October 30th, 2026

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

Re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions" (FDMS Docket number USBC-2026-0628)

Dear Mr. Sweeney,

The League of Women Voters of the United States (the League) strongly opposes the proposed rules in the US Census Bureau's Notice of Proposed Rulemaking (NPRM) published on September 10, 2026, titled *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions* (FDMS Docket number USBC-2026-0628).

Introduction

LWV is a 106-year-old nonpartisan nonprofit committed to ensuring that everyone is represented in our democracy. We are a grassroots organization comprising over 1 million members and supporters in all 50 states and the District of Columbia across more than 800 local and state Leagues. The League focuses on advocacy, education, litigation, and organizing to advance our mission of empowering voters and defending democracy. We base our work on policy positions developed through multi-year studies and consensus among League membership, ensuring our advocacy reflects best practices and a nationwide perspective. Ensuring a fair, accurate, and fully funded census is core to this mission, and occasions our opposition to the proposed rule.

We believe the proposed changes, taken together, amount to unconstitutional and unprecedented changes to the decennial census that would produce an inaccurate count.

Specifically, the exclusion of noncitizens from apportionment data is unconstitutional, and changes to residence criteria and the elimination of race and ethnicity data are unprecedented. **The League opposes the proposals in the notice, and we strongly urge the Census Bureau and Department of Commerce to withdraw this proposed rule.** The census is a core part of our democratic process, and these proposed changes will exclude people with a constitutional right to be counted in our democracy. The rule would:

1) Exclude noncitizens, besides "lawful permanent residents," from apportionment.
2) Remove race and ethnicity questions from the decennial census.
3) Unnecessarily ban the future inclusion of sexual orientation questions on future censuses.
4) Redefine "usual residence," limit enumeration to a narrow window, and tie it to tax records.

The League firmly opposes these changes because they would create unreliable, inaccurate census data.

Exclusion of Noncitizens and Ban on Race, Ethnicity, and Sexual Orientation Data Collection

The NPRM proposes to exclude noncitizens who are not "lawful permanent residents" from the count for congressional apportionment purposes. It would do so by changing the residence criteria to exclude anyone who is not a citizen or a permanent resident, meaning other visa holders, refugees, undocumented immigrants, and additional groups would not be in the apportionment count. This is an unconstitutional attempt to reshape apportionment: the 14th Amendment clearly requires that apportionment be based on the "whole number of persons in each State." The proposed rule also recommends implementing a question on legal status to exclude noncitizens from the count. For such an exclusion to be legal, it would require an amendment to the Constitution. Taken together, these proposals violate the plain language of the Constitution. Separately, the proposed legal-status question on the short-form decennial census is unprecedented and has not been sufficiently studied or evaluated.

The Constitution plainly states that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State." By excluding noncitizens from the apportionment count, many people in this country will not be represented in Congress, even though they have a constitutional right to be counted and therefore represented, regardless of immigration status. Moreover, adding a citizenship question or a question about immigration status would likely create a chilling effect and result in undercounts that would degrade the quality of census data in general, not just for apportionment. Such an undercount would disadvantage local communities and governments by presenting an inaccurate picture of their residents. Consequently, state and local

governments would rely on inaccurate census data to determine their funding needs for federal programs, emergency services, public health, and more.

Additionally, the proposal to prohibit the collection of race and ethnicity data through the decennial census is unprecedented and would exacerbate a decline in census data quality. Since the first census in 1790, the United States has collected data on race in some way. To depart from this practice through this proposed rule, with no alternative way to continue collecting these data, would eliminate reliable data on race and ethnicity in the US population. Furthermore, the League views this prohibition as especially troubling considering the ongoing delays to implementing the 2024 Statistical Policy Directive No. 15 (which would include the new Middle Eastern and North African category) across federal agencies. The effects of the prohibition would be felt across all sectors of society that rely on these data, from governments and policymakers to private institutions and businesses.

