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Re: ACS SPD 15

The following comments were submitted through the Federal e-Rulemaking Portal at www.regulations.gov under the docket established for a request for comment - USBC-2024-0020. According to the Notice - American Community Survey SPD15 Timeline 30-day FRN, certain changes to OMB policies concerning the collection of race and ethnicity data are now open for comment.

The undersigned would like to specifically address the OMB's decision to continue to identify Original people of the United States, who are unique to America as the *Descendants of Persons Enslaved in the United States (Descendants)* as a "race".

OMB collects data concerning citizens' "race" to create statistics about "race" and to present other estimates by groups. Local, state, tribal, and federal programs use these data as critical factors in the basic research behind governmental policies, particularly for civil rights. "Race" data are used in planning and funding government programs that provide funds and/or services for specific groups.

However, the use of the term "race" is problematic from a number of perspectives. First and foremost, ***there is no scientific support for the notion that there are "races" of human beings.*** (See the section below entitled Logical, Linguistic, Legal and Scientific Defects of OMB's Statistical Policy Directive No. 15 as Currently Drafted)

The Pseudoscience of Race

Among human beings, “race” has no taxonomic significance because all living humans belong to the same *sub species,* ***Homo sapiens*****.** In 2019, the American Association of Physical Anthropologists issued a statement on biological aspects of race, concluding that ***“pure races, in the sense of genetically homogenous populations, do not exist in the human species today, nor is there any evidence that they have ever existed in the past.”***

Race acquired its modern meaning in the field of *scientific racism* starting in the 19th century. Scientific racism is the pseudoscientific belief that the human species is divided into biologically distinct taxa called "races”, and that empirical evidence exists to justify racial discrimination, or the notion of racial inferiority, or racial superiority[1]

In modern genetics, the concept of distinct human races in a biological sense[2] has become widely debunked[3] and is regarded as scientifically obsolete.[4]

Resulting Paradoxical and Nonsensical Policymaking Schemes

One Drop Rule

Use of the pseudoscientific term “race” in the context of government policy frustrates rather than supports the aims of policies which employ the concept of “race” to meet policy objectives.

Attempts to employ the pseudoscientific concept of “race” as a basis for government policy has led to senseless, logically improper, and contradictory outcomes.

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[1] Garros, Joel Z. (January 9, 2006). "A brave old world: an analysis of scientific racism and BiDil". McGill Journal of Medicine. 9 (1): 54–60. PMC 2687899. PMID 19529811.
[2] Kenyon-Flatt, Britanny (March 19, 2021). "How Scientific Taxonomy Constructed the Myth of Race". Sapiens.
[3] Norton, Heather L.; Quillen, Ellen E.; Bigham, Abigail W.; Pearson, Laurel N.; Dunsworth, Holly (July 9, 2019). "Human races are not like dog breeds: refuting a racist analogy"
[4] "Ostensibly scientific": cf. Theodore M. Porter, Dorothy Ross (eds.) 2003. The Cambridge History of Science: Volume 7, The Modern Social Sciences Cambridge University Press, p. 293 "Race has long played a powerful popular role in explaining social and cultural traits, often in ostensibly scientific terms"; Adam Kuper, Jessica Kuper (eds.), The Social Science Encyclopedia (1996), "Racism", p. 716: "This [sc. scientific] racism entailed the use of 'scientific techniques', to sanction the belief in European and American racial Superiority"; Routledge Encyclopedia of Philosophy: Questions to Sociobiology (1998), "Race, theories of", p. 18: "Its exponents [sc. of scientific racism] tended to equate race with species and claimed that it constituted a scientific explanation of human history"; Terry Jay Ellingson, The myth of the noble savage (2001), 147ff. "In scientific racism, the racism was never very scientific; nor, it could at least be argued, was whatever met the qualifications of actual science ever very racist" (p. 151); Paul A. Erickson, Liam D. Murphy, A History of Anthropological Theory (2008), p. 152: "Scientific racism: Improper or incorrect science that actively or passively supports racism".

For example, use of the term "race" does not account for the infinite number of permutations and combinations of "races" that would result when a child has a parent of two different "races". Such classifications are in fact reality categorized according to **genetic admixtures**. Genetic admixtures occur when two people from two distinct ***geographic*** populations procreate resulting in a population that is descended from multiple geographic sources. This popular logical and mathematical paradox grows out of another flawed notion; the "one-drop rule". The one-drop rule was a legal principle of racial classification that was prominent in the 20th-century United States. It asserted that any person with even one ancestor of black ancestry ("one drop" of "Black blood) is considered "black" Negro or colored in historical terms)[5]. In reality, this one drop rule was meant to exclude children produced from rapes of enslaved women by enslavers from inheriting property under wills and estates.

