

# POLICY INSIGHTS

## The U.S. CENSUS

### From Enumeration to Intrusion

by Twila Brase\*

*This report has been modified from its original publication in 2010 to reflect changes for the 2020 Census. Additional minor updates and clarifications have been included.*

#### Executive Summary

By April 1, Americans in every household will have received the 2020 U.S. Census form in their mailbox.<sup>1</sup> Since the first census in 1790, the U.S. Constitution has upheld the U.S. Census as a means of counting citizens to properly apportion Representatives and direct taxes among the 50 states.

While enumeration continues to be one portion of the Census, the overall purpose of the Census has shifted as the nation has developed and grown. The U.S. Census and in particular, the Census Bureau's American Community Survey, now collect additional private data on Americans, including information on health status and medical conditions.

The shift from enumeration to data collection has raised significant privacy concerns for Americans. Some citizens have opted out of the Census or limited their responses despite the risk of financial penalties. The U.S. Census Bureau has acknowledged the public's concern, but failed to recognize the unconstitutional nature of these intrusions. Furthermore, federal officials have failed to acknowledge the shift

#### Key Points:

- The U.S. Census collects more private data on citizens than the Constitution requires.
- The purpose of the Census is enumeration for the sole purpose of apportioning Representatives and taxes.
- Failure to complete the Census can result in financial penalties.
- Privacy concerns abound as various third parties have been authorized to access private Census data.
- The U.S. Census is just one of many data collection surveys.
- The rising cost of the Census is from increased reluctance to participate.

**The sole purpose of the U.S. Census is to count the number of people in the United States.**

from simple enumeration to intrusive data collection as the source of higher costs and poor compliance. The problem, however, is not the American people. The problem is the intrusiveness nature of the U.S. Census. One renowned financial leader offers a better way.

**Purpose of the U.S. Census**

April 1, 2020 is the official data of the 24th decennial census, a nationwide activity taking place every ten years to meet Constitutional requirements.

The purpose of the U.S. Census is enumeration. During the summer of 1787, America’s forefathers gathered together to compose the new Constitution of the United States of America. Among other topics, delegates to the Constitutional Convention had to decide how to allocate representatives to Congress for each State.

According to the U.S. Constitution: “Representatives and direct Taxes shall be apportioned among the several states... according to their respective numbers.” These numbers are to be determined by occasional and regular enumeration:

“Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten years...”<sup>2</sup>

To enumerate means to ascertain the number of or to count.<sup>3</sup> Thus, the sole purpose of the U.S. Census is to count the number of people in the United States in an effort to properly apportion Representatives and taxes among the 50 states.

This enumeration is conducted through

the U.S. Census. In 1790, the first census was taken.<sup>4</sup> As a result, the U.S. House of Representatives grew from the original 65 members to 106. The current membership of 435 was set by Congress in 1911.<sup>5</sup>

The first nine decennial enumerations were managed by the Judicial branch, and a crew of U.S. marshals and assistant marshals.<sup>6</sup> The United States Census Bureau has executed the census since the Bureau was established in 1902.<sup>7</sup>

**From Enumeration to Intrusion**

U.S. Census

The U.S. Census Bureau calls the decennial Census its “Population & Housing Census.”<sup>8</sup> The U.S. government initially used the Census solely for enumeration. For instance, during the first census in 1790, the Census counted 3.9 million inhabitants.<sup>9</sup>

However, as the country progressed, Congress expanded the U.S. Census beyond its Constitutional purpose to secure more data from citizens, as various sections of the U.S. Census law—Title 13 of the U.S. Code—make clear. As the Census Bureau states,

“Down through the years, the Nation’s needs and interests became more complex. This meant that there had to be statistics to help people understand what was happening and have a basis for planning. The content of the decennial census changed accordingly.”<sup>10</sup>

On the radio, First Lady Eleanor Roosevelt promoted the 1940 census as: “the greatest assemblage of facts ever collected by any people about the things that affect their

welfare” adding that it would provide “illuminating data on problems which have become particularly pressing.”<sup>11</sup>

Thus, the U.S. Census Bureau continued the constitutional task of counting individuals, but added the collection of private personal data.

