

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
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WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

July 14, 2016

The Honorable John H. Thompson  
Director  
U.S. Census Bureau  
4600 Silver Hill Road  
Washington, D.C. 20233

Dear Director Thompson:

On June 30, 2016, the Census Bureau released a notice of criteria and request for comment for the 2020 decennial census residence rule.<sup>1</sup> The residence rule provides the basis by which the Bureau determines where each person should be counted in the decennial census. The residence rule also impacts who will be counted in the decennial census. As such the rule represents a vital aspect of the decennial census. The Committee has questions about why the Bureau limited the public comment period for the 2020 residency rules to 30 days. Courts have held that in general, a 30-day comment period is the minimally acceptable comment period required by the Administrative Procedure Act.<sup>2</sup>

Given the scope and complex nature of the proposed residence rule, a 30-day comment period is unlikely to provide an adequate opportunity for the public to submit comments. Among the many changes included in the proposed 2020 residence rule are: changes to how overseas military personnel are to be counted, changes to how the residents of juvenile treatments centers are counted and changes to the way religious groups' living quarters are to be counted.<sup>3</sup> These changes will affect the way large groups of people will be counted for the Census, which has far-reaching implications.

The 30-day comment period may limit the number of individuals who provide feedback and opinions on the proposed residency rules. The 2020 residency rules represent the first time that Census is opening a *Federal Register* comment period on residency rules prior to the decennial census.<sup>4</sup> As part of Census's preparations for the 2020 residency rules, Census released a copy of the 2010 residency rules for comment in May of 2015. The comment period on the 2010 residency rules was 60-days.<sup>5</sup> According to the notice, there were 262 comments.<sup>6</sup> The overwhelming majority of these comments were related to the counting of overseas military personnel and the counting of prison populations. Of the 262 comments that were submitted, the

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<sup>1</sup> Proposed 2020 Census Residence Criteria and Residence Situations, 81 Fed. Reg. 42577 (proposed June 30, 2016) (to be codified at 15 C.F.R.).

<sup>2</sup> See *Chemical Mfrs. Ass'n v. EPA*, 899 F.2d 344, 347 (5th Cir. 1990).

<sup>3</sup> Proposed 2020 Census Residence Criteria and Residence Situations, 81 Fed. Reg. 42577 (proposed June 30, 2016) (to be codified at 15 C.F.R.).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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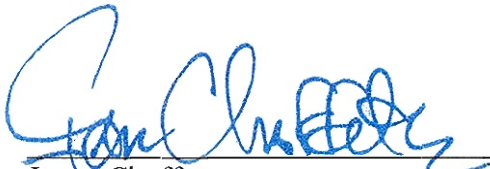
majority came within the last five days of the period.<sup>7</sup> A 30-day comment period ignores the lessons from the May 2015 comment period on the 2010 residency rules, and would most likely result in a serious reduction in public participation and a dramatically smaller pool of comments.

The 30-day comment period selected by the Bureau will not only limit the level of public participation, but is also contrary to two relevant executive orders regarding public comment on proposed rules. Under Executive Order (E.O.) 12866, issued on October 4, 1993, agencies are advised to adopt a comment period that allows for meaningful public comment. Executive Order 12866 further states that in order to provide an opportunity for meaningful public comment, agencies should, in most cases, provide a 60-day comment period for proposed rules.<sup>8</sup> The establishment of a best practice of utilizing a 60-day comment period for proposed rules was further reinforced by E.O. 13563, issued on January 18, 2011. Executive Order 13563 reiterates and underscores E.O. 12866 and provides that agencies should generally utilize a comment period of at least 60 days for any proposed rule.<sup>9</sup>

The Bureau's decision to provide only a 30-day comment period for the proposed 2020 residence rule raises concerns about the public's ability to participate in the rulemaking process in a meaningful way. The proposed 2020 residence rule creates significant and complex changes to the way that the Bureau will determine where individuals are counted in the 2020 decennial census. The result of these changes may have far-reaching impacts on everything from apportionment of representation to the distribution of government funds. The serious ramifications that the 2020 residence rule will have on the public highlights the need for the Bureau to adopt a longer comment period. Therefore, we strongly urge the Bureau extend the comment period to 60-days.

Please contact Patrick Hartobey of Chairman Chaffetz' staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,




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Jason Chaffetz  
Chairman



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Elijah E. Cummings  
Ranking Member



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Mark Meadows  
Chairman  
Subcommittee on Government Operations



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Gerald E. Connolly  
Ranking Member  
Subcommittee on Government Operations

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<sup>7</sup> PowerPoint Presentation from U.S. Census Bureau on Proposed Residence Rule and Residence Situations for the 2020 Census (June 2016) (on file with Comm.).

<sup>8</sup> Exec. Order No. 12,866, 58 C.F.R. 190 (1990).

<sup>9</sup> Exec. Order No. 13,563, 76 C.F.R. 14 (2011).