

# COMMONLY ASKED QUESTIONS ABOUT THE NEW CENSUS CITIZENSHIP QUESTION

April 9, 2018

## GENERAL QUESTIONS

### 1. Will the citizenship question be on all of the census forms?

Commerce Secretary Wilbur Ross instructed the Census Bureau to add the citizenship question to the 2020 census on March 26. This was in response to a December 2017 request from the Justice Department to add the question to the 2020 Census form in order to have better data to enforce Section 2 of the Voting Rights Act and “protect minority voting rights.” Secretary Ross was required to make a decision by the end of March because the Census Act requires the Secretary to submit final census questions to Congress no later than two years before the decennial census date (April 1, 2018).

**Citizenship Question from American Community Survey to be asked on the 2020 Census**

**8 Is this person a citizen of the United States?**

Yes, born in the United States → *SKIP to question 10a*

Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas

Yes, born abroad of U.S. citizen parent or parents

Yes, U.S. citizen by naturalization – *Print year of naturalization*

No, not a U.S. citizen

There is only one form for the 2020 Census. All households must answer the same form, online, by telephone, by paper questionnaire, or by providing answers to a census taker who visits in the second major phase of the count. The citizenship question has been asked on the ongoing American Community Survey, which replaced the census “long form,” for more than 50 years. The ACS is sent to 3.5 million addresses a year (~295,000 addresses/month) and will continue to include a citizenship question.

### 2. If the citizenship question is currently on the American Community Survey, why is it a problem to add it to the census?

There are several concerns.

**First**, as conservative commentator David Brooks [observed](#), “In normal times, frankly, it doesn’t strike me as an odd question to ask, are you a citizen? .... [but] given the climate, it strikes me as a menacing question and probably a counterproductive one.”

**Second**, asking about citizenship on the ACS – an ongoing survey of less than three percent of U.S. homes per year – is not an adequate substitute for testing how people would respond to it if added to the decennial census. In a January 2018 letter to Secretary Ross warning that adding the question would “put the accuracy of the enumeration and success of the census in all communities at grave risk,” six former Census Bureau directors said that every census is different and that the environment in which a census occurs is a significant factor. Small changes to the order of questions, wording, and instructions can have significant and often unexpected consequences for response rates and the quality and truthfulness of answers, they wrote.

University of Michigan sociology professor Barbara Anderson, who chairs the Census Bureau’s Science Advisory Committee, noted that the Committee opposed the addition of the question

for several reasons including that the Bureau violated its own policy by not doing proper testing of the citizenship question on the ACS before adding it to the decennial census. In a March 30 memo to Census Bureau Acting Director Ron Jarmin, Anderson wrote that the committee of scientists was worried that using the ACS language “could have spill-over item nonresponse consequences for the race/ethnicity item. Similarly, borrowing the question from the ACS – which has question wording that reflected a different set of motivations and uses – results in a question wording that is puzzling in its specificity distinguishing U.S. territories.” She emphasized that the ACS data is collected in a different data collection context.

As Secretary Ross himself told the House Oversight and Government Reform Committee at an October 12, 2017 hearing, “One of the problems with adding questions is it reduces response rates. It may seem counterintuitive, but the more things you ask in those forms, the less likely you are to get them in.”

**Third**, the Census Bureau’s [own research](#) in 2017 found that asking questions about citizenship caused an “unprecedented groundswell in confidentiality and data-sharing concerns among immigrants or those who live with immigrants.” In [test settings](#) from February through September, 2017, survey respondents provided incomplete or incorrect information and were visibly nervous about immigration and citizenship questions. One Census Bureau interviewer reported that one respondent got up and left her alone in his apartment when the interviewer asked citizenship-related questions.

As one interviewee said, “The possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me.” Even if census data are protected under law from such disclosure, the perception that this could happen existed before the citizenship question was added and the addition of the question deepens that concern.

### **3. Is the citizenship question being included in the Rhode Island End-to-End Census Test?**

No, the 2018 End-to-End Census Test in Providence County, RI, was planned and launched before the Commerce Secretary decided to include a citizenship question on the census form. There are no other field tests planned before the census starts in 2020.

### **4. What are the reasons being given to justify the addition of the citizenship question?**

The Department of Justice’s (DOJ) official request claimed that it needed “block level” citizenship voting age population (CVAP) data, which are not currently available through the American Community Survey (ACS), to determine violations of Section 2 of the Voting Rights Act (VRA) and to permit more effective enforcement of the VRA. This claim is without merit since the citizenship question has not been asked on the decennial census since before passage of the VRA in 1965. Instead, citizenship and immigration-related information has been collected through the ACS (which used to be the census “long form”). DOJ and civil rights advocates have used these data effectively to help implement and enforce the VRA.

