

The Citizenship Question, Confidentiality, Language Access, and Other Critical Issues on the 2020 Census

A Resource for Census 2020 Partner Organizations

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The addition of a citizenship question to the 2020 Census poses a severe threat to an accurate and complete count of all residents of the United States. Fears about confidentiality and safety could drastically reduce participation by immigrants, communities of color, and low-income people, hampering their access to resources and political representation for years to come.

Asian Americans Advancing Justice – Asian Law Caucus (“Advancing Justice – ALC”) initiated the first version of this memo in response to questions from community leaders in hard-to-count communities about the 2020 Census and how they should address fear and distrust of the citizenship question among their community members. We have since expanded this memo so it can serve as a resource on a range of subjects for community leaders and organizations as they plan for and strategize about their Census work.

This content is being used to support regional convenings in Northern California about Census 2020, which were started with the goal of ensuring unified strategy and messaging on the citizenship question and have now expanded to tackle other strategic questions. We hope this is a useful tool for community leaders elsewhere as well and would be glad to support similar regional convenings in other areas. If you have any questions or need additional support, please contact Julia Marks at juliam@advancingjustice-alc.org.

If further questions emerge about Census 2020 or the Census Bureau’s plans change regarding any of the subjects addressed here we will update this memo. The Census Bureau continues to finalize its Census 2020 plans.

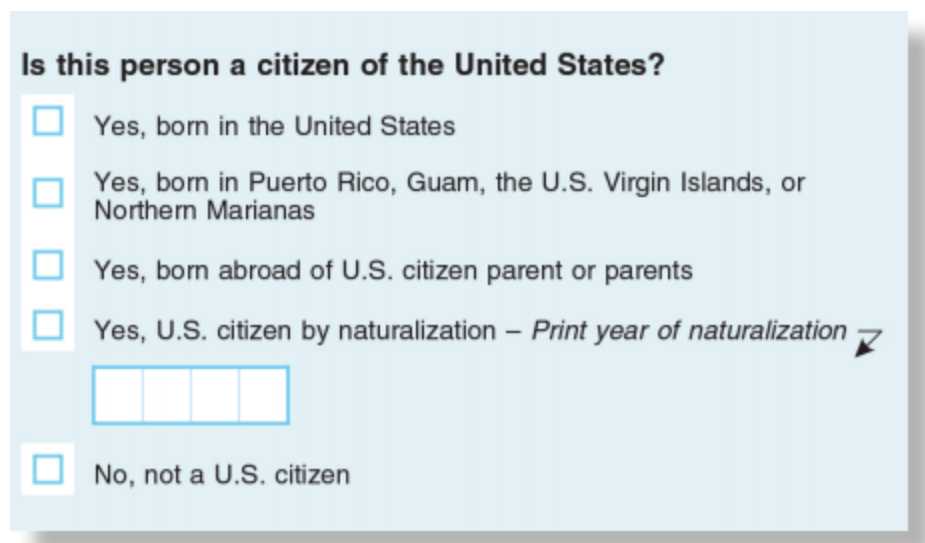
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I. General Census Information

A. What does the citizenship question on the 2020 Census look like?

The Secretary of Commerce has elected to add, for the first time since 1950, a citizenship question to the decennial Census form that goes to every household, a controversial move that has resulted in six separate lawsuits seeking the question's removal.¹ The question, shown below, asks if a respondent is or is not a citizen and, if they are, how they became a citizen. For those respondents who are not citizens, the question does *not* ask for information about immigration status. Despite the presence of multiple legal challenges, this memo assumes the citizenship question will remain on the Census and prepares community organizations to react to that possibility.



The image shows a screenshot of a form titled "Is this person a citizen of the United States?". It contains five radio button options and a text input field. The options are: "Yes, born in the United States", "Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas", "Yes, born abroad of U.S. citizen parent or parents", "Yes, U.S. citizen by naturalization – Print year of naturalization" (with a dropdown arrow), and "No, not a U.S. citizen". The text input field is a four-digit box.

Source: <https://www2.Census.gov/library/publications/decennial/2020/operations/planned-questions-2020-acs.pdf>

