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**Submitted electronically via Regulations.gov**

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Administrator  
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1800 G Street, NW, 9<sup>th</sup> Floor  
Washington, DC 20503

RE: OMB–2023–0001, Initial Proposals for Updating OMB's Race and Ethnicity  
Statistical Standards

To Whom It May Concern:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we write in response to the notice and request for comments proposing updates to the Office of Management and Budget's (OMB) Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15).<sup>1</sup> OMB's suggested changes include removing Middle East and North African (MENA) nationalities from the definition of "white" and adding MENA as an ethnicity; using a combined question rather than two separate questions to ask about race and ethnicity; disaggregating race and ethnicity data; and updating outdated and offensive terminology used in required reporting categories to collect federal race and ethnicity data. We appreciate the opportunity to comment on these proposals.

As our country becomes increasingly diverse,<sup>2</sup> federal, state, and local governments, researchers, and advocates need comprehensive and accurate data on both race and ethnicity in order to ensure that everyone can participate equally in our democracy and to identify and address discrimination. Federal race and ethnicity data collection should allow people to fully and accurately identify in the categories listed and encourage them to represent all relevant aspects of their identity. Moreover, given the importance of this data, changes to federal race and ethnicity

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<sup>1</sup> Initial Proposals for Updating OMB's Race and Ethnicity Statistical Standards, 88 Fed. Reg. 5375 (Jan. 27, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-01635.pdf> (hereinafter OMB Proposed Standards).

<sup>2</sup> Eric Jensen, et al., U.S. Census Bureau, The Chance That Two People Chosen at Random Are of Different Race or Ethnicity Groups Has Increased Since 2010 (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html>.

data should be carefully considered and grounded in rigorous research. Finally, the undercount of Latinx, Black, and other people of color in the United States<sup>3</sup> has significant adverse consequences and we support and share the goal of working to obtain an accurate count.

Many of OMB's proposals would improve federal data collection in ways that advance these goals. In the 25 years since SPD 15 was last revised, organizations representing people of MENA descent have called for adding MENA as an ethnicity in order to recognize their distinct experiences and cultural background. We applaud OMB for embracing this change. OMB's additional proposals to disaggregate the collection and reporting of race, ethnicity, and national origin data and discontinue the use of outdated terms such as "negro" and "Far East" are also necessary to better understand America's increasingly diverse population and retire outmoded and offensive language.

We are concerned, however, that combining race and ethnicity into a single question could result in the undercount of certain groups, including Afro-Latinx populations. OMB's previous research testing the combined question was insufficient to identify the effect of the combined question on these groups. The combined question also risks confusing race and ethnicity, which is one of the very problems OMB hopes to address through its current proposals.<sup>4</sup> Given these concerns, OMB should collect additional data on the effect of a combined question before finalizing revised federal race and ethnicity standards. If OMB proceeds with a combined question, it should incorporate additional measures to encourage people to report both race and ethnicity data, and fully and accurately identify themselves in the response options presented.

Founded in 1940 by Thurgood Marshall, LDF is the nation's oldest civil rights law organization. Launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state-sponsored racial discrimination, LDF has spent the past 80 years committed to achieving racial justice, equality, and an inclusive society.

LDF has long fought to ensure that we have complete and accurate federal demographic data, and that this data is used for the critical goal of advancing civil rights and realizing our constitutional ideals. In April 2018, LDF sent Freedom of Information Act requests to the U.S. Department of Commerce, the U.S. Census Bureau, and the U.S. Department of Justice seeking records regarding the Trump administration's decision to add a citizenship status question to the 2020 decennial census. When the agencies failed to respond, LDF sued to obtain these records.<sup>5</sup>

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<sup>3</sup> Press Release, U.S. Census Bureau, Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census (Mar. 10, 2022), <https://www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html#:~:text=The%20Hispanic%20or%20Latino%20population%20had,significant%20undercount%20rate%20of%204.99%25>.

<sup>4</sup> OMB Proposed Standard at 5379 ("Evidence suggests that the use of separate race and ethnicity questions confuses many respondents who instead understand race and ethnicity to be similar, or the same, concepts. For example, a large and increasing percentage of Hispanic or Latino respondents on the decennial census and American Community Survey (ACS) over the past several decades are either not reporting a race or are selecting Some Other Race (SOR); this is after responding to the ethnicity question, which SPD 15 requires to be collected first and separately. Decennial census and ACS research found that a combined race and ethnicity question reduces confusion and reduces SOR reporting by Hispanic or Latino respondents.")

