May 9, 2022

Submitted via https://www.regulations.gov

Gina Moore
Office of Resources and Business Operations, 3101A
Federal Advisory Committee Management Division
Environmental Protection Agency
1200 Pennsylvania Ave. NW, Washington, DC 20460

Re: 87 FR 11704, EPA Docket No. 2022-04403, Center for Antiracist Research Comment in Support of Proposed Rulemaking: Collection of Self-Identified Ethnicity and Race Information for Federal Advisory Committee Nominees

Dear Ms. Moore:

The Boston University Center for Antiracist Research ("the Center") is a nonpartisan, nonprofit, university-based research institution that seeks to devise novel and practical ways to understand, explain, and solve seemingly intractable problems of racial inequity and injustice. We foster exhaustive research, research-based policy innovation, data-driven educational and advocacy campaigns, and narrative-change initiatives in an effort to build an antiracist society that ensures equity and justice for all.

We believe that racial and ethnic demographic data collection is a necessary part of the process of understanding, and dismantling racism. For the purpose of this comment, "race" and "ethnicity" are defined in accordance with the usage of the federal Office of Management and Budget (OMB), because its standards are adopted by many federal agencies, states, and localities. The appropriateness of the specific OMB categories—including distinctions made between race and ethnicity—warrant deeper examination and outlining reforms of the OMB categories is beyond the scope of this comment. Accordingly, we write in support of the above-referenced proposed rule, which will promote a greater understanding of the potential racialized impact of the EPA's Federal Advisory Committee nomination policies and practices, and the corresponding need for antiracist alternatives.

The Center Supports Collecting Self-Identified Racial and Ethnic Information from EPA Federal Advisory Committee Nominees

The collection of racial and ethnic demographic information is a necessary step towards understanding and dismantling racism.[1] When this racial and ethnic

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[1] Trans-disciplinary "Race" Working Group, "Trans-Disciplinary Guidelines For Researching 'Race,'" (University of New Mexico: Spring 2010), https://race.unm.edu/about/race-research.html.

demographic information is collected, analysis and contextualization of the information allows us to identify the policies that create and perpetuate inequities, and to respond with antiracist alternatives.[2] The proposed rule will promote understanding of whether particular racialized groups are being excluded, underrepresented, or overrepresented as potential nominees for the EPA Federal Advisory Committees. This information can shed light on whether any changes are necessary to equitably identify government leaders or make our policymaking processes more just.

The proposed rule is important not because it provides information about race, but because it can provide information about racism. Race is not a biological fact[3] or a "fixed trait."[4] Race is "[a] power construct of collected or merged differences that lives socially."[5] Racial and ethnic information does not tell us anything about how an individual person will think or behave, but collecting racial and ethnic data does enable analysis regarding experiences of racism.[6] By collecting racial demographic data, we can see racial disparities and inequities, and seeing these disparities and inequities allows us to see racism. If we do not collect racial demographic data, then we cannot see racial disparities and inequities, and if we cannot see these disparities and inequities, then it will be very difficult to see racism.

The EPA's collection of racial and demographic data regarding advisory committee nominees can shed light on racialized outcomes within the selection process and the need for antiracist interventions. Research using such data has helped to reveal hiring discrimination against Black, Indigenous, and other People of Color (BIPOC),[7] and to debunk pervasive racist myths attributing racially disparate outcomes to qualities or behaviors of racial groups.[8] The

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[2] Neda A. Khoshkhoo *et al.*, "Toward Evidence-Based, Antiracist Policymaking: Problems and Proposals For Better Racial Data Collection and Reporting," *Boston University Center for Antiracist Research* (Forthcoming 2022).

[3] Race and ethnicity categories, such as those used for the U.S. Census, "emerge, or are negotiated, in…a political fashion—none exists in nature." G. Cristina Mora and Michael Rodríguez-Muñiz, "Latinos, Race, and the American Future: A Response to Richard Alba's 'The Likely Persistence of a White Majority,'" *New Labor Forum* 26, no. 2 (Spring 2017): 41, www.jstor.org/stable/26420068.

[4] Trans-disciplinary "Race" Working Group, "Trans-Disciplinary Guidelines For Researching 'Race,'" (University of New Mexico: Spring 2010), https://race.unm.edu/about/race-research.html.

[5] Ibram X. Kendi, *How to Be an Antiracist* (New York: One World, 2019): 35.

[6] Neda A. Khoshkhoo *et al.*, *supra* note 2.

[7] Patrick M. Kline, Evan K. Rose, and Christopher R. Walters, "Systemic Discrimination Among Large U.S. Employers," *National Bureau of Economic Research Working Paper Series* 29053, www.nber.org/papers/w29053 (last visited Apr 7, 2022); Ruqaiijah Yearby, "The Impact of Structural Racism in Employment and Wages on Minority Women's Health," *Human Rights Magazine* 43 (2021): 21–23; "Race-Based Charges (Charges Filed with EEOC) FY 1997 - FY 2021," U.S. Equal Employment Opportunity Commission, accessed April 26, 2022, www.eeoc.gov/statistics/race-based-charges-charges-filed-eeoc-fy-1997-fy-2021.

[8] Elizabeth Weise and Jessica Guynn, "Black and Hispanic computer scientists have degrees from top universities, but don't get hired in tech," *USA TODAY* (October 12, 2014), www.usatoday.com/story/tech/2014/10/12/silicon-valley-diversity-tech-hiring-computer-science-graduates-african-american-hispanic/14684211/ (reporting that Black and Hispanic computer scientists and computer engineers graduate from top universities at twice the rate that leading technology companies hire them).

