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October 31, 2016

The Honorable Howard A. Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

**Re: Standards for Maintaining, Collecting, and
Presenting Federal Data on Race and Ethnicity
(Document Citations: 81 FR 67398)**

Dear Administrator Shelanski,

Thank you for the opportunity to comment on OMB's Standards for Maintaining, Collecting and Presenting Federal Data on Race and Ethnicity. The National Health Law Program (NHeLP) protects and advances the health rights of low income and underserved individuals. The oldest non-profit of its kind, NHeLP advocates, educates and litigates at the federal and state level.

The following are overarching principles shared with the Census Bureau to guide its efforts on determining the race and ethnicity questions for the 2020 census, which we believe are pertinent to OMB's efforts to revise its Standards. The two important, and fundamental, tenets that are centrally important for Census data collection on the race and ethnicity of U.S. persons are:

1. Ensuring that we do not move backwards from the detailed reporting achieved in the 2010 Census, which should serve as the baseline for effective practice and;
2. Ensuring the accuracy of the data collected.

Principle #1: 2010 Census as a Baseline for Effective Practice - We cannot go backwards

Any data collected in future Census activities must meet the standard already achieved in 2010. This is a minimum or floor, with the hopes that future efforts can build on this foundation. We cannot go backwards in terms of the quality of detailed data collected.

To honor this principle, we recommend the following practices:

- A maximum number of checkboxes should be included, with the number used during the 2010 Census serving as a minimum. Checkboxes capturing detailed race groups improve detailed race reporting and should be utilized for all race groups, regardless of whether or not the race and Hispanic origin questions are combined;
- A maximum number of examples should be included, with the number used during the 2010 Census serving as a minimum. Examples are critical in soliciting detailed race reporting from detailed race groups not represented by checkboxes and should also be utilized;
- Native Hawaiian and other Pacific Islander (NHPI) response options should be clearly identified and separate from Asian American response options. Increasing the visibility of NHPI response options will help promote their detailed race reporting, which was particularly low during the 2010 Census.

We also suggest that OMB adopt strict timelines for when agencies using OMB's standards must implement the new standards, particularly the Department of Health and Human Services. Otherwise, we risk having different data sets for different agencies, making it difficult and complex to analyze and compare data. We also recommend that OMB require programs jointly operated by a federal agency and state agencies be required to use the OMB standards. This should include Medicaid and CHIP agencies. As one example of a current problem arising from a lack of data standardization, each state Medicaid agency determines its own race and/or ethnicity categories for collecting data from applicants. Having different categories between states impedes easy comparisons across states for the same program and similar populations.

Principle #2: Accuracy

Without accurate data by detailed subgroup, the diversity in our communities means some of the most disadvantaged in our communities are rendered invisible to policy

makers, leaving their critical needs unmet. For example, past research has demonstrated that decreasing both the number of separate checkboxes and listings of examples for Asian American and NHPI race groups are both ineffective and a threat to accuracy. Thus, the following practices should be avoided:

- Removing checkboxes used to capture detailed race groups; and
- Removing a subgroup or national origin from the list of examples for each broad race category reduced reporting for that group.

In addition to the recommendations above regarding checkboxes and examples, we recommend the following to ensure more accurate data about particular communities:

- Oversampling Asian Americans, NHPIs and other relevant subgroups by ethnic group in future testing protocols, ensuring an adequate sample of both large and small groups across all panels;
- Providing adequate language assistance to ensure meaningful responses from limited-English proficient individuals to ensure results are not biased by English-fluent respondents.

These principles are equally relevant for OMB in its exercise to revise the Standards and to the topics raised in the Federal Register notice.

I. The use of separate questions versus a combined question to measure race and ethnicity and question phrasing

We support the comments of The Leadership Conference on Civil and Human Rights with respect to the question about combining race and ethnicity questions for Hispanics/Latinos.

We believe the most important factor is identifying the formation that will allow for maintaining or improving the detailed reporting for all groups achieved previously and ensuring the accuracy of the data collected. Maintaining or improving upon the quality of these data is essential to informed public policy for our communities and the fair allocation of federal, state, and local funding. For example, a decrease in detailed Asian American data could result in a failure to capture jurisdictions for the provision of language assistance during elections. The formula utilized by the Census Bureau to make Section 203 determinations relies on being able to reach the threshold by detailed group and not the Asian category as a whole.

Our recommendation is that for either format (separate vs. combined), there should be:

- A maximum number of checkboxes included, with the number used during the 2010 Census serving as a minimum;
- A maximum number of examples, with the number used during the 2010 Census serving as a minimum; and
- NHPI response options should be clearly identified separate from Asian American response options.

Additionally, our recommendations apply to all platforms through which these questions could be asked (i.e. online or paper). We are concerned with potential biases that may be introduced if checkboxes for detailed subgroups are only offered on an online version of the question(s). As outlined by the comments of AAJC, and extrapolating from past research, we can anticipate that those who are elderly, low-income, and less English language proficient will be the least likely to access the internet-based survey. These are the very populations that will be more likely to access a paper version of the questions and thus must have equal access to detailed checkboxes as those responding online.

