November 20, 2019

Director Steven D. Dillingham
United States Department of Commerce
U.S. Census Bureau
Office of the Director
Washington, DC 20233-0001

Re: 2020 Census Tribal Consultation on Differential Privacy

Dear Director Dillingham:

On behalf of the National Congress of American Indians (NCAI) and its Policy Research Center this letter responds to the tribal consultation initiated in your letter to tribal nations in September 2019 on the proposed 2020 Census data products and the 2020 Disclosure Avoidance System (DAS) (Differential Privacy Implementation). We were glad you attended the in-person tribal consultations held at the Alaska Tribal Leaders Conference and at the NCAI 2019 Annual Convention & Marketplace. We appreciate the efforts of your Tribal Affairs team to coordinate these events.

As the oldest, largest and most representative organization serving the broad interests of American Indian and Alaska Native (AI/AN) tribal nations, we are grateful for the opportunity to comment on this critical issue. While we appreciate the U.S. Census Bureau’s commitment to confidentiality, we also strongly request you to keep your commitment as stated in your letter to publish detailed race and ethnicity data from the 2020 Census, including detailed data on the AI/AN population.

NCAI recently passed a resolution (ABQ-19-070) calling on the U.S. Census Bureau to “conduct a meaningful consultation with tribal nations until a solution is found to ensure the confidentiality of American Indian and Alaska Native data and access to census data that tribal nations need for their local governance and research purposes.” Based on our understanding of the potential impact of Differential Privacy on reducing accuracy and access to data for small, rural, and remote populations, we strongly request that you delay implementation of Differential Privacy methods until the U.S. Census Bureau is able to guarantee both the confidentiality and access to accurate data for all tribal nations.
NCAI convened a group of experts on American Indian and Alaska Native census data analysis and use over the past several months to review the potential impact of Differential Privacy, and the group recently reviewed the release of 2010 Census demonstration data with Differential Privacy applied. We were disappointed to find that many tribal nations would experience significant undercounts, in addition to the already documented undercount rate in the 2010 Census data, with many tribal nations having an over 100 percent undercount, meaning their data would not be available or accurate. Tribal nations rely on census data for their local governance and decision-making and depend on census data being accurate when used for redistricting and federal funding decisions and formulas. We were disappointed that this data did not have any privacy loss budget or accommodation for tribal nations since we have met with your staff several times before its release.

All tribal nations need census data to be accurate since they use it for local governance, decision-making, planning, and work to ensure that their citizens have access to adequate housing, education, and health services. The current U.S. Census Bureau tribal geographies, such as tribal designated statistical areas, tribal block groups, and tribal census tracts rely on accurate decennial Census data. If Differential Privacy is applied as currently planned, we understand that data below the “place” level will be infused with noise and the underlying data will not be publicly shared. How will the U.S. Census Bureau calculate results for tribal geographies if the data used to create them is inaccurate and non-public? Many federal agencies use these geographies to calculate need, service areas, or for use in funding formulas. If the data is inaccurate below a certain geography, then many small, rural, and remote tribal nations and other rural communities will be left out, may lose resources, and will not be represented accurately in legislative and voting districts.

In your letter calling for tribal consultation, you requested that tribal nations submit information on how they use census data and what data tables are essential. This request is a complex task for tribal nations since it involves asking tribal staff to recall how they use census data and to recall which data tables are essential to their work, which is also a very challenging task given tribal staff turnover and varying ways that tribal nations may access census data. The complexity of the task makes a meaningful consultation more challenging. In addition, the demonstration data was only released on October 29, 2019, and time is needed for analysis and discussion of the potential impact with tribal leaders, administrators and other advocates. The U.S. Census Bureau must conduct a meaningful tribal consultation and allow time for more meetings and information exchange so that tribal nations can clearly understand the direct impact of the use of differential privacy methods on population counts and AI/AN geographies. The final decision on the allocation of the privacy loss budget must be made in consultation with tribal nations.

