

Executive Order on Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census

Jan. 20, 2021

Q&A for Public Schools

What policy is asserted in the EO?

The EO makes two clear policy statements:

1. States' representation in Congress, which is reapportioned every ten years using counts from the Census, will be based on the total number of persons residing in each state, without regard for immigration status.
2. It is essential that the Census count be accurate and based on reliable and high-quality data.

What does the EO require federal entities to do?

The order requires the Secretary of Commerce to prepare a state population report, used for the apportionment of Congressional seats, that reflects "the whole number of persons whose usual residence was in each state as of the designated Census date..., without regard to immigration status."

The order also requires the Secretary of Commerce to "take all necessary steps, consistent with law, to ensure that the total population information presented to the President and to the States is accurate and complies with all applicable laws."

Which federal officials and agencies are required to take action?

The Secretary of Commerce, who oversees the Census, has been directed to take action to ensure that the Census counts provided to the President and to Congress for purposes of apportioning Congressional seats for the next ten years are accurate and reflect the whole number of persons in each state, regardless of immigration status. The Census Bureau will be the office with direct ownership of this task.

How are the stated policy and required action different from the past?

The order reverses the directives of the prior administration about the exclusion of undocumented persons from Census counts. In 2019, President Trump directed federal officials to gather information about individuals' citizenship status after the Supreme Court blocked the citizenship question from being added to the Census questionnaire. In 2020, he issued a Presidential Memorandum directing the Secretary of Commerce to issue a report excluding "aliens who are not in a lawful immigration status" from the population counts used to determine representation in Congress.

The 2020 Presidential Memorandum explicitly stated a policy goal of excluding from the Census counts used to determine Congressional seats "aliens who are not in a lawful immigration status," and the objective to deny additional congressional representation and corresponding political influence to "States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress."

President Trump's directives in the 2021 Memorandum were challenged in federal court, and the Supreme Court issued its decision in one such case in December 2020, ruling that the issue was not ripe for judicial consideration. Since then, the Census Bureau chief resigned following a report from the Office of Inspector General, saying that Census Bureau workers were under significant pressure to provide him a technical report with the immigration data requested by the Presidential Memorandum.

What past orders or actions were specifically rescinded?

This EO revokes two executive actions by former President Trump:

1. EO 13880, July 11, 2019 (Collecting Information About Citizenship Status in Connection with the Decennial Census) instructed the Census Bureau to use administrative records to figure out who is in the country illegally after the Supreme Court blocked the citizenship question from being added to the 2020 Census questionnaire.
2. Presidential Memorandum, July 21, 2020 (Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census) instructed the Census Bureau to provide data that would allow the administration to exclude undocumented persons from the state population counts used for apportioning each state's Congressional seats.

What changes do we anticipate in federal policy, including regulation, guidance, enforcement, etc.? Specifically, what past administrative directive is likely to be changed significantly or rescinded entirely?

Other than the directives issued by the prior administration in 2019 and 2020 described above, no other federal policy changes are anticipated at this time. This executive order returns federal practice with respect to Census counts back to the status quo in place for more than 200 years. The reports issued to the President and to Congress will reflect the whole number of persons in each state, without regard to immigration status.

What will the impact be on local policies?

While local school boards are not likely to change their individual board policies due to these federal policy shifts regarding the decennial Census, they should be aware that Census counts are an important data source for public services, including education.

As NSBA has explained in its amicus briefs to the Supreme Court in both [2019](#) and [2020](#), local school districts depend on federal funding streams and population information determined in part by Census data. Efforts to exclude undocumented persons from the Census count undermine the accuracy of Census data by chilling participation and by causing an undercount. Communities that serve large numbers of undocumented students in their schools tend to be most harmed by undercounts, as they are not allocated federal dollars reflective of the number of students they serve. Because of the effort to exclude undocumented persons from the Census count, it is possible that the 2020 Census numbers will be lower than would be expected. It is important for school boards to remain vigilant in their efforts to inform their communities of the importance of completing the Census form every ten years.