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May 21, 2021

Dr. Ron S. Jarmin
Acting Director
U.S. Census Bureau
Office of the Director
Washington, DC 20233-0001

Delivered via email to Ron.S.Jarmin@census.gov; ocia.tao@census.gov; Dee.A.Alexander@census.gov

Dear Acting Director Jarmin,

We write to provide comments in response to the U.S. Census Bureau Tribal Consultation on the 2020 Census Disclosure Avoidance System (DAS). Thank you for holding a Tribal Consultation Webinar on May 19, 2021. We are responding to the request for written input by May 28, 2021.

We submitted several letters to the U.S. Census Bureau over the past two years with serious concerns about the potential negative impacts on American Indian/Alaska Native (AI/AN) data quality and usability from your plans to implement the DAS using Differential Privacy. We continue to be very concerned about the potential negative impacts of these new privacy protections on data quality and usability for AI/AN Tribal Nations.

The National Congress of American Indians (NCAI) is the oldest, largest, and most representative national organization serving the broad interests of AI/AN Tribal Nations and advocates to uphold and strengthen tribal sovereignty. Every Tribal Nation, as a sovereign nation, has the right to be counted and to have accurate and usable data about their nation produced from the decennial census. We have stated on multiple occasions that the 2020 Census data must be accurate and usable for the following priority use cases: 1) **reapportionment and representation**; 2) **federal funding formulas and decision-making**; 3) **local tribal governance**; and 4) **AI/AN research and public health surveillance/trend data**.

The NCAI Policy Research Center analyzed the two April Demonstration Products which show the impact of algorithmic changes since November 2020 and two levels of Privacy Loss Budget (PLB) applied to the data. We were shocked to see that the data for Federal American Indian Reservations and Off Reservation Trust Lands showed more AI/AN tribal geographies (lands) with population losses or errors after "improvements" from the November 2020 Demonstration Product to the April Demonstration Product with a PLB of 4.5. This worsening of the accuracy for AI/AN tribal lands indicates that there were algorithmic and processing changes that

likely made the data less accurate for Tribal Nations. We are also concerned that this coincided with comments from U.S. Census Bureau staff in emails in exhibits from the Alabama lawsuit that indicated that there was a fear that other racial/ethnic groups would file lawsuits if one had more accurate data based on political status, and AI/AN Tribal Nations would be included in groups with political status. If the data for AI/AN Tribal Nations was made less accurate from the algorithmic changes in the April 2021 Demonstration Products because of concerns related to race and ethnicity, the U.S. Census Bureau made a significant and ominous mistake.

AI/AN Tribal Nations are sovereign nations for which the federal government has a trust responsibility and must engage in a government to government relationship to ensure that the federal government responsibilities are met. If the data for AI/AN Tribal Nations worsened due to concerns about potential racial and ethnic group litigation, the U.S. Census Bureau failed in its trust responsibility. The data for AI/AN Tribal Nations was improving up to that point. We can see an improvement between the April Demonstration Products with a PLB of 4.5 and the PLB of 12.2, but in some cases the quality, accuracy, and usability only improved back to the level of accuracy from the November 2020 demonstration product. Therefore it appears that data for AI/AN Tribal Nations has not improved much since November 2020 despite clear input from Tribal Nations that the accuracy needed to improve.

Some AI/AN Tribal Nations continue to have significant errors in their decennial census data in the 2010 demonstration products, and a few have zero counts, which is unacceptable. If a sovereign nation made the effort to work with the U.S. Census Bureau to respond to the decennial census, that sovereign nation should never end up with zero counts due to the privacy protections. This would be a failure of the federal trust responsibility as it essentially erases a sovereign Tribal Nation from the data.

AI/AN Tribal Nations should not have to bear errors in their data of more than five percent for each AI/AN Tribal Nation regardless of the population size. However, many AI/AN Tribal Nations have errors of more than 10 percent in the demonstration products, and this amount of error is devastating for those with populations under 500. In fact, 353 of 617 AI/AN Tribal Lands examined in the demonstration data have total populations lower than 500, and a high percentage of smaller populations have errors of 5 or 10 percent or even more.

We were informed by Dr. Abowd in the Tribal Consultation Webinar that all the losses and gains would "equal out" in the data. Yet, we calculate the net loss to AI/AN Tribal lands to be over 1000 individuals in the April Demonstration Product with the higher PLB, and over 2000 individuals with the lower PLB. Tribal Nations should not be "equaled out" or suffer this degree of lost counts. Each Tribal Nation deserves to be counted accurately in the 2020 Census data products.