<sup>5</sup> Compl., *NAACP Legal Defense & Ed. Fund, Inc. v. U.S. Dep't of Justice*, No. 18-cv-9363 (Oct. 12, 2018), available at <https://www.naacpldf.org/wp-content/uploads/NAACP-LDF-v.-DOJ-Census-FOIA-Complaint-AS-FILED.pdf>.

On April 1, 2019, LDF filed an amicus brief urging the U.S. Supreme Court to reject the Department of Commerce’s pretextual attempt to add a citizenship status question to the 2020 census, arguing that the question could lead to an undercount of Black people.<sup>6</sup> LDF has also advocated for legislation that would ensure that changes to the census are properly researched, studied, and tested before being instituted,<sup>7</sup> and conducted national education campaigns to ensure that Black Americans are fairly counted.<sup>8</sup>

LDF has also frequently challenged discriminatory uses of federal data, such as reapportionment plans designed to reduce minority voting strength. These challenges include redistricting lawsuits challenging the creation of various electoral districts at the state and local level under Section 2 of the Voting Rights Act, when those plans dilute Black voting strength and prevent Black voters from having a fair opportunity to elect candidates of choice.<sup>9</sup> All these advocacy efforts rely on census data.

I. OMB should add MENA as an ethnicity in order to acknowledge the unique cultural and ethnic background of persons of MENA descent and allow for better data collection and political representation.

We support OMB’s proposal to add MENA as an ethnicity to SPD 15 and to remove MENA from the definition of “white.” Currently, people of MENA descent are categorized as white,<sup>10</sup> yet may experience a lived reality quite different from white people. The inclusion of MENA as an ethnicity will lead to more comprehensive data collection that allows us to explore how this identity can impact an individual’s life, including by allowing us to better understand the ways in which MENA communities may experience discrimination because of their ethnicity and race. In turn, having the data on MENA populations will allow the government, researchers, and advocates to better evaluate and understand the needs of MENA communities and address these issues through policy.

Currently, SPD 15 defines the “white” race category to include those having origins in any of the “original peoples of . . . the Middle East, or North Africa.”<sup>11</sup> Because there is currently no way to mark their ethnicity as MENA, OMB encourages MENA individuals to identify as white alone, even if they might otherwise identify as white and MENA, Black and MENA, or other identities.

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<sup>6</sup> *Amicus Curiae* Br. of the NAACP Legal Defense & Ed. Fund, Inc. in Support of Respondents, *U.S. Dep’t of Commerce v. New York*, No. 18-966 (Apr. 1, 2016), <https://www.naacpldf.org/wp-content/uploads/NAACP-LDF-Amicus-Curiae-Brief-Final.pdf>.

<sup>7</sup> Press Release, Schatz Reintroduces Legislation to Protect Census and Ensure Any Proposed Changes Are Studied And Tested (Feb 6, 2019), <https://www.schatz.senate.gov/news/press-releases/schatz-reintroduces-legislation-to-protect-census-and-ensure-any-proposed-changes-are-studied-and-tested> (noting LDF’s support for the Census Improving Data and Enhanced Accuracy (Census IDEA) Act).

<sup>8</sup> NAACP Legal Defense & Ed. Fund, Inc, Count Me In (last updated Apr. 27, 2023), <https://www.naacpldf.org/case-issue/count-on-change/>.

<sup>9</sup> See, e.g., *Thornburg v. Gingles*, 478 U.S. 30 (1986).

<sup>10</sup> OMB Proposed Standards, *supra* note 1, at 5376.

