>

As in the equal population context, differential privacy similarly makes compliance with these minority voting rights protections impossible to truly achieve. With both population and demographic data shuffled to an unknown degree below the state level, map drawers performing the complex demographic and voting analyses in the Herculean effort to satisfy the inherently conflicting obligations of the Voting Rights Act and the Court's racial gerrymandering precedents are forced to work with data that does not accurately reflect their communities or minority populations. It introduces yet another area of legal dispute as expert witnesses will now have to spar over which population and demographic datasets to use before ever even reaching the merits of a case. Courts and litigants will spend years and millions of dollars adjudicating race-based challenges to redistricting plans based on inaccurate evidence with no guarantee the outcome serves the Voting Rights Act's goals.

Concerns of differential privacy undermining minority voting protections or frustrating enforcement of those, or partisan gerrymandering provisions, are not mere fantasy. Research has already shown that the Bureau's differential privacy operations produce data with systematic biases along racial and partisan lines, including artificial reductions of racial and partisan heterogeneity and "unpredictable changes" to district-level partisan outcomes.<sup>22</sup> These biases can directly and materially impact the number of majority-minority districts protected by the Voting Rights Act when analyzed under current judicial standards, as well as the results of different types of analyses utilized by state courts in adjudicating partisan gerrymandering claims. For example, there are now many block groups and tracts where the Census' CVAP as assessed by the American Community Survey exceeds the VAP identified in the Census' redistricting data sets, in some parts of the country as high as 25% of these geographies.

Indeed, to witness the impact and stakes of the Bureau's differential privacy model, one need only look to two Voting Rights Act cases currently pending before the U.S. Supreme Court:

---

<sup>21</sup> See, e.g., California Voting Rights Act of 2001, CAL. ELEC. CODE §§ 14025-32; VA. CODE ANN. § 24.2-129 (2021).

<sup>22</sup> Christopher T. Kenny, et al., *The Use of Differential Privacy for Census Data and Its Impact on Redistricting: The Case of the 2020 U.S. Census*, 7 SCI. ADVANCES 41 (Oct. 6, 2021) (<https://www.science.org/doi/10.1126/sciadv.abk3283>).

*Merrill v. Milligan*<sup>23</sup>, out of Alabama, and *Ardoin v. Robinson*<sup>24</sup>, out of Louisiana. In both cases, plaintiffs challenging the states' enacted congressional plans as violating § 2 of the VRA each produced illustrative redistricting plans containing additional majority-minority districts which barely satisfied the 50% voting population requirement under § 2.<sup>25</sup> The district courts in both cases, using these illustrative plans, found the plaintiffs were likely to establish the enacted plans violated § 2 and enjoined them from being used in the 2022 elections.<sup>26</sup> These rulings were eventually appealed to, and stayed by, the U.S. Supreme Court where they remain pending. Thanks to the Bureau's differential privacy model, however, it is impossible to know whether the Alabama and Louisiana plaintiffs' claims were meritorious enough to reach this stage since their validity could turn on even the smallest distortion of either state's minority populations. Nor can the court, if it does ultimately rule for the plaintiffs, order a bona fide remedy for the adjudged § 2 violations since there is no guarantee a razor-thin majority-minority district using the Census' differently private redistricting data is, in fact, a majority-minority district.

The problems resulting from the Bureau's differential privacy protection method are not limited to the context of political representation. More than three hundred federal spending programs across the policy spectrum depend on decennial census data to calculate and determine the geographic disbursement of government funds.<sup>27</sup> Shuffling population and demographic data below the state level invariably frustrates every one of these federal programs, jeopardizing the proper distribution of billions of dollars in federal funding for governmental programs and agencies, state and local jurisdictions, educational and medical institutions, and vulnerable populations. Since many of these programs award additional funding based on intensely localized appraisals of the specific populations or areas most in need, differential privacy's intensifying distortion of reality at lower levels of geography mean its harms will be disproportionately felt by the very people the programs were designed to help.

---

<sup>23</sup> Nos. 21-1086 & 21-1087.

<sup>24</sup> No. 21-1596.

<sup>25</sup> See *Milligan v. Merrill*, No. 2:21-cv-1530, Plaintiffs' Motion for a Preliminary Injunction and Memorandum of Law in Support Thereof, at 7-8 (N.D. Ala. Dec. 15, 2021); *Robinson v. Ardoin*, No. 3:22-cv-211, at 22-24 (M.D. La. June 6, 2022).

<sup>26</sup> *Milligan*, No. 2:21-cv-1530 (Jan. 24, 2022); *Robinson*, No. 3:22-cv-211 (June 6, 2022).

<sup>27</sup> GEORGE WASHINGTON UNIVERSITY, INSTITUTE OF PUBLIC POLICY, *Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds* (Apr. 29, 2020) (<https://gwipp.gwu.edu/counting-dollars-2020-role-decennial-census-geographic-distribution-federal-funds>).