Substantial data collection continued with the 2010 census. According to testimony by Robert Goldenkoff of the Government Accountability Office (GAO), “...the complex and costly business of data collection is now underway.”<sup>12</sup>

Data collected by the 10 questions in the 2010 Census show the level of intrusion—and how far the Census has shifted from enumeration. The information gathered included:

- The number of individuals living in the household.
- The first name, last name, sex, age, date of birth, and race (and Hispanic ethnicity) of each person in the household.
- Who owns the property and whether they have a mortgage/loan, or if they own the home free and clear.
- Household telephone number.
- Whether each individual sometimes lives or stays elsewhere.<sup>13</sup>

The 2020 census has several similar questions:

- First and Last Name
- Phone number
- How many people are living or staying at the house, apartment or mobile home (“house”) on April 1, 2020.
- Whether the house is owned or

rented, and if there is a mortgage.

- The sex of each person in the house.
- The age and date of birth of each person in the house.
- The race of each person in the house.
- Whether a person in the house is of Hispanic, Latino, or Spanish origin.
- The relationship of each person in the house to the individual completing the Census.<sup>14</sup>

#### Economic Census

Throughout the 1800s, data collection through the U.S. Census Bureau also expanded to include surveys of quantity and value of products, manufacturers, fisheries, and social issues such as taxation, churches, poverty and crime.<sup>15</sup>

The Economic Census is conducted every five years “to provide reliable data for your industry and geographic area.”<sup>16</sup> According to the Census Bureau, far-reaching changes in the economy led businesses and government to seek more data “to adjust their plans” accordingly.<sup>17</sup>

The 2007 Office of Physicians and Other Health Practitioners survey had 30 questions, including one on total operating receipts. Another question asked for the total amount of revenue generated from the total number of patients in each of 18 different disease/injury groups. For example, patients treated for:

- Neoplasms
- Mental diseases
- Respiratory system
- Pregnancy/childbirth
- Signs and symptoms
- Injuries and adverse effects
- “All other patient care - Specify”

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***This data could be published or linked with other data in the future.***

### American Community Survey

In 2005, the U.S. Census Bureau replaced the Census long form with the American Community Survey. The Survey is sent out monthly to approximately three million people per year.<sup>18</sup> Data collection focuses on individuals in the household. The 2006 Survey included person-specific questions such as:

- “What time did this person usually leave home to go to work last week?”
- “How well does this person speak English?”
- At what location did this person work LAST WEEK?”
- Does this person have any of the following long-lasting [health] conditions?<sup>19</sup>

A separate section of the Survey focused on housing with in-depth questions about the number of automobiles in a household, the cost of electricity, and several other topics.<sup>20</sup>

### Private Health Data

The Survey’s health-related questions about each person in the household may feel intrusive and make recipients uncomfortable. For example, in the 2019 survey, the following questions were asked:

- Is this person CURRENTLY covered by any of the following types of health insurance or health coverage plans?
- Is there a premium for this plan?
- Is this person deaf or does he/she have serious difficulty hearing?
- Is this person blind or does he/she have serious difficulty seeing even when wearing glasses?

Because of a physical, mental or emotional condition does this person have difficulty in doing any of the following activities:

- Learning, remembering, or making decisions?
- Walking or climbing stairs?
- Dressing or bathing?
- Doing errands alone such as visiting a doctor’s office or shopping?
- Working at a job or business?

In the PAST 12 MONTHS, has this person given birth to any children?<sup>21</sup>

Not only could this data be published or linked with other data in the future, the findings could ultimately be used to push public health policy that may or may not benefit or be preferred by these individuals.

### **Serious Concerns**

As the decennial U.S. Census, the Economic Census, and the American Community Survey have probed ever more deeply into the private and corporate lives of Americans, the level of public concern has risen. However, Kent Kaiser, a former professor at Northwestern College in Minnesota, says the public’s concern is nothing new. Kaiser wrote,

“...since 1790, when the first U.S. census was taken, many members of Congress have expressed serious concerns over the extent of the information collected by the government.”<sup>22</sup>

Joseph S. Kennedy writes that even the first census generated concern,

“There were no complex forms with questions about income and plumbing – just a simple head count. Yet the 1790 count, like the 2000 Census, stirred in the American people their deepest feelings of mistrust about the role of the federal government in their lives.”<sup>23</sup>

Back in 1790, concerns ranged from the fear that the census was going to be used to raise taxes to the belief that counting people was against God’s will.<sup>24</sup> Now privacy concerns often pervade the discussion. As former United States Representative Michele Bachmann once noted,

“These are very intricate questions that are being asked of the American people, and I think it’s time as a lawmaker that we come together and start looking out for the American individual and their privacy rights, as well.”<sup>25</sup>

David McMillen, writing in *Government Information Quarterly*, explains the concern,

“When data is collected under mandatory authority...The citizen is required by law to provide the information. This then changes the constraints on the agency. No longer is it saying to the citizens, if you accept these conditions please give me your information. Rather, the citizen is given no choice.