B. What is the timeline for Census 2020?

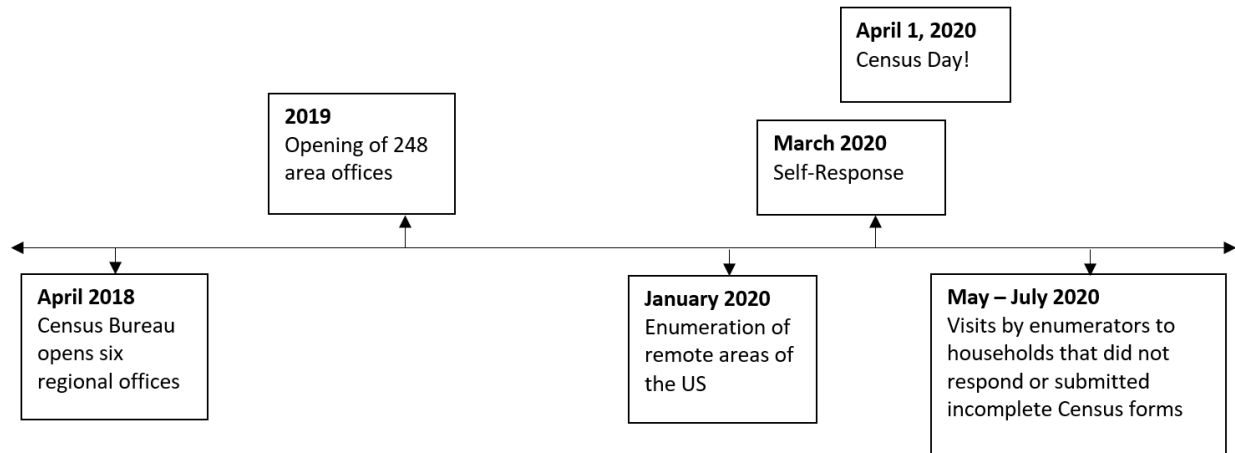
The Constitution of the United States requires that a Census be conducted every ten years, counting all people in the country.² Although the enumeration of the population takes place over many months, each decennial Census is officially “taken” as of April 1st of the first year of the decade,³ also known as “Census Day.” This cycle, Census Day is April 1, 2020.

¹ Hansi Lo Wang, *Multi State Lawsuit Against Citizenship Question to Go Ahead*, WAMU 88.5 AM. UNIV. (Jul. 26, 2018), <https://wamu.org/story/18/07/26/multi-state-lawsuit-against-census-citizenship-question-to-move-ahead/>.

² U.S. Const. art. I, § 2, cl. 3.

³ 13 U.S.C. § 141.

Over the course of 2019, the Census Bureau will open local area offices to prepare for the Census, including 30 offices in California.⁴ In January 2020, enumeration will begin in remote areas in Alaska and in March 2020 the Census Bureau will begin encouraging the population at large to respond to the Census online.⁵ Census enumerators will begin visiting households that do not respond to the Census—known as Nonresponse Follow Up—in May 2020.⁶



C. What is the timeline for litigation on the citizenship question?

It is hard to predict the timeline for resolution of the citizenship question lawsuits. Two of the six lawsuits have completed a joint trial in New York, but as of the beginning of December 2018 the judge in those cases had not yet issued a ruling. The remaining four cases (two that have been combined in California and two that have been combined in Maryland) are tentatively scheduled to go to trial in January 2019. Whatever the outcome of the trials, the judicial rulings are almost certain to be appealed, likely to the Supreme Court. The printing of Census forms and related mail materials is scheduled to begin in summer 2019, meaning appeals must be expedited so they are resolved by then.⁷

⁴ U.S. Census Bureau, L.A. Region, *2020 Census Recruiting Information California* (July 2018), available at <https://census.assembly.ca.gov/sites/census.assembly.ca.gov/files/California%20Recruiting%20Information%20Flyer.pdf>.

⁵ U.S. Census Bureau, *2020 Census Program Management Review* (Oct. 19, 2018) at 5, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/pmr-materials/10-19-2018/pmr-welcome-high-level-updates-2018-10-19.pdf?#>.

⁶ Nonresponse Follow Up will begin on May 9, 2020, except in areas with significant off-campus college and university student populations, where it will start on April 9, 2020. See U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU)* (April 16, 2018) at 5, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan.pdf>.

⁷ See U.S. Census Bureau, *2020 Census Operational Plan – Version 3.0* (Sept. 2017) at 89, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf>.

D. How will the Census Bureau survey people?

This will be the first Census ever taken with an online component. The Census Bureau plans to use different outreach approaches for areas with higher and lower rates of Internet access or use.⁸

In the areas the Census Bureau considers likely to have high rates of Internet access, the Census Bureau will first send a paper mailing to each household with a unique identification code that a household can use to submit an online Census form.⁹ For households that do not respond online, the Census Bureau will send two additional mailed reminders with the unique identification codes. Households that still fail to respond online will get a fourth notice with the identification code but this time will also receive a paper Census form.¹⁰

In areas with low Internet connectivity or use (about 20 percent of addresses, on average nationwide), the first mailing will include both a unique identification code for the online Census form and a paper Census form.¹¹

If a person wants to respond to the Census by paper form but does not have one, they may request a paper version by phone. The Census Bureau will operate a Census Questionnaire Assistance (CQA) telephone hotline, which the public can call to ask questions.¹² If a community member calls the CQA because they do not want to fill out an online form and prefer a paper form, the CQA representative will first encourage the community member to fill out the form verbally by phone. According to Census planning documents, if the community member declines, the representative will then agree to send the community member a paper form.¹³

In May 2020, after residents have had some time to respond to the Census, the Census Bureau will begin sending short-term paid staff known as “enumerators” to those households that have not yet responded or have responded incompletely.¹⁴ An enumerator will try to contact a household up to six times.¹⁵ After the third try, enumerators can ask a nearby reliable “proxy” for information, such as a landlord or neighbor.¹⁶ Follow up by phone is also possible.