Nonetheless, Secretary Ross supported the request and said that “neither the Census Bureau nor the concerned stakeholders could document that the response rate would in fact decline materially... However, even if there is some impact on responses, the value of more complete and accurate data derived from surveying the entire population outweighs such concerns.” This

runs counter to the views of census experts, including the Census Bureau’s own Science Advisory Committee, which points out it is the Bureau’s responsibility to test impact on response rates and in the absence of empirical data on response rates, the Bureau should not add the question.

Pundits and elected officials supporting the decision have given other reasons for wanting the question added. Several articles have speculated about other reasons driving the decision. For example, former Attorney General Eric Holder [said](#) adding the citizenship question will result in undercounting minority populations. “Undercounting minority populations would shift electoral power and federal resources from urban population centers to rural areas that are more generally populated by Trump’s supporters.” Some who agree with Holder’s main point that this will further undercount minority populations note that the impact could be [equally as bad for Red and Blue states](#).

Strikingly, one of the long time proponents of asking such a question, Kansas Secretary of State Kris Kobach was quite forthright on a [Fox News segment](#) that adding a citizenship question had little to do with the VRA. He said adding the citizenship question is a key step to a longer term goal of changing apportionment – that is, the allocation of representatives to Congress – to be based on number of voting age citizens instead of number of people in a state.

**5. Does Secretary Ross’s decision have any impact on race and ethnicity questions, including earlier discussions about creating a new Arab-American category?**

No. The decision to add a citizenship question has no bearing on changes to race and ethnicity questions. Those decisions were made under more traditional Census Bureau methods. However, the Census Bureau Scientific Advisory Committee said that the addition of the citizenship question may influence the response rate on race and ethnicity questions.

United States Census Bureau  
U.S. DEPARTMENT OF COMMERCE  
Economics and Statistics Administration  
U.S. CENSUS BUREAU

**2018 Census Test**

**8. Is Person 1 of Hispanic, Latino, or Spanish origin?**  
Mark  one or more boxes AND print origins.

- No, not of Hispanic, Latino, or Spanish origin
- Yes, Mexican, Mexican Am., Chicano
- Yes, Puerto Rican
- Yes, Cuban
- Yes, another Hispanic, Latino, or Spanish origin – Print, for example, Salvadoran, Dominican, Colombian, Guatemalan, Spaniard, Ecuadorian, etc. ↴

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**9. What is Person 1's race?**  
Mark  one or more boxes AND print origins.

- White – Print, for example, German, Irish, English, Italian, Lebanese, Egyptian, etc. ↴
- Black or African Am. – Print, for example, African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, etc. ↴
- American Indian or Alaska Native – Print name of enrolled or principal tribe(s), for example, Navajo Nation, Blackfeet Tribe, Mayan, Aztec, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, etc. ↴
- Chinese
- Vietnamese
- Native Hawaiian
- Filipino
- Korean
- Samoan
- Asian Indian
- Japanese
- Chamorro
- Other Asian – Print, for example, Pakistani, Cambodian, Hmong, etc. ↴
- Other Pacific Islander – Print, for example, Tongan, Fijian, Marshallese, etc. ↴
- Some other race – Print race or origin. ↴

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As far as a new Arab-American category, after years of research, testing, and consultation with stakeholders, the Census Bureau recommended in 2017 the addition of a new MENA (Middle East

and North Africa) ethnicity category. The Bureau was waiting until the Office of Management and Budget revised the official statistical policy to make a determination on how it would ask about race and ethnicity in the 2020 Census. While it appeared that OMB was prepared to add a new MENA category in an updated policy, its review process came to a halt in the new Trump administration.

In the face of OMB inaction, the Census Bureau decided to drop its plans to add the MENA category. *However, the 2020 Census race question will include a new write-in box for respondents who check the White category, allowing people to indicate a subgroup or ethnicity such as Lebanese or Egyptian. Other race categories will also be able to indicate a subgroup or ethnicity.*

**6. Will there be an opportunity for the public to provide comments on the addition of the citizenship question?**

According to the Census Bureau, they plan on having a 60-day public comment period in May on the entire census survey. It will be announced in the *Federal Register*. This allows the public an opportunity to submit its views about adding the citizenship question to the census.

*It is important to establish a strong, clear public record from a range of stakeholders and experts who oppose addition of a citizenship question to the 2020 Census. That record could be helpful to litigators challenging the citizenship question in court and to convey public sentiment.*

**7. What is the deadline by which any change can be made to the form?**

The Census Bureau must print and create electronic versions of tens of millions of forms in 13 languages, as well as instructional, educational, and staff training materials to explain the questionnaire. The 2020 Census Operational Plan v. 3.0 states that the questionnaires must be finalized for printing and design across all response or collection modes in May 2019.

