STATE OF WASHINGTON

DEPARTMENT OF HEALTH

PO Box 47890 • Olympia, Washington 98504-7890
Tel: 360-236-4030 • 711 Washington State Relay

November 2, 2026

Daniel Sweeney
Deputy General Counsel for Economic, Statistical, and Regulatory Affairs
Office of the General Counsel
U.S. Department of Commerce
4600 Silver Hill Road, Designation: ADDEMO/FRN
Washington, DC 20746

RE: Docket No. USBC-2026-0628; RIN 0607-AA75; Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57,524 (Sept. 10, 2026)[1]

Dear Mr. Sweeney:

Introduction and Position

The Washington State Department of Health (DOH) submits these comments on the Census Bureau's proposed residence criteria and proposed restrictions on demographic questions, published at 91 Fed. Reg. 57524 (Sept. 10, 2026). DOH opposes both proposals.

Our objection is practical. DOH does not conduct the census, and we take no position here on the constitutional question the Bureau frames in the preamble. What DOH does is register births and deaths, track disease, license health facilities, pass federal funds through to local health jurisdictions and Tribes, and decide where to send vaccine, staff, and money during an emergency. Every one of those functions divides a numerator DOH collects by a denominator the Census Bureau produces. Proposed § 60.4(b) would take out of that denominator people who continue to live in Washington, get sick in Washington, and seek care in Washington. Proposed § 70.2(a) would take out the population characteristic that tells DOH which Washington

[1]Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57,524, https://www.federalregister.gov/documents/2026/09/10/2026-18481/decennial-census-of-the-population-of-americans-proposed-residence-criteria-and-proposed-regulations

communities need help. Neither change reduces the underlying health need or burden, and in some cases might make it harder to identify.

DOH asks the Bureau to withdraw § 60.4(b) and to withdraw Part 70 as proposed, and to clarify the provisions identified below before issuing any final rule.

Washington's Interest

The 2020 Census counted 7,705,281 residents in Washington.[2] The state's apportionment population was 7,715,946, and Washington was apportioned ten seats in the U.S. House of Representatives.[3] Twenty-nine federally recognized Tribes are located in Washington.[4]

Census data reaches Washington's health system through two channels, and this rulemaking affects both.

The first is funding. The Bureau's own accounting found that 353 federal assistance listings used Decennial Census Program's data, in whole or in part, to distribute more than $2.8 trillion in fiscal year 2021.[5] Washington's share of that system runs through the programs that carry much of the state's health infrastructure: an analysis covering FY2016 put Washington's receipts at $16.8 billion across 55 census-guided programs, with Medicaid alone accounting for $7.06 billion.[6] Those allocations do not run on the apportionment count directly. They run on the Bureau's annual population estimates, which the Bureau builds from the most recent decennial census and updates with births, deaths, and migration, and which the Bureau describes as "used in federal funding allocations, as survey controls, as denominators for vital rates and per capita time series."[7] Medicaid, the largest single program in that inventory, shows how close the connection is – the Bureau of Economic Analysis uses the Population Estimates Program figure as the population denominator for state per capita income, and the Medicaid reimbursement formula rests on a three-year average of each state's per capita income.[8]

The second is the denominator itself. Because Census-derived population estimates serve as denominators for population-based health measures, changes in the completeness or composition of those denominators can produce apparent changes in rates even when the underlying number of health events has not changed. This would complicate comparisons across geographic areas, demographic groups, and time and could make it more difficult to distinguish true changes in population health from artifacts of population measurement. These effects are particularly

---

[2] U.S. Census Bureau, Washington State Grew by Almost 1 Million (Aug. 25, 2021), https://www.census.gov/library/stories/state-by-state/washington.html

[3] Wash. Office of Fin. Mgmt., 2020 Census Data Releases, https://ofm.wa.gov/2020-census-data-releases

[4] Wash. Governor's Office of Indian Affairs, Frequently Asked Questions, https://goia.wa.gov/resources/frequently-asked-questions

[5] Ceci A. Villa Ross, Uses of Decennial Census Programs in Federal Funds Distribution: Fiscal Year 2021, at 2, 24 (U.S. Census Bureau Working Paper, June 2023), Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021

[6] Andrew Reamer, Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds, Report #3, Washington (G.W. Inst. of Pub. Pol'y, Jan. 30, 2019), https://gwipp.gwu.edu/sites/g/files/zaxdzs6111/files/downloads/IPP-1819-3%20CountingforDollars_WA.pdf

[7] U.S. Census Bureau, About the Population Estimates Program, https://www.census.gov/programs-surveys/popest/about.html

[8] Villa Ross, supra, at 11

consequential for small populations and small geographic areas including rural counties, where relatively small changes in the denominator can materially affect estimated rates.