“It is my position that the use of information collected under a mandatory authority must be limited to the intent for which it is collected.”<sup>26</sup>

### Privacy & Power

Information is power. At the heart of citizen privacy concerns is the question of power, in this case, individual power or government power.

Privacy concerns have become more prevalent in the digital age. Technology has simplified access to personal data, giving rise to concerns about linking data, as well as profiling and tracking individuals.

To address these concerns, the U.S. Census Bureau has attempted to allay the fears of the American people. In 2019, the Bureau wrote, “All data at the Census Bureau, whether obtained from surveys or records from other agencies, are protected from disclosure and kept confidential under the law.<sup>27</sup> Their letter enclosed with the 2000 Census was even more explicit:

“Your privacy is protected by law (Title 13 of the United States Code), which also requires that you answer these questions. That law ensures that your information is only used for statistical purposes and that no unauthorized person can see your form or find out what you tell us – no other government agency, no court of law, NO ONE.”

### Authorized Access

If no ‘unauthorized person’ can see the information, who are the ‘authorized persons’ that have access to the data?

The list is growing. According to the U.S. Census Bureau website, there are 4,285 employees at the staff headquarters in Suitland, Maryland. An article in Thoughtco.com provides more detailed

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information: there are 12 regional offices and “about 12,000 permanent employees,” as well as a “temporary force of 860,000.”<sup>28</sup>

In addition, U.S. Census data is regularly accessed by various third parties, including at least one federal government agency.

In 2004, the University of Minnesota received \$5.0 million from the National Science Foundation to develop “the world’s most comprehensive database on population.”<sup>29</sup> The University will use data from “150 censuses spanning 40 years in 40 countries” for a total of 500 million records. With this database, researchers will be able to analyze

“global change and look at issues such as urbanization, migration, economic change, aging, educational trends and the effects of international trade.”<sup>30</sup>

Census data has also been opened up to the world for genealogical purposes. In 2006, it was reported that the ancestry.com database contained 500 million people with information taken from every census record between 1790 and 1930.<sup>31\*</sup> In 2009, ancestry.com reported having “over 4 billion records.”<sup>32</sup> By 2017, Ancestry reported surpassing five Million people in their database.<sup>33</sup>

The modern-day ability to link private data with personal names is clarified by the use of census data at ancestry.com. As Chris Cowan, vice president of publishing at ProQuest Genealogy Center states,

“It is a massive undertaking to not only scan and digitize all the pages from the U.S. Census, but then to have them indexed and to have all

these millions upon millions of names identified and searchable...”<sup>34</sup>

**CBO “Census Agents”**

Federal officials outside of the U.S. Census Bureau have gained some access despite the federal privacy protections in Title 13. In 1999, Congress passed a law requiring the Congressional Budget Office (CBO) to develop a micro-simulation model aimed at making changes to the Social Security system. This task required the CBO to have access to Census Bureau data. However, Title 13 of federal law prohibited CBO from accessing the data and the U.S. Census Bureau refused to share the data.<sup>35</sup>

The goal of the micro-simulation legislation was to create a “linked data set” on individuals, allowing the CBO to evaluate proposed Medicare and Social Security reforms. The data set would be created by matching individual earnings records (owned by the Internal Revenue Service and housed in the Social Security Administration) with data collected by the U.S. Census Bureau.<sup>36</sup>

Late in 2000, in an attempt to gain legal access to nearly all data collected by the Census Bureau, the CBO tried to change the law using the data-sharing language being considered for inclusion in the Electronic Government Act. In 2001, before Congress began to debate the provision, the U.S. Census Bureau relented, allowing the CBO to use “a huge Census ‘Matched Data Set’ which combines Census and IRS data on a large sample of survey respondents...”<sup>37</sup>

Under this agreement, CBO employees became sworn “census agents” and CBO analyses of data were performed at a Social Security site located a few blocks from

CBO headquarters.<sup>38</sup>

However, to secure permanent access to census data, the CBO argued for statutory language. Congress agreed, inserting it into the Electronic Government Act of 2002, which was enacted on December 17, 2002.<sup>39</sup> Under this law, the CBO cannot be limited (within the boundaries of laws governing confidentiality) in their work with databases of Designated Statistical Agencies.<sup>40</sup>

### Future Access by HHS?

As federal officials push for health care cost containment with an emphasis on using the monitoring capabilities of government databases and electronic health information technology, will the U.S. Department of Health and Human Services (HHS) seek similar access to Census data?