If the Census Bureau never gets a response from a household, or gets an incomplete response, the Census Bureau will seek out data about that household from other administrative sources to fill

⁸ Proposed Information Collection; Comment Request; 2020 Census, 83 Fed. Reg. 26643, 26647 (proposed June 8, 2018).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 17. Census Questionnaire Assistance Operation (CQA)* (Feb. 2018) at 2, https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/CQA_detailed_operational_plan_2.0.pdf.

¹³ *2020 Census Operational Plan – Version 3.0*, *supra* note 7 at 111.

¹⁴ For more detail on enumerator follow-up to households that partially respond to the Census, please see Section III.B.

¹⁵ *2020 Census Operational Plan – Version 3.0*, *supra* note 7 at 118.

¹⁶ *Id.*

in missing information.¹⁷ Ultimately, if the Census Bureau has no other option, the Bureau will use statistical methods to estimate the answers to missing responses.

Additional information on how the Census Bureau will survey specific hard-to-count populations can be found in Section VIII below.

II. Data Confidentiality

A. What are the confidentiality protections for data submitted on the Census?

There are extremely strong protections for Census data.

The Census Bureau, the Commerce Department (which houses the Census Bureau), and their employees may not reveal personally-identifiable data that they have gathered through the Census to *anyone*, a restriction that prohibits sharing information with federal agencies, immigration authorities, law enforcement, or courts of law. Employees with access to protected data are sworn to keep information confidential for life. Wrongful disclosure can result in a fine of up to \$250,000, imprisonment up to five years, or both.¹⁸ The law also states that neither the Census Bureau nor any other federal department is permitted to use Census data for any purpose other than statistical analysis.¹⁹ Many respected nonprofit and civil rights partners have great confidence in these data confidentiality protections, and feel that concerns about data confidentiality should not stop anyone from participating in the Census.

It should be noted that these data confidentiality protections are codified in federal law and federal law can be changed by Congress (with the president's agreement). Most observers believe that such a change is unlikely.

There is also the possibility that the Trump Administration will argue that existing federal statutes create exceptions to Census confidentiality laws. Such a conclusion would depart from current interpretation of the law. A 2010 memo from the Office of Legal Counsel at the U.S. Department of Justice (DOJ) states that the PATRIOT Act, which loosened certain privacy protections for terrorism and intelligence investigations, does *not* override the legally binding Census confidentiality protections already in place under the Census Act.²⁰ However, internal emails between senior DOJ officials in the Trump Administration indicate that this question

¹⁷ Proposed Information Collection; Comment Request; 2020 Census, 83 Fed. Reg. 26643, 26647 (proposed June 8, 2018). Administrative data can be pulled from the IRS, the American Community Survey, the Social Security Administration, prior Censuses, the U.S. Postal Service, and other federal sources or offices.

¹⁸ 13 U.S.C. § 214; 18 U.S.C. § 3559(a); 18 U.S.C. § 3571(b).

¹⁹ 13 U.S.C.A. § 9(a)(1).

²⁰ Jeannie S. Lee, *Memo. Op. for the Gen. Counsel, Dep't of Commerce on Census Confidentiality and the PATRIOT Act*, OFFICE OF LEGAL COUNSEL (Jan. 4, 2010), <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2016/03/18/2010-01-04-Census-confidentiality.pdf>.

could come up for “renewed debate.”²¹ If the Trump Administration concludes that the PATRIOT Act or other laws²² override Census confidentiality laws, the issue is likely to be litigated and the ultimate determination will rest with the courts.

The data confidentiality protections in federal law mean the Census Bureau cannot provide *individual* Census responses, or data that can be linked to identifiable individuals or households, to other agencies of the federal government or other entities.²³ The Bureau can and does release aggregate information (i.e. statistical datasets) about populations and communities: as long as Census tabulations and data sets do not identify specific individuals, they do not violate the law.²⁴ However, in some rare instances, the release of aggregated data can raise concerns. For example, following the Sept. 11, 2001 attacks the Census Bureau provided aggregated data to the Department of Homeland Security (at DHS’s request) on how many Arab Americans resided in certain zip codes.²⁵ Following this incident, the Census Bureau, in consultation with stakeholder organizations, put in place new policies for providing special tabulations that could be viewed as sensitive in nature to federal agencies or other entities.²⁶

Before the current laws protecting the confidentiality of Census data were enacted, there was a deeply problematic history of Census data being misused. During World War II, the Census Bureau gave the United States military and the Justice Department data on Japanese American population levels in certain areas of the United States, at times with great detail, to aid in internment.²⁷

²¹ June 12, 2018 Email From Ben Aguiñaga To John Gore, *available at* <https://www.documentcloud.org/documents/5193403-Nov-16-2018-Declaration-of-Andrew-Case-in.html#document/p27/a466663>.