It similarly frustrates the mission of demographers, statisticians, and other researchers hoping to perform demographic or economic analyses of the nation’s population, or subsets thereof, and makes it impossible to determine whether a statistical observation reflects a trend or a noise-induced anomaly. For example, for school boards that use Census data for planning school enrollment and construction, Census data that misreports the Voting Age Population can significantly distort these crucially important and very localized use of Census data. And those hoping to rectify issues or errors they’ve identified with the 2020 Census data are left with no recourse since differential privacy effectively limits the Bureau’s Count Question Resolution process to a confirmation that the boundaries, and thus housing unit counts, were correct for the jurisdiction; no changes will be made to population counts otherwise.

The Bureau consistently asserts that technological advances left it with no choice but to implement its disclosure avoidance system based on differential privacy in order to comply with its confidentiality obligations under the Census Act.<sup>28</sup> In taking this position, the Bureau makes three critical errors. First, the same study which found systematic biases in the Bureau’s differential privacy procedures also found that they may not prevent the accurate prediction of “sensitive” attributes, like race, any more than the swapping methodology used in the 2010 Census,<sup>29</sup> thereby throwing the cost-benefit analysis, if not the entire efficacy of the differential privacy program into question.<sup>30</sup> Second, in opting for differential privacy over reliable and accurate census data, the Bureau is prioritizing compliance with a statutory command over its constitutional duty. The Census Act’s confidentiality provision undoubtedly serves an important and longstanding purpose by imposing certain obligations on the Bureau to protect the personal information of census respondents. But that statutorily established goal of privacy cannot supersede or interfere with the fundamental constitutional purpose of the decennial census: to accurately count the nation’s population and disseminate those results for use in congressional

---

<sup>28</sup> See generally, e.g., U.S. CENSUS BUREAU, DISCLOSURE AVOIDANCE FOR THE 2020 CENSUS: AN INTRODUCTION 1-3 (Nov. 2021) (<https://www2.census.gov/library/publications/decennial/2020/2020-census-disclosure-avoidance-handbook.pdf>).

<sup>29</sup> See Kenny, et al., *supra* note 22.

<sup>30</sup> Critical research by Stephen Ruggles has been disregarded by the Bureau, and his published academic writings on this subject should be considered. Steven Ruggles & David Van Riper, *The Role of Chance in the Census Bureau Database Reconstruction Experiment*, 41 POPULATION RESEARCH AND POLICY REV. 781-88 (2022) (<https://link.springer.com/article/10.1007/s11113-021-09674-3>).

reapportionment and electoral redistricting. And as Professor Ruggles notes in Population Research and Policy Review, differential privacy probably does not even accomplish the Bureau's stated goals.

Finally, there is also a strong likelihood that differential privacy's application to the P.L. 94-171 redistricting data is an unlawful statistical adjustment under the U.S. Supreme Court's decision in *Department of Commerce v. U.S. House of Representatives*.<sup>31</sup> In *DOC*, the Bureau argued that Congress's 1976 amendments to the Census Act authorized them to use two statistical sampling methods to correct undercounts in the 2000 Census, an argument reminiscent of those it currently raises that differential privacy is authorized and necessitated by the Census Act's confidentiality provisions. The Court held the 1976 amendments to the Census Act did not disturb the "longstanding prohibition" on the use of statistical sampling when calculating the population for purposes of apportionment and rejected the Bureau's attempted statistical adjustments.<sup>32</sup>

Justice O'Connor's majority opinion recognized a distinction between the use of sampling when collecting "nonapportionment information" in connection with the decennial census, like housing and employment data, versus the use of sampling when calculating population for apportionment purposes, concluding Congress only intended the former be made mandatory by the 1976 amendments.<sup>33</sup> The Court emphasized at no point during debates did any member suggest the 1976 amendments would "so fundamentally change the manner in which the Bureau could calculate the population for apportionment" and "profoundly affect Congress by likely shifting the number of seats apportioned to some States and altering district lines in many others."<sup>34</sup> Differential privacy and its substantial impacts on the redistricting process being couched in the decades-old confidentiality provisions of the Census Act replicates these circumstances, and as Justice O'Connor stated in *DOC*, "it tests the limits of reason to suggest that despite such silence, Members of Congress voting for those amendments intended to enact

---

<sup>31</sup> 525 U.S. 316 (1999).

<sup>32</sup> *Id.* at 342-44.

<sup>33</sup> *Id.* at 338-44.

<sup>34</sup> *Id.* at 342-43. These statements, in conjunction with Justice O'Connor's finding that the *Glavin* plaintiffs' had legal standing to challenge the vote dilution effects of sampling on purely intra-state redistricting, make clear that the Court's ruling pertained to the calculation of population used for both congressional apportionment and intra-state redistricting. *Id.* at 332-34.

what would arguably be the single most significant change in the method of conducting the decennial census since its inception.”<sup>35</sup>

## **B. NEW DATA SOURCES**

In line with our recommendation regarding new technologies, the Bureau must first explain and address glaring issues with two of its new data sources or methods used in the 2020 Census prior to exploring and implementing new ones for the 2030 Census: its use of group quarters imputation and its use of administrative records. The Bureau’s operational plan in these two areas saw substantial and untested last-minute changes in the final months of 2020 Census operations,<sup>36</sup> changes which to this day have still not been fully explained to the public. The coronavirus pandemic undoubtedly played a role in necessitating these changes, but the challenges the Bureau was facing cannot excuse the lack of transparency as to how these data sources and methods of using them were impacted, particularly given substantial evidence that these processes contained and resulted in significant flaws in data quality.

