

Census Bureau Policy Statement on Negotiating Collaborative Arrangements with Agencies for the Acquisition of Administrative Record Data to Support Title 13 Projects

I. EXECUTIVE SUMMARY

Since the 1940s, the Census Bureau has considered administrative records an important resource for enhancing the census and survey data collections conducted under Title 13, United States Code (U.S.C.). Typically, the Census Bureau acquires administrative record data through monetary payment to the agency supplying the data (hereinafter referred to as the “source agency”). Occasionally, however, source agencies will receive non-monetary remuneration from the Census Bureau – i.e., products, services and/or technical consultation -- in return for using their data.

This policy provides guidance to Census Bureau employees and Special Sworn Status individuals for the negotiation of such administrative record data files for use in a Title 13 project. It sets forth four principles to ensure appropriate acquisition of administrative record data: 1) that there be appropriate Census Bureau legal authority to acquire the data; 2) that there be appropriate Census Bureau legal authority to deliver the proposed project or service to the source agency; 3) that the product or service can be delivered without compromising the Census Bureau’s authority, mission or reputation; and 4) that the Census Bureau have the corporate resources required to provide the product or service to the source agency.

II. PURPOSE

The purpose of this policy statement is to provide Census Bureau employees and Special Sworn Status individuals with guidance in negotiating for the acquisition of administrative record data for Title 13 purposes. This policy sets forth principles that ensure commitments made to acquire administrative records on behalf of the Census Bureau’s Title 13 projects are legal and ethically appropriate given the Bureau’s commitment to the privacy and confidentiality of its respondents, and that they make sound business sense in terms of the net value received by the federal government.

III. LEGAL AUTHORITIES

The following legal authorities guide the implementation of this policy:

- ❑ Title 13, United States Code (U.S.C.)
- ❑ Title 15, Section 1525
- ❑ The Privacy Act of 1974
- ❑ Attorney General McGranery Opinion (1953)

A description of these legal authorities and how they guide the negotiation of administrative record data acquisition can be found in Attachment B of this policy.

IV. SCOPE

This policy covers negotiation activities at the Census Bureau that have **all** of the following characteristics:

- They involve the acquisition of administrative record data by the Census Bureau for the purposes of conducting a Title 13 project.
- They involve a Census Bureau deliverable to the source agency that is other than direct payment. Such deliverables may include, but not be limited to, data products, data enhancements, statistical models, access to data, file editing or other technical services.
- The Census Bureau deliverable is part of a specific “give-and-take” arrangement covered in an agreement for the acquisition of administrative record data, **or** a service provided by the Bureau which, while not part of a formal agreement, facilitates the overall relationship between the Census Bureau and the source agency. An example of the latter would be the Census Bureau’s practice of processing data received by the Internal Revenue Service (IRS) and providing back to the IRS on an as-needed basis aggregated counts on the number of IRS returns filed for various forms. Without being part of a specific agreement, this deliverable strengthens the Census Bureau’s relationship with the IRS, from which it receives significant amounts of data to support both demographic and economic programs.
- The legal authority for the Census Bureau’s **delivery of a product or service** to the source agency is **either** Title 13 U.S.C. **or** Title 15 U.S.C.

This policy does **not** apply to situations where Title 15 U.S.C. is the Census Bureau’s authority to **acquire** administrative records for the purposes of conducting a reimbursable project. Please refer to the Census Bureau Reimbursable Policy Statement for policy guidance on this topic.

V. BACKGROUND

Since the 1940s, the Census Bureau has considered administrative records an important resource for enhancing its census and survey data collections. Title 13 United States Code (U.S.C.), Section 6 authorizes the Census Bureau to use administrative records for this purpose “to the maximum extent possible and consistent with the kind, timeliness, quality and scope of the statistics required.” The negotiation process for acquiring administrative record data from a particular source agency is generally straightforward: either the source agency provides its data files to the Census Bureau without charge, or the Census Bureau offers funds to the source agency in exchange for using the data. Occasionally, however, source agencies receive non-monetary remuneration from the Census Bureau – i.e., products, services and/or technical consultation -- in return for

allowing the Census Bureau to use their data. Examples of such in-kind requests from source agencies have included the following:

- Providing public data products for no charge or a reduced charge;
- Producing aggregated statistical data, special tabulations or models derived from a Title 13 data collection;
- Cleaning up, unduplicating, or otherwise editing a source agency data file without using information protected by Title 13 and returning the edited file to the agency;
- Appending classification information that is not protected by Title 13 to a source agency's data files such as geocodes; and
- Providing technical support on the use of publicly available data products, geocodes, models, etc. that could be used to enhance a source agency's data file.