²² The Office of Legal Counsel also determined that the Census confidentiality laws were not repealed or changed by a federal statute that bars federal entities from restricting the sharing of immigration status information with immigration authorities. Randolph Moss, *Memo. Op. for the General Counsel, Dept. of Commerce on Relationship Between Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and Statutory Requirement for Confidentiality of Census Information*, OFFICE OF LEGAL COUNSEL (May 18, 1999), <https://www.justice.gov/opinion/file/844106/download>.

²³ 13 U.S.C.A. § 9(a)(2),(3).

²⁴ 13 U.S.C.A. § 8(b).

²⁵ Lynette Clemetson, *Homeland Security Given Data on Arab Americans*, N.Y. TIMES (July 30, 2004), <https://www.nytimes.com/2004/07/30/us/homeland-security-given-data-on-arab-americans.html>.

²⁶ Lynette Clemetson, *Census Policy On Providing Sensitive Data Is Revised*, NEW YORK TIMES (Aug. 31, 2004) <https://www.nytimes.com/2004/08/31/us/census-policy-on-providing-sensitive-data-is-revised.html>.

²⁷ Lori Aratani, *Secret use of Census info helped send Japanese Americans to internment camps in WWII*, WASHINGTON POST (Apr. 6, 2018); William Seltzer and Margo Anderson, *After Pearl Harbor: The Proper Role of Population Data Systems in Time of War*, STATISTICIANS IN HISTORY (Mar. 8, 2000), <http://margoanderson.org/govstat/newpaa.pdf>.

III. Consequences of Non-Participation or False Response

A. What are the consequences of an undercount of our communities?

The Census determines both the apportionment of political representation and of federal resources. The population of a state as determined by the Census will determine the number of Congressional representatives that state will have for the next ten years.²⁸ Also, Census data are used to redraw districts for the House of Representatives and all state and local political jurisdictions, and are used to determine when majority-minority districts (districts where minority populations are the majority of voters and thus in a position to elect candidates of their choice) are required. If our communities do not participate in the Census, it could reduce the number of representatives they will have in Congress and will lessen the amount of political power our communities will have at all levels of government.

The Census is also important because it guides the distribution of federal funds. About 300 federal programs use Census data to determine where to put their resources.²⁹ When our communities do not participate in the Census, they do not get their fair share of more than \$800 billion dollars in federal money annually.³⁰ Many state programs also allocate funding based on Census data.

B. What are the consequences for a community member who chooses to not participate in the Census?

Technically, Census response is required by law. If a community member refuses or “willfully neglects” to participate in the Census—whether by skipping a single question or the Census as a whole—they can be found guilty of an infraction and fined up to \$5,000.³¹ This is not likely to actually happen: according to the Census Bureau, no one has been prosecuted since 1970 for failing to fill out the Census.³²

By contrast, a likely consequence of non-participation is a visit by an enumerator, who will seek to obtain missing information from the household.³³ Despite the fact that Census enumerators are not law enforcement or immigration officials—in fact, enumerators are often community members hired from the communities in which they canvass—they are still representatives of the

²⁸ U.S. Const. art. I, § 2, cl. 3.

²⁹ Andrew Reamer, *Counting For Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds*, GEORGE WASHINGTON INST. OF PUB. POLICY (Mar. 19, 2018) at 1.

³⁰ *Id.*

³¹ 13 U.S.C. § 221(a); 18 U.S.C. § 3559(a); 18 U.S.C. § 3571(b).

³² W. Gardner Selby, *Americans must answer U.S. Census Bureau survey by law, though agency hasn't prosecuted since 1970*, POLITIFACT (Jan. 9, 2014), <http://www.politifact.com/texas/statements/2014/jan/09/us-Census-bureau/americans-must-answer-us-Census-bureau-survey-law/>.

³³ U.S. Census Bureau, *Memorandum 2018.10: Release of the 2020 Census Nonresponse Followup Operation (NRFU) Detailed Operational Plan* (Apr. 16, 2018), https://www.Census.gov/programs-surveys/decennial-Census/2020-Census/planning-management/memo-series/2020-memo-2018_10.html.

federal government. That may make an enumerator visit to the home a troubling and fear-inducing prospect for many of our community members.

Not responding to the Census at all likely guarantees an enumerator visit. Responding to the Census, either online or by paper form, but leaving certain questions blank, could lead to an enumerator visit. We do not know how many skipped questions will trigger a visit by an enumerator; senior Bureau officials have said it is highly unlikely that skipping the citizenship question alone will result in an in-person enumerator visit.³⁴ The more questions that a household skips, the more likely it is that Census Bureau staff will try to get missing information by phone or in-person.