**Group Quarters Imputation.** It is no secret the 2020 Census’s group quarters enumeration operations were beleaguered. The coronavirus pandemic disrupted the ordinary operations of group quarters facilities throughout 2020, leading to unexpected and varying occupancies in places like college dorms on April 1, Census Day. The Bureau’s field operations for enumerating group quarters were delayed several months and condensed into a shorter time frame, while the Bureau’s counting procedures for group quarters were hastily changed to minimize in-person contact.<sup>37</sup> Reporting in late 2020 revealed that after group quarters data collection operations were completed, the Bureau found “major inconsistencies” in the records and information it had received that, if left unfixed, could lead to the miscounting of millions of

---

<sup>35</sup> *Id.* at 343.

<sup>36</sup> See U.S. CENSUS BUREAU, *2020 Census Group Quarters* (Mar. 16, 2021) (<https://www.census.gov/newsroom/blogs/random-samplings/2021/03/2020-census-group-quarters.html>); U.S. CENSUS BUREAU, *Administrative Records and the 2020 Census* (Apr. 1, 2021) ([https://www.census.gov/newsroom/blogs/random-samplings/2021/04/administrative\\_recor.html](https://www.census.gov/newsroom/blogs/random-samplings/2021/04/administrative_recor.html)).

<sup>37</sup> *2020 Census Group Quarters*, *supra* note 36.

people.<sup>38</sup> These discrepancies prompted the Bureau to make several last-minute changes to its group quarters review and count resolution procedures without advance public notice or explanation and virtually no testing, the most problematic being the Bureau’s decision to use an entirely new methodology, termed “group quarters imputation,” for the first time to fill in missing or incomplete data from certain group quarters facilities.<sup>39</sup>

Additionally, “in response to public feedback received on the [Count Question Resolution operation](#) about counting group quarters’ populations” the Bureau created “a new, one-time operation for governmental units in the United States and Puerto Rico to request that the U.S. Census Bureau review the population counts of group quarters *they believe were not correctly counted* as of April 1, 2020 (emphasis added).”<sup>40</sup>

The public still does not know the full extent of the discrepancies in the 2020 group quarters data, despite them being significant enough to warrant delaying the release of 2020 Census data until they were resolved.<sup>41</sup> The Bureau has only publicly acknowledged that some unspecified number of group quarters facilities provided incomplete information regarding their occupancy status or population count.<sup>42</sup> Similarly, the Bureau has not yet released the full details of its hastily adopted and untested group quarters imputation method beyond a very high-level overview generally describing the process and characterizing it as “scientifically sound.”<sup>43</sup> That overview fails to disclose how frequently group quarters imputation was used, what proportion of those imputations dealt with population counts versus characteristics or demographics, or how

---

<sup>38</sup> Hansi Lo Wang, *Millions of Census Records May Be Flawed, Jeopardizing Trump’s Bid to Alter Count*, NPR (Dec. 5, 2020) (<https://www.npr.org/2020/12/05/943416487/millions-of-census-records-may-be-flawed-jeopardizing-trumps-bid-to-alter-count>)

<sup>39</sup> *2020 Census Group Quarters*, *supra* note 36. It is notable that the Bureau implemented group quarters imputation without complying with the Administrative Procedures Act’s notice and rulemaking requirements, violations which the U.S. Supreme Court based its rejection of the citizenship question on. *See Dept. of Commerce v. New York*, No. 18-966 (June 27, 2019).

<sup>40</sup> U.S. CENSUS BUREAU, *2020 Post-Census Group Quarters Review Operation (PCGQR)* (<https://www.census.gov/about/policies/quality/corrections/pcgqr.html>).

<sup>41</sup> U.S. CENSUS BUREAU, Press Release: *Census Bureau Statement on Redistricting Data Timeline* (Feb. 12, 2021) (<https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>); U.S. CENSUS BUREAU, Press Release: *Census Bureau Statement on Modifying 2020 Census Operations to Make Sure College Students are Counted* (Mar. 15, 2020) (<https://www.census.gov/newsroom/press-releases/2020/modifying-2020-operations-for-counting-college-students.html>).

<sup>42</sup> U.S. CENSUS BUREAU, *2020 Census Program Memorandum Series: 2022.08* (Mar. 3, 2022) ([https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2022\\_08.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2022_08.pdf)).

<sup>43</sup> *Id.* at 1.

decisions as to which sources of data would inform an imputation were applied to individual group quarters facilities. Despite the Bureau’s best efforts to obfuscate the magnitude of these issues or the extent of its imputations, several reports and studies have shed some light on the matters.