The proposal to prohibit the collection of sexual orientation data is unnecessarily prohibitive. The Bureau does not currently collect sexual orientation data through a dedicated question on the short-form decennial census questionnaire. It does, however, collect information on same-sex couples through the household relationship question, which it has used for decades, including in a redesigned version on the 2020 census. These are distinct forms of data collection. The Bureau should neither limit nor prohibit the collection of data on same-sex couples or future sexual orientation data collection, as such prohibitions would undermine the quality of government data available on the LGBTQIA+ community.

Redefining "Usual Residence;" Enumeration Period; Tying Enumeration to Tax Records

The NPRM also proposes a redefinition of "usual residence" from being "where someone lives and sleeps most of the time" to a definition that ties residence to tax records and other administrative records.

According to the *Census Act of 1790*, enumeration has always been tied to Census Day, and usual residence has traditionally meant "where someone lives and sleeps most of the time." The NPRM proposes redefining "usual residence" as "the residence at which [the respondent has] lawfully spent the greatest number of days during the census enumeration period" and requires that "a person' s 'usual residence' should be consistent with, and evidenced by, their tax records (e.g. tax returns, W-2 forms)."

This redefinition is problematic for several reasons. First, it introduces the concept of a "lawful" residence, which has never been included in a decennial census. Second, it limits where a person can be counted to the place they have spent the most time in between January 3rd - April 1st, and in doing so risks major miscounts and undercounts.

The proposed rule would, for the first time in the history of the decennial census, make a person's place in the count depend on the "lawfulness" of their presence at their home. Under the NPRM, a person counts as having spent a day at a residence only if they spent at least one hour "physically and lawfully present" there that day within the narrowly defined enumeration period. Furthermore, the proposed rule does not define what constitutes "lawful" residence. The League believes the Census Bureau should not determine the "lawfulness" of residence, whether related to immigration or otherwise.

Additionally, the term "lawful" is novel and has no precedent in past decennial censuses. The concept of "lawful" residence, together with the narrow enumeration period, would exclude unhoused people and people with insecure housing situations from the count. Further, tying enumeration to tax records creates a separate set of exclusion and reliability concerns. It risks undercounting or miscounting children in mixed-status households and people who do not file taxes. It also risks miscounting people whose taxes are prepared by accountants and military workers deployed for the duration of the enumeration period. These untested, undemocratic changes would make enumeration needlessly more complex, error-prone, and cumbersome.

In sum, the League opposes these changes to the 1790 definition, as they create a narrow window of enumeration, risk undercounting and miscounting people, propose an unprecedented concept of "lawful" residence in census operations, and risk excluding people from the count. Traditionally, the Census Bureau has defined usual residence as the place where a person lives and sleeps most of the time, and the League believes this definition must remain the standard, as it is the job of the census to count people and not assess their legal or immigration status.

Conclusion

For decades, the League has been deeply committed to ensuring the success of the decennial census process and the US Census Bureau's ongoing efforts. We believe in a full, fair, and accurate census, because it is essential to the basic functions of our society. The League's census support includes public education, Get Out the Count initiatives, community engagement and serving as an official partner to the Census Bureau in its efforts. The League has been a critical partner to the Census Bureau across the country, as our local affiliates share information and resources on how to participate in the census count and raise awareness about the census's importance in helping us better understand our communities.

In our commitment to defending democracy, the League has worked with the Census Bureau over the years to continue improving the census process. The League believes that the proposed changes to the residence rule would create an inconsistent and unreliable census count. As

explained above, excluding noncitizens from the apportionment count is unconstitutional. If implemented, the proposed changes would also harm the census, apportionment, and communities around the country, and erode a key process in our democracy.

We respectfully urge the Department of Commerce and the US Census Bureau to withdraw the NPRM and instead 1) follow the plain text of the Constitution and continue counting all persons in the United States regardless of immigration status 2) continue collecting race and ethnicity data, 3) continue using the traditional definition of "usual residence" and forgo the residence criteria and changes to enumeration in the proposed rule, and 4) not prohibit the addition of sexual orientation questions on future censuses.

Thank you for considering the League's position on these proposed changes to the census. We appreciate the opportunity to comment and look forward to further engagement. For any questions, please contact Jessica Jones Capparell at jjones@lwv.org.

Sincerely,

Jessica Jones Capparell

Director of Government Affairs, League of Women Voters US