

PRE-DECISIONAL/DELIBERATIVE

U.S. Department of Homeland Security
Washington, DC 20528



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UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Office of the Director
Washington, DC 20233-0001

MAR 19 2019

MEMORANDUM FOR James McCament
Deputy Under Secretary
Office of Strategy, Policy, and Plans
Department of Homeland Security

From: Ron S. Jarmin (b)(6)
Deputy Director
U.S. Census Bureau

Subject: Request for Acquisition of U.S. Department of Homeland Security
Administrative Records Data

I write to request that the U.S. Department of Homeland Security's Arrival Departure Information System (ADIS) administrative records data be provided to the U.S. Census Bureau for statistical purposes under the authority of Section 6, Title 13 of the United States Code.

The data will be used to provide new and improved estimates of population characteristics related to citizenship. The Census Bureau plans to use the ADIS data as one of several core datasets to respond to a U.S. Department of Justice request for more accurate, block-level Citizen Voting Age Population tabulations. From the multiple datasets, the Census Bureau will develop an edit and imputation system for the citizenship variable. Through the use of the Census Bureau's protected identification key, the tabulation variable could be added to a 2020 Census file and used for further research related to the quality of the Census Bureau's citizenship variables. Through the use of these and other data sources, the Census Bureau disclosure avoidance methodology and state-of-the-art differential privacy measures, anonymized, census block-level tallies can be established.

The Census Bureau requests a delivery of the ADIS data with all data available as of April 1, 2018, and with annual follow-up refreshes reflecting data as of April 1, 2019, April 1, 2020, and April 1, 2021. The data should contain personal identifiers and variables related to citizenship status.

Thank you in advance for your assistance. If you have questions or need additional information about this project, please contact (b)(6) Assistant Division Chief for Data Acquisition and Curation, Economic Reimbursable Surveys Division, at (b)(6) or

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Homeland Security

May 9, 2019

The Honorable Adam Smith
U.S. House of Representatives
Washington, DC 20515

Dear Representative Smith:

Thank you for your April 3, 2019 letter to the Department of Homeland Security.

As you stated in your letter, the U.S. Census Bureau relies on administrative data sets to carry out its mandate and produce statistics necessary to guide the work of policymakers and program administrators. U.S. Citizenship and Immigration Services (USCIS) has provided anonymized data on lawful permanent residents (LPRs) and naturalized citizens to the Census Bureau annually since 2007.

The Census Bureau has requested that USCIS provide it with the following personally identifiable information (PII): names, aliases, addresses, birth dates, A-Numbers, and Social Security numbers related to naturalized citizens and LPRs. The Census Bureau will use the data for research and operations to improve data collection and record linkage methods for surveys and decennial censuses. The Census Bureau will also use USCIS data to provide new and improved estimates of population characteristics related to citizenship.

Title 13 of the U.S. Code provides legal authority for the Census Bureau to receive administrative data from other federal departments and agencies pertinent to its work.¹⁷¹ Administrative data refers to microdata records contained in files collected and maintained by administrative or program agencies and commercial entities and may include PII. Data received by the Census Bureau is afforded confidentiality protections,¹⁷² and wrongful disclosure of such information by Census employees can result in civil penalties of up to \$5,000, imprisonment up to 5 years, or both.¹⁷³

The information requested is also protected by the *Privacy Act of 1974*, which prohibits disclosure of information without the written consent of the individuals unless an exception applies. The *Privacy Act of 1974* also affords protections to records contained in a system of records pertaining to individuals, defined as U.S. citizens and LPRs.¹⁷⁴ But the Privacy Act also provides an exception to wrongful disclosure that would enable USCIS to disclose protected

¹⁷¹ 13 U.S.C. § 6.

¹⁷² 13 U.S.C. § 9.

¹⁷³ 13 U.S.C. § 214.

¹⁷⁴ 5 U.S.C. § 552a.

records to the Census Bureau “for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13.”³⁵ The Office of Management and Budget, in its implementing guidance, clarified this section of the Privacy Act as follows:

Agencies may disclose records to the Census Bureau in individually identifiable form for use by the Census Bureau pursuant to provisions of Title 13. (Title 13 not only limits the uses of these records but also makes them immune from compulsory disclosure). See 40 Fed. Reg. 28,948, 28,954 (July 9, 1975), available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

Title 13 of the U.S. Code is very broad and encompasses all data, regardless of whether the data contains PII. In addition, the Census Bureau, in its request, described how the data collection would be “pertinent to its work,” as required by the statute. Thus, Title 13 and the Privacy Act both permit USCIS to disclose this PII contained in USCIS records and covered by a USCIS system of records to the Census Bureau.

From multiple federal datasets, the Census Bureau will develop an imputation system for the citizenship variable and will employ methodologies to ensure that PII is protected. In particular, Census intends to take data obtained from USCIS and match it against data it receives from other sources to include the Social Security Administration and the U.S. Department of State, using the Social Security number as the common identifier. A-Numbers will be used to identify duplicate identities in data obtained from USCIS. Once all data related to an individual is gathered, the information will be anonymized and provided a unique identifier.