Fair Lines America Foundation has acquired responses to public records requests made to state universities in nine states (including Texas, California, Florida, and New York). These requests were motivated by concern over public reports of substantial inconsistencies in the group quarters data and a desire to obtain information relevant to their 2020 Census group quarters submissions and the impact of the coronavirus pandemic on their populations.<sup>44</sup> Specifically, the records show each institution’s group quarters facility maximum occupancy, the number of residents residing in such facilities on March 15, 2020, and April 1, 2020, and the number of residents actually reported to the Bureau in response to its 2020 Census group quarters questionnaire.<sup>45</sup> These records revealed substantial confusion amongst group quarters respondents as to the appropriate counting and reporting standards in light of the pandemic’s upheaval of most of the nation’s ordinary living situations. This confusion and variation in counting protocols led to staggering disparities between the number of persons residing in an institution’s group quarters facilities on 2020 Census Day versus the number actually reported to the Bureau. These disparities ranged from hundreds to thousands of people depending on the institution and were found even amongst institutions located in the same state.<sup>46</sup>

In an effort to help the public better understand how the Census Bureau was handling these group quarters issues, FLAF submitted a Freedom of Information Act request to the Bureau in February 2021 seeking records for “each institutional living facility or housing facility from which a completed 2020 Group Quarters Enumeration questionnaire was received” that demonstrated “the number of residents reported by each living or housing facility nationwide in response to the Census Bureau’s request for group quarters population data . . . .”<sup>47</sup> After the Bureau denied the request as barred by the Census Act’s confidentiality provision,<sup>48</sup> FLAF

---

<sup>44</sup> FAIR LINES AMERICA FOUNDATION, COLLEGE FOIA 2020 (<https://foundation.fairlines.org/college-foia-2020>).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Fair Lines America Foundation, Inc. v. U.S. Dept. of Commerce*, No. 1:21-cv-1361, Complaint for Declaratory and Injunctive Relief 13-20 (D.D.C. May 18, 2021).

<sup>48</sup> *Id.* at 5.

submitted a renewed request on March 31, 2021, clarifying it only sought records which the Secretary of Commerce was explicitly authorized to provide and not otherwise exempt from disclosure under the Census Act.<sup>49</sup> In other words, FLAF sought only tabulations and other statistical measures derived from summarizing the original underlying group quarters population data for Census Day 2020 without underlying demographic or personally identifiable information. This could include statewide group quarters population totals in the aggregate and the number of persons counted via imputation. The Bureau failed to respond to this request by the statutory deadline, leaving FLAF with no choice but to seek relief in federal court.

FLAF filed its FOIA lawsuit on May 18, 2021, and only after this litigation commenced did the Bureau provide any sort of response to FLAF's FOIA request. In a letter dated May 24, 2021, the Bureau partially granted and partially denied FLAF's request, providing 988 pages of responsive records.<sup>50</sup> Of those, 166 pages were either fully or partially redacted and all records were from December 2020 or earlier.<sup>51</sup> The Bureau asserted the redactions were made pursuant to FOIA's statutory exceptions for intra-agency memorandums<sup>52</sup> and information specifically exempted from disclosure by statute<sup>53</sup>, citing the Census Act's confidentiality provisions<sup>54</sup> despite FLAF's request having been explicitly narrowed to exclude any such confidential information. Attempts to resolve the disputed redactions and obtain the remaining responsive records were made over the following two months, but these proved futile. Amidst stonewalling and steadfast resistance from the Bureau, FLAF eventually filed a motion for injunctive relief on July 19 to compel the production of the unredacted and outstanding records.

After fighting against the disclosure of these records for more than a year, the Bureau regrettably was granted summary judgment by the federal district court on August 2, 2022.<sup>55</sup> But the court's ruling did not reflect a wholesale endorsement of the Bureau's expansive interpretation of the Census Act's confidentiality provisions or its methods of complying with those requirements; rather, it stemmed from the considerable discretion given to agencies to act

---

<sup>49</sup> *Id.* at 5-6.

<sup>50</sup> *Id.*, Plaintiff's Motion for Preliminary Injunction, at 8 (July 19, 2021).

<sup>51</sup> *Id.*

<sup>52</sup> 5 U.S.C. § 552(b)(5).

<sup>53</sup> 5 U.S.C. § 552(b)(3).

<sup>54</sup> 13 U.S.C. §§ 8(b), 9(a).

<sup>55</sup> *Fair Lines America Foundation, Inc. v. U.S. Dept. of Commerce*, No. 1:21-cv-1361 (D.D.C. Aug. 2, 2022).

on a belief that need not be likely, but merely *plausible*. It rightfully rejected the Bureau’s argument that the requested information fell under the scope of § 8(b) since, by the plain terms of the request, FLAF was not seeking information submitted by any particular respondents such as raw census data.<sup>56</sup> It did, however, accept the Bureau’s argument that the records could be properly withheld under § 9(a) based on that provision’s more expansive language covering any publication “whereby” the data provided by any particular respondent *could* be identified.<sup>57</sup> Even though the court was inclined to agree with FLAF’s argument and evidence that the Bureau’s asserted risk of personal identification possibly resulting from disclosing group quarters aggregation or imputation records was farfetched, remote, and maybe even impossible, it explained the agency’s justification need only be logical or plausible to be sustained.<sup>58</sup>