We observed the tribal consultation session at the NCAI Annual Convention, and we do not think the session was a meaningful consultation since participants were distracted by other requests such as the list of approved tribal names that was placed on the table and there was little time for tribal representatives to give input on the topic of the consultation. As our NCAI resolution requests, the tribal consultation should continue until the U.S. Census Bureau can find a solution so that data about tribal nations is confidential, accessible, and accurate. Meaningful consultation can occur only after the demonstration data and analysis results have been made
widely available to tribal leaders for their consideration and they have the opportunity to provide input to the U.S. Census Bureau. We also need further information on how Differential Privacy will treat the “off-spine” geographies such as the AI/AN and Native Hawaiian geographic units and what proportion of epsilon (privacy loss budget) will be allocated to these geographies.

We have developed recommendations below that we urge you to immediately implement and/or to immediately provide an update to all tribal nations:

**Recommendation #1** – The U.S. Census Bureau must delay implementation of Differential Privacy or any other disclosure avoidance methodology until meaningful tribal consultation has occurred and a solution is found to ensure confidential, accurate, and accessible data for all tribal nations and other rural, remote, and small populations. Meaningful consultation must include time for discussion of the potential impacts of Differential Privacy, including its demonstrated application to the 2010 U.S. Decennial data, and full information on potential other methods and their impact on allocation of the privacy loss budget (epsilon) for tribal nations and AIANNH geographic units.

**Recommendation #2** – The U.S. Census Bureau must not release the Redistricting Summary File (PL94-171) until a solution is found to ensure accurate enumeration and representation of the citizens of all American Indian and Alaska Native tribal nations and other rural, remote, and small populations.

**Recommendation #3** – The U.S. Census Bureau must ensure inclusion of accurate data to publish tables for AI/AN non-standard (“off-spine”) geographies among the 2020 Census data products (including, but not limited to, such geographies as: reservations, Oklahoma Statistical Areas (OTSA), Alaska Native Village Statistical Areas (ANVSA), Alaska Native Regional Corporations (ANRC), tribal subdivisions, tribal tracts, and tribal blocks). It is imperative that these AI/AN geographies continue to be available.

**Recommendation #4** – The U.S. Census Bureau must ensure that confidential and accurate data representing all tribal nations will be available for use in all federal funding decisions and formulas. Please release the information you have gathered on the use of census data in federal funding formulas as soon as possible to ensure a meaningful consultation with tribal nations.

**Recommendation #5** – The U.S. Census Bureau must develop a method to correct the negative impact of Differential Privacy on increasing the undercount of tribal citizens and tribal nations at all geographic levels. Demonstration products released on October 29, 2019 implementing differential privacy on 2010 Census data presented the possible statistical elimination of many AI/AN populations at particular geography levels, as well as the compression of the AI/AN populations at primary (“on-spine”) geographic levels. This would exacerbate the undercount already common to AI/AN populations for the 2020 Census. In comparing the percentage change between the test products and existing 2010 Census data, differential privacy overwhelmingly impacted counts in the negative direction for AI/AN alone populations on AI/AN homelands. This was also the case for Native Hawaiians, in both population and household counts. This outcome would be devastating, and is untenable as a solution to privacy concerns for the 2020 Census.
**Recommendation #6** – The U.S. Census Bureau must clarify the future allocation of the epsilon (“privacy budget”) distribution, both for AI/AN geographies, future use by tribal nations, and for future research use. The 2010 demonstration data did not account for any privacy budget being allocated to AI/AN geographies or withheld for hypothetical future use. It is critical that a substantial portion of the epsilon be allocated to AI/AN tribal nation data and tribal geographies, as allocating only to standard (“on-spine”) geographies would statistically erase a significant proportion of data on citizens of tribal nations.