It is 1935, Nazi Germany passed two radically discriminatory pieces of legislation inspired by American laws: the Reich Citizenship Law and the Law for the Protection of German Blood and German Honor. Together, these were known as the Nuremberg Laws, and they laid the legal groundwork for the persecution of Jewish people during the Holocaust and World War II. It is well established that the Nuremberg Laws were inspired by and based by the American Jim Crow system. Nazis admired the Jim Crow-era laws that discriminated against Black Americans and segregated them from white Americans, and they debated whether to introduce similar segregation in Germany.[6] It is particularly ironic that even the Third Reich considered the "one drop rule" too extreme for Nazi Germany.

This popular misconception around "race" (e.g., that one person is 1/4 Black and 1/8 Hungarian and 1/8 Hispanic) conflates the pseudoscientific concept of "race" inconsistently with other spuriously employed terms like language (e.g., Hispanic which attempts to group people in terms of the Spanish language but not Spanish nationality) religion (e.g., Jewish), Nationality (Chinese) or skin color (e.g., Black and white).

By compounding logical, linguistic, scientific and mathematical errors only serves to frustrate the laudable policy objectives at the heart of the efforts to classify citizens of the United States.

Citizens of the United States are categorized not because of any characteristic that they inherently possess.

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[5] Davis, F. James. Frontline. "Who's black. One nation's definition". Retrieved 27 February 2015.
[6] James Q. Whitman, author of Hitler's American Model

Equal Justice Under Law

One important value in American society is that everyone has equal justice under the law. Another important idea is the "rule of law." The rule of law means that everyone must obey the law and no one is above the law. Under a Constitutional scheme where "all humans are created equal", groups of people are—ostensibly—identified and categorized as a matter of public policy to redress systematic exclusion from equal participation in America; socially, politically and economically (e.g., racism, sexism, religious persecution, persecution on basis of sexual orientation etc.,)

Without a true understanding of the historical background, some Americans express a frustration, confusion, resentment and resistance to laws designed to redress the legally enforced wrongs described above.

Says one respondent to a 1995 Washington Post-ABC News national poll

> ***"They talk about a glass ceiling for women and minorities," said Ira Linville, 52, a technical specialist for the Environmental Protection Agency in Conyers, Ga. "There's a glass ceiling for middle-aged white male managers too."***[7]

Says another respondent

> ***"Blacks . . . walk around with a chip on their shoulder, like we owe them something," said Shirley Powell, 61, a housewife in Angleton, Tex. "I don't feel that we do."*** [8]

Viewed from an "ahistorical" perspective, these comments are not so much based on racial hostility but on a lack of understanding of the historical realities giving rise to policies designed to address past wrongs.

A more logical and practical basis for grouping United States citizens is found in the well-established notion of protected classes.

Rather than attempting to classify groups in terms of the pseudoscience of "race" or the nonsensical concept of language (e.g., Spanish speaking citizens excluding individuals who immigrated directly to the US from Spain) protected classes are defined in terms of a ***precise discriminatory experience that a group has suffered as a matter of law***. These protected classes, then, are groups of people who are afforded special legal protection against discrimination that existed over generations as a matter of law.

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[7] Americans Vent Anger at Affirmative Action, By Richard Morin and Sharon Warden, Washington Post Staff Writers Friday, March 24, 1995.
[8] Ibid

The protected classes include: age, ancestry, color, disability, ethnicity, gender, gender identity or expression, genetic information, HIV/AIDS status, military status, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran status, or any other bases under the law.

From the perspective of a protected class, the Descendants can be classified for policy purposes in a way that is logically, scientifically, mathematically and historically accurate. That is, the Descendants of enslaved people can be more precisely said to ***share a unique experience*** rather than a distinct ethnocultural category.

Unique Experience of Descendants

Enslavement

All Descendants all share a distinct well-defined and well-established historical experience. Namely, the Transatlantic Slave Trade, Forced Enslavement and Jim Crow.

During the Trans-Atlantic Slave Trade, from approximately 1526 to 1867, some 12.5 million captured men, women, and children were put on ships in Africa, and 400 thousand arrived in the United States.[9]

These human beings were forced into enslavement for 246 years from 1619 to 1865. This forced slave labor has enriched the United States immeasurably.