DOH publishes rates, not counts. A cancer incidence rate, an overdose death rate, an immunization coverage rate, and a communicable disease attack rate each require a population figure for the place and the group being described. The Washington Tracking Network, DOH's public data portal, delivers that information at state, county, and census tract level, including through the Washington Environmental Health Disparities Map.[9] Local health jurisdictions, Tribes, emergency managers, other Washington state agencies, and community organizations use those small-area figures to decide where to place a clinic, which neighborhoods to canvass, and which populations to reach first.

Comments That Cross Sections

Sections 60.2, 60.4, and the proposed legal-status question: Section 60.4(b) is drafted by subtraction. It excludes every foreign citizen who is not also a U.S. citizen or lawful permanent resident, which reaches well beyond people present unlawfully. Refugees and people granted asylum are not lawful permanent residents on arrival, and neither are humanitarian parolees, certified victims of trafficking, international students, temporary and seasonal workers, exchange visitors, or people whose applications are pending. Washington's refugee and immigrant assistance programs are built around several of those categories.[10] The scale is not marginal. The U.S. Department of Labor certified 33,049 H-2A agricultural positions for Washington employers in 2022, a 420 percent increase over 2013 and among the highest totals in the nation[11] and Washington institutions enrolled 27,264 international students as of October 2025.[12] A household also does not respond to the census selectively. An estimated 246,000 unauthorized immigrants lived in Washington as of 2019, and roughly 88,000 of them lived with at least one U.S.-citizen child under 18.[13] Nationally, about 4.6 million U.S.-born children under 18 lived with an unauthorized immigrant parent in 2023.[14] When a household concludes that answering the census carries immigration risk, the citizen children, the lawful permanent resident grandparent, and the naturalized citizen parent in that household go uncounted along with everyone else. The proposal is framed as excluding one group from the apportionment base. Its operational effect reaches whole households, including people the Bureau intends to count.

Tribal consultation: The notice states that the Bureau "plans to formally notify federally recognized and state recognized Tribes and conduct a tribal consultation regarding the proposed regulations."[15]. Washington's 29 federally recognized Tribes have a direct stake in both parts of

---

[9] Wash. State Dep't of Health, Washington Tracking Network (WTN), https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn

[10] DSHS Office of Refugee and Immigrant Assistance program description (DSHS 22-2127, Oct. 2025)

[11] JLARC, *ESD Administration of the H-2A Temporary Worker Visa Program*, Report 24-03 (Apr. 2024)

[12] Higher Ed Immigration Portal, Washington state profile (citing SEVIS, Oct. 2025)

[13] Migration Pol'y Inst., Profile of the Unauthorized Population: Washington, https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/WA

[14] Jeffrey S. Passel & Jens Manuel Krogstad, U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023 (Pew Rsch. Ctr., Aug. 21, 2025), https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/

[15] 91 Fed. Reg. at 57528 (Exec. Order No. 13175—Tribal Consultation)

this rulemaking. A virtual Tribal Consultation was held October 2, 2026, scheduled 22 days after the rule's publication, with only two weeks' notice instead of the usual 30 days, citing operational deadlines. The National Congress of American Indians (NCAI) requested additional Tribal consultation but did not receive a response[16]. DOH recommends additional opportunities for Tribal consultation and a supplemental comment period opened prior to a final rule being issued.

The Regulatory Flexibility Act certification: The Deputy General Counsel certified that this rule would not have a significant economic impact on a substantial number of small entities, reasoning that no entity other than the Census Bureau is directly regulated and that census information "would remain available or could be obtained in other ways."[17] That reasoning does not hold for small local health jurisdictions. No other source produces small-area population counts by race and ethnicity. DOH asks the Bureau to withdraw the certification and to prepare an initial regulatory flexibility analysis that examines effects on small governmental jurisdictions.

§ 60.2 General Definition of "Usual Residence" for Conducting the Decennial Census

> *Solicited comment (91 Fed. Reg. 57526). The Census Bureau invites the public to comment on these proposed residence criteria.*
>
> *§ 60.2. (a) A person's "usual residence" is the residence at which they have lawfully spent the greatest number of days during the census enumeration period. A person's "usual residence" should be consistent with, and evidenced by, their tax records (e.g., tax returns, W-2 forms). (b) A person is considered to have spent a day at a residence if he or she spent at least one hour physically and lawfully present there that day. … (c) The census enumeration period runs from January 3 to April 1 during decennial census years. April 1 is referred to as "Census Day."*

DOH raises four concerns with the general definition.