**Recommendation #7** - Since the 2020 Census will necessarily need to withhold a portion of the privacy budget for future research use, the privacy budget must allow for future data that is needed for federal decision-making for future tribal consultations and to uphold the government-to-government relationship between the federal government and tribal nations. Tribal nations, as sovereign nations, need to have access to future data requests and data tabulations to be able to respond to future tribal consultations, grant announcements, and future funding formula decisions. These future requests may come from Federal agencies, state agencies or tribal nations themselves. Therefore, a significant proportion of the research-use privacy loss budget must be reserved for use in these areas. These requests may be necessary to fulfill or justify existing federal (or state) programs or obligations to tribal nations and communities.

**Recommendation #8** – The U.S. Census Bureau must immediately explain the other privacy methods they are considering for AI/AN data products. Multiple presentations and Census materials express that officials may use other types of privacy protections for small population groups within the same privacy budget. More information is needed on these possible options for tribal leaders to evaluate the potential impacts.

**Recommendation #9** – The U.S. Census Bureau must provide clear instructions for tribal nations to correct both the tribal boundaries map and the tribal name code list as soon as possible. The Census Bureau should send all tribal nations the current tribal boundaries and tribal name code lists to ensure they are correct before the 2020 Census begins.

**Recommendation #10** – The U.S. Census Bureau must ensure language accessibility for AI/AN respondents and should collaborate with tribal nations to increase its efforts to hire AI/AN enumerators to address this issue in a timely fashion.

**Recommendation #11** – The U.S. Census Bureau should continue to work to improve the issue of withheld data for small AI/AN tribal nations and groups. The issue of withholding data, particularly Alaska Native village data, presents ongoing problems for tribal nations; additional work to alleviate this issue is needed.

**Conclusion** – The recent release of the 2010 data with Differential Privacy implemented reveals the detrimental impact Differential Privacy can have in its present form without substantial allocation of the privacy budget to AI/AN “off-spine” geographies and tribal nation data needs. Our initial findings show that the application of Differential Privacy means many tribes are essentially statistically terminated in the 2010 demonstration data – the difference in the existing 2010 Decennial population count and the 2010 Decennial demonstration data with Differential
Privacy applied results in a 100 percent undercount for many tribal nations. Differential Privacy methods that do not account for the “off-spine” geographies has the potential to significantly exacerbate the well-known and persistent undercount of American Indians on reservations of 4.9 percent, as well as the potential Alaska Native undercount, which is thought to be much higher.

Tribal nations and AI/AN organizations are spending significant funds and effort toward ensuring an accurate count in the 2020 Census. If Differential Privacy results in inaccurate or permanently restricted data, especially for small, rural, and remote populations, efforts to get out the count will go to waste, and all tribal nations will not be adequately represented when votes and funding are on the line. In fact, a lack of accurate or available AI/AN data may depress the response rate in all subsequent Census Bureau data collection efforts in these nations and communities with the American Community Survey or future Decennial Censuses. If tribal leaders and their citizens feel as if their information will not benefit them, then this may become an additional reason to refuse to respond. We are also very concerned that these negative impacts will impact other small, rural, or remote populations.

As mentioned above, NCAI resolution ABQ-19-070 reiterates the necessity for 2020 Census data on tribal nations to be both private and accurate. At present, the planned use of Differential Privacy does not meet this threshold. NCAI and its Policy Research Center call on the U.S. Census Bureau to conduct meaningful consultation with tribal nations until they can ensure confidential, accurate and accessible 2020 Census data for all tribal nations, or, if that is not possible with Differential Privacy, discontinue its use for the 2020 Census and consult with tribal nations on another option.

If you have any questions or comments, do not hesitate to contact the NCAI Policy Research Center at research@NCAI.org.

Sincerely,

Kevin Allis
Chief Executive Officer
National Congress of American Indians

Attachment: NCAI Resolution ABQ-19-070 – “Calling on the U.S. Census Bureau to Consult with Tribal Nations to Ensure Both Privacy and Accuracy of Census Data for Tribal Governance.”