<sup>11</sup> *Id.*

MENA Americans' lived experiences differ significantly from that of non-MENA white Americans. The War on Terror has led to persistent bias against people who are perceived as Arab or Muslim, including many MENA individuals.<sup>12</sup> According to FBI data, from 2020-2021, there was a 50 percent increase in anti-Arab hate crimes.<sup>13</sup> Younger people of MENA descent in particular have had “a plethora of different experiences that made them feel that some of their experiences were actually closer to communities of color in the United States,” according to Neda Maghbouleh, a Professor of Sociology at the University of Toronto.<sup>14</sup>

Categorizing MENA individuals as white hides the various political, economic, social, and health inequities between MENA communities and other groups.<sup>15</sup> Because the OMB does not collect information on the ethnicity of MENA individuals, there is no direct way to accurately count members of this group or understand their experiences in official statistics.<sup>16</sup> While official federal data on MENA populations is unavailable, smaller surveys have shown that MENA communities experience disparate social and economic outcomes. In these surveys, scholars have found that MENA communities are more likely to live below the poverty line and rent rather than own their homes compared to non-MENA white people.<sup>17</sup> Additionally, they report worse health outcomes, including higher age-adjusted mortality risk, and lower birth rates.<sup>18</sup> In countries such as Canada, which collect data on MENA individuals as racialized minorities, MENA individuals tend to report higher rates of discrimination than whites, and rates on par with other communities of color.<sup>19</sup>

People of MENA descent have advocated for the inclusion of MENA as a distinct ethnicity category for nearly 30 years because they are not perceived, nor perceive themselves, as white alone.<sup>20</sup> Adding MENA as an ethnicity category would allow people of MENA descent to better represent how they are perceived in the United States and how they perceive themselves. When the Census tested adding MENA as an ethnicity in 2015 National Content Test (NCT), a significant percentage of respondents (79 percent) who identified with MENA origins selected that category.<sup>21</sup>

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<sup>12</sup> E.g. Farah Pandith, *The U.S., Muslims, and a Turbulent Post-9/11 World*, COUNCIL ON FOREIGN RELATIONS (Sept. 1, 2021 3:36 PM ET), <https://www.cfr.org/article/us-muslims-and-turbulent-post-911-world>.

<sup>13</sup> THE LEADERSHIP CONFERENCE ON CIV. & HUM. RTS., CAUSE FOR CONCERN 2024: STATE OF HATE 15 (2023), <https://civilrights.org/edfund/wp-content/uploads/sites/2/2023/04/Cause-For-Concern-2024.pdf>.

<sup>14</sup> Hansi L. Wang, *The U.S. Census sees Middle Eastern and North African people as white. Many don't.*, NPR (Feb. 17, 2022), <https://www.npr.org/2022/02/17/1079181478/us-census-middle-eastern-white-north-african-mena>.

<sup>15</sup> E.g. Nadia Abuelezam, *The Health of Arab Americans in the United States: An Updated Comprehensive Literature Review*, 6 FRONTIERS IN PUBLIC HEALTH 262 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6141804/>.

<sup>16</sup> Neda Maghbouleh, et al. *Middle Eastern and North African Americans may not be perceived, nor perceive themselves, to be White*, *Proceedings of the National Academy of Sciences*, vol. 119, no. 7, <https://www.pnas.org/doi/10.1073/pnas.2117940119>.

<sup>17</sup> *Id.*

<sup>18</sup> Elyas Bakhtiari, *Health effects of Muslim racialization: Evidence from birth outcomes in California before and after September 11, 2001*, 12 SSM POP. HEALTH 12 100703 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7721634/>.

<sup>19</sup> Statistics Canada, Perceptions of discrimination, by visible minority status, General Social Survey. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54913/tbl/tbl04-eng.htm>.

<sup>20</sup> The Leadership Conference Ed. Fund, Factsheet: Will You Count? Middle Eastern and North African Americans (MENA) in the 2020 Census (Apr. 2018), <http://civilrightsdocs.info/pdf/census/2020/Fact-Sheet-MENA-HTC.pdf>

<sup>21</sup> U.S. CENSUS BUREAU, 2015 NATIONAL CONTENT TEST RACE AND ETHNICITY ANALYSIS REPORT, at 41-47 (Feb. 28, 2017), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2015nct-race-ethnicity-analysis.pdf> (hereinafter 2015 NCT).

Adding MENA as an ethnicity would also help us better understand the diversity within MENA communities and the ways in which the experiences of MENA individuals can differ from each other based on race. As defined in the proposed federal race and ethnicity standards, the MENA category would include a diverse range of nationalities, including people who identify as Lebanese, Iranian, Egyptian, Syrian, Moroccan, Israeli, Algerian, Iraqi, Kurd, Tunisian, Chaldean, and Assyrian.<sup>22</sup> Because of the diversity in the MENA region, when given the opportunity, people who identify as MENA may identify as having different races, and may have different experiences in the United States based on their race. People who are Sudanese, for example, may identify as both MENA and Black,<sup>23</sup> and may experience discrimination both because of their race and because of their ethnicity. Indeed, Black Arab and Black Muslim people have long reported discrimination and exclusions even within MENA communities.<sup>24</sup> Better data collection can help us better understand and address those differences.