The evidentiary standard in § 60.2(a) ties usual residence to tax records. Many Washington residents have no tax record that would place them anywhere. Workers earning below the filing threshold have none. People experiencing homelessness, people in long-term care, and many older adults living on Social Security alone have none. If tax records carry the evidentiary weight this provision assigns them, the people least likely to appear in them are the same people most likely to be missed today, and the rule would widen a known undercount rather than close it.

The word "lawfully" in § 60.2(b) does more work than the preamble acknowledges. Read with § 60.2(a), a person whose physical presence is not lawful accrues no qualifying days at any residence and therefore has no usual residence anywhere in the United States. That is a definitional exclusion accomplished in the general definition, and it operates before § 60.4 is ever reached. If the Bureau intends § 60.4 to be the operative exclusion, "lawfully" should be struck from § 60.2(b).

---

[16] Native News Weekly (October 18, 2026): D.C. Briefs - Native News Online

[17] 91 Fed. Reg. at 57528 (Regulatory Flexibility Act certification)

The January 3 to April 1 window will misplace part of Washington's seasonal workforce. Agricultural and food-processing employment in central and eastern Washington shifts substantially over the course of a year, and where a person sleeps during a late-winter window is not necessarily where that person lives and uses health services for most of the year. DOH's concern here is operational: the communities that host seasonal workers carry the service load, and this criterion would count them as though they did not. This concern is particularly important in rural Washington, where relatively small changes in population estimates can materially affect measures of community need. Rural hospitals, Rural Health Clinics, EMS agencies, local health jurisdictions, and other community organizations rely on population-based measures to understand service demand, plan workforce and capacity, and demonstrate need for state and federal resources. Residence criteria that do not accurately reflect populations served throughout the year could therefore create a mismatch between measured population need and actual demand for rural health services.

The notice also does not say what becomes of the resident population base. Endnote 5 states that the Bureau "maintains and publishes statistics separate from those for apportionment" and expects to continue doing so,[18] but the regulatory text does not say whether the Population Estimates Program will continue to rest on a full resident count. Population undercounts have implications for rural health in Washington. DOH is concerned that rural funding formulas may shift, reducing eligibility or weakening justification for some federal rural health grants. Health Professional Shortage Areas (HPSA)/Medically Underserved Area (MUA) designations could be harder to obtain and/or lost because population to provider ratios may appear artificially improved. Rural Hospital and EMS planning may be misaligned with actual service demand, especially in agricultural regions with seasonal or migrant workforces. DOH asks the Bureau to state plainly in any final rule that the resident population base is unaffected.

§ 60.4 Foreign Citizens in the United States

> *§ 60.4. (a) Citizens of foreign countries who are also either citizens or lawful permanent residents of the United States as of April 1 of a decennial census year. Counted at their usual residence in accordance with § 60.2. (b) All other citizens of foreign countries as of April 1 of a decennial census year. Not counted for apportionment.*
>
> *Solicited comment (91 Fed. Reg. 57526). The Census Bureau invites comments on whether other forms of legal status are materially similar to lawful permanent resident status.*
>
> *Solicited comment (91 Fed. Reg. 57526). The Census Bureau welcomes comments on the inclusion of a legal-status question on the short-form decennial census questionnaire.*

DOH opposes § 60.4(b), and opposes adding a legal-status question to the short form.

People left out of the count are not left out of the health system. They arrive at emergency departments, enroll children in school immunization programs, receive cancer diagnoses and develop chronic diseases that require proper treatment, medical attention, prevention measures,

[18] 91 Fed. Reg. at 57528 n.5, supra note 1.

and care. They also work in food service and agriculture where DOH regulates for public safety and are part of the transmission chain in communicable disease outbreak the state responds to. Tuberculosis, measles, and highly pathogenic avian influenza, do not check status. The federal designations that route clinic and workforce resources into Washington communities, among them Medically Underserved Areas and Health Professional Shortage Areas, are themselves derived from Decennial Census Programs data.[19] DOH's outbreak response has to be sized to the population actually present, while the federal resources supporting that response would be sized to a smaller number. Washington would be asked to serve a population it is no longer funded to serve, and that gap would fall hardest on the communities least able to absorb it.

On the legal-status question, the Bureau's own reasoning forecloses it. In support of Part 70, the notice states that "in general, the more questions that are included on the decennial census questionnaire, the lower the overall response rate."[20] The Bureau relies on that proposition to justify deleting two questions, then proposes adding one considerably more sensitive than either. A legal-status question would depress self-response most in the households that are already hardest to enumerate, pushing the Bureau toward the administrative-record determination described at 57526 for precisely the population whose records are thinnest. DOH recommends against including the question.

