

NFIB
The Voice of Small Business®
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U.S. First Class Mail

December 12, 2017

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
c/o Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce, Room 6616
14th and Constitution Avenue NW
Docket No. USBC-2017-0005
Washington, DC 20230

Dear Mr. Secretary:

RE: Comments on Census Bureau Notice on "Proposed Information Collection;
Comment Request; The American Community Survey," Docket No. USBC-
2017-0005, 82 *Fed. Reg.* 58378 (December 12, 2017)

The National Federation of Independent Business (NFIB) submits these comments in response to the Census Bureau notice titled "Proposed Information Collection; Comment Request; The American Community Survey [ACS]" published in the *Federal Register* on December 12, 2017. NFIB appreciates the Census Bureau's recognition that, in implementing its constitutional and statutory duties to collect certain information, the Bureau must take account of "the people's privacy and respondent burden" (82 *Fed. Reg.* at 58379, col. 1). The Bureau's notice failed to take proper account of two aspects of the burden of responding to the ACS: (a) the cost to the public, and (b) the legal authority to impose the burden. For the reader's convenience, recommendations NFIB makes for the Bureau to correct those shortcomings appear in boldface type below.

NFIB is an incorporated nonprofit association with approximately 300,000 members across America. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and, in particular, ensures that the governments of the United States and the fifty states hear the voice of small business as they formulate public policies. Members of NFIB are subject to direction from the Bureau to respond to the ACS.

When the Bureau directs NFIB members to respond to surveys such as the American Community Survey, they respond as the law requires. In doing so, they incur substantial associated costs -- principally the value of their time diverted from running the business to responding to the ACS. The Bureau errs in stating in its notice: "Estimated Total Annual Cost to Public: \$0." **The Bureau should issue a revised notice under the Paperwork Reduction Act that contains an actual estimated total annual cost to the public of responding to the ACS, including the value of the diversion of the time of business owners or employees from their work to respond to the ACS.**

Part of the Bureau's duty in minimizing respondent burden is to ensure that the Bureau collects information only when the laws of the United States authorize the Bureau to collect the information, for an agency has no power unless Congress has conferred such power on the agency by law. *Louisiana Public Service Commission (PSC) v. Federal Communications Commission (FCC)*, 476 U.S. 355, 374 (1986). The Bureau's ACS should not include any questions that go beyond the scope of information collection that Congress authorized in the statutes that the Bureau cited in the notice as its authority for conducting the ACS.

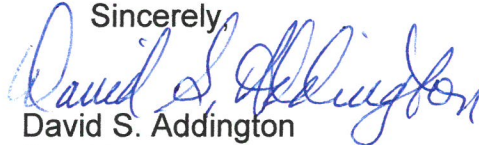
The notice cites as the legal authority for the ACS sections 141 and 193 of title 13 of the U.S. Code. Section 141 authorizes the Census Bureau to take a "census of population" in such form as the Secretary determines, but then defines the term "census of population" specifically to mean "a census of population, housing, and matters relating to population and housing." Section 193 authorizes the Secretary to "make surveys and collect such preliminary and supplemental statistics related to the main topic of the census as are necessary to the initiation, taking, or completion thereof." The "main topic" -- indeed, the entire topic -- of a census taken under section 141 is "population, housing, and matters relating to population and housing." Thus, a question in a survey conducted by the Bureau under the authority of sections 141 and 193 of title 13 -- such as the ACS -- must be rationally related to "population, housing, and matters relating to population and housing."

The Bureau should examine all the questions in the ACS to ensure that each of them is, as the law requires, rationally related to population, housing, and matters relating to population and housing, and delete any questions that lack the requisite rational relationship. In particular, the Bureau should confirm that such a rational relationship exists for questions on Journey to Work, Computer and Internet Use, Educational Attainment and Undergraduate Field of Degree, Grandparents as Caregivers, Health Insurance Coverage, Language Spoken at Home, and Vehicles Available. Unless the Bureau takes the overbroad view that anything that relates to a human being relates to "population" -- which would impermissibly treat as meaningless surplusage the statutory limitation of the survey to "population, housing, and matters relating to population and housing" -- the Bureau may have difficulty finding the requisite rational relationship for such questions. **Absent the rational relationship to population, housing, and matters relating to population and housing, the Bureau then must search elsewhere among the statutes concerning the Bureau for**

authority to ask the questions. If it finds such alternative authority, then the Bureau should publish a revised notice that cites the correct legal authority for the ACS, and not just the insufficient sections 141 and 193 of title 13 that the current notice cites.

The National Federation of Independent Business appreciates the opportunity to comment on the Census Bureau information collection known as the American Community Survey.

Sincerely,



David S. Addington
Senior Vice President and General Counsel