Accurate federal race and ethnicity data is vital to informing federal, state, and local policy and the functioning of our democracy. The inclusion of MENA as an ethnicity can help further document and address discrimination against MENA individuals and disparities in opportunity that may result from that discrimination.

II. OMB should conduct additional testing before proceeding with the combined race and ethnicity question to ensure that it does not reduce the count of Afro-Latinx people and other groups.

We are concerned that combining race and ethnicity into a single question could lead the federal government to undercount of people who identify with both a race and an ethnicity, such as Afro-Latinx people.<sup>25</sup> Before OMB finalizes this rule, the Census Bureau should conduct additional testing to fully understand the outcomes associated with a combined race and ethnicity question. Should it proceed with a combined question, OMB should incorporate additional measures into SPD 15 to encourage people to report both race and ethnicity data.

*A. Race and ethnicity can each affect people's lives, and federal data standards should seek to collect both.*

Collecting accurate data on respondents' race and ethnicity is necessary for the federal government to understand the ways in which these characteristics lead to discrimination and

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<sup>22</sup> OMB Proposed Rule, *supra* note 1.

<sup>23</sup> Hind Makki, *Why are some black Africans considered white Americans?*, ALJAZEERA (Feb. 16, 2017), <https://www.aljazeera.com/opinions/2017/2/16/why-are-some-black-africans-considered-white-americans>.

<sup>24</sup> Eileen Hsieh, Arab-Americans tackling anti-Blackness in the Middle East, Middle East Eye (Jul. 3, 2020), <https://www.middleeasteye.net/news/black-lives-matter-blm-arab-americans-call-out-racism>; Rowaida Abdelaziz, *Arab and Muslim Communities Need To Talk About Anti-Blackness*, HUFF. POST (Jul. 3, 2020), [https://www.huffpost.com/entry/the-need-for-arab-and-muslim-communities-to-reckon-and-reconcile-anti-blackness\\_n\\_5efdfc24c5b6acab284cce95](https://www.huffpost.com/entry/the-need-for-arab-and-muslim-communities-to-reckon-and-reconcile-anti-blackness_n_5efdfc24c5b6acab284cce95)

<sup>25</sup> Tanya Kateri Hernandez, *The new census proposal may likely undercount Black people by ignoring Afro-Latinos. We can't let that happen.*, THEGRIO (Mar. 16, 2023), <https://thegrio.com/2023/03/16/the-new-census-proposal-may-likely-undercount-black-people-by-ignoring-afro-latinos-we-cant-let-that-happen/>.



differences in opportunity. When these differences are lost within federal data, it impacts our ability to seek equity in employment, housing, healthcare, voting, and other opportunities.<sup>26</sup>

As sociologist Patricia Hill Collins has noted, “people’s lives and the organization of power in a society are better understood as being shaped not by a single axis of social division,” be it race, ethnicity, or national origin, “but by many axes that work together and influence each other.”<sup>27</sup> OMB has similarly long recognized that race and ethnicity are “separate and distinct concepts.”<sup>28</sup>

Unfortunately, given the long history of racism in the United States, race has profound impacts on whether people can access opportunity and fully participate in our democracy, even when compared to other people with the same ethnicity. For example, scholars such as law professor Tanya Kateri Hernandez and sociologist Nancy Lopez have documented the ways whiteness and Blackness affect the lives of Latinx people.<sup>29</sup> Research by former Chief Demographer for the U.S. Census Howard Hogan similarly found that white Latinx households experienced substantially lower poverty rates than those who identified as “some other race” or Black.<sup>30</sup> Other studies have found that, controlling for other factors, Black Latinx people are sentenced more harshly than white Latinx people,<sup>31</sup> and that Latinx people experience disparate health outcomes based on race.<sup>32</sup> Because both race and ethnicity can affect people’s life experiences, it is vital that the federal government collect comprehensive data on both.