VI. POLICY

This policy sets forth four principles to guide negotiations involving a Census Bureau deliverable in return for administrative record data. These principles, including expository sub-principles, are as follows:

A. There is legal authority for the acquisition of the administrative record data by the Census Bureau.

This principle is addressed if the negotiation meets the following conditions:

- Confirmation that the administrative record data can be legally acquired under Title 13 U.S.C. (For Census Bureau collection authorities, see Attachment B, "Summary of Relevant Legal Authorities for Data Collected or Acquired by the Census Bureau"); AND
- Confirmation that the acquisition of these administrative record data delivers a clear benefit to the Census Bureau under Title 13 (See Attachment C, "Criteria for Determining a Title 13 Benefit"); AND
- Confirmation that the source agency has legal authorization to provide these administrative record data to the Census Bureau; AND
- Confirmation that there is no third party having legal right to the data involved in the acquisition; OR if there are such third-party data involved, that the third party has provided appropriate authorization.

B. There is legal authority for the Census Bureau to deliver the proposed product or service requested by the source agency in return for the acquired data file.

This principle is addressed if the negotiation meets the following conditions:

*If the **deliverable** is a data product or service that contains or is derived from data collected or acquired **under Title 13**:*

- Confirmation that the deliverable is already available in the public domain; OR
- If it is not in the public domain but is scheduled to be placed there, confirmation that it is releasable under the Census Bureau's Pre-Release Policy; OR
- If the deliverable is being tailored to the needs of the source agency, confirmation that it can meet the confidentiality requirements of Title 13, U.S.C., Section 9; OR
- If the source agency requirements cannot be met with a product or service that can be made publicly available, confirmation that the source agency agrees to submit a project via the Center for Economic Studies/Research Data Centers (CES/RDCs) or other approved Census Bureau secure site, subject to all terms and conditions for acceptance.

*If the **deliverable** is a data product or service that does **not** contain or derive from Title 13 data:*

- Confirmation that the deliverable is a product or service that does not involve Title 13 data; AND
- Confirmation that the product or service can be delivered in accordance with the Census Bureau's authority under Title 15, U.S.C., and the Census Bureau's Policy for Conducting Reimbursable Projects (final approval pending).

C. The product or service can be delivered to the source agency without compromising the Census Bureau's authority, mission or reputation.

This principle is addressed if the negotiation meets the following conditions:

- Confirmation that there is a precedent that meets the criteria set forth herein for delivering this type of product or service; OR, if there is no precedent, confirmation that the proposed deliverable has been presented to the Data Stewardship Executive Policy (DSEP) Committee and met with its approval; AND
- Confirmation that the source agency's mission precludes enforcement or regulatory activities; OR, if the source agency's mission involves enforcement

or regulatory activities, confirmation that the deliverable is going to and will be restricted to a functionally separated unit within the source agency whose purpose is solely statistical in accordance with the Office of Management and Budget's Order Providing for the Confidentiality of Statistical Information¹; AND

- Confirmation that the Census Bureau has provided products or services to the source agency before without encountering any problems with the source agency's use or handling of those deliverables; OR, if the source agency does not have a history with the Census Bureau, confirmation that it agrees to abide by Census Bureau principles regarding privacy, confidentiality, and use of the deliverable only for statistical purposes;² AND
- A high level of confidence that the delivery of this product or service to the source agency will have only a positive or neutral impact on the Census Bureau's reputation and its ability to fulfill its mission; AND
- Confirmation that the deliverable will comply with the Census Bureau Privacy Principles.

D. The Census Bureau has the corporate resources required to provide the product or service deliverable to the source agency.

This principle is addressed if the negotiation meets the following conditions:

- Confirmation that the resources necessary to provide the specified deliverable have been identified; AND
- Confirmation that all the divisions whose involvement will be required to deliver the product or service have the resources available to do so; AND
- Confirmation that the delivery of the product or service is a cost-effective means for obtaining the administrative record data.