Given that the priority use cases of AI/AN Tribal Nations have not yet been met in the latest data products, and harmful reductions in accuracy are still present in the data, we make the following recommendations:

- The accuracy and usability of AI/AN tribal geography data must improve significantly in the final 2020 Census data, and any reductions in accuracy or worsening of error metrics is unacceptable;

- The total population count in EACH AI/AN tribal geography must be held invariant (equal to the actual count), and errors in other decennial demographic and housing characteristics must have no more than five percent error rates regardless of the size of the geography. The U.S. Census Bureau should follow other standard practices of suppressing counts under 10 if there is a risk to privacy, but this should be done in consultation with the affected AI/AN Tribal Nation(s);

- AI/AN Tribal Nations that have actual counts in the 2020 Census raw data must never end up with zero counts in the final dataset. The federal government has a trust responsibility to ensure that Tribal Nations are counted. The total number of AI/AN geographies with zero counts must be zero. If an AI/AN geography had at least one response to the 2020 enumeration, they should have counts in the 2020 Census data;

- Consideration should be given for the priority use cases listed above, and the U.S. Census Bureau must demonstrate how they have updated the application of privacy protections to ensure that AI/AN Tribal Nations have accurate and usable data for those purposes;

- The allocation of PLB must be increased for AI/AN Tribal Nations, but not at the expense of other groups. This can be done by raising the global PLB, which we understand is possible;

- AI/AN decennial data should not be made less accurate out of fear of litigation from racial and ethnic groups. Tribal Nations are sovereign nations and the U.S. Census Bureau has a responsibility to address their requests for more accuracy on a government to government basis. NCAI has worked in partnership with other groups to ensure accurate data for all, especially underrepresented racial/ethnic groups and small, rural, and remote groups. Our analysis of the metrics reveals a systematic negative impact on these groups. The accuracy for all of these groups should match that of non-Hispanic White data to be fair and equitable. Regardless of the need to protect privacy, the application of the privacy protections and the resulting usability of 2020 Census data must be equitable;

- If AI/ANs are the largest population group in a geographic unit in the raw data, they must be prioritized for accuracy with errors no greater than five percent, or even be invariant if the geographic unit is an AI/AN tribal geography;

- AI/AN population alone, and alone or in combination outside of AI/AN geographies must have no more than five percent error in any geographic unit

to ensure public health surveillance and trend data are accurate and AI/ANs who live off tribal lands are accurately counted; and

- AI/AN Tribal Nations need another chance for tribal consultation to review the data after the DSEP decision in June before the data goes into final processing to ensure that all of our requests have been met. The spirit of tribal consultation means that the solutions are developed in partnership. Another Tribal Consultation Webinar must be conducted in lay language accessible to a general audience. The previous tribal consultations have not been meaningful since they included information that was too complicated for an audience unfamiliar with the DAS and at a literacy level that was too high. Every Tribal Nation, even if they don't have a high level statistical expert with them, should be able to understand the topic of the consultation and the issues at stake.

The failure of the U.S. Census Bureau to ensure that AI/AN Tribal Nations have accurate and usable 2020 Census data threatens their sovereign rights and fails to meet the federal trust responsibility. AI/AN Tribal Nations worked hard to get out the count in the middle of a pandemic, and they should not be penalized and caused harm by significant losses in counts in 2020 Census data as a result of privacy protections. We have given input over the past two years, and while we have seen some improvements, there is more work to be done. AI/AN Tribal Nations deserve accurate and usable 2020 Census data for their priority uses, and no Tribal Nation should suffer the consequences of zero counts or errors of more than five percent.

Accurate and usable data for AI/ANs and Tribal Nations at all geographic levels is critical in order to consider the 2020 Census products equitable and just. Tribal Nations, as sovereign nations, have the right to have accurate data from the 2020 Census. We look forward to continued conversations with the U.S. Census Bureau to find solutions. We have posted our analysis of the April 2020 Demonstration Products on our Research Recommendations webpage at https://bit.ly/2N1ICND. We are happy to further discuss our concerns and possible solutions.

If you have any questions, please feel free to contact our NCAI Policy Research Center team at research@ncai.org.

Sincerely,

Dante Desiderio
Chief Executive Officer
National Congress of American Indians