Finally, OMB must develop clear guidance on how data prior to the revised Standards should be compared to data collected following the revised Standards. The ability to compare race and ethnicity data over time is critical to our work, including civil rights enforcement. This is particularly salient given the adoption of final regulations implementing Section 1557 of the Affordable Care Act, a new nondiscrimination provision that aims to protect individuals from discrimination based on race, color, national origin, age, sex and disability in healthcare. Collecting race and ethnicity data, in addition to other demographic data, is a critical step in identifying, and then preventing, discrimination and disparities in healthcare.

Further, protocols and guidance for re-aggregating data, or “bridging” sets of data collected through different formats, must accompany any revisions to the census race and ethnicity questions. In particular, OMB should revise its Standards to ensure (a) comparability of data over time (bridging); (b) consistent tabulations of data, by federal agencies and federally funded programs, collected through a combined question with respect to both race and ethnicity; and (c) clear protocols and guidance for data users to follow in comparing 2020 census race and ethnicity data with data collected earlier in time.

II. The classification of a Middle Eastern and North African (MENA) group and distinct reporting categories

We are supportive of efforts by advocates in the MENA community to have distinct reporting categories for the community. We support the points made in a July 2013 letter⁵ to the Census Bureau by organizations and scholars from the Middle Eastern and North African (MENA) communities on the topic.

Again, OMB must develop clear guidance on how data prior to the revised Standards should be compared to data collected following the revised Standards. OMB should revise its Standards to ensure (a) comparability of data over time (bridging); (b) consistent tabulations of data, by federal agencies and federally funded programs, collected through a combined question with respect to both race and ethnicity; and (c) clear protocols and guidance for data users to follow in comparing 2020 Census race and ethnicity data with data collected earlier in time. This will be especially important with the addition of a category for people of Middle Eastern and North African origin.

III. The description of the intended use of minimum reporting categories

We are supportive of OMB's intention to have the Standards provide a minimum set of racial and ethnic categories for use when Federal agencies are collecting and presenting such information for statistical, administrative, or compliance purposes and have worked to encourage agencies to collect additional detailed categories over the years. We have also encountered many agencies who have mistakenly misinterpreted the Standards as stating these categories are the ONLY permissible reporting categories. We believe the language can be strengthened to encourage more collecting and reporting of detailed categories by agencies.

As noted above, we also recommend that OMB adopt strict timeframes for when other Federal agencies using the OMB Standards must implement the new standards, once finalized.

IV. The salience of terminology used for race and ethnicity classifications and other language in the standard

As OMB recognizes, "diversity of the U.S. continues to increase." We agree that revising racial and ethnic terminology in light of today's growing diversity is an important task to undertake. The terminology should be aligned to recognize the breadth of racial

and ethnic communities comprising the American public today and strive to reflect the importance of all communities.

V. Concerns about timing of revision process

We have very serious concerns about OMB's proposed plan to finalize any revisions its standards on race and ethnicity through an unnecessarily truncated timeline. The effort to revise the Standards during the 1990s started in 1994 and was not finalized until 1997. This time, the process started with this Federal Register notice, issued on September 30, 2016, and we have heard that the plan is to have the Standards finalized by the end of the year or by mid-January. Even taking into account the claim that the scope is much narrower this time and that much of the research has already been completed, the timeline currently contemplated risks a bad outcome. Here are some of our concerns:

- The Census Bureau just released preliminary findings from the 2015 National Content Test; a detailed report on the findings will not be available until January 2017. We will not be prepared to offer meaningful comments on proposed revisions to the Standards until we have seen and had a chance to study and consider the complete findings from this important test. This current timeline has us potentially finalizing revisions without even seeing the official results from the test.
- Rushing the process also runs the risk that the public will not have confidence in the results as the perception will be that OMB and the Census Bureau are not really interested in meaningful feedback and have already predetermined the outcome.
- Also, OMB plans to issue its proposed revisions and seek comments during a lame duck Congress and a presidential transition (not to mention the holidays). That timing does not provide an appropriate opportunity for interested stakeholders to consider the revisions and offer thorough, meaningful feedback.
- Finally, it appears that this timeline is being driven by an arbitrary deadline - the requirement in Title 13, U.S.C., that the Census Bureau submit to Congress, by April 1, 2017, topics (not actual questions) to be covered in the 2020 Census. The Bureau can meet that obligation without finalizing the revisions to the standards.

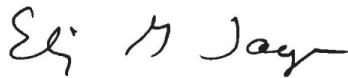
We believe that the timing of this process must be recalibrated to allow for appropriate and meaningful engagement by interested stakeholders, including Congress, civil rights organizations and citizens. Our recommendation is to revise the timeline as follows:

- Wait until the full results of the 2015 National Content Test have been released by the Census Bureau before issuing the second Federal Register notice (the proposed revisions). The release of the report on the 2015 National Content Test is currently scheduled for January 2017;
- Provide a 90 or 120-day comment period for the 2nd federal register notice (the proposed revisions) once it is issued; and
- Aim to issue the 3rd (and presumably final) Federal Register notice by or before Fall 2017, to inform submission of final 2020 Census questions to Congress by April 1, 2018.

VI. Conclusion

Thank you for this opportunity to comment on the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity as OMB strives to update its standards while keeping up with changes in society and population realities. If you have any questions, please contact Mara Youdelman, Managing Attorney (DC Office), at 202-289-7661 or youdelman@healthlaw.org.

Sincerely,



Elizabeth G. Taylor
Executive Director