¹ The one exception to this condition is when the source agency receiving the deliverable from the Census Bureau is the Social Security Administration (SSA), which has functional separation in practice, but not in law or regulation. The specific guidance for this exception is the Census Bureau's Policy on Non-Employee Access to Title 13 Data.

² The Administrative Records Coordinator, in the Office of Analysis and Executive Support, can provide the Census Bureau parties negotiating agreements with documentation that can be provided to the source agency setting forth the Census Bureau's standards for individual privacy, data confidentiality, and the need for agency functional separation to ensure data are used solely for statistical purposes.

Special Considerations

Negotiating Agreements That Involve Both Title 13 and Title 15 Legal Authorities

Occasionally, an agreement will be negotiated whereby the legal authority for **acquiring** administrative record data is **Title 13** (i.e., the data will be used in a Title 13 program), but the legal authority under which the Census Bureau is **providing a particular deliverable** to the source agency is **Title 15** (e.g., editing and unduplicating some records provided by the source agency using a commercially available software product). This type of deliverable is generally something that the source agency could do for itself, but it may not have adequate resources or expertise. In the event that the data to be serviced under Title 15 are essentially the *same data* that are being acquired for a Title 13 purpose, it is important that these data and the distinct purposes for which they were brought to the Census Bureau are not “commingled,” or even perceived to be commingled.

Because the confidentiality requirements under Title 15 are not as stringent as those under Title 13, such arrangements should be considered only when there are no other negotiation options available. Such arrangements must be presented to the DSEP Committee for its review and approval (see “Requirement for DSEP Review” section below) before any agreement with the source agency can be finalized. The Office of Analysis and Executive Support (OAES) Administrative Records Coordinator (ARC) will work with the Census Bureau parties negotiating the agreement to make a presentation to DSEP.

If DSEP approves the proposed arrangement, the Census Bureau parties negotiating the agreement must establish structures and procedures that ensure distinct logical and functional access control for each data set acquired under these separate authorities. These controls are listed below, in order of preference:

- Maintaining and using the data acquired for a Title 13 purpose in an organizational unit that is functionally separate and distinct from the organizational unit maintaining and using the same data being worked on under Title 15.
- If the data are obtained under both legal authorities for use by the same organizational unit, the data acquired for a Title 13 purpose must be maintained and used on a computer system that is separate and distinct from the computer system housing the same data being worked on to produce a deliverable under Title 15. There should be no communication capability between the two systems.
- If program or resource constraints preclude the possibility of maintaining and using the data in separate organizational units or on separate computers, the organizational unit may maintain the data on one computer system with the explicit approval of the Census Bureau IT Security Office (ITSO). ITSO will require a security plan that demonstrates rigorous access controls for both data sets: these options include, but are not limited to, restricting each employee’s access to only one or the other data set; having access to one of the data sets embargoed by the system administrator while the other data are being accessed by staff; and/or fully automating the processing on one

data set such that employee access is no longer required, or at least only minimally required.

Impact on Census Bureau Reputation

The primary objective of this policy is to protect the Census Bureau's reputation as a data collection agency that places the highest premium on the confidentiality of respondents' data and its use of data solely for statistical purposes. The Census Bureau cannot afford to have its mission compromised by breaches – real or perceived -- in these areas.

Compliance with this policy, therefore, requires that the Census Bureau staff involved in the negotiation weigh the effect on public perception of providing a particular product or service. In instances when the impact is unclear to either the parties negotiating the agreement or the ARC, the decision will be elevated to the DSEP Committee for counsel and direction as noted below.

Requirement for DSEP Committee Review

There are a number of instances when the proposed deliverable should be submitted to the DSEP Committee for its consideration and approval. The DSEP Committee will review any negotiation whereby:

- There is no Census Bureau precedent for delivering the particular product or service being proposed.
- The source agency has an enforcement or regulatory mission, and it has not established a functionally separated division, unit or other organizational entity for statistical activities.
- The Census Bureau has a history of difficulties with the source agency misusing or misrepresenting Census Bureau products or services.
- It is unclear to either the Census Bureau individuals negotiating the agreement or the ARC whether the deliverable will have a negative impact on the Census Bureau's reputation for protecting the confidentiality of data or as an objective collector of data for statistical purposes.
- The Census Bureau parties negotiating the agreement wish to appeal a decision by the ARC disapproving an agreement based on this policy.