In the months since the district court’s ruling, arguments in favor of disclosing the details of the Bureau’s group quarters enumeration and imputation processes have only grown stronger as the public learns more information regarding their flaws. On September 14, 2022, the Office of the Inspector General released its “Lessons Learned From the 2020 Decennial Census” report detailing a number of issues that impacted the accuracy and quality of data collected by the Bureau in the 2020 decennial census operations.<sup>59</sup> Among other findings, the report found that college students were likely undercounted at off-campus addresses despite the Bureau’s outreach efforts, efforts which themselves would not have helped mitigate the risk of an inaccurate count because the Bureau did not have a final plan in place to use any off-campus student data it might have received.<sup>60</sup> The report found “noteworthy omissions” from colleges and universities that submitted information and “significant gaps” in the data elements provided.<sup>61</sup> For example, data submitted by colleges and universities in 20 states did not include records for the flagship state university, 10 states’ college data didn’t contain records for the state university system, and several states failed to provide any college or university data at all.<sup>62</sup> When student records were

---

<sup>56</sup> *Id.* at 10-11.

<sup>57</sup> *Id.* at 12-13.

<sup>58</sup> *Id.* at 14-15.

<sup>59</sup> U.S. DEPT. OF COMMERCE, OFFICE OF INSPECTOR GEN’L, OFFICE OF AUDIT AND EVALUATION, LESSONS LEARNED FROM THE 2020 DECENNIAL CENSUS, Final Report No. OIG-22-030 (Sept. 14, 2022) (<https://www.oig.doc.gov/OIGPublications/OIG-22-030.pdf>).

<sup>60</sup> *Id.* at 4-8.

<sup>61</sup> *Id.* at 6.

<sup>62</sup> *Id.* at 6-7.

provided, only 72% contained a local address and only 52% contained the date of birth necessary to perform the person-name matching to identify duplicate responses for alternative addresses<sup>63</sup> – an issue impacting millions of students given the circumstances of the pandemic and confusion amongst administrators as to the correct population reporting procedures. The OIG report also provided the first quantitative and qualitative insight into some of the Bureau’s group quarters imputation activities, revealing the Bureau imputed the population count for more than 10% of off-campus housing units identified in the data provided by colleges and universities.<sup>64</sup> The report did not provide imputation details or quantities for other types of group quarters facilities.

The Census Bureau itself has recognized that underlying issues with group quarters data can have significant impacts for obtaining an accurate population count.<sup>65</sup> We already know thanks to the 2020 Post-Enumeration Survey that the 2020 Census had statistically significant undercounts and overcounts in 14 states, equating to an estimated overcount of roughly 695,422 people in New York and estimated undercounts of roughly 761,094 people in Florida and 560,319 people in Texas.<sup>66</sup> Each of these states contain a substantial number of group quarters facilities, and each of these states either received or lost one or more congressional seats for the decade by margins well within these estimated ranges of error.<sup>67</sup> With there being many reasons to doubt the accuracy of the 2020 group quarters population totals, the public has a right to know whether these significant consequences for political representation and governmental funding were attributable in whole or in part to the Bureau’s hastily rewritten group quarters procedures and imputation method.

**Administrative Records.** A similar narrative played out with regards to the Bureau’s use of administrative records in the 2020 Census. The Bureau has historically used administrative records to help refine its address lists and to ascertain population estimates, but their use took on a heightened focus in 2020. Specifically, the Trump Administration planned to

---

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 7.

<sup>65</sup> U.S. CENSUS BUREAU, *How We Complete the Census When Households or Group Quarters Don’t Respond* (Apr. 16, 2021) (<https://www.census.gov/newsroom/blogs/random-samplings/2021/04/imputation-when-households-or-group-quarters-dont-respond.html>).

<sup>66</sup> THE AMERICAN REDISTRICTING PROJECT, *supra* note 4.

<sup>67</sup> *Id.*

combine federal and state administrative records with 2020 Census responses and American Community Survey data to accurately determine citizenship status<sup>68</sup> after the U.S. Supreme Court rejected an attempt to include a citizenship question in the 2020 Census questionnaire.<sup>69</sup> This plan was met with fierce pushback and legal challenges from civil rights organizations and stakeholders who asserted that administrative records were not accurate enough to be relied on so heavily and there was not ample time for the Bureau to refine its methodology for using these records in such a novel way.<sup>70</sup>

The discussion of administrative records took a heel turn in early 2021, however, following President Biden's inauguration and the Bureau's decision to abandon its ongoing efforts to include citizenship status in the 2020 Census data.<sup>71</sup> Despite the earlier fight in the citizenship context, and unlike its group quarters imputation methodology, the Bureau had already been planning on using administrative records to directly inform its enumeration and count review operations for the first time in the 2020 Census and had even tested using them from 2013 to 2018.<sup>72</sup> But the coronavirus pandemic stymied enumeration and in-person follow up operations and led to the delayed release of 2019 tax returns, forcing the Bureau to make last-minute changes to its plan for using administrative records, including lessening the degree of reliability and corroboration required for population counts and characteristics taken from administrative records.<sup>73</sup>

---

<sup>68</sup> EXECUTIVE ORDER NO. 13880, 84 FR 33821, COLLECTING INFORMATION ABOUT CITIZENSHIP STATUS IN CONNECTION WITH THE DECENNIAL CENSUS (July 11, 2019).