The public has several good reasons for concern regarding the possibility of future infringements of privacy through HHS access to, or linking with, the Census Bureau:

- There are already robust health data surveillance systems within HHS.
- Despite not yet activated, the 1996 federal Health Insurance Portability and Accountability law requires the federal government to issue every patient a Unique Patient Identification (UPI) and tracking number.
- The 1999 federal HIPAA “privacy” rule permits government access to health data without patient consent.<sup>41</sup>
- Congress has provided \$19 billion to create a National Health Information Network (NHIN), now called the eHealth Exchange. This funding is in the HITECH Act within

the 2009 ‘economic stimulus’ bill—the American Recovery and Reinvestment Act.<sup>42</sup>

### Imperfect Data

Whether citizens answer their Census forms truthfully or not, U.S. Census data is and will be used for federal and state policy decisions. It will also be used to appropriate to each community “its fair share,” of federal funds, according to the March 8, 2010 U.S. Census letter. While the accuracy of the data is not known, sometimes the Bureau’s data can be substantially in error.

In 2007, the Census Bureau announced that it miscalculated the number of uninsured people for at least a decade. The number and percentage of people who were uninsured in 2005 changed from 46.6 million (15.9 percent of the population) to 44.8 million (15.3 percent)—a reduction of 1.8 million. It planned to reissue totals back to 1995.<sup>43</sup>

### Tainted History

Although the U.S. Census has been marketed as a tool for good, it has also had a troubled past. The day after the Japanese bombed Pearl Harbor in 1941, the U.S. Census Bureau began sorting census data by race to identify Americans of Japanese descent:

“Dividing specific addresses was illegal. So the Census Bureau provided information that located Japanese-American concentration within specific census tracts. Census tracts were geographic areas generally yielding 4,000 to 8,000 citizens. When necessary, the Census Bureau could provide even finer detail: so-called ‘enumeration

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districts,’ and in some cities ‘census blocks.’”<sup>44</sup>

Within 48 hours of the World War II attack, the Census Bureau published its first report on people in America. To complete these reports, “The Census Bureau had tracked the racial ancestry of Japanese Americans based on their responses to the 1940 census.”<sup>45</sup>

On February 19, 1942, President Franklin D. Roosevelt signed an executive order authorizing the internment of Japanese-Americans on the West Coast.<sup>46</sup>

With the simple connection of a name or a person’s general location to their respective data, this action proved that the Census gives government officials not only the power to intrude, but the power to deny freedom.

#### **Penalties for Opting Out**

Concerned about their privacy, many Americans are opting out of the Census and the American Community Survey. While this may seem like an easy response for concerned individuals, non-compliance unleashes a chain of often unpleasant events.

Census workers, known as “enumerators,” begin showing up at the door, leaving personal notes and dropping off U.S. Census marketing materials and brochures, usually until they receive a response.

Enumerators are also encouraged to turn to neighbors for information if they receive no information from the home.<sup>47</sup> In 2010, enumerators spent the end of April to July visiting homes and knocking on doors.<sup>48</sup>

Some citizens have found that the most effective opposition to the intrusive questions is to simply fill in the number of persons in the household—fulfill the Constitutional purpose of the Census—and leave the rest blank.

However, failure to complete the Census or the American Community Survey may result in a financial penalty. Those who fail to comply fully or in part may face a fine of \$100. Those who provide false information may be fined \$500.<sup>49</sup>

#### **Rising Costs**

Federal officials say that the continued non-compliance of Americans has increased the cost of the Census. As Dr. Robert Groves, former director of the U.S. Census Bureau, wrote,

“In my personal judgment, much of the cost inflation is from increased reluctance to participate.”