VII. IMPLEMENTATION

Roles and Responsibilities for Implementation

The processes for negotiating administrative records agreements and acquiring data are fully described in the *Administrative Records Handbook*, Sections 2 and 4. These steps are briefly summarized as follows:

- Negotiations for the acquisition of a new administrative record file typically move through several stages before a Memorandum of Understanding (MOU) or other type of agreement is finalized. Typically, a program manager or a researcher will have an idea for using a particular administrative data file, determine that the necessary data are not already available at the Census Bureau by consulting with the appropriate division,³ and initiate a preliminary discussion with appropriate staff at the source agency. Once this initial contact is made and a decision is made to proceed with the negotiation, the program manager or researcher contacts the ARC.
- The ARC then coordinates a “strategy meeting,” that includes the program manager/researcher, the ARC, and representatives from either the Data Integration Division (DID) or the Economic Planning and Coordination Division (EPCD).⁴ At this meeting, the group decides on specific roles and responsibilities for managing the overall negotiation, including establishing specific data needs with the source agency, Census Bureau deliverables, drafting and finalizing the MOU/agreement, determining whether third party concurrence is required (e.g., from the IRS to secure certain data files from the Social Security Administration, or to use IRS files in producing a deliverable), and acquiring the data.
- The Census Bureau individual(s) responsible for negotiating with the source agency should advise the source agency that any deliverables proposed in lieu of funding for the acquisition of data must meet the parameters of this policy statement. They should evaluate the proposed arrangement against the principles set forth in this policy (see Attachment A), and if they have any concerns, they should contact the ARC. If the ARC indicates concerns with the arrangement, the individuals negotiating the agreement should inform the source agency and explore appropriate alternatives.
- In some instances, the negotiated arrangement will warrant additional review and approval by the DSEP. These circumstances are noted above in the “Special Considerations: Requirement for DSEP Committee Review” section of this policy statement.
- Once the MOU/agreement is ready for clearance and signature, the ARC will make a formal determination that it meets the requirements of this policy statement as part of the clearance process. In addition, the clearance process will require certification by the Census Bureau staff member(s) negotiating this agreement that the requirements of this policy have been met.

³ The Data Integration Division (DID) manages the acquisition of demographic administrative record data and state-level economic administrative record data; the Economic Planning and Coordination Division (EPCD) manages the acquisition of federal economic administrative record data; the Geography Division (GEO) manages acquisition of data for maintaining the Master Address File. See *Administrative Records Handbook* for more information.

⁴ Negotiations for the acquisition of administrative record data to enhance the Master Address File are conducted exclusively by the GEO Division and thus GEO is not typically involved in this process.

- If the ARC determines that the MOU/agreement does not meet the requirements of this policy, the Census Bureau staff involved in the negotiation may appeal to the Data Stewardship Executive Policy (DSEP) Committee. The DSEP Committee will review the agreement against the policy and render a final decision approving or disapproving the agreement.

Implementation and Awareness Strategies

The framework for implementing this policy is already established in the *Administrative Records Handbook*.

VIII. REFERENCES

Data Stewardship Executive Policy Committee Issue Paper: “Negotiating Quid Pro Quo Arrangements with Administrative Record Source Agencies for Title 13 Projects,” January 24, 2002.

IX. DATE POLICY BECOMES EFFECTIVE

TBD.

X. SIGNATURE AND DATE SIGNED

_____/s/_____
Nancy A. Potok
Chair, Data Stewardship Executive Committee

9/29/2002
Date

XI. ATTACHMENTS

Attachment A -- Decision Flowchart: Policy on Negotiating Collaborative Arrangements with Agencies for the Acquisition of Administrative Record Data to Support Title 13 Projects

Attachment B – Summary of Relevant Legal Authorities for Data Collected or Acquired by the Census Bureau of the Census

Attachment C – Criteria for Determining a Title 13 Benefit

Attachment D -- Definitions