C. What are the consequences for a non-citizen who lies on the citizenship question?

Under the Census Act (Title 13, U.S.C.), it is a crime for any person—U.S. citizen or non-citizen—to lie on the Census. If someone lies on the Census, they can be fined up to \$5,000.³⁵ Enforcement of this law is very unlikely.

Beyond the criminal consequences of the Census Act, there could also be adverse immigration consequences if a non-citizen is found to have made a false claim of citizenship.³⁶ This is also very unlikely, as the Census Bureau’s priority is counting people, not immigration enforcement, and confidentiality rules prevent the Bureau from sharing individual Census responses with the agencies that do immigration enforcement. In fact tens of thousands of individuals misrepresent themselves as citizens on other surveys administered by the Census Bureau every year, with no consequences.³⁷ Nevertheless, it is a fact that lying on the citizenship question comes with the risk, however remote, of severe immigration consequences.

D. Are there data that indicate how many people are likely to not respond or falsely respond to the citizenship question?

The Census Bureau has asked the citizenship question on the American Community Survey (ACS), a survey that the Bureau sends to a representative sample of approximately 3.5 million residential addresses each year. The rate of nonresponse to the citizenship question in the 2016 ACS was 6.0%, compared to the other ACS questions that will also appear on the 2020 Census,

³⁴ In one case, a Census official said if a community member does not answer four or more questions, they will get a visit from an enumerator. In other instances, Census officials have said that each subsequent non-answer makes it more likely that a household will get an enumerator visit. People are “counted” as long as they fill out two items, including their names.

³⁵ 13 U.S.C. § 221(b); 18 U.S.C. § 3559(a); 18 U.S.C. § 3571(b).

³⁶ 8 U.S.C.A § 1227(a)(3)(D)(i).

³⁷ The Census Bureau admits that about 30 percent of non-citizens who respond to the citizenship question on the American Community Survey inaccurately mark “citizen.” Memo. from Commerce Secretary Wilbur Ross to Undersecretary for Economic Affairs Karen Dunn Kelly, *Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire* (Mar. 26, 2018).

which had nonresponse rates of 1.8% or less.³⁸ People who are racial and ethnic minorities, foreign born, or living in “central cities of metropolitan areas” are least likely to respond to the citizenship question.³⁹ There are 43 places where the nonresponse rate to the citizenship question on the ACS was 10% or more—16 of those places are in California.⁴⁰

Additionally, research predicts that, based on ACS data, past Census data, and administrative records, nearly 7 million people nationally might respond that they are citizens on the 2020 Census when they are not citizens and/or administrative records indicate that they are not citizens.⁴¹

IV. Response Options on the Citizenship Question

In addition to understanding the potential ramifications of participation and non-participation in the Census, community members may want to know the mechanics of responding and whether they can skip sensitive questions in practice, even if it is legally prohibited.

A. Can a community member skip a question when responding to the Census via the online form?

Yes. Senior Census Bureau officials have confirmed verbally at several public meetings that community members will be able to skip questions on the online Census form and still submit the form,⁴² though the online interface will likely encourage respondents to answer all Census questions before allowing them to submit a partial response. The acting director of the Census Bureau, Ron Jarmin, told lawmakers that an individual who skips a question on the Census will still be counted.⁴³

B. Can a community member skip a question when responding to the Census via the paper form?

Yes. They can simply leave that field blank.

³⁸ William P. O’Hare, *Citizenship Question Nonresponse*, CTR. ON POVERTY AND INEQUALITY GEORGETOWN LAW (Sept. 2018) at 5, <http://www.georgetownpoverty.org/wp-content/uploads/2018/09/GCPI-ESOI-Demographic-Profile-of-People-Who-Do-Not-Respond-to-the-Citizenship-Question-20180906-Accessible-Version-Without-Appendix.pdf>.

³⁹ *Id.* at 6.

⁴⁰ *Id.* at 14.

⁴¹ J. David Brown, et. al., *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census*, CTR. FOR ECON. STUDIES (Aug. 2018) at 45, <https://www2.census.gov/ces/wp/2018/CES-WP-18-38.pdf>.

⁴² At a 2018 meeting in Kansas City, a senior Census Bureau official said that respondents *will* be able to skip the citizenship question on the online form if they wish to do so. Because in the past Census Bureau officials and official Census Bureau documents have been reluctant to say anything concrete about decisions that have not been finalized, we feel that this is reliable information.

⁴³ Hansi Lo Wang, *Skipping to 2020 Census Citizenship Question? You’ll Still Be Counted*, NPR.ORG (Apr. 19, 2018), <https://www.npr.org/2018/04/19/603629576/skipping-the-2020-Census-citizenship-question-youll-still-be-counted>.

