

## **United States Census and American Community Survey Fact Sheet**

### **What is the Census?**

- The United States Census is a survey conducted by the United States Department of Commerce every 10 years to collect and provide statistical data to the federal government so that it can make informed decisions for government action for areas of social welfare.

### **Where does the federal government find authority to conduct a Census?**

- The United States Constitution authorizes a Census in Article I, Section 2.
  - "Representation and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers ... . The actual 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, in such Manner as they shall by Law direct."- Article I, Section 2 of United States Constitution.
- The Census is conducted under the authority of Title 13 of the United States Code, § 141, which provides that the Secretary of Commerce has authority to take a census.

### **What is the American Community Survey?**

- It is a supplement to the Census to collect statistical information from smaller populations during the period between each U.S. Census.
- It is also governed by Title 13 of the United States Code. Under §193, the Secretary also has authority to conduct any preliminary and supplemental surveys related to the main topic of the Census.

### **Do I have to fill it out? Is there any punishment for not answering Census or American Community Survey questions?**

- Current law requires individuals to answer Census question or face a fine of \$100. 13. U.S.C. §221(a). Similarly, people who willfully provide false information on Census forms may have to pay a fine of \$500. 13. U.S.C. §221(b). To the best of our knowledge no one has ever been prosecuted under these statutes. The ACLU cannot tell you how to respond to the upcoming 2010 Census or the American Community Survey but hopefully this information will be helpful in formulating your decision.

### **Do the questions asked on the U.S. Census and the American Community Survey constitute a unconstitutional invasion of privacy?**

- No. In U.S. v. Rickenbacker, 309 F.2d 462 (1962), the Second Circuit Court of Appeals held that the questionnaire did not violate the defendant's right to freedom from illegal searches and seizures.
- In U.S. v. Little, 321 F. Supp. 368 (1971) the court found that the authority to gather reliable statistical data reasonably related to governmental purposes and functions is a necessity if modern government is to legislate intelligently and effectively and thus not an invasion of privacy.

### **What is the ACLU's position regarding the Census?**

- It is the formal position of the ACLU that the Census serves a vital role in our democracy and that is why it is required by the Constitution. It determines apportionment for voting, as well as helps allocate other government benefits such as anti-poverty programs and the placement of public schools.
- However, the ACLU recognizes the countervailing privacy concerns and believes that the answers to most Census questions should be voluntary.

### **Is the data collected for the Census or American Community Survey private?**

- There are specific and comprehensive statutory protections for Census data under Title 13 § 9.
  - “Neither the Secretary, nor any other officer, or employee of the Department of Commerce or bureau or agency thereof, or local government census liaison, may...
    - (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
    - ...
    - (3) permit anyone other than the sworn officers and employees of the Department of bureau or agency thereof to examine the individual reports.”
- Courts have held this language to be “clear and unambiguous” in protecting Census information from disclosure. *U.S. v. Bethlehem Steel Corp*, 21 F.R.D. 568, 569-570 (S.D.N.Y. 1958).
- Even if the Department of the Census was allowed to disclose records, no agency could require them under any legal process or use them if they were somehow disclosed:
  - “No department, bureau, agency, officer, or employee of the Government, except the Secretary in carrying out the purposes of this title, shall require, for any reason, copies of census reports which have been retained by any such establishment or individual. Copies of census reports which have been so retained shall be immune from legal process, and shall not, without the consent of the individual or establishment concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.” 13 U.S.C. § 9.

### **Is there anything in the Patriot Act that provides an exemption to this protection?**

- No. Any attempt to acquire Census data by the Department of Homeland Security or other agency would seem to be illegal on its face. Nor would National Security Letters- a type of administrative subpoena enhanced by the Patriot Act and extensively misused by the FBI- apply to Census information. 18 U.S.C. §2709 (electronic communications records); 12 U.S.C. § 3414 (a)(5) (financial records); 15 U.S.C. §1681(u) (credit report records).