§ 60.9 Persons Confined at Correctional or Detention Facilities

> *§ 60.9. Persons confined at correctional or detention facilities, including juvenile facilities. Counted at the facility.*

This provision and § 60.4(b) point in opposite directions for the same people, and the notice does not reconcile them. A foreign citizen who is not a lawful permanent resident and who is held in an immigration detention facility on Census Day falls under § 60.9, which counts that person at the facility, and under § 60.4(b), which does not count that person at all.

Counting confined persons at the facility also conflicts with Washington law. RCW 44.05.140, enacted in 2019, requires the state redistricting commission to deem each incarcerated person as residing at his or her last known place of residence rather than at the institution.[21] A federal criterion assigning the same people to the facility produces two inconsistent population geographies for the same decade.

The public health consequence is small-area distortion. A facility population concentrated in one census tract can materially alter that tract's denominator and distort population-based rates calculated for the surrounding community, particularly when the facility population is large relative to the noninstitutionalized population of the tract.

§ 70.2 Restrictions on the Inclusion of Certain Demographic Questions

---

[19] Villa Ross, supra note 5, at 8.

[20] 91 Fed. Reg. at 57527, supra note 1.

[21] Wash. Rev. Code § 44.05.140, https://app.leg.wa.gov/RCW/default.aspx?cite=44.05.140

Solicited comment (91 Fed. Reg. 57528). The Census Bureau invites the public to comment on this proposal regarding demographic questions.

§ 70.2. (a) No question about race, ethnicity, or sexual orientation shall appear on the short form decennial census questionnaire or any questionnaire used for the enumeration of the population. (b) Questions about biological sex, date of birth, and household relationships may be included on the decennial census questionnaire for the sake of facilitating data verification … (c) With the exception of questions about biological sex, date of birth, and household relationships, no person shall be obligated to furnish a response to any demographic question as part of the decennial census.

DOH opposes § 70.2(a). It conflicts with at least three federal requirements, and it removes data the state cannot obtain anywhere else.

First, 42 U.S.C. § 300kk directs the Secretary of Health and Human Services to ensure that any federally conducted or supported health care or public health program, activity, or survey collects and reports data by race and ethnicity, and the statute names surveys conducted by the Bureau of the Census in the text of that requirement.[22] The proposed prohibition would place the decennial enumeration outside a data standard Congress applied across the federal health enterprise.

Second, OMB's revised Statistical Policy Directive No. 15 provides that the federal race and ethnicity standards "shall be used for all Federally sponsored statistical data collections," with agencies to bring existing collections into conformity no later than March 28, 2029.[23] The decennial census is the anchor collection of the federal statistical system. The notice does not address the directive.

Third, Public Law 94-171 requires the Bureau to furnish redistricting tabulations to each state within one year of Census Day, and those files consist of tables P1 through P4: race, Hispanic or Latino origin by race, and each of those for the population 18 years and over.[24] If no question about race or ethnicity may appear on any questionnaire used for the enumeration, the Bureau cannot produce those tables from self-response. The notice does not explain how the redistricting obligation would be met.

The loss to DOH is concrete. Proposed § 70.2(a) would strip out the race, ethnicity, and other demographic detail that shows DOH where diseases and associated risk or protective factors may concentrate, eliminating a source of small-area demographic information the department cannot obtain elsewhere and potentially weakening federal reporting, funding, and public health planning. These changes would reduce the accuracy and usefulness of census data for Washington's public health system without altering the people DOH is responsible for serving.

---

[22] 42 U.S.C. § 300kk(a)(1), https://www.law.cornell.edu/uscode/text/42/300kk

[23] Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22,182 (Mar. 29, 2024), https://www.federalregister.gov/documents/2024/03/29/2024-06469/revisions-to-ombs-statistical-policy-directive-no-15-standards-for-maintaining-collecting-and

[24] U.S. Census Bureau, P.L. 94-171 Redistricting Data Summary Files (tables P1–P4), https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html

Changes as significant as what is proposed in both § 60.4(b) and § 70.2(a) also affect monitoring disease and risk factor trends from year to year, undermining the public's trust in validity and reliability of estimates that are produced

DOH also notes § 70.2(c), which would make response voluntary for every demographic question other than sex, date of birth, and household relationship. Voluntary response is not neutral. It varies by community, and the variation runs along the same lines as the disparities the data are meant to measure.