<sup>69</sup> *Dept. of Commerce v. New York*, No. 18-966 (June 27, 2019).

<sup>70</sup> E.g., Suzanne Almeida & Tye Rush, *Wrong on So Many Levels: Why Citizenship Data Will Damage Voting Maps*, COMMON CAUSE (July 26, 2019) (<https://www.commoncause.org/democracy-wire/wrong-on-so-many-levels-why-citizenship-data-will-damage-voting-maps/>); Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump's Order to Count Citizens*, SCIENCE (Sept. 16, 2019) (<https://www.science.org/content/article/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens>); Tara Bahrapour, *Census Bureau's Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019) ([https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises-privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732\\_story.html](https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises-privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html)); Jeff Zalesin, *Census Bureau's Citizenship Data Collection is Misguided and Harmful*, CAMPAIGN LEGAL CENTER (Jan. 24, 2020) (<https://campaignlegal.org/update/census-bureaus-citizenship-data-collection-misguided-and-harmful>).

<sup>71</sup> EXECUTIVE ORDER NO. 13986, 86 FR 7015, ENSURING A LAWFUL AND ACCURATE ENUMERATION AND APPORTIONMENT PURSUANT TO THE DECENNIAL CENSUS (Jan. 20, 2021).

<sup>72</sup> *Administrative Records and the 2020 Census*, *supra* note 36.

<sup>73</sup> *See id.*; Final Report No. OIG-22-030, *supra* note 59.

The Bureau’s decision to utilize administrative records more broadly to inform its enumeration and count resolution processes is not problematic in itself, but the decision to lower the level of confidence needed to accept information from such records is. Indeed, it is perplexing that the overwhelming concerns regarding the accuracy of such records to determine citizenship status did not equally apply to their use for determining the core data points of the decennial census, sometimes from just a single record. To its credit, the Bureau has been more forthcoming with data showing the frequency with which it used administrative records to resolve population counts, at least when compared to its disclosure of group quarters imputation figures.<sup>74</sup> But the data released by the Bureau to date does not provide the quantity or quality of administrative records used for the enumerated counts or characteristics, making it impossible to assess how much confidence can be placed in the final figures.

The Bureau consistently asserts that the administrative records it relied on were “high-quality,”<sup>75</sup> but there is a big difference between the quality of a count or characteristic taken from several independent agencies’ records versus one taken from a single source lacking any corroboration. The Inspector General’s September 2022 report describes pervasive issues within the Bureau’s 2020 Census Quality Assurance Plan and a lack of reliable administrative records to inform nonresponse follow-up and group quarters enumeration procedures.<sup>76</sup> Issues in the quality of administrative records being used aren’t cabined to impacting one subset of the overall count – they can impact a multitude of counting operations for all types of facilities and populations.<sup>77</sup> The Bureau has acknowledged the 2020 Census had statistically significant undercounts and overcounts in fourteen states and undercounted the nation’s minority populations, and it is possible if not probable that reliance on unreliable administrative records played a role in those errors. The Bureau’s Director has already stated that administrative records will be relied on

---

<sup>74</sup> See generally U.S. CENSUS BUREAU, Press Release: *Census Bureau Releases 2020 Census Operational Quality Metrics for Counties and Tracts* (Oct. 6, 2022) (<https://www.census.gov/newsroom/press-releases/2022/2020-census-operational-quality-metrics.html>).

<sup>75</sup> *Administrative Records and the 2020 Census*, *supra* note 36.

<sup>76</sup> See generally Final Report No. OIG-22-030, *supra* note 59.

<sup>77</sup> For example, the U.S. Supreme Court has highlighted “24 million voter registrations in the United States — about one in eight — are either invalid or significantly inaccurate. Pew Center on the States, Election Initiatives Issue Brief (Feb. 2012). And about 2.75 million people are said to be registered to vote in more than one State.” *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1838 (2018).

even more heavily in its 2030 Census operational design,<sup>78</sup> and that being the plan moving forward, it is imperative that the public be given a full explanation of the Bureau's decision-making process for administrative records and the specific degrees of record quality and quantity the Bureau utilized to obtain or inform counts and characteristics.

### **C. REACHING AND MOTIVATING EVERYONE**

It is apparent to both the Census Bureau and the public that the 2020 Census failed to reach and accurately count the nation's population. The integrity of the 2020 Census results was undermined by group quarters enumeration discrepancies, unreliable administrative records, abandoned or ignored data quality protections, and rushed modifications to the Bureau's operating and count resolution procedures – issues due either in whole or in part to the Bureau's own operational decisions. The magnitude of these errors and their specific impact on certain populations or jurisdictions remains largely unknown, obscured by both the Bureau's lack of full transparency and its new differential privacy method, which effectively renders it impossible for stakeholders or data users to determine whether a certain inaccuracy in its population is erroneous by accident or design. With the nation's constitutionally mandated apportionment of political representation already distorted and billions of dollars in governmental funding destined to be misappropriated for the remainder of the decade, the Census Bureau faces a monumental task in restoring confidence in the decennial census and motivating people to respond to the 2030 Census.

