

Census Policy Update: Citizenship Data and Trump's Executive Order

On July 11, 2019, President Trump announced that he and the Commerce Department would abandon efforts to add a citizenship question to the 2020 Census. He did, however, issue an Executive Order to facilitate the Commerce Department's collection of citizenship data through administrative records. This document provides an overview of the Executive Order and discusses what this means for our communities and for achieving a complete count.

Here's what you need to know:

- Trump's Executive Order **does not** and cannot undermine federal law's extremely strong data privacy protections that surround an individual census response.
- Information provided to the Census Bureau on a 2020 Census form is totally confidential and cannot be accessed by immigration authorities or other government agencies.
- Data that the Census Bureau collects from other government agencies can only be used for statistical purposes.
- The Executive Order changes little, if anything, about the Census Bureau's powers to and plans to collect data from other government agencies.

Background

The Commerce Department attempted to add a question about citizenship status to the 2020 Census. Civil rights advocates, progressive cities and states, and other litigators successfully fought inclusion of the question. On June 27, 2019, the Supreme Court held that the Commerce Department's attempt to add the question was illegal under the Administrative Procedures Act. The Court left open the possibility that a citizenship question could appear on the 2020 Census, but the Secretary of Commerce would have had to engage in a new decision-making process. President Trump's announcement on July 11 withdrawing from the fight officially resolved the issue.

Although the Census Bureau will not ask people about citizenship, the Trump Administration still plans to have the Census Bureau determine the citizenship status of respondents using data from administrative sources. The core function of the Executive Order is to facilitate information sharing between the Commerce Department and other government agencies. The Executive Order directs all federal government agencies to "share information requested by the Department to the maximum extent permissible under the law."

Potential Consequences of Executive Order

Minimal Change to Census Bureau Data Collection Plans

The Executive Order does not fundamentally change the information that the Commerce Department may gather. The Bureau already collects administrative data as part of its census operations, in an effort to keep down costs and achieve greater accuracy. The Census Act explicitly authorizes the Bureau to use administrative data as part of its data collection. 13 USC § 6. The Privacy Act of 1974 permits federal agencies to disclose personally identifiable

information to the Census Bureau if it is to be used for statistical purposes under the Census Act.

In fact, the Census Bureau already planned to assemble citizenship data through a combination of asking about citizenship on the 2020 Census *and* using administrative records.¹ When the Commerce Department was considering whether to add a citizenship question to the 2020 Census, Census Bureau employees analyzed the Bureau's ability to determine citizenship through administrative records.² The Census Bureau sought data from USCIS, the Social Security Administration (which has data regarding who has social security numbers and ITINs), and the Department of State back in March 2018.³

The Executive Order may cause the Commerce Department to seek additional records it was not planning to collect, creating a more robust dataset on citizenship status of all people living in the U.S.

Strong Confidentiality Laws Still Apply

Critically, confidentiality laws will continue to apply to all census responses. Title 13 of the U.S. Code prohibits the sharing of information from personal census responses with the public or other government agencies, including immigration enforcement. Under Title 13, census data can only be used for statistical purposes. This limitation applies to the actual survey responses and to all information collected under the Census Act, which includes the administrative records collected by and linked by the Census Bureau.

Possible Repercussions for Representation and Voting

The Executive Order may also affect voting rights by providing states with citizenship data for use in redistricting. Currently, districts are drawn to equalize the total population of people in each political district. Going forward, it is likely that some conservative states will use this new data to try to redistrict by equalizing the citizen population or the citizen voting-age population in each district. This would provide communities with large populations of non-citizens with fewer representatives and would increase political representation for white people and Republicans.

The Executive Order may make it easier for states to do this, by helping the Bureau collect a more robust and reliable set of citizenship data.

The question of which population metric is the appropriate basis for redistricting is certain to end up in the courts.

Additional Detail on the Executive Order

The Executive Order applies broadly to all federal agencies, but Trump also identified specific records that should be shared. These include USCIS file of Lawful Permanent Residents and Naturalizations, ICE nonimmigrant visa information, DHS Customs and Border Arrival / Departure transaction data, DHS refugee and asylum visa processing, Dept. of State passport applications, Social Security Administration beneficiary records, and Dept. of Health and Human Services Medicaid and CHIP data. The order also directed the Commerce Secretary to request

¹ https://www.commerce.gov/sites/default/files/2018-03-26_2.pdf

² <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p1289/a428453>

³ <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p672/a428455>

citizenship data from state governments, though Trump does not have the power to force states to comply with those requests.

Trump also ordered the establishment of an interagency working group to improve access to administrative records and directed the Commerce Secretary to prepare for improved collection of citizenship data in the future. This includes preparing for a citizenship question on the 2030 Census and possibly expanding the size of the population surveyed annually via the American Community Survey.

Next Steps - What this Means for Our Work

There are still significant fears and concerns around the safety of participating in the census. Information about the importance of census and data confidentiality protections will be required to help support a complete count. CBOs and local governments need clear, succinct, and trustworthy messaging about confidentiality laws. We have presented to and met with hundreds of CBOs in the last few months about these issues, have created community education materials, and have engaged with the press.

The media coverage of the citizenship question has heightened fears about safety and the possible misuse of data and we are concerned that the Trump Administration's announcement about the collection of administrative data will perpetuate these fears. Although the Executive Order does not significantly change the Census Bureau's plans or legal authority, people are now aware that records, including immigration records, will be centralized at the Census Bureau. It will be essential to communicate the fact that Title 13 protections still apply, and that the information-sharing only goes one way--into the Census Bureau for statistical purposes and not out of the Census Bureau for any other purpose.

Additionally, we need to continue to work with coalition partners to be vigilant about the Census Bureau's policies around and implementation of citizenship-information collection. The Executive Order requires agencies to share information with the Bureau but to do so in accordance with existing laws. Civil rights advocates need to push for transparency about information-sharing and monitor to ensure information-sharing does in fact comport with existing laws.