Jim Crow

Following the Civil War, Jim Crow laws evolved as a system of laws that enforced racial segregation in the United States from the 1880s to the 1960s. Jim Crow laws were legally sanctioned by the U.S. Supreme Court, and those who defied them could face arrest, fines, jail time, violence, or death. In 1896, the Supreme Court case *Plessy v. Ferguson,* 163 US 537 (1896) upheld the constitutionality of the "separate but equal" doctrine. It was not until *Brown v. Board of Education of Topeka*, 347 U.S. 483, (1954) a landmark decision of the U.S. Supreme Court, held that U.S. state laws establishing racial segregation in public schools are unconstitutional, even if the segregated schools are otherwise equal in quality.

The lack of economic opportunities during the Jim Crow era—especially the lack of access to education—is the leading factor in why those Descendants of the enslaved have lower

[9]Historical Context: Facts about the Slave Trade and Slavery, by Steven Mintz, The Gilder Lehrman Institute of American History

levels of education, income, and wealth today[10]. The impact of Jim Crow enforced in the Southern states until the mid-twentieth century, systematically disadvantaged Descendants of enslaved people. Most Descendants of enslaved people who had been enslaved until the Civil War and continued to reside in the Jim Crow states that adopted the strictest regimes after slavery ended.

Slavery Was America's First Big Business

Due in no small part to the economic advantages of free-forced labor, the United States developed into the richest and most powerful nation in the history of humanity. If the Confederacy had been a separate nation, it would have ranked as the fourth richest in the world at the start of the Civil War. The slave economy singles handedly enabled America's vast prosperity in comparison with the rest of the world. By the start of the war, the South was producing 75 percent of the world's cotton and creating more millionaires per capita in the Mississippi River valley than anywhere in the nation. Enslaved workers represented Southern planters' most significant investment—and the bulk of their wealth.[11]

The bodies of the enslaved served as America's largest financial asset, and they were forced to maintain America's most exported commodity. In the 60 years, from 1801 to 1862, the amount of cotton picked daily by an enslaved person increased 400 percent. The profits from cotton propelled the US into a position as one of the leading economies in the world and made the South its most prosperous region. As mentioned, the ownership of enslaved people increased wealth for Southern planters so much that by the dawn of the Civil War, the Mississippi River Valley had more millionaires per capita than any other region.[12]

Logical, Linguistic, Legal and Scientific Defects of OMB's Statistical Policy Directive No. 15 (Directive 15) as Currently Drafted

Directive 15's reliance on the flawed social construct of "race" results in flawed policy tool which renders it constitutionally difficult to understand or apply rendering it unconstitutional and statistically unsound.

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[10] The Long Shadows Of Slavery And Jim Crow: Uncovering The Economic Impact On Black Americans, The Hoover Institution, Monday, July 17, 2023 By: Lukas Althoff

[11] How Slavery Became the Economic Engine of the South Slavery was so profitable, it sprouted more millionaires per capita in the Mississippi River valley than anywhere in the nation. By: Greg Timmons April 2, 2024 | Original: March 6, 2018

[12] Vox, PR Lockhart, How Slavery Became America's First Big Business

Proposed "Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting and Presenting Federal Data on Race and Ethnicity (SPD-5)" fail to address inherent defects to the existing data collection system and the foundational principles established by this governmental data collection process. The primary defect occurred when the OMB ignored its own recognition of the fiction of "race" when it states:

"*Defining race and ethnicity*. For purposes of SPD 15, the race and ethnicity categories set forth are sociopolitical constructs and are not an attempt to define race and ethnicity biologically or genetically."

However, OMB then proceeds to define every other group as an ethnicity while identifying "Blacks" or "African Americans" as a "race." As there was an acknowledgement that "race" is not a scientifically justifiable construct, why has OMB refused to give all groups appropriate ethnicity designations?

Further, the "ethnicity" definitions are themselves confused in such a way that would preclude any sound classification scheme. "Black" and "white" are colors. Traditionally these terms (and their predecessors i.e., negro, colored, Caucasian etc.) are used to describe individuals who were both beneficiaries of and subject to Jim Crow laws in the Unites States. At the same time Hispanic is generally used to refer to individuals who speak Spanish language but generally would not include a Spaniard from Spain or an American high school student who learned to speak Spanish in high school English class. Moreover, Asian refers not to skin color or language but continent of origin (Asia). Finally, American Indian contains numerous erroneous definitions. The land known as "America" existed before it was colonized by Americans. The native people were erroneously described as Indians by Christopher Columbus who believed that believed he had reached the coast of India.[13]

The OMB's Directive SP15 revisions stated that they are evidence-based. However, evidence of genetic and historical uniqueness of the Descendants of Persons Emancipated in 1865 was ignored by the OMB and the "fiction" of "race" substituted resulting in the above-mentioned paradoxical and nonsensical policymaking schemes reflected in the decision to not assign ethnicities to all groups or populations.