C. Can a community member skip a question when responding to the Census via an enumerator at their home?

Yes. According to Census planning documents, one of the answers an enumerator may select when filling out a Census form with a respondent is “Don’t Know/Refuse.”⁴⁴ While enumerators will likely encourage respondents to answer each question, and may tell respondents that a response to each question is legally required, enumerators are not authorized to require or force respondents to answer.

D. Can a community member skip a question when responding to the Census via the Census Bureau’s telephone hotline?

Current Census planning documents do not address directly how CQA staff will handle telephone respondents who do not want to answer all questions. However, because senior Census Bureau officials have said that the Bureau will accept online and paper Census forms with missing answers, we believe it is likely that the same protocols will apply to telephone responses. The Census Bureau has specified that CQA phone operators may need to provide “special messaging” to callers who express concerns about the Census or have heard negative publicity about the Census.⁴⁵

E. Can a community member submit their Census information without including an address?

No. Some community members might be willing to respond to the Census but hesitant to provide their address information, because of a concern that the federal or local governments will use their address to find them or their family members. It is important to keep in mind that the Census must count people *and* put them correctly in a specific location (i.e. address), in order to produce useful, accurate datasets for the fair allocation of political representation and government resources. Therefore, a respondent must provide a valid address that the Census Bureau can match to its Master Address File when submitting a Census form through any mode.

If a community member responds to the Census online using their household’s unique Census ID, that response will be automatically tied to a specific address. If the community member does not have their unique ID and goes online to respond to the Census, they will be required to enter a residence address, which the Bureau must then match to its master file or send to its field operation staff to verify the existence of a housing unit at that address.⁴⁶ If the community member answers the Census over the phone, the CQA phone operator will ask for a Census ID or an address for the same reason.⁴⁷

⁴⁴ 2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU), *supra* note 6 at 87.

⁴⁵ 2020 Census Detailed Op. Plan for: 17. CQA, *supra* note 12 at 13.

⁴⁶ 2020 Census Operational Plan – Version 3.0, *supra* note 7 at 100.

⁴⁷ See 2020 Census Detailed Op. Plan for: 17. CQA, *supra* note 12 at 23.

V. Community Organizing Considerations on the Citizenship Question and Other Issues

A. What are the legal consequences for community groups that advise people to skip questions on the Census or to not respond at all?

Nonprofit organizations that advocate for partial or full nonresponse could risk scrutiny of their 501(c)(3) status. An organization can lose its 501(c)(3) status if it is responsible for the “conduct of illegal activities to a substantial degree”; even “planning and sponsoring” illegal acts could lead to loss of status.⁴⁸ Publicly advocating for community members to skip a Census question, which is technically a federal crime, might qualify. Any nonprofit organization that wants to help community members mitigate risk associated with the Census should be cognizant of the potential consequences of being on record as encouraging nonresponse and of putting their support for nonresponse in writing. Similar to a 501(c)(3) organization, if a 501(c)(4) organization conducts illegal activities as a substantial part of its work, it may face scrutiny of its status.⁴⁹

There is also a remote possibility of criminal consequences. Legally, any person or entity that indirectly or directly provides information, advice, or assistance to the Census Bureau with the intent of causing an inaccurate Census count can be fined up to \$100,000 (\$200,000 for an entity), face up to one year in prison, or both.⁵⁰ It is not clear that this law would apply to an organization that encourages nonresponse. The last time the government prosecuted someone under this statute was 1970.

B. What are the potential results of a civil disobedience campaign in which respondents, regardless of citizenship status, do not answer the citizenship question?

A widespread choice by U.S. citizens and non-citizens to not answer the citizenship question would have a number of impacts. Some have problematic consequences for future voting rights advocacy and enforcement.

First, it must be noted that, as stated above, every individual who skips the citizenship question as part of a coordinated effort of this kind will have technically committed a federal crime and, as also stated above, any organization that publicly advocates for widespread nonresponse on any part of the Census could face scrutiny of its 501(c)(3) or (c)4 status.

Mass nonresponse to the citizenship question could have negative consequences for upholding voting rights. The federal Voting Rights Act (VRA) protects voters who are members of a

⁴⁸ *J. Activities that are illegal or contrary to public policy* (1985), IRS.GOV, <https://www.irs.gov/pub/irs-tege/eotopicj85.pdf>.

⁴⁹ *Id.*

⁵⁰ 13 U.S.C. § 222; 18 U.S.C. § 3559(a); 18 U.S.C. § 3571(b), (c).

protected class and who, because of gerrymandering or other reasons, are unable to elect candidates of their choice. When civil rights organizations seek to enforce the VRA, they need data known as the “citizen voting age population,” or CVAP, which help determine where majority-minority districts must be drawn and where language access in voting (e.g. translated ballots, bilingual poll workers, etc.) must be provided.

