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Mr. Arturo Vargas

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Mr. Michael Berning
Assistant Division Chief for Data Acquisition and Curation
U.S. Census Bureau
4600 Silver Hill Road, Room 5H151
Washington, DC 20233

Submitted via email to PRAComments@doc.gov

Dear Mr. Berning:

On behalf of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, I write to provide comments in response to the U.S. Census Bureau Notice (the "Federal Register Notice") published on September 16, 2019 at 84 FR 48582, concerning the Bureau's acquisition of state administrative records (Docket Number USBC-2019-00080).

NALEO Educational Fund is the nation's leading nonprofit organization that facilitates the full participation of Latinos in the American political process, from citizenship to public service. Our Board members and constituency encompass the nation's more than 6,700 Latino elected and appointed official, and include Republicans, Democrats and Independents. NALEO Educational Fund is a national leader in Census outreach, community education and policy development. Since the 1990 Census, our organization has conducted outreach campaigns to promote the full and accurate count of the Latino community. Together with media and community-based organizational partners, we have launched iHAGASE CONTAR! ("Make Yourself Count!") and iHAZME CONTAR! ("Make Me Count!") campaigns to drive response to the 2020 Census through dissemination of community education materials; promotion of a toll-free Census information hotline staffed by bilingual operators; technical assistance for community groups; and direct assistance to Latino residents with completing Census forms.

NALEO Educational Fund also has decades of experience working closely with its Latino elected official constituency, other government officials and partner organizations to promote public policies to achieve the most accurate count possible of the nation's population. NALEO Educational Fund served as a member of the U.S. Census Bureau's national advisory committees between 2000 and August 2019, and continues to share its expertise with top Census Bureau officials. NALEO Educational Fund is also the co-chair of the Leadership Conference on Civil and Human Rights' Census Task Force, and of the National Hispanic Leadership Agenda's Census Task Force.

In the Bureau's Federal Register Notice, it states that it uses State administrative records linked with other survey and census records to "conduct further research and improve operations with surveys and censuses, including 2020 Census Operations." It also notes that the Bureau benefits from these efforts by improving data quality and estimates, as well as studies of program participation over time. We acknowledge that the Bureau hopes to achieve cost-savings and pursue innovative approaches in its work by using State administrative records. However, while we commend the Bureau's efforts in this regard, we have several concerns about the quality of the data in State administrative records about certain population groups which would impair the Bureau's ability to use the records effectively for the purposes it has set forth.

State Administrative Records Are Likely to Omit Information About Undercounted or Underserved Population Groups

We are concerned about the Bureau's use of State administrative records for 2020 Census operations or surveys, because it is likely to produce inaccurate data about persons of color, lower-income, and other historically undercounted or underserved populations. For example, the National Advisory Committee for Racial, Ethnic, and Other Populations' (NAC) Administrative Records, Internet, and Hard to Count Population Working Group's final report summarized Census Bureau research as finding that it is more difficult to match administrative records to survey subjects who are racial and ethnic minorities and of two or more races; not fluent in English; children; lacking a social security number; homeless; or possess lower income or education levels. Other research and analysis support this finding, including the Urban Institute's 2017 report, *Administrative Records in the 2020 US Census, Civil Rights Considerations and Opportunities*. State administrative records may be less complete, accurate and up-to-date about undercounted or underserved populations, in part because many of these residents are extremely mobile, live in non-traditional housing, and have lower incomes than the overall population.

Americans with the lowest incomes will also likely account for large shares of those covered in records upon which the Bureau expects to rely, such as the recipients of assistance through TANF, SNAP, WIC and other state public benefit programs. Noncitizens and their minor dependents are less likely to be included in these record sources than adult U.S. citizens and their minor dependents. Many noncitizen residents are prohibited, either temporarily or permanently, from receiving public benefits, and thus will never appear in records concerning those programs. The Administration's new "public charge" rule and the policy debate that surround its adoption have also deterred noncitizens from applying for these benefits, even if they are eligible, because of fear of consequences to family members.

Moreover, people of color from historically underserved communities account for disproportionate shares of lower-income families and of noncitizens. Because communities of color also include significant numbers of low-income residents and noncitizens, they are more likely to be omitted from State administrative records than non-Hispanic White, wealthier communities. In addition, the likely omission of a significant number of children from these records is of particular concern to the Latino community, in light of research indicating that nearly 400,000 very young Latino children (ages 0-4) were left uncounted in Census 2010. According to research by Dr. William O'Hare, presented in Child Trends Hispanic Institute and NALEO Educational Fund's 2016 report *The Invisible Ones, How Latino Children are Left Out of Our Nation's Census Count*, the net undercount of very young Latino children was 7.1%, compared to 4.3% for non-Latinos. The use of State administrative records could make it more difficult to ameliorate this undercount in Census 2020.

The Bureau itself has recognized the limitations of administrative records in its decision regarding the use of those records in enumerating some households during its Nonresponse Followup operations. After testing and modeling, the limitations of these records contributed to the Bureau's decision to exclude administrative records from the data and approaches it plans to use to enumerate some households after one unsuccessful NRFU in-person contact attempt.

