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And U.S. First Class Mail

August 27, 2021

The Honorable Gina M. Raimondo
Secretary of Commerce
c/o Thomas J. Smith
Bureau of the Census
Docket USBC-2021-0018
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Dear Madam Secretary:

RE: Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Management and Organizational Practices Survey (MOPS) 2021; Docket USBC-2021-0018, OMB Control No. 0607-0963, 86 *Fed. Reg.* 40807 (July 29, 2021)

This letter presents comments of the National Federation of Independent Business (NFIB) in response to the Department of Commerce Bureau of the Census notice titled "Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Management and Organizational Practices Survey (MOPS) 2021" and published in the *Federal Register* of July 29, 2021. NFIB asks the Department to cancel the Management and Organizational Practices Survey, 2021 (MOPS 2021).

NFIB is an incorporated nonprofit association representing small and independent business members across America. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that the governments of the United States and the fifty states hear the voice of small business as they formulate public policies. The Bureau of the Census should not impose on America's small businesses the cost and burden of filling out a report seeking information that is none of the Bureau's business, as is the case with MOPS 2021.

The Bureau describes MOPS 2021 as follows:

The data obtained from the MOPS will allow the Census Bureau to estimate a firm's stock of management and organizational assets, specifically the use of decentralized

decision rights and establishment performance data such as production targets in decision-making. These data will provide information on investments in management and organizational practices, which will lead to a better understanding of the benefits from these investments when measured in terms of firm productivity or firm market value. This survey on management and organizational practices will provide information on the dimensions of organizational capital for this sector not currently available elsewhere.¹

First, the federal government has only those functions that the U.S. Constitution assigns to it, and MOPS 2021 serves none of those functions. No provision of the Constitution calls for the federal government to: (1) collect data on whether and how American firms use "decentralized decision rights;" (2) collect data on firms' "use of ... establishment performance data such as production targets in decision-making;" or (3) reach a government "better understanding" of the benefits of such decision rights and performance data on "firm productivity" or "firm market value." In particular, MOPS 2021 provides nothing needed for the regulation of interstate, foreign, or tribal commerce. How a business lawfully makes its internal decisions is none of the government's business under the Constitution.

Secondly, neither of the statutes that the Bureau claims as authority for MOPS 2021 (13 U.S.C. 131 and 182) authorizes the Bureau to (1) collect data on whether and how American firms use "decentralized decision rights;" (2) collect data on firms' "use of ... establishment performance data such as production targets in decision-making;" or (3) reach a government "better understanding" of the benefits of such decision rights and performance data on "firm productivity" or "firm market value." The statutes refer only to taking "censuses ... of ... businesses" and "surveys deemed necessary to furnish annual and other interim current data on the subjects covered by the censuses[.]"² A census is a count of something, and surveys can only cover the subjects of such a count. The statutes say nothing about compelling businesses to answer questions about who has what authority within the business to make decisions ("decentralized decision rights") and how the business uses information about its performance in making decisions ("establishment performance data ... in decision-making"). How a business lawfully makes its internal decisions is none of the government's business under sections 131 and 182 of the U.S. Code.

Thirdly, MOPS 2021 imposes burdensome costs on American businesses. The Bureau says it will compel 50,000 American businesses to answer the survey, which, at 45 minutes per response, forces businesses to divert their owners or employees away from work to answer the survey for an aggregate of 37,500 hours.³ Forty-five minutes for just this one survey is a significant drawdown on an owner's or employee's time to complete this survey online, and this survey would be but one of many time-consuming forms a

¹ 86 *Fed. Reg.* at 40807, cols. 2-3.

² The Bureau of the Census cites sections 131 and 182 of title 13 of the United States Code as the Bureau's authority to conduct the survey. 86 *Fed. Reg.* at 40808, col. 1.

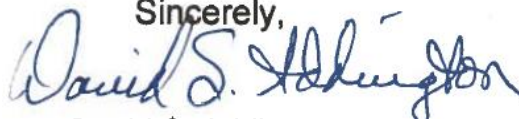
³ 86 *Fed. Reg.* at 40808, col. 1.

business must fill out for the government. MOPS 2021 is not just 45 minutes for the government; it is 45 minutes more for the government. And the Bureau has cleverly claimed a purported cost of zero dollars as the cost of the survey to the public, by defining the real costs out of existence. The Bureau's cost estimate excludes the cost to the business of the 45 minutes for which the business must pay the survey respondent while the respondent is not doing the business's work but is instead filling out the survey form for the government; excludes the cost to the business of purchasing any hardware or software needed to be capable of filling out the survey, which the survey respondent must do online; and excludes the cost of collecting the information needed to answer the survey.⁴ All of the costs excluded by the Bureau are, in fact, real costs that businesses bear when the Bureau compels them to answer MOPS 2021.

Finally, the MOPS 2021 tramples upon the liberty and privacy rights of Americans. As long as a business conducts itself lawfully, it is none of the government's business how a business runs itself, including what information it uses to make decisions and who within the business gets to make what decisions. The Bureau seems to think that its power to compel people to answer its surveys is essentially a limitless equivalent of a subpoena for testimony about how a business runs itself, but Congress has given the Bureau no such authority to intrude into American businesses. The rights of Americans under the Fourth and Fifth Amendments of the Constitution to freedom from governmental intrusion extend to Americans in their businesses as well as in their personal lives, so the Bureau should be much more careful about intruding into the businesses of Americans (whether for itself alone, or for itself and curious academicians).⁵

For the foregoing reasons, the Department of Commerce should cancel the MOPS 2021 survey. The curiosity of the government is not enough to justify government intrusion into the lives and businesses of Americans. Please stop MOPS.

Sincerely,



David S. Addington
Executive Vice President and General Counsel

cc: Hon. Shalanda D. Young, Acting Director
Attn: OIRA
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

⁴ 86 *Fed. Reg.* at 40807, col. 3 (report electronically through Bureau's online reporting system) and 86 *Fed. Reg.* at 40808, col. 1 (Bureau's purported cost estimate).

⁵ The Bureau noted that it was conducting MOPS 21 "as a joint project by the Census Bureau, the University of Chicago Booth School of Business, Stanford School of Humanities and Sciences, and the Stanford Institute for Human-Centered Artificial Intelligence." 86 *Fed. Reg.* at 40807, col. 2.



UNITED STATES DEPARTMENT OF COMMERCE
U.S. Census Bureau
Washington, DC 20233-0001

September 13, 2021

Mr. David S. Addington
Executive Vice President and General Counsel
National Federation of Independent Business
555 12th Street NW, Suite 1001
Washington, D.C. 20004

Dear Mr. Addington:

This is in response to your correspondence relaying the National Federation of Independent Business (NFIB) comments on a Federal Register Notice published by the U.S. Census Bureau regarding the Census Bureau's plans to submit the Management and Organizational Practices Survey for Office of Management and Budget (OMB) review.

Thank you for your comment regarding the NFIB's objections to the proposed survey. Your comment, as well as all other comments received by the close of the 60-day comment period, will be duly considered. As required under the Paperwork Reduction Act, Census will also be providing responses to these comments to OMB for their review, which is slated to be in December 2021. Census will alert you when those responses are available to the public.

Sincerely,

Kimberly P. Moore

Kimberly P. Moore
Chief, Economy-Wide Statistics Division
U.S. Census Bureau