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Census Bureau Data: Selected Access, Privacy, and Penalty Provisions in Titles 13 and 26, *U.S. Code*

The Census Bureau collects and publishes data on various population and economic characteristics under the authority of Title 13 of the *U.S. Code*. Additionally, Section 6103(j) of Title 26 authorizes the Internal Revenue Service (IRS) to share certain information from federal tax returns with the Census Bureau. All of these data are collected from individuals, commercial entities, and governments across the United States and territories.

Under Section 9 of Title 13, data collected by the Census Bureau are to be used solely for *statistical purposes*, which includes the “description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups.”

Some of the data that the Census Bureau collects are considered *personally identifiable information* (PII) and *business identifiable information* (BII), which includes but is not limited to names, addresses, Social Security numbers, employer identification numbers, telephone numbers, email addresses, trade secrets, commercial information, and financial information.

Much of the data collected during Census Bureau surveys are disseminated for public access in a digital format without identifying individuals. Federal law requires that PII and BII remain confidential.

Confidentiality protections of Census Bureau data are found primarily in Sections 9 and 214 of Title 13, and also in Section 6103(j) of Title 26 as it pertains to tax information for statistical purposes.

Data Access

Generally, access to Census’s restricted-use, confidential data is limited to Census Bureau and Department of Commerce personnel as detailed in Section 9 of Title 13. Section 6103(j)(1) of Title 26 permits the IRS to share federal tax return information with the Census Bureau only for structuring the census and conducting related statistical activities. Under Section 3583 of Title 44, the Census Bureau (and other agencies within the federal statistical system) permits researchers to access confidential data through a standard application process (SAP).

Access under Title 13

The confidentiality of certain information collected by the Census Bureau is established in Section 9 of Title 13. Specifically, Section 9(a) states that the Secretary of Commerce, any officer or employee of the Department of Commerce or Census Bureau, or a local government census liaison may not

(1) use the information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied; or

(2) make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or

(3) permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.

Individuals who are authorized to have access to confidential information are referred to in Section 214 of Title 13. Individuals with access generally include those who are an employee or staff member of the Census Bureau, who have “taken and subscribed the oath of office” or “sworn to observe limitations imposed by section 9” of Title 13; or those who are a “census liaison” per Section 16 of Title 13. Under Section 214, these individuals (as well as former employees, staff members, and census liaisons) are prohibited from wrongfully disclosing confidential information from census respondents and are subject to penalties for doing so.

Section 23 of Title 13 allows the Secretary to utilize temporary staff including “employees of Federal, State, or local agencies or instrumentalities, and employees of private organizations” to assist the Census Bureau in performing work authorized under Title 13, but only if such temporary staff swear to observe the confidentiality requirements of Section 9.

Section 9 also prohibits census reports collected from individuals or establishments from being admitted as “evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding” without their consent.

Federal Statistical Research Data Centers

Certain restricted-use data are accessible to researchers at Federal Statistical Research Data Centers (FSRDCs) established across the continental United States. FSRDCs are intended to serve as secure hubs for members of the public to access certain confidential information.

In order to gain access to FSRDCs, researchers must complete a standard application process (SAP), which includes completing a background investigation and fingerprinting in order to obtain special sworn status (SSS).

As part of the SAP, researchers must be associated with an approved project. According to the SAP portal, the access application process can take an expected 12 to 24 weeks for

approval, depending in part on whether the applicant needs data from multiple statistical agencies or units. This process can take longer than the expected 24 weeks for applications that require approval from organizations and entities outside of the SAP, such as state and local governments.

The SAP is developed in compliance with Section 3583 of Title 44, which includes criteria to determine an applicant's access to a data asset. OMB memorandum M-23-04 further establishes SAP guidance, including the condition that the restricted-access data must be used exclusively for statistical purposes.

Data Privacy

The Census Bureau has established its own policies and procedures to ensure access and confidentiality standards are followed within the agency. This includes applying *statistical safeguards* to Census data, as well as data stewardship controls such as Census's Disclosure Review Board (DRB) and training programs for staff.

Statistical Safeguards

According to the Census Bureau, statistical safeguards “help prevent someone from using that statistic to learn about a specific person.” Statistical safeguards limit the possibility that information on individuals may be disclosed by using methods to remove, modify, or disguise data collected from respondents.

Over time, the Census Bureau has used several different methods to limit disclosure, such as cell suppression, data swapping, and noise injection. The Census Bureau is currently using a *differential privacy* framework. The Census Bureau explains that differential privacy “works by adding *statistical noise*—small, random additions or subtractions—to every published statistic so that no one can reidentify a specific person or household with any certainty using any combination of the published data.”

The Census Bureau indicates that this process requires balance. If too much noise is introduced, the data will be of no use; if there is too little noise, the data are unprotected.

Data Stewardship

The Census Bureau established the Disclosure Review Board (DRB), which has the primary responsibility to ensure that released statistical products adhere to the confidentiality standards established by federal law. The DRB broadly oversees the Census Bureau's disclosure avoidance policies and methodologies.

The DRB supports the Data Stewardship Executive Policy (DSEP) Committee, which was established to ensure protection of Title 13 data. The mission of the DSEP Committee is to ensure the Census Bureau can “effectively and responsibly collect and use data about the nation's people and economy,” which requires respondents' privacy and data confidentiality to be protected throughout the data lifecycle.

Census Bureau employees—as well as contractors and other individuals who have attained SSS—are, by virtue of their lifetime oath, considered data stewards who have responsibility to protect the confidentiality and privacy of information they can access. To ensure compliance with the confidentiality of information collected per Titles 13 and 26, the Census Bureau requires the aforementioned personnel to complete a “data stewardship awareness training,” which consists of four courses: Data Stewardship/Controlled Unclassified Information (CUI), Title 13/CUI, Title 26, and Cyber Security.

New Census Bureau employees, contractors, and other SSS individuals must complete the trainings prior to or immediately upon onboarding. Trainings must be completed annually in compliance with the Federal Information Security Modernization Act (FISMA).

Penalties

Under Section 214 of Title 13, individuals with access to sensitive information maintained by the Census Bureau are subject to penalties for wrongful disclosure of such information.

Furthermore, Section 7213(a)(1) of Title 26 provides criminal penalties for unauthorized disclosure of tax information, which for the most part are the same as the penalties for 13 U.S.C. §214. Section 7431 of Title 26 provides civil damages for unauthorized disclosure. While both Section 214 and Section 7213(a)(1) provide for a maximum fine of \$5,000, or imprisonment of not more than five years, or both, it is possible that violations of those offenses may be subject to the superseding fines set out in Section 3571(b) of Title 18.

Issues for Congress

Considering the breadth of private information on individuals across the United States and territories held by the Census Bureau, Congress may have an interest in the statutory and administrative policies intended to protect respondents' confidentiality.

Congress could conduct oversight on the administrative policies and procedures implemented by the Census Bureau to ensure they are compliant and sufficient to meet the confidentiality requirements established by Title 13 and 26.

Furthermore, Congress may request additional reporting on the statistical safeguard methods used to protect confidential data.

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