OMB has said that its proposal to move to a combined question is partly in response to an increased number of individuals marking “some other race” in the 2020 Census.<sup>33</sup> In recent surveys by the Census Bureau, a growing number of people mark “Hispanic” as their ethnicity and then check “some other race” and, in some cases, write in “Hispanic” or the name of a country.<sup>34</sup> The government may then assign those people a race by looking at prior survey results, government

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<sup>26</sup> Nancy Lopez, *The US Census Bureau keeps confusing race and ethnicity*, The Conversation (Feb. 28, 2018 6.40am EST), <https://theconversation.com/the-us-census-bureau-keeps-confusing-race-and-ethnicity-89649>

<sup>27</sup> PATRICIA HILL COLLINS & SIRMA BILGE, *INTERSECTIONALITY 2* (2016).

<sup>28</sup> Elizabeth M. Grieco & Rachel C. Cassidy, U.S. Census Bureau, *Overview of Race & Hispanic Origin*, Census 2000 Brief (Mar. 2001), <https://www.nrc.gov/docs/ML1003/ML100341430.pdf>.

<sup>29</sup> E.g. TANYA HERNANDEZ, *RACIAL INNOCENCE: UNMASKING LATINO ANTI-BLACK BIAS AND THE STRUGGLE FOR EQUALITY* (2022); Nancy Lopez & Howard Hogan, *What’s Your Street Race? The Urgency of Critical Race Theory and Intersectionality as Lenses for Revising the U.S. Office of Management and Budget Guidelines, Census and Administrative Data in Latinx Communities and Beyond*, *GENEALOGY* vol. 5, no. 3, at 75 (Aug. 2021), <https://doi.org/10.3390/genealogy5030075>

<sup>30</sup> Howard Hogan, *Race Reporting Among Hispanics: Analysis of ACS Data*. in *THE FRONTIERS OF APPLIED DEMOGRAPHY, APPLIED DEMOGRAPHY SERIES 9* (D. A. Swanson, ed. 2017).

<sup>31</sup> Darrell Steffensmeier & Stephen Demuth. *Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?*, 65 *AM. SOC. REV.* 705 (2000), <https://www.icpsr.umich.edu/summerprog/2009/nijworkshop/SteffDemuth2000FederalStudy.pdf>.

<sup>32</sup> E.g. Thomas LaVeist-Ramos, et al., *Are black Hispanics black or Hispanic? Exploring disparities at the intersection of race and ethnicity*, 66 *J. OF EPIDEMIOLOGICAL COMMUNITY HEALTH* e21, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3369004/>

<sup>33</sup> Nicholas Jones, et al., U.S. Census Bureau, *2020 Census Illuminates Racial and Ethnic Composition of the Country* (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>.

<sup>34</sup> Mark Hugo Lopez, *Who is Hispanic?*, PEW RESEARCH CTR. (Sept. 15, 2022), <https://www.pewresearch.org/short-reads/2022/09/15/who-is-hispanic/>.

documents, and other sources—or, if an individual marked both “some other race” and another race, such as white or Black, code them as having “Two or More Races.”<sup>35</sup> This practice makes it harder to understand the ways race and ethnicity can each separately affect people’s lived experiences.

OMB’s desire to avoid imputing race is valid. As discussed below, however, we do not think that a combined question is an effective way to address this concern. Instead, OMB should explore means to encourage respondents to report racial data, such as adding a prelude to the race question that prompts respondents to consider whether they wish to identify themselves within a specific racial category.

*B. Prior testing is insufficient to understand the effects of a combined question on how Afro-Latinx people report their race and ethnicity.*

We are concerned that a combined question could affect how Afro-Latinx people—and potentially other groups that identify with both a race and ethnicity—identify themselves in federal data collection. The tests that have been done to date on the combined question are not sufficient to fully assess these impacts.

There is some evidence that Afro-Latinx people are already undercounted in the census. While the 2020 census counted 1.2 million Afro-Latinx people, research by the Pew Research Center suggests that the count is closer to 6 million.<sup>36</sup> Any changes to SPD 15 must take pains to ensure that it addresses the undercount of Latinx people in general, and Afro-Latinx people specifically.