Endnote 11 of the notice observes that questions about tribal membership are not necessarily questions about race or ethnicity,[25] but the proposed rule does not preserve any American Indian and Alaska Native identifier on the short form. DOH asks the Bureau to confirm whether tribal affiliation or AI/AN identification would remain, given the Indian Health Service and tribal public health funding that rests on it.

§ 70.4 Other Sources of Demographic Data

> *§ 70.4. Nothing in this part shall be construed to restrict the Census Bureau's ability to ask demographic questions on the American Community Survey or any other surveys that are not used for the enumeration of the population, or to receive demographic data from other sources.*

DOH supports this provision and asks the Bureau to go further.

The American Community Survey does not substitute for the decennial count at the geographies DOH works in. ACS tract-level estimates are sample-based, and for smaller racial and ethnic groups the margins of error at that geography are often too wide to support a rate calculation. ACS estimates are also controlled to the Bureau's population estimates, which are built from the decennial base. A decennial census collecting no race or ethnicity data weakens the ACS rather than leaving it untouched. These changes would also affect longitudinal comparability. Public health surveillance depends on consistent population definitions and demographic measures to assess whether disease burden and disparities are improving or worsening over time. A change in who is represented in the population denominator, or in the demographic information available to characterize that population, could create discontinuities in health indicators beginning in 2030 that reflect changes in measurement rather than changes in underlying health conditions.

DOH asks that any final rule state affirmatively that the Bureau will continue to produce population tabulations by race and ethnicity for the resident population, at the census tract level, for the 2030 cycle.

Solicited Comment: Respondent Burden Reduction Estimates (91 Fed. Reg. 57528)

> *Solicited comment (91 Fed. Reg. 57,528). The Census Bureau is seeking public comment on respondent burden reduction estimates resulting from this proposal.*

[25] 91 Fed. Reg. at 57,529 n.11, supra note 1.

DOH cannot comment on the estimates because none have been published. The notice states that the rule "contains no information collection requirements under the Paperwork Reduction Act,"[26] which sits awkwardly with a rule whose subject is the content of the decennial questionnaire.

DOH's own view of the arithmetic is this: The burden removed by deleting two questions is measured in seconds per household. The burden that a legal-status question would add, raised in this same rulemaking, is not. And the analytic cost of the deletion runs for ten years, because a decennial census cannot be repeated once the gap is discovered. DOH asks the Bureau to publish its burden estimate, including any estimate associated with a legal-status question, and to reopen the comment period once that estimate is available.

Recommendations

1. Withdraw proposed § 60.4(b). Count all residents of Washington at their usual residence, as the 2020 criteria did.
2. Do not add a legal-status question to the short-form questionnaire.
3. Strike the tax-record evidentiary standard in § 60.2(a) and the word "lawfully" in § 60.2(b), and state in any final rule that the resident population base used for the Population Estimates Program is unaffected by these criteria.
4. State whether § 60.9 or § 60.4(b) governs a person held in an immigration detention facility, and address the conflict with RCW 44.05.140.
5. Withdraw § 70.2(a), and reconcile any restriction on demographic questions with 42 U.S.C. § 300kk, Statistical Policy Directive No. 15, and the redistricting tabulations required by Public Law 94-171.
6. Confirm that an American Indian and Alaska Native identifier will remain available on the short-form questionnaire.
7. State affirmatively that the Bureau will continue to publish population tabulations by race and ethnicity as well as the methods to derive these estimates for the resident population at the census tract level for the 2030 cycle.
8. Publish the respondent burden estimates, including any estimate for a legal-status question, and reopen the comment period.
9. Complete tribal consultation and open a supplemental comment period before issuing any final rule.
10. Withdraw the Regulatory Flexibility Act certification and prepare an initial regulatory flexibility analysis addressing small governmental jurisdictions.

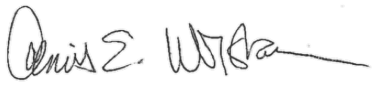
Conclusion

Washington's public health system runs on the decennial census. The count provides the population denominator for many of the rates DOH publishes, the base for the estimates that carry federal health funding into the state, and the small-area detail that tells local health jurisdictions and Tribes where the need is. The two proposals in this notice would remove people

[26] 91 Fed. Reg. at 57,528 (Paperwork Reduction Act), supra note 1.

from that count without reducing by one person the population Washington is responsible for serving. Thank you for reviewing DOH's recommendations and for the opportunity to provide these comments.

Sincerely,



Dennis E. Worsham
Secretary of Health
Washington State Department of Health.