## **LITIGATION**

**8. Litigation has already been filed to challenge the Secretary's decision. How will that process unfold and what are the opportunities for engagement?**

The California State Attorney General [filed litigation](#) in federal court on March 26, 2018. A [second challenge](#) was filed on April 3 by 18 states including, New York, Connecticut, Delaware, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Vermont, and Washington; and eight local governments, the District of Columbia, New York City, Chicago, Philadelphia, Providence, San Francisco city and county, and Seattle; and the U.S. Conference of Mayors. The litigation is based on constitutional and Administrative Procedure Act grounds. It is possible that additional lawsuits will be filed by other stakeholders.

In addition, the NAACP recently filed a case in a Maryland federal court challenging the Census Bureau's insufficient preparations. While the broader legal strategies are still unfolding, it is clear that these lawsuits must be resolved in fairly short order – certainly within a timeframe that allows the Census Bureau to properly operationalize a change (e.g., redesign and print forms, redesign community education materials). There will be amicus brief opportunities from a wide range of interests and expertise that will likely be coordinated by The Leadership Conference Education Fund and the Brennan Center for Justice.

The litigation also necessitates additional research and generates public education and community organizing opportunities.

## **LEGISLATION**

### **9. Can Congress remove the citizenship question?**

Yes. Congress is not required to accept or reject the census topics and questions the Commerce Secretary submits in accordance with the Census Act (Title 13, U.S.C.). If Congress takes no action, acceptance of the questions is implied. If lawmakers object to any topics or questions, they could try to convince the Secretary to revise the questionnaire in a mutually agreeable way. Barring such agreement, however, Congress can add or remove questions from the census (or modify question wording) through the normal legislative process. That process entails passing legislation (either a free-standing bill or an amendment to another bill, such as an appropriations measure) that the president must sign into law; a presidential veto would require a two-thirds vote by each chamber of Congress to override. Clearly, significant changes in the composition of Congress after the 2018 midterm elections could affect the likelihood of successful legislative action to eliminate the citizenship question over the objections of the president.

### **10. What might happen if there is a failed census?**

Seats in the U.S. House of Representatives were not reapportioned following a decennial census only once in our history – following the 1920 Census, which showed that the nation’s population had become urbanized for the first time, thus diminishing the political influence of lawmakers from rural areas. A majority of members of Congress therefore refused to accept the resulting apportionment, and Congress was not reapportioned throughout the 1920s. To mitigate the possibility of a reoccurrence, Congress passed a new apportionment law – on the books today – that uses an “automatic” apportionment process to redistribute seats among the states based on population shifts. (Congress adopted the current “method of equal proportions” formula in 1941.) Essentially, the apportionment of seats according to the mathematical formula goes into effect unless Congress affirmatively rejects it after receiving the results and the state population totals from the president. However, if Congress were to reject its own apportionment based on the results of the 2020 Census, that decision would not automatically affect the use of 2020 Census data for other purposes, such as the allocation of federal program funds or redistricting. For many states, there are constitutional or statutory requirements to use decennial census data for state and/or congressional redistricting.

### **11. What can state and local elected officials do?**

The U.S. Conference of Mayors has already joined one of the legal challenges, as have some cities and states. Other state and local officials can join the litigation or file amicus briefs.

State and local officials can educate the media and their members of Congress and weigh in with the Trump Administration on the impact on their funding and representation if the count is not accurate.

State and local officials can organize complete count committees and work to reassure their constituents of the confidentiality protections, invest government funding in outreach and

education to encourage participation, and empower state and local agencies to provide outreach and assistance.

The National Association of Counties, National Conference of State Legislatures, National Governors Association, and National League of Cities, as well as the U.S. Conference of Mayors, have launched census education efforts for their members. They also have been organizing support for adequate funding on the federal level for Census Bureau outreach and targeted advertising.

### ***WHAT IF THE QUESTION ISN'T REMOVED?***

#### ***12. How can those who complete the census be protected against misuse of the census data?***

**First**, it is important to clarify that the citizenship question does not ask about legal immigration status and is focused only on whether or not an individual is a citizen. The challenge is that in this time of harsh immigration enforcement and xenophobic rhetoric from elected and appointed officials at the highest level of the government, there is fear and suspicion in immigrant communities over any interaction with the federal government. In addition, the unofficial reasons articulated for the addition of the question further fans distrust of government in households with immigrant members and by people of color generally.