If the citizenship question on the 2020 Census is used as the source for CVAP data in the future (and there is reason to believe it will be)⁵¹ and if U.S. citizens’ failure to respond to the citizenship question leads to a recording of some or all of them as non-citizens,⁵² then a campaign to “boycott” the citizenship question by U.S. citizens will make the citizen voting-age population in our communities look smaller than it actually is. This would make it harder to achieve majority-minority districts and make it harder for limited-English speaking communities to get translated voting materials.

While some advocates have argued such a campaign could be viewed by non-citizens as a powerful sign of solidarity from their allies, the cost of widespread nonresponse likely outweighs the benefits.

C. Can a community-based organization request a large number of paper Census forms? Can a community-based organization assist community members in filling out online and/or paper forms?

Community-based organizations cannot request paper Census forms in bulk for their community members to fill out. In 2010, “Be Counted” forms, without unique ID codes tied to a specific residential address, were available for a short time during peak Census operations and distributed through Questionnaire Assistance Center, or QACs, or at high foot-traffic locations, such as libraries, post offices, or 7-11 stores. Be Counted forms and QACs are not part of the 2020 Census plan.

If community members bring their forms to community-based organizations, staff members at those organizations may help community members fill out their forms, to a limited extent. Staff members may sit next to community members to explain and/or translate questions on the Census form, but according to Census Bureau guidance, staff members may not actually fill out the form for community members, because it would undermine the legal protections that ensure the confidentiality of community members’ responses. However, since we are not aware of any legal authority prohibiting community-based organizations’ staff from assisting someone in

⁵¹ Letter from Arthur E. Gary, General Counsel of Justice Management Division, to Dr. Ron Jarmin, Acting Director of the Census Bureau (Dec. 12, 2017), *Re: Request to Reinstate the Citizenship Question on the 2020 Census Questionnaire*, <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html> (stating that “decennial questionnaire data regarding citizenship...would be more appropriate for use in redistricting...than the ACS citizenship estimates”).

⁵² If a response is missing information, the Bureau will first attempt to locate the missing information by matching the respondent to administrative records. If the administrative records cannot be matched, then the Bureau will use statistical methods to impute the response.

filling out the form, we will continue to press the Census Bureau for clarification on an acceptable and appropriate role for nonprofit staff.

A community-based organization could set up computers on which community members fill out the Census form online, and could have staff members assist, translate as needed, and watch over the process. But again, pursuant to Census Bureau guidance, staff members should not key in answers for community members.

VI. Language Access

A. What language resources is the Census Bureau providing?

The online Census survey will be available in English and 12 non-English languages, specifically those languages that are spoken by at least 60,000 limited-English speaking households in the United States.⁵³ These languages are: Spanish, Chinese, Vietnamese, Korean, Russian, Arabic, Tagalog, Polish, French, Haitian Creole, Portuguese, and Japanese. Respondents can access phone support in the same 12 languages (plus English) by calling the CQA number for the desired language. The paper Census form, as well as enumerator training materials, will be provided in English and Spanish only.⁵⁴ The initial mailed or dropped off Census packages will include messages in all 13 languages, directing people how to call the CQA for help in completing the Census form.

The Census Bureau will provide language guides, language glossaries, and a language identification card for field staff in 59 languages plus English.⁵⁵ Those languages are:

Spanish	Haitian Creole	Bengali	Romanian	Tamil	Tigrinya	Igbo
Chinese	Portuguese	Greek	Telugu	Navajo	Ilocano	Marathi
Vietnamese	Japanese	Amharic	Burmese	Hungarian	Dutch	Sinhala
Korean	Italian	Somali	Punjabi	Hebrew	Croatian	Slovak
Russian	Farsi	Thai	Lao	Malayalam	Bulgarian	American Sign Language
Arabic	German	Gjurali	Hmong	Swahili	Twi	
Tagalog	Armenian	Khmer	Albanian	Yiddish	Lithuanian	
Polish	Hindi	Nepali	Turkish	Indonesia	Yoruba	
French	Ukrainian	Urdu	Bosnian	Serbian	Czech	

⁵³ Albert E. Fontenot, Jr., *2020 Census Non English Language Support*, 2020 Census Program Memorandum Series: 2018.06 (Feb. 27, 2018), https://www2.Census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2018_06.pdf.