In support of the combined question, OMB relies on the results of the 2015 NCT, which surveyed 1.2 million homes,<sup>37</sup> as well as the 2010 Census Alternative Questionnaire Experiment, which surveyed 500,000 homes.<sup>38</sup> For each of these tests, OMB sent some respondents surveys with the combined question and some respondents surveys with the current, separate race and ethnicity questions. In each test, the majority of respondents identified as white alone.<sup>39</sup> In support of the combined question, OMB points to the fact that the reporting in the Black/African American category for Hispanics was statistically higher in a combined question than for the separate question format, and that it did not decrease reporting for any race or ethnic group except white.<sup>40</sup>

However, the Census Bureau’s tests of the combined question in 2010 and 2015 were not sufficient to capture the effect of the question for Afro-Latinx respondents. Given the racial diversity within Hispanic communities and the differences between lived experiences and

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<sup>35</sup> Pat Cantwell, U.S. Census Bureau, How We Complete the Census When Households or Group Quarters Don’t Respond (Apr. 16, 2021), <https://www.census.gov/newsroom/blogs/random-samplings/2021/04/imputation-when-households-or-group-quarters-dont-respond.html>.

<sup>36</sup> Ana Gonzalez-Barrera, *About 6 million U.S. adults identify as Afro-Latinos*, PEW RESEARCH CTR. (May 2, 2022), <https://www.pewresearch.org/fact-tank/2022/05/02/about-6-million-u-s-adults-identify-as-afro-latino/>.

<sup>37</sup> 2015 NCT, *supra* note 19.

<sup>38</sup> ELIZABETH COMPTON, ET AL., 2010 CENSUS RACE AND HISPANIC ORIGIN ALTERNATIVE QUESTIONNAIRE EXPERIMENT (2013), <https://www.census.gov/programs-surveys/decennial-census/decade/2010/program-management/cpex/2010-cpex-211.html> (hereinafter 2010 AQE).

<sup>39</sup> 2015 NCT, *supra* note 19, at 43; 2010 AQE, *supra* note 36, at 43.

<sup>40</sup> 2015 NCT, *supra* note 19.

outcomes,<sup>41</sup> we cannot assume that Afro-Latinx people would respond to a combined question in the same way as more “white-identifying” people with Hispanic backgrounds. While the Census did survey areas—such as New York City and Puerto Rico—that may include Afro-Latinx communities, it did not take steps to guarantee sufficient responses from Afro-Latinx individuals to test whether the combined question affected how they reported their race and ethnicity. A sufficient test of whether Afro-Latinx respondents might change their reporting of race in a combined question format would require an oversampling of Afro-Latinx respondents in a geography that is known to have a high population of people with that identity (*i.e.*, Washington Heights)—which the Census did not do. Moreover, the Census Bureau tested the combined question format via mail-in surveys—and, unlike the decennial census,<sup>42</sup> did not follow-up on non-responses.<sup>43</sup> This difference in methodology could impact the results because the likelihood that someone mails back a questionnaire is highly correlated with race and ethnicity.<sup>44</sup> According to a past study conducted by the Census Bureau, the survey response rate for mail survey in areas with a high concentration of Black residents is significantly lower than the rate for areas with higher concentrations of white residents.<sup>45</sup> As such, it is possible that Afro-Latinx people were less likely to mail back the 2015 NCT, and any differences in their responses would not appear in the data.

The testing that has been conducted indicates that a combined question could lead people to omit data on their race. According to the Census Bureau, in the 2015 NCT, “[t]he percentages of respondents reporting Hispanic alone were significantly higher in the combined question formats, and the percentage of respondents reporting Hispanic and another race group was significantly higher in the Separate Question format.”<sup>46</sup> In that test, more than 70 percent of respondents identifying as Hispanic in a combined question format did not select a racial category.<sup>47</sup> By contrast, in the 2020 decennial census, only 43.6 percent of people who identified as Hispanic either did not respond to the 2020 census race question or reported being “some other race” alone.<sup>48</sup> Combining race and ethnicity into a single question thus may decrease reporting of race by people who identify as Hispanic.

Finally, the changing makeup of the Black population in the United States makes us concerned that a combined question could impact the count of Afro-Latinx people. According to a 2019 report by the Pew Research Center, the foreign-born Black population has almost doubled in the past 20 years, and 12% of that population comes from non-Caribbean, non-African countries,

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<sup>41</sup> See Part II(A), *supra*. See also Ana Gonzalez-Barrera, *About 6 million U.S. adults identify as Afro-Latino*, PEW RESEARCH CTR. (May 2, 2022), <https://www.pewresearch.org/short-reads/2022/05/02/about-6-million-u-s-adults-identify-as-afro-latino/>.