Statistically, methodologically sound and logically consistent designations are essential to disaggregate data to determine the impact of government funding decisions and to address societal disparities. Flattening "Blackness" into a generic fictional racial category is discriminatory on its face as it fails to acknowledge that the fact that one is melanated

[13] Ife, Barry W. (1992) "Introduction to the Letters from America", King's College London. [1]. Accessed February 12, 2012..

does not mean that one has had the same experiences or compounded intergenerational adversity in this country.

"Collecting Data Related to Descent [sic] from Persons Who Were Enslaved in the United States.

Summary of Public Input.

The FRN asked, "How can Federal surveys or forms collect data related to descent from enslaved peoples originally from the African continent? For example, when collecting and coding responses, what term best describes this population group (e.g., is the preferred term 'American Descendants of Slavery,' 'American Freedmen,' or something else)? How should this group be defined? Should it be collected as a detailed group within the 'Black or African American' minimum category, or through a separate question or other approach?"

The majority of the public input on this subject expressed support for adding a category or question to identify descendants of persons enslaved in the United States. There was support for terms including: Foundational Black American, American Descendant of Slavery, American Freedman or Freedman, Black American, African-American, and Negro or American Negro; however, there was disagreement about which term is preferred. Commenters described the importance of collecting these data and the value for data users and policymakers, pointed to existing research that shows differences in outcome measures, like income and wealth, and stated that descendants of persons who were enslaved in the United States are ethnically distinct from African immigrants. Other commenters, including civil rights groups, opposed the collection of these data.

Commenters expressed concern about the difficulty of verifying that identification is accurate, the usefulness or necessity of the data, the exclusion of other groups of historically enslaved people, and the creation of confusion that could make the Black or African American community harder to count. Related, there was also concern about potential harm to the full and accurate count of the Black or African American population, particularly Black or African American immigrants.

The comments noted the lack of in-depth research and engagement with the diverse Black or African American community on terminology, definition, and data collection and coding protocol, as well as implications on the counts of other Black or African American diasporic populations."

Despite the overwhelming support of an ethnicity designation for the Descendants of the enslaved or Negro Freedman, the OMB Working Group failed to support this change stating:

"Working Group's Final Recommendation. The Working Group did not recommend disaggregation of the Black or African American category by descent from persons who were enslaved in the United States. They identified the disaggregation of Black or African American population groups as a priority area for future research and noted that additional stakeholder engagement is also needed."

The basis of OMB's decision follows:

" Individuals and civil rights groups disagreed on whether or how to implement this potential revision."

Although the majority of respondents supported a change from a racial designation to an ethnicity designation, the OMB catered to a few legacy organizations, which disagreed with changing the racial designation and they also disagreed with desegregating the data. This is troubling on many levels but reveals the lack of transparency in OMB's decision-making process. It also conflates the needs of the Descendants of the Negro Enslaved people with African and Caribbean people. See the attached previous submission showing that the Descendants of Negro Enslaved people are at the lowest rung of economic disparity ladder. They are the lowest rung of the health disparity ladder. In point of fact, they are the lowest rung of every disparity ladder. Their needs must not be confused with the needs of Sub-Saharan and Caribbean people. Given the vast disparities it would be irresponsible for OMB not to establish a process that would allow for appropriate disaggregation of data by ethnicity to help this depreciated and subjugated class of citizens in the United States - the Descendants of the Negro Enslaved, also called Negro Freedman.

Conclusion

We implore the OMB to correct this grievous error in SPD 15 by establishing an ethnic designation for all groups. Additionally, we demand that the OMD redefine the current racial designated category Black/African American into an ethnicity defined as "Person having origins in the original foundational population of North America as a Descendant of a person or persons who were emancipated in the United States or Freed Blacks (previously subjected to the fugitive Slave Acts) here before 1870, who were nationally emancipated in 1865. (I.E., Negro Freedmen – see 13th and 14th Amendments, and the Civil Rights Act of 1866) Furthermore we request two additional categories for people of Sub-Saharan African and Caribbean descent. Separate and apart from the Black/African American category, respectively.

Therefore, we urge the OMB to take immediate corrective action to cease its practice of racial categorization and to comply with Executive Order 13985. It is clear that we are only now beginning to honestly grapple with how history has informed OMB's attempts to

develop a rational policy scheme for the collection, compilation and analysis of groups of Americans. It is hoped that—if the United States is indeed sincere and serious in its effort to address historical wrongs through policy—that this commentary will serve as a starting point and a foundation for a more rational and methodologically sound statutory scheme for classification of groups of people who require protection or special attention under the law.

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Sincerely,

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CONCERNED BLACK AMERICAN CITIZENS

Capitol Accountability Project

Kentucky US Freedmen Coalition