⁵⁴ *Id.*

⁵⁵ *Id.*

VII. Enumerators

A. Will Census enumerators have to be U.S. citizens?

There is a possibility work-eligible non-citizens will be allowed to work for the Census Bureau as enumerators even though the stated qualifications for the position require U.S. citizenship. In response to this question in public forums, acting director of the Census Bureau, Ron Jarmin, has said that the Bureau wants people with appropriate “language and cultural skills on the ground” for the most accurate count and that the Bureau is still pursuing all options to achieve that goal. This suggests the Bureau might bend its requirement for U.S. citizenship if an applicant who is a legal permanent resident brings specific needed skills, especially with respect to fluency in a language other than English.⁵⁶ Technically, federal law requires that all “permanent” employees of the Census must be citizens, but does not have any such limiting language for temporary employees such as enumerators.⁵⁷

B. Will local Census Bureau offices be able to influence hiring and training of enumerators?

There are six Regional Census Centers located across the country, including one in Los Angeles, CA.⁵⁸ Regional centers are in charge of local office operations and some high level operations.⁵⁹

Recruiting and hiring will be done by local offices but all administrative infrastructure for recruitment, staffing, and training will be handled through centralized operations conducted by the Census Bureau.⁶⁰ As an example, after a job applicant (i.e. an enumerator applicant) passes an online test and a required background check and is hired, they will take a centrally designed online, independent training.⁶¹ These online trainings will be supplemented with in-person classroom trainings, led by local offices but also designed centrally.⁶²

We do not yet know whether regional or Area Census Offices (called Local Census Offices in 2010) could or would deviate from standardized training materials to meet the needs of local communities.

⁵⁶ Hansi Lo Wang, *Transcript: Census Bureau Acting Director Ron Jarmin's Interview With NPR*, NPR.ORG (Jul. 11, 2018), <https://www.npr.org/2018/07/11/627352984/transcript-census-bureaus-acting-director-ron-jarmin-interview-with-npr>.

⁵⁷ 13 U.S.C. §§ 22-23.

⁵⁸ U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 32. Field Infrastructure Operation (FLDI) and 33. Decennial Logistics Management Operation (DLM)* (Jan. 2018) at 26, https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/FLDI-DLM_detailed_operational_plan.pdf.

⁵⁹ *Id.* at 5-14.

⁶⁰ *2020 Census Operational Plan – Version 3.0*, *supra* note 7 at 148-52; *see also 2020 Census Detailed Operational Plan for: 32. FLDI and 33. (DLM)*, *supra* note 58 at 36.

⁶¹ *2020 Census Detailed Operational Plan for: 32. FLDI and 33. (DLM)*, *supra* note 58 at 71.

⁶² *Id.* at 71-72.

VIII. Counting of Specific Hard-to-Count Populations

A. What special measures will the Census Bureau take to count community members who are experiencing homelessness, receive mail at P.O. boxes, live in transitory housing, or live in group housing or facilities?

The Census Bureau has specific strategies for respondents or communities that have traditionally been hard to count, including people who are experiencing homelessness, who are in temporary or unstable housing, who receive mail at P.O. boxes, and who live in group facilities (called Group Quarters).

For individuals with temporary or no housing, or who regularly use services such as soup kitchens, homeless shelters, mobile food vans, and similar community services, Census enumerators will conduct in-person surveys at these locations from March 30 to April 1, with targeted, pre-identified outdoor locations being counted on April 1st.⁶³

Communities in which many residents receive mail at P.O. boxes will be counted via the Update Leave Operation, a program that targets areas with non-traditional addresses or irregular mail delivery, homes that are seasonally empty, or addresses that cannot be verified using administrative data. Census field staff will visit each housing unit in these areas to “update” the master address file and physically “leave” a questionnaire package at the home that will include three options to respond to the Census: a paper Census form, a link and unique ID for online response, and the CQA telephone numbers.⁶⁴ Nothing will be mailed to a P.O. box.

For shared living facilities known as group quarters (GQs), the Bureau plans to use a range of approaches, including electronically exchanging administrative data, distributing and collecting modified individual Census forms, and/or in-person enumeration. Each facility will choose the method of enumeration during a GQ advance contact period.⁶⁵ GQs include college dorms and other on-campus group residences, nursing homes, residential treatment centers, group homes, and correctional facilities.⁶⁶ For medical and correctional facilities, the Bureau will allow self-enumeration through modified individual paper forms it delivers to and picks up from designated facility administrators, who themselves will be sworn to the Census confidentiality oath.⁶⁷

⁶³ Cara Brumfield, *Counting People Experiencing Homelessness*, CTR. ON POVERTY AND INEQUALITY GEORGETOWN LAW (Sept. 2018) at 1, <http://www.georgetownpoverty.org/wp-content/uploads/2018/09/GCPI-ESOI-Counting-People-Experiencing-Homelessness-20180904.pdf>.

⁶⁴ U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 35. Update Leave Operation (UL)* (Jun. 25, 2018) at 10, https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/UL_detailed_operational_plan.pdf.

⁶⁵ *2020 Census Operational Plan – Version 3.0*, *supra* note 7 at 105-106. College students will be counted as part of their own households near campus. The 2018 Census Test Form asks those filling out the questionnaire to “leave off anyone living away from here, either at college or in the Armed Forces.”

⁶⁶ *Id.*

⁶⁷ *Id.*

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