“The decennial census begins by mailing a questionnaire to most persons; this is the cheapest mode of data collection from households. If everyone filled out that form and mailed it back, vast sums of money required for followup activities to the nonrespondents would be saved. For this reason, much attention at the Census Bureau is focused on how to increase the mailback rate.”<sup>50</sup>

To increase the mailback rate, the Census Bureau implemented a \$340 million informational campaign for the 2010 census.<sup>51</sup> The campaign was aimed at building motivation for compliance and alleviating fears about completing the form. Dr. Groves wrote,

“The Census Bureau projects for every one percentage point increase in the national mail back participation rate for the 2010 Census, the federal government saves \$85 million. It costs substantially more money to send census takers to households that fail to mail back their short 10 question form than it does to receive it by mail.”<sup>52</sup>

Perhaps this is why, for the 2020 census, the Census Bureau is planning a media campaign of nearly \$250 million, which will pay for hundreds of digital and radio ads, television commercials, billboards and print ads in 13 languages. Most of the ads will be used before the doorknocking begins.<sup>53</sup>

However, given the public’s primary rationale for refusal, a marketing campaign may not work. Joseph L. Bast, former president of The Heartland Institute, underscores the growing objections of the American public:

“I object to the census, especially the long form, because it intrudes into the privacy of citizens far beyond any reasonable interpretation of the “enumeration” authorized by the Constitution...it seems to me that compelling people to surrender to the government detailed information about their homes, families, and lifestyles is a search with neither a warrant nor probable cause. That violates the Fourth Amendment.”<sup>54</sup>

### A Better Way

Perhaps, federal officials would find a much higher response rate and lower cost if they

returned to the constitutional basis of the U.S. Census and left data collection behind. The impact could even build America into a stronger, more economically robust country.

Sir John Cowperthwaite, the man primarily responsible for Hong Kong’s economic transformation, was once asked what key thing poor countries should do to improve economically. He said,

“They should abolish the Office of National Statistics.”<sup>55</sup>

As Financial Secretary of Hong Kong, Mr. Cowperthwaite refused to collect all but the most superficial of statistics, believing them dangerous. He believed the State would spend its time trying to remedy perceived ills while hindering the ability of the market economy to work. In his first speech as Financial Secretary, he made his principles clear,

“In the long run, the aggregate of decisions of individual businessmen, exercising individual judgment in a free economy, even if often mistaken, is less likely to do harm than the centralised decisions of a government, and certainly the harm is likely to be counteracted faster.”<sup>56</sup>

### Unconstitutional Count

Finally, it should be remembered that the purpose of the U.S. Census is to count U.S. citizens for the purpose of determining the number of Representatives in Congress and apportioning taxes among the 50 states. Yet, federal census officials intend to count anyone and everyone in the country, For example, “The 2010 Census aims to count all U.S. residents—citizens and non-citizens alike.”<sup>57</sup> About the 2020 Census, the U.S.

**“They should abolish the Office of National Statistics.”**

**The failure to limit the census to citizens may shift the political landscape of the United States.**

Census Bureau writes, “The U.S. Census Bureau collects data from all foreign-born who participate in its censuses and surveys, regardless of legal status. Thus, unauthorized migrants are implicitly included in the Census Bureau estimates of the total foreign-born population.”<sup>58</sup>

To encourage illegal aliens to fill out the form in 2010, Census officials promised, “No one, not immigration, not your landlord, not the president, not the CIA, is going to have access to the information.”<sup>59</sup>

The failure to limit the census to citizens may shift the political landscape of the United States, denying American citizens their constitutional right to equal representation.

### Conclusion

Restoring the Census to its constitutional purpose of a simple head count, eliminating the American Community Survey, ending intrusive questions, and repealing all penalties for non-compliance may help to restore American trust and compliance with the U.S. Census.

At a time when the nation’s debt ceiling has been raised to a staggering \$23.2 trillion,<sup>60</sup> such actions may also eliminate the extraordinary and needless costs associated with enumerators, repeat home visits, census merchandise (frisbees, pencils, bags, backpacks, etc.) and multi-million-dollar media campaigns.

As the nation looks beyond whatever the experience of the 2020 Census will be, Congress must recognize that the intrusive nature of the Census itself is the problem with the Census, not the American people.

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\* *Twila Brase is president and co-founder of Citizens’ Council for Health Freedom.*

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