If the Bureau truly wishes to reach and motivate everyone to complete the 2030 Census it is imperative that it not repeat the internal mistakes of the 2020 Census. The Bureau of the Census must reevaluate its own agency priorities in light of the 2020 Census's failures and work meaningfully with the public to enhance transparency and accountability for past and future censuses. There are two significant actions that would greatly improve the Bureau's standing

---

<sup>78</sup> Reid Wilson, *Census Director Turns to States for Help With Next Count*, PLURIBUS NEWS (Oct. 5, 2022) (<https://pluribusnews.com/news-and-events/census-director-turns-to-states-for-help-with-next-count/>).

prior to the 2030 Census: reestablishing the bipartisan Census Monitoring Board and meaningful incorporation of the public’s feedback and recommendations.

**Census Monitoring Board.** With so many of the 2020 Census’s issues revolving around the Bureau’s decision-making process and a lack of transparency over those processes, reestablishing the Census Monitoring Board to oversee 2030 Census operational planning and design would go a long way towards assuaging the public’s concerns. The Census Monitoring Board was created by Congress to “observe and monitor all aspects of the preparation and implementation of the 2000 decennial census” and automatically dissolved, by design, shortly after operations were complete in 2001.<sup>79</sup> The Board possessed broad statutory authority enabling it to conduct comprehensive, meaningful oversight of the Bureau’s 2000 Census operations with the explicit purpose of promoting “the most accurate and complete census possible,”<sup>80</sup> including the ability to obtain data, information, and files from the Census Bureau and other federal agencies as a matter of course.<sup>81</sup> It also had a mandatory obligation to submit oversight reports and underlying materials to Congress by certain deadlines, both before and after decennial census operations were complete,<sup>82</sup> providing much needed context as to how the Bureau was handling its preparations and issues over time. One aspect of the 2000-era Board that would be particularly useful under the current circumstances was the requirement that the Board’s periodic reports to Congress specifically address statutorily prescribed topics or issues during the covered period, such as the degree to which the Bureau’s efforts to prepare and conduct the 2000 Census would “achieve the maximum possible accuracy at every level of geography” or were “free from political bias and arbitrary decisions.”<sup>83</sup>

Installing a neutral third-party entity whose sole purpose is to track and provide oversight of the Bureau’s decennial census preparations and operations would negate the risk of the 2030 Census results being undermined by missed statutory deadlines, hastily modified procedures, and data quality issues which are never fully explained. Vesting that entity with non-negotiable authority to obtain data and other information from the Bureau and to share those materials in a

---

<sup>79</sup> 111 Stat. 2483-87 (Nov. 26, 1997).

<sup>80</sup> *Id.* at 2486.

<sup>81</sup> *Id.* at 2484.

<sup>82</sup> *Id.* at 2485-86.

<sup>83</sup> *Id.* at 2486.

protected manner would prevent the Bureau from hiding its mistakes or problematic statistical methods behind a veil of confidentiality, in addition to reducing the financial and logistical burdens the Bureau would otherwise incur when it resists the public's efforts to secure transparency. Statutorily curating that entity's oversight responsibilities to focus on certain topics of high concern, such as the Bureau's efforts to maximize accuracy in population counts or the soundness of new statistical methodologies, would guarantee no further degradations of the primary purpose and utility of the decennial census based on the whims of the Bureau.

While the scope of the Census Monitoring Board's statutory responsibilities and authority should largely mirror those in place for the 2000 Census, any future iteration should modify the composition of the Board to be more bipartisan to guarantee its success. The 2000 Census Board was created as an eight-member body, with two appointed by the majority leader of the U.S. Senate, two appointed by the Speaker of the House of Representatives, and four appointed by the President.<sup>84</sup> The issue with this structure is it inherently risks the Board's membership and work falling prey to partisan squabbles in the likely scenario that one party, in control of the Presidency and at least one chamber of Congress at the requisite time, appoints a majority of its members. To mitigate this, the appointment procedures for any future Census Monitoring Board should be revised to give each of the two major political parties an equal number of appointments regardless of which controls the executive and legislative branches. This could be achieved by giving the Senate Majority Leader, Senate Minority Leader, Speaker of the House, and House Minority Leader two appointments each. Similarly, the procedures for selecting the Board's co-chairs and executive directors<sup>85</sup> should also be revised to guarantee one co-chair each will be appointed by the two parties' initial Board appointees. The Republican appointees could select a co-chair from among their ranks and the Democratic appointees could do the same. A co-Executive Director could also be hired by each group of appointees. The overall number of Board members, and to whom specifically appointment power is granted, is less important, so long as the end result is a deliberative body wherein both parties have an equal say in its decisions and actions.

---

<sup>84</sup> *Id.* at 2483-84.

<sup>85</sup> *Id.* at 2484.

**Listening to Public Feedback.** The best thing the Bureau can do to improve the accuracy of the 2030 Census and motivate people to respond is *listen* to the public’s concerns and suggestions and meaningfully incorporate that feedback into its census design, products, and operational procedures. A too-often occurrence throughout the 2020 Census saga was the Census Bureau’s failure to adequately respond to or address public input or criticisms of enumeration or data processing methods after the Bureau itself had solicited that feedback. This trend was most pronounced in the back and forth regarding differential privacy.