State Administrative Records Are Likely to Contain Incomplete or Inconsistent Information about Undercounted and Underserved Population Groups

Testing by the Census Bureau and other research have found that administrative records frequently lack detailed or accurate information about race, ethnicity, and household relationships, which would create challenges for the Bureau's use of the records for surveys or research on issues such as program participation. For example, the Bureau's comparison of representative administrative records to results of the 2010 Census revealed that the two sources agreed on one of the most basic elements of the decennial Census – number of residents living at a given address – just 62% of the time. In addition, the collection and format of administrative records vary from state to state. The Office of Management and Budget-led Interagency Working Group that studied possible revision of standard race and ethnicity data collection protocols and other expert bodies have pointed out that state and local entities do not universally conform to federal data standards. For example, state and local government agencies often group numerically smaller communities including Native Hawaiians, Pacific Islanders, Asian Americans, and Native Americans into single, nondescript categories labeled "other." In addition, there are inconsistencies with respect to how different states compile and present different demographic characteristics in their datasets. These inconsistencies would impair the quality of data the Bureau compiles, and would create significant challenges for the Bureau's ability to integrate State administrative records into its own datasets.

Collection and Use of Administrative Records to Determine the Citizen and Non-Citizen Population of the United States

The inaccuracy of information in State administrative records is of particular concern in light of the Administration's July 2019 Executive Order to collect information about citizenship status in connection with the 2020 Census. The Executive Order directs the Department of Commerce to strengthen its efforts, consistent with law, to obtain State administrative records concerning citizenship. We also understand that the Administration intends to make available a dataset with information on the citizen and noncitizen population for every state at the time it releases the PL 94-171 Redistricting files.

For the reasons set forth above, State administrative records are likely to contain inaccurate, incomplete and inconsistent information about the citizenship status of residents. Because of their poor data quality in this regard, they would not serve as a sound source of information for the purported purposes the Executive Order sets forth as the justification for their collection. The Administration claims the citizenship data in these records would inform immigration policy, the evaluation of public benefits programs, and the assessment of the size of the undocumented population in the country. The Executive Order also indicates that the citizenship data would enable states to design state and local districts based on the "voter-eligible" population of the jurisdiction.

One of the Administration's efforts to implement the Executive Order demonstrates the problems in using State administrative records to acquire citizenship data. In October 2019, the Bureau announced that in connection with the Executive Order, it was requesting states to voluntarily make driver's license administrative records available for use in Census 2020. In addition to citizenship information, the Bureau also requested information about a license or identification card holder's name, address, date of birth, sex, race and eye color. However, as of this writing, according to an Associated Press survey, at least 13 states have refused to share driver's license records, with some citing concerns about privacy, and restrictions in state law.

Moreover, the poor data quality of State administrative records compounds the risk that the Administration, states and localities will use the data compiled on the citizen and non-citizen population in ways which would harm the Latino community. For example, the Executive Order explicitly indicates that the Administration believes that the data collected would enable it to continue to advance public policies which unfairly deprive noncitizens and their families access to public service and assistance programs. We would also note that the Administration claims that the data it collects would help it inform its policies regarding the undocumented immigrant population. However, most State administrative records on noncitizens do not distinguish between those who are authorized and those who are undocumented, making the records an unreliable source of information for the immigration policies set forth in the Executive Order. This is of particular concern in light of the unsound and inhumane manner in which the Administration has conducted immigration enforcement activities in the Latino community.

Finally, the Administration's incorporation of poor quality data from State administrative records on citizenship status exacerbates the risk that such data will be used in a manner that would impair Latino civil and voting rights. The Executive Order explicitly acknowledges that its dataset would enable states to "more effectively exercise" the option of drawing district lines based the count of the "voter-eligible" population, as opposed to the total population. Drawing district lines on the basis of the voter-eligible population would violate Latino voting rights, and prevent Latinos from achieving fair opportunities for representation during redistricting. This risk is extremely salient in light of the fact that policymakers in some states have announced their intention to pursue this approach for their redistricting process.

A November 2019 report authored by Asian American Advancing Justice, the Mexican American Legal Defense and Educational Fund and the NALEO Educational Fund documented how courts invalidated proof of citizenship requirements for voting or registration in states such as Arizona, Kansas and Ohio as violating the National Voter Registration Act or other civil rights protections. The report - *Practice-Based Preclearance: Protecting Against Tactics Persistently Used to Silence Minority Communities' Votes* - also highlights the persistent use of discriminatory electoral practices in places where there are emerging populations of immigrants and people of color. The dataset the Administration intends to compile with respect to the citizen population of U.S. residents will provide states that pursue discriminatory practices with a source of poor quality data that will make their efforts even more insidious.

Recommendations

Ultimately, we urge the Bureau to exercise extreme caution in how it compiles and uses State administrative records for Census 2020 and its surveys and research. Because the poor quality of data in those records on undercounted and underserved communities, it is critical that the Bureau consult with organizations that are familiar with those communities as it proceeds with its efforts. For this consultation to be effective and meaningful, the Bureau must be fully transparent with respect to how it evaluates the quality of data in the records, how it intends to contend with the inaccuracy and lack of consistency within the records, and how it intends to ultimately use the data from the records.

The Administration should also cease promoting the availability of the data it is compiling on the citizen and noncitizen population for states to use during redistricting. As noted above, the use of poor quality data from State administrative records compounds the risk that inaccurate data will be provided to states on citizenship status, and that such data will be

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used in a manner to harm the civil and voting rights of Latinos and other underrepresented populations.

In the Bureau's Federal Register Notice, it sets forth its vision of improving the efficiency and accuracy of its data collection, and improving measures of the population and the economy. We share the Bureau's vision, and look forward to continuing to work together to achieve this important goal.

Sincerely,



Arturo Vargas
Chief Executive Officer

Cc: Congressional Hispanic Caucus
Congressional Hispanic Conference