EPA's collection of racial and ethnic data can help it ensure that its practices are legal, equitable, and adhere to the EPA's own stated standards.[9]

In sum, the EPA's proposed rule is an important step towards building a just system of nominee selection, addressing systemic racial disparities, and investigating practices that appear to marginalize or disadvantage potential nominees.

The Center Supports the Reporting of Self-Identified Race and Ethnicity Information Regarding EPA Federal Advisory Committee Nominees to a Federal Statistical Body or Internal Statistical Authority for Publication

Data collection is only meaningful if the data that is collected can be evaluated. It is crucial that the EPA regularly report depersonalized racial and ethnic demographic data and relevant findings so that they may be analyzed by scholars, advocates, and other government entities. As the American Sociological Association explains, "scholarship on 'race' provides scientific evidence in the current scientific and civic debate over the social consequences of the existing categorizations and perceptions of race; allows scholars to document how race shapes social ranking, access to resources, and life experiences; and advances understanding of this important dimension of social life, which in turn advances social justice."[10] Making racial and ethnic data accessible to scholars and advocates will enhance public understanding of the ways racism manifests and support the development of antiracist innovations. Publicly reporting the collected data will also help other governmental entities learn from the EPA's challenges and successes, encouraging broader adoption of successful data collection practices. Furthermore, data reporting and transparency are necessary for effective oversight of the EPA's policies and practices.[11]

The EPA Should Disaggregate Racial Categories

The EPA's data collection form should include racial and ethnic categories that reflect distinct racialized experiences. Many data collection entities treat the OMB racial categories as default standards and rely on them for data collection purposes even though these categories are overbroad. The OMB currently lists five racial categories ("American Indian or Alaska Native (AIAN)," "Asian,"

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[9] OMS US EPA, *Equal Opportunity Employment at EPA* (2022), www.epa.gov/careers/equal-opportunity-employment-epa (last visited Apr 7, 2022) (noting that the EPA is required to ensure that "selection for positions with the agency is based solely on merit without regard to race, color…[or] national origin").

[10] American Sociological Association, "The Importance of Collecting Data and Doing Social Scientific Research on Race" (2003): 4, www.asanet.org/sites/default/files/savvy/images/press/docs/pdf/asa_race_statement.pdf.

[11] Lisa Schultz Bressman, "Procedures as Politics in Administrative Law," *Columbia Law Review* 107, no. 8 (December 2007): 1752. ("[T]he rules are better explained, from a purely descriptive standpoint, as assisting Congress (through its constituents) in monitoring agency action."); Elmer B. Staats, "Who Is Accountable? To Whom? For What? How?" *Keynote Address to The Annual Conference oof NCAC/ASPA* (December 6, 1979), www.gao.gov/assets/111071.pdf.

"Black or African American," "Native Hawaiian or Other Pacific Islander (NHPI)," and "white,") and two ethnic categories ("Hispanic" and "Not Hispanic"). These categories, which have not been updated since 1997, aggregate data into groupings that conflate varied racialized experiences.

Many state-based approaches to racial and ethnic data collection are even worse. For example, some public health data reporting efforts at the state level have lumped together information regarding people in the "Asian" category and those in the "Pacific Islander" category; the resulting "Asian or Pacific Islander" category is too broad to provide meaningful information.[12] Some of these less-effective aggregation practices have gone so far as to aggregate "American Indian, Alaska Native, Native Hawaiian, Pacific Islander" into one category.[13] Alternatively, some states have not bothered to count certain racial groups—such as Middle Eastern/North African people—at all, while others consider the "other race" category as sufficient to encompass those who fall into the American Indian, Alaska Native, Native Hawaiian, Other Pacific Islander, and/or multiracial categories.[14] These practices disregard and conflate disparate lived realities.

Researchers and advocacy groups have highlighted better practices, such as collecting and reporting data by subgroups in addition to providing as much racial and ethnic granularity as possible.[15] Moreover, instead of relying on an "other" category to remedy any failings in the existing racial and ethnic categories, the EPA's methodology should permit nominees to enter self-identified racial and ethnic information in a blank field. This helps capture the fact that the multiracial population in the U.S. has undergone a 276% increase over 10 years.[16] This practice will also help inform how the methodology should evolve in the future.

Conclusion

The collection and reporting of racial and ethnic data can shed light on racial inequity and promote evidence-based antiracist policymaking.[17] Contrary to the arguments advanced in opposition to this rule, the collection and reporting of racial and ethnic data is not racist. Rather, such data collection better equips

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[12] Khoshkhoo *et al.*, *supra* note 2.

[13] Khoshkhoo *et al.*, *supra* note 2.

[14] Khoshkhoo *et al.*, *supra* note 2.

[15] Khoshkhoo *et al.*, *supra* note 2; Nadia Shilpi Islam *et al.*, "Methodological Issues in the Collection, Analysis, and Reporting of Granular Data in Asian American Populations: Historical Challenges and Potential Solutions," *Journal Health Care Poor Underserved* 21, no. 4 (November 2010): 1354–1381; Marguerite J. Ro and Albert K. Yee, "Out of the Shadows: Asian Americans, Native Hawaiians, and Pacific Islanders," *American Journal of Public Health* 100, no. 5 (May, 2010): 776-778.

[16] Nicholas Jones *et al.*, "2020 Census Illuminates Racial and Ethnic Composition of the Country," *United States Census Bureau*, August 12, 2021. www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html#:~:text=The%20White%20and%20Black%20or,people%2C%20a%20230%25%20change.

[17] Khoshkhoo *et al.*, *supra* note 2.

the EPA to address inequity and increases government transparency. The Center for Antiracist Research supports the proposed rule as one step towards identifying and correcting racist policies and practices.