<sup>42</sup> <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html>

<sup>43</sup> 2015 NCT, *supra* note 16, at 39.

<sup>44</sup> Deborah H. Griffin, U.S. Census Bureau, *Measuring Survey Nonresponse by Race and Ethnicity* (2002), [https://www.census.gov/library/working-papers/2002/acs/2002\\_Griffin\\_01.html](https://www.census.gov/library/working-papers/2002/acs/2002_Griffin_01.html)

<sup>45</sup> *Id.*

<sup>46</sup> 2015 NCT, *supra* note 16, at 44.

<sup>47</sup> *Id.*

<sup>48</sup> U.S. Census Bureau, *Census Bureau Releases 2020 Census Results of Racial Identification for the Self-Reported Hispanic or Latino Population* (Mar. 28, 2023), <https://www.census.gov/newsroom/press-releases/2023/2020-census-racial-identification-hispanic.html#:~:text=The%20data%20show%20that%20the,18.6%20million%20people%20in%202020..>



including countries where most people identify as Hispanic, such as Mexico, and Honduras.<sup>49</sup> Moreover, a larger proportion of the Black population is younger and, for many of them, 2030 will be their first census: 35 percent of the U.S. Black population is age 22 or younger, and 33 percent of the Black Hispanic population is within this age group.<sup>50</sup> As such, there are more people who may consider themselves Afro-Latinx in the United States, and those people may not have had to report both race and ethnicity separately in prior censuses. These factors could work together to make the Black population more vulnerable to only marking their race or ethnicity, but not both, in a combined question format.

Unfortunately, because OMB has never required data collection on MENA populations, we do not know whether Afro-MENA individuals are more likely to report both race and ethnicity data using a combined question or a separate question. While we fully support the addition of MENA as an ethnicity, we encourage testing on this front as well.

*C. The Census Bureau should conduct more testing before proceeding with a combined question and should take additional steps to encourage accurate reporting of both race and ethnicity data.*

The Census Bureau should perform timely, additional testing of the combined question's effects before finalizing its updates to SPD 15, with a particular emphasis on areas where large populations of Afro-Latinx people reside. To increase the reliability of its estimates, it should oversample neighborhoods with larger Afro-Latinx communities. The government Advisory Committees for the OMB and the Census should also be expanded to include Afro-Latinx representatives that could provide much needed intersectional ethnic and racial insights. The Census Bureau should conduct similar testing to identify whether Afro-MENA populations report more complete race and ethnicity data using a combined question or separate race and ethnicity questions.

If OMB nonetheless moves forward with a combined question without performing additional testing, which we oppose, it must take steps to ensure that people are encouraged to mark all races and ethnicities necessary to reflect their identity. OMB should format the question stem in a manner that encourages people to check all boxes that might apply to them. OMB should also require federal agencies to modify the Black category to "Black or African American or Afro/Black Latino" and include check boxes that allow people to select a national origin traditionally considered to be Hispanic, such as the Dominican Republic, Colombia, and Cuba, and to include national origins with larger Black populations under the "Hispanic" category. OMB should similarly include MENA countries with large Black populations, such as Sudan, under both "MENA" and "Black." Before finalizing the question wording and other changes, OMB must perform rigorous testing and consult with directly impacted communities.

Finally, OMB should consider conducting additional outreach to and testing with other groups who may identify with both a race and an ethnicity, such as people who identify as both

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<sup>49</sup> Christine Tamir, *The Growing Diversity of Black America*, Pew Research Ctr. (Mar. 25, 2021), <https://www.pewresearch.org/social-trends/2021/03/25/the-growing-diversity-of-black-america/>.

<sup>50</sup> *Id.*

Black and MENA, in order to ensure that the form of the question does not alter how they choose to identify themselves.