**Second**, under Title 13 of the United States Code personal information from the census cannot be used against respondents by any government agency or court. Additionally, personal information collected by the census cannot be disclosed or published for 72 years; that includes names, addresses (including GPS coordinates), Social Security Numbers, and telephone numbers. Only sworn Census Bureau employees may see personally identifiable information, and they must keep that information confidential for life, under threat of significant penalties for revealing the information (up to \$250,000 fine and/or 5 year prison term).

No one has challenged the census confidentiality law in court. Only Congress can change the law through the legislative process, and no lawmaker has proposed weakening the strong Title 13 protections.

**Third**, legal advocacy organizations and law firms working with national census stakeholders are developing a rapid response strategy for representing families and individuals who are victims of any actions by federal law enforcement agencies that rest on personal data from the census obtained in violation of the law or used to harm respondents in violation of the law. This effort likely will be similar to monitoring and protection of voting rights on Election Day by qualified lawyers across the country.

**Finally**, since World War II, the Census Bureau has developed a strong agency culture of protecting against the misuse of personal data. There has been much recent media coverage of the use of census data to facilitate the internment of Japanese Americans during WWII, which took place under a very different legal regime, with a War Powers Act in effect, and which actually led to the extremely strong current protections of Title 13. The Title 13 confidentiality protections even supersede the post-9/11 Patriot Act.

**13. What is the response to those who suggest that people boycott the census or the citizenship question, or provide false responses to the citizenship question?**

Response to the decennial census is required by law. There are penalties for not answering census questions (\$100 fine) and for providing false responses (\$500 fine). The Census Bureau is a statistical agency and does not enforce the law; that responsibility falls to the Department of Justice. As a practical matter, the Census Bureau uses the “carrot approach” to encourage full participation in the census and does not refer cases of nonresponse to DOJ for prosecution. Nevertheless, the Census Act also prohibits any action that is intended to cause an inaccurate enumeration (\$1,000 fine and/or up to one year imprisonment).

The Census Bureau is likely to seek to treat missing answers to the citizenship question as it treats missing answers for any question. It will attempt to use statistical imputation methods to “fill in” the information. High imputation rates, however, call into question the quality and usability of the statistical data derived from the question. In his decision memorandum, Secretary Ross directed the Census Bureau to research the use of administrative records to evaluate the accuracy of responses to the citizenship question. It is unclear from the Ross memorandum whether the Bureau would then use administrative data on citizenship data to fill in missing responses for specific households and individuals. We will not know for sure how the Census Bureau will handle missing answers to the citizenship question until it finalizes 2020 Census operational plans.

Because the data is so important for government funding, planning, civil rights enforcement and to ensure a fair distribution of a voice in our democracy, communities only hurt themselves and help those who seek to undermine them by not participating in the census. The question does not ask about legal status and the confidentiality of their answers is strongly protected.

***WHAT CAN FUNDERS DO TO HELP?***

**14. What are the various mechanisms for funders to support the work around removing the question?**

Funders can educate their grantees and others on the issues and support litigation, public policy work, strategic communications and outreach efforts, and public education, as well as research on the national and local level.

**15. Even if the question is removed, there will be confusion on the ground, so what can funders do to mitigate the fall-out?**

Even before the question was added, the challenge of overcoming fear and misunderstanding around the census was difficult. Even if the Census Bureau activities are fully funded, trusted community voices are needed even more now to overcome fear and mistrust and encourage participation in the census.

Funding is needed at the national, state and local levels to prepare targeted and translated materials, develop and implement communications strategies, develop and implement outreach, support organizing and direct assistance for completing the census, and build a rapid response network. Funding is also even more important to support the ability of ethnic media to provide accurate information around the census through paid advertising in partnership with community-based organizations. Because of the breadth of impact of census in directing government dollars and programs, funding is needed to support census outreach and assistance by a wide

range of institutions, including civic engagement groups and other community-based organizations, schools, libraries, faith-based institutions, community health centers, service providers and agencies working with children and other vulnerable populations.

Funders are beginning to form state, county and city funder collaboratives and develop funding strategies. The Funders' Committee for Civic Participation's Funders Census Initiative (FCI 2020) is working with the [United Philanthropy Forum](#) to track state and local funder activities and develop best practices and toolkits. More information can be found at <https://funderscommittee.org/working-group/#funders-census-initiative-fci-2020>.

The Democracy Funders Census Subgroup has developed national funding strategies for both policy and "Get Out the Count" efforts. Funders can align their funding and also contribute to a pooled fund that enables rapid and flexible responses, as well as support financial investments to hard-to-count areas with fewer funder resources. For more information, please contact Gary Bass ([gbass@baumanfoundation.org](mailto:gbass@baumanfoundation.org)) of the Bauman Foundation.