Given the sensitive nature of the request and that Census has requested PII from other DHS Components, DHS referred the draft agreement to the Data Access Review Council (DARC). The DARC is the coordinated oversight and compliance mechanism for the review of Departmental initiatives and activities involving the internal or external transfer of PII through bulk data transfers. The DARC ensures such initiatives or activities comply with applicable law and adequately protect the privacy, civil rights, and civil liberties of the individuals whose information shared through such initiatives or activities. Prior to sharing any PII with the Census Bureau, DHS will publish a Privacy Impact Assessment to provide transparency about this agreement and analyze any associated privacy risks in sharing the requested information with the Census Bureau.

If DHS decides to share information with the Census Bureau pursuant to this request, USCIS will transfer citizenship and LPR records to the Census Bureau, with the exception of records pertaining to individuals protected by 8 U.S.C. § 1367 (individuals who applied for and/or received T nonimmigrant status (victims of trafficking), U nonimmigrant status (certain victims of criminal activity), or benefits under the Violence Against Women Act). USCIS also will not provide records pertaining to other classes of applicants (e.g., refugees and asylees) subject to heightened statutory and regulatory confidentiality provisions (i.e., 8 C.F.R. § 208.6)

³⁵ 5 U.S.C. § 552a(b)(4).

that would not allow the sharing of such data, if such data cannot be shared in a way that complies with any such restrictions.

In weighing the decision to share PII with the Census Bureau, USCIS considered various factors. First, we considered that there are no legal restrictions in sharing this information. Second, we decided that sharing this data could improve the overall data quality and estimates of native and foreign-born persons residing in the United States. The Census Bureau has stated that an accurate count of U.S. citizenship, both native and foreign-born persons (naturalized), benefits the Federal Government's efforts to accurately assess resources associated with federal laws and programs. Third, USCIS considered that the public may misunderstand that this data would be used for immigration enforcement, even though that use is prohibited under Title 13.

Given the potential improvements in the accuracy of citizenship reporting in multiple Census Bureau products that benefit other government programs and services, and the absence of legal restrictions, I supported the Census Bureau's request to share administrative data to assist with citizenship estimates at the census block level.

Thank you again for your letter and interest in this important issue. The co-signers of your letter will receive separate, identical responses. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

(b)(6)

David P. Pekoske
Senior Official Performing the Duties
of the Deputy Secretary



Homeland Security

December 17, 2021

Robert Santos
Director
U.S. Census Bureau
Department of Commerce
4600 Silver Hill Road
Washington, D.C. 20746

Subject: Termination of DHS-Census Memorandum of Agreement Number: 2064-FY20-NFE-0335 and Deletion of DHS Data.

Dear Director Santos:

As the January 20, 2021 *Executive Order on Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census* revoked Executive Order 13880 and the July 2020 Presidential Memorandum - upon which the enclosed DHS-Census Memorandum of Agreement (December 23, 2019) as amended (the MOA) between the Department of Homeland Security and the U.S. Department of Commerce's Bureau of the Census were premised - DHS would like to follow up with Census on next steps regarding the deletion of DHS data and termination of the MOA.

Pursuant to the terms of the MOA, Census will retain all original, unaltered DHS Source Data no more than two years after receipt by Census and such data will be expunged from Census Bureau systems no later than two years after receipt from DHS. Further, Census agrees to notify DHS within 30 days of the completion of the research involving the DHS Source Data. Upon such notice or at the end of the above-mentioned retention date, whichever occurs sooner, the Census Bureau will destroy all original DHS Source Data. In addition, any *linked name files, linked research files, and derivative files* containing any DHS source data, in addition to any copies of any these file types, shall be destroyed no later than two years from receipt or when no longer required for programmatic purposes, whichever is longer. Under the terms of the MOA, Census was permitted to use DHS data for research and operations to improve record linkage methods for surveys *and* the 2020 decennial census. To date, Census has only used portions of USCIS data to strengthen its citizenship population estimates in the American Community Survey and did not use any DHS data for the 2020 decennial census. Census should delete all original, unaltered DHS Source Data and confirm such deletion in writing to DHS. Census may retain the portions of the derivative DHS, U.S. Citizenship and Immigration Service data currently being used for programmatic purposes.

Mr. Robert Santos

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As two years have almost passed from Census' initial receipt of DHS data, in addition to the January 2021 Executive Order revoking both Executive Order 13880 and the July 2020 Presidential Memorandum, DHS requests that all DHS Source Data and any linked name files, linked research files, and (except as specifically provided above) derivative files containing any DHS source data, in addition to any *copies* of any of these file types, be deleted immediately. DHS requests, as also provided for in the MOA, written confirmation from Census to DHS that the data and data files have all been deleted from the Census Bureau's systems.

Finally, pursuant to section 8 of the MOA, DHS provides notice to Census that the MOA is terminated effective 30 days after the date of this letter. As provided by section 8 of the MOA, all provisions of the MOA regarding the protection of records shall remain in effect as long as Census retains possession of any records or data obtained from DHS pursuant to the MOA.

Sincerely,

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Kelli Ann Burriesci
Deputy Under Secretary
Office of Strategy, Policy, and Plans

Enclosures

cc: Alejandro N. Mayorkas, Secretary
John Tien, Deputy Secretary
Jonathan Meyer, General Counsel
Lynn Parker Dupree, Chief Privacy Officer
Eric Hysen, Chief Information Officer
Katherine Culliton-González, Officer for Civil Rights and Civil Liberties
Ur Jaddou, Director, U.S. Citizenship and Immigration Services
Chris Magnus, Commissioner, U.S. Customs and Border Protection
Tae Johnson, Acting Director, U.S. Immigration and Customs Enforcement