III. OMB should require federal agencies to collect and report detailed and disaggregated race and ethnicity data.

OMB should require, rather than merely encourage, federal agencies to collect and report disaggregated data on detailed racial and ethnic categories in order to ensure accurate reporting and identify differences in people's opportunities and experiences within groups. For example, OMB should require federal agencies to disaggregate statistics for people who mark "white" and "Hispanic" (or "MENA") from those who mark "Black" and "Hispanic" (or "MENA") or "Hispanic" (or "MENA") and another race or "Some Other Race." As noted above, OMB should also include a range of national origin boxes underneath each race and ethnicity category.<sup>51</sup>

OMB should also prohibit federal agencies from tabulating people who report a race and then write either "Hispanic" or a national origin under "some other race" as "Two or More Races," as those individuals have one race and one ethnicity or national origin. The results of the recent American Community Survey (ACS) raise concerns that federal agencies will conflate race and ethnicity in how they tabulate data. Currently, the Census Bureau would identify a Hispanic person who checked "white" as their race and writes in "Cuban" under "some other race" as having "Two or More Races."<sup>52</sup> Although there are just two years in between the surveys, the 2021 ACS shows a decrease for Hispanic and non-Hispanic Black alone and an increase for "Two or More Races" compared to the 2019 ACS.<sup>53</sup> This racial shift is unlikely to be demographic forces (i.e., death, birth, migration) and is likely driven by the census' coding process for the write-in answers. Allowing federal agencies to group people who mark a race and an ethnicity into the "Two or More Races" category would obscure differences that individuals experience based on their race by combining people who have the same ethnicity but different races into a single category. Particularly if OMB finalizes a rule requiring federal agencies to use a combined question, OMB should prohibit federal agencies from incorrectly tabulating people as having "two or more races" when their responses indicate that they have a race and an ethnicity or national origin.

IV. OMB should update the outdated terminology used in the required categories for federal race and ethnicity data collection.

We support OMB's proposal to discontinue the use of terms like "majority" and "minority," "Far East," and "negro." A decade ago, in 2013, the Census Bureau removed the term

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<sup>51</sup> We acknowledge that adding these national original boxes underneath the required race categories risks conflating race and national origin. As such, it is essential that the Census Bureau conduct rigorous testing, including focus groups with affected communities, before finalizing these categories.

<sup>52</sup> Lopez, *supra* note 32.

<sup>53</sup> Social Explorer, Racial Ethnic Changes According to the Newly Released 2021 ACS 1-Year Estimates (Sept. 26, 2020), <https://www.socialexplorer.com/blog/post/racial-ethnic-changes-according-to-the-newly-released-2021-acs-1-year-estimates-12939>.

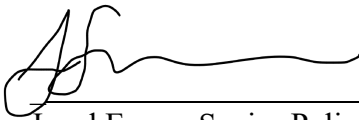
“negro” from agency forms after more than a century of use.<sup>54</sup> Now, as this country grows more racially and ethnically diverse, it is even more important that this sort of antiquated language is also removed from OMB’s required categories. We are in full support of the removal of any language that could reasonably be seen as inflammatory, racist, or offensive towards any racial group, while still maintaining the accuracy and integrity of the census.

V. Conclusion

Our ability to create and inform policy, empower marginalized communities, and examine dynamics of systemic racism all relies on data that is truly reflective of how different groups are situated and identify. As OMB finalizes its updates to SPD 15, the agency must ensure that people have an opportunity to have all relevant aspects of their identity fully and accurately represented, while also ensuring that the way in which federal agencies solicit demographic data is evidence-based and accurately counts all segments of the U.S. population. While we support many of the OMB’s proposed changes, including its decision to add MENA as an ethnicity, we strongly urge OMB to collect additional data on the effect of a combined question on Afro-Latinx populations before finalizing the rule.

Thank you for the opportunity to comment. If you have any questions, please contact Jared Evans, Senior Policy Counsel at [jevans@naacpldf.org](mailto:jevans@naacpldf.org), Amalea Smirniotopoulos, Senior Policy Counsel, at [asmirniotopoulos@naacpldf.org](mailto:asmirniotopoulos@naacpldf.org), or Dr. Kesha Moore at [kmoore@naacpldf.org](mailto:kmoore@naacpldf.org).

Sincerely,



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<sup>54</sup> Tanya Brown, *No More 'Negro' For Census Bureau Forms and Surveys*, NPR (Feb. 25, 2013), <https://www.npr.org/sections/thetwo-way/2013/02/25/172885551/no-more-negro-for-census-bureau-forms-and-surveys>.