Struggling to refine its new differential privacy protection method, the Bureau periodically released demonstration datasets protected by differential privacy for public review and comment,<sup>86</sup> clearly recognizing that the greatest asset in the Bureau’s troubleshooting toolbox is public scrutiny. From the release of the very first dataset, the public identified significant issues with both the methodology itself and the impact it would have on the quality and utility of 2020 Census data. Stakeholders and data users from both sides of the political aisle, and from every field which relies on or utilizes census data, voiced significant opposition to the Bureau’s new privacy protection method and consistently urged it be significantly curtailed, if not abandoned, citing immeasurable harm to the work of redistricting authorities, statisticians, and demographic researchers, in addition to governmental funding and policymaking.<sup>87</sup> States themselves even brought legal challenges to try and prevent the system from being implemented.<sup>88</sup> The Bureau’s response to this overwhelming resistance against differential privacy was tepid at best, making only modest tweaks to the model’s privacy parameters which

---

<sup>86</sup> *Census Bureau Sets Key Parameters to Protect Privacy in 2020 Census Results*, *supra* note 7.

<sup>87</sup> E.g., Celine Castronuovo, *Harvard Researchers Come Out Against Census Privacy Technique*, THE HILL (June 2, 2021) (<https://thehill.com/homenews/campaign/556513-harvard-researchers-come-out-against-census-privacy-technique/>); Mike Schneider, *Groups: Census Privacy Tool Could Hurt Voting Rights Goals*, ABC NEWS (Apr. 5, 2021) (<https://abcnews.go.com/Politics/wireStory/groups-census-privacy-tool-hurt-voting-rights-goals-76882958>); NAT’L CONGRESS OF AMERICAN INDIANS, Letter to U.S. Census Bureau Re: 2020 Census Tribal Consultation on Differential Privacy (Nov. 20, 2019) ([https://www.ncai.org/policy-research-center/research-data/recommendations/NCAI\\_Census\\_Tribal\\_Consultation\\_Letter\\_11\\_20\\_2019\\_FINAL\\_signed.pdf](https://www.ncai.org/policy-research-center/research-data/recommendations/NCAI_Census_Tribal_Consultation_Letter_11_20_2019_FINAL_signed.pdf)); MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND & ASIAN AMERICANS ADVANCING JUSTICE, PRELIMINARY REPORT: IMPACT OF DIFFERENTIAL PRIVACY & THE 2020 CENSUS ON LATINOS, ASIAN AMERICANS AND REDISTRICTING (Apr. 5, 2021) (<https://www.maldef.org/wp-content/uploads/2021/04/FINAL-MALDEF-AAJC-Differential-Privacy-Preliminary-Report-4.5.2021-1.pdf>).

<sup>88</sup> Priyanka Nanayakkara & Jessica Hullman, *States Are Suing the Census Bureau Over Its Attempts to Make Data Private*, SLATE (Aug. 12, 2021) (<https://slate.com/technology/2021/08/census-bureau-differential-privacy-lawsuit.html>).

failed to remedy its central point of contention: an over-prioritization of data privacy over data accuracy.

The Bureau's lack of responsiveness pervaded other issues identified in the lead-up to the 2020 Census. The Inspector General's September report<sup>89</sup> recounts numerous instances in which the Bureau was made aware of issues or flaws that could potentially impact the quality of 2020 Census responses or data but failed to act to resolve them. In August 2020, the OIG issued a management alert detailing how the Bureau's group quarters enumeration procedures were not accurately counting the nation's college students and how its follow-up college outreach efforts were not sufficient to reliably address these miscounts.<sup>90</sup> Neither of these issues were resolved and, as to be expected, the 2020 Census group quarters population counts contained significant discrepancies. In September 2020, another OIG alert identified wide-ranging and ongoing problems with the Bureau's resolution of operational control system alerts designed to ensure data quality and accuracy.<sup>91</sup> Despite having notice that significant portions of its quality assurance programs were not being followed, the Bureau not only failed to take appropriate steps to curtail these deviations from procedures, but it also failed to ensure that adequate monitoring or oversight of these problem-laden programs was occurring.<sup>92</sup>

If the Bureau is serious about regaining the public's trust, motivating responses, and counting every person correctly in the 2030 Census, it must ensure the issues which plagued the 2020 Census do not extend to its successor. Achieving such a goal is impossible to achieve so long as there persists such a vast disparity between the Bureau's problematic notions as to what issues are worthy of recognition and redress versus the actual problems that stakeholders and census data users are experiencing. The success of the decennial census cannot be determined by the Bureau's own internal definitions or barometers of accuracy. It hinges entirely on how reliable and usable its results are to the American public, and the public has clear, well documented issues with the Bureau's 2020 Census operations and resulting products. The Bureau must remain mindful of these overwhelming sentiments as it prepares the 2030 Census

---

<sup>89</sup> Final Report No. OIG-22-030, *supra* note 59.

<sup>90</sup> *Id.* at 4.

<sup>91</sup> *Id.* at 16.

<sup>92</sup> *Id.* at 16-28.

operational design and base its decisions not on what is best for the Bureau, but on what is best for census data users and the American public.