



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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Census Delays and Redistricting | March 7, 2021 | OAS Episode 124

Ed: Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith.

“I think when history looks back, the 2020 Census will have a place alongside the censuses that are considered the most challenging. As someone who works here, it makes me very proud that despite the challenges we faced, we were able to complete the collection of the data we needed and we’re well on our way to getting that high-quality data back to the American people.”

That was James Whitehorne, Chief of the Redistricting and Voting Rights Data Office at the U.S. Census Bureau. He’s one of my guests on the podcast.

The census, an enormous once-a-decade undertaking, usually does not make a lot of headlines. This past year, however, upset virtually everything in society and the census was no exception. The data state legislatures rely on for redistricting congressional and state legislative seats will not be available until September 30th, six months later than usual.

Whitehorne discusses how the pandemic affected the bureau’s ability to collect data, other challenges the bureau faced, the success of using online forms, and some historical perspective on the 2020 count.

My second guest is Wendy Underhill, who oversees the Elections and Redistricting Program at NCSL. Wendy discusses steps states are taking to deal with the delayed data delivery and how it might affect election filing dates.

Let’s start with James Whitehorne. Welcome to the podcast.

James: Thank you, Ed. Very happy to be here today.

Time Marker (TM): 01:49

Ed: So, let's start with the basics. Could you tell our listeners when the reapportionment and redistricting data is expected to be released to the states, and maybe just give us a brief explanation of the difference between those two datasets?

James: Definitely, and I'm actually kind of glad you asked this question first because this is something that when I do public presentations, I usually lead off with. It's a clarification that my office has to make fairly often. Sometimes people use them interchangeably, but they are really two distinct things.

Apportionment is the dividing up of the seats in Congress to the states based on their population total, and this is the constitutional charge on the Census Bureau that comes from Article 1, Section 2 of the Constitution mandating that an apportionment of the representatives among the states has to be carried out every ten years.

The numbers that the census produces for apportionment are only the state population totals because that's all that is needed. The Census Bureau typically runs the apportionment calculations as a courtesy as well, identifying how many seats in Congress each state should receive based on those total population numbers, and using a congressionally prescribed method that's called the Method of Equal Proportions, and we're expecting to publish those this decade by April 30th of this year.

Now, redistricting on the other hand is the equalizing of population between districts, so each district has roughly the same population and each legislator represents a roughly equal number of people. I use the term roughly because the balancing act of sorting these numbers out can have a different measure of what is considered acceptable depending on what type of district is being balanced.

Congressional districts are typically balanced to within a single person. State legislative districts typically have to be within a plus or minus 5% within any given state. So, in order to meet those population thresholds, you need detailed geography and population counts.

The redistricting data provided by the Census Bureau is created down to the individual census block, which is the smallest piece of geography in which the census publishes data. These can vary in size. In urban areas, they're typically a city block; in less dense areas, they can be much larger using different types of boundaries like rivers and natural features.

The redistricting data also contains characteristic information such as race and ethnicity and voting age, that provide data users with the information they need to comply with the federal Voting Rights Act and their own state statutes. We're expecting to publish that data by September 30th of this year.

TM: 04:05

Ed: Well now, James, the data deadlines have obviously been pushed somewhat and I wonder if you could tell us how the pandemic affected the bureau's ability to collect the information.

James: Initially the pandemic did have an impact on our ability to collect the information we needed, at least at the start of our collections. We're very fortunate, however, that we had four key innovation areas that we implemented as the 2020 Census planning, that really helped us to overcome that challenge and helped propel us to a successful collection of data for the 2020 Census.

For your listeners who aren't aware, the pandemic was declared almost simultaneously with the start of the 2020 Census self-response period. We were able to keep our self-response operation up and running, but we had to delay and suspend collection activities that required face-to-face interaction.

The suspension started in late March of 2020 and during that suspension period, the bureau took a hard look at how we conducted each and every operation and at the ongoing guidance from federal, state and local health officials. We made operational adjustments, keeping the health and safety of our workforce and the American people as our highest priority.

We acquired and distributed over 42 million pieces of PPE across the country, and we were able to implement a targeted restart of operations in those areas where conditions allowed in late July, and then got all of our operations going back nationwide in early August.

We increased our planned mailings encouraging people to self-respond and, through those innovation areas I alluded to, we were able to use administrative records, geographic information, system routing technology and digital devices for enumerators to increase our non-response follow-up productivity to 1.92 cases per hour, which is almost double the 1.01 cases per hour that we had in 2010 when we were working in a paper environment.

TM: 05:46

Ed: Now, I understand that in addition to the pandemic delays as you've just described, there have been some other challenges including counting people in group settings. Can you talk a little about that?

James: Certainly. But I think I first need to define what I mean by group settings. In census terminology, we call situations where people live or stay in a group living arrangement... we call them group quarters or GQs... these are places like correctional facilities, nursing homes, college and university student housing, military quarters, and some other noninstitutional and institutional settings.

Group quarters are enumerated through a special program at the census. That program conducts an advanced contact to each of these group quarters areas to identify how they want to respond. So, with the onset of the pandemic, the program reached back out to those group quarters who had said they wanted an in-person enumeration and many of them chose to switch to an alternate method, whether it be administrative records or electronic.

One of the GQ types that is receiving a lot of attention is the college student housing. According to census residents' rules, which indicate where people should be counted, college students are supposed to be counted at the school. However, many colleges and universities sent students

home just after the start of the self-response period. The Census Bureau identified this as a concern early on, we worked with schools and students through a public messaging campaign, making sure that the students knew to respond using their school address.

We also worked with schools to get as much information for off-campus students as we could. We prioritized calls in a program we have that's called Coverage Follow-up for households that had an indication on their form that students listed as living or staying elsewhere were on their form. And then we're now going through processing the responses and removing duplicate responses, paying particular attention to ensuring people are counted where they should be.

The pandemic is responsible for many challenges, but we worked to understand what those challenges are, and we are addressing them all.

TM: 07:40

Ed: Now, I did a podcast about a year ago with Kathleen Stiles from the Bureau and we discussed one concern, which was how well an online approach would work for the count, and I'm curious how successful that was and if things would have been delayed further without it.

James: Well, I mentioned those four key innovation areas earlier. One of those innovation areas was the optimization of self-response, which is when people take it upon themselves to respond to the census, and primarily one of the main parts of that key innovation area was the addition of an internet option for the 2020 Census.

And I think we can say that hands-down, this was a huge success. To start with, the Internet instrument itself was up from the day it opened until the day we ended collections with absolutely zero downtime. When the census announced there would be an Internet option, there was a lot of concern that it would encounter some of the difficulties that systems like healthcare.gov encountered on their rollout.

In addition, having an Internet option was leveraged to allow our nonresponse enumerators to use handheld devices rather than paper. It allowed our questionnaire assistance center operators, our telephone centers, to enumerate callers over the phone. So, the Internet wasn't just used for census operations; it provided tools that our extensive partnership network could use to help drive response in hard-to-count communities by providing access to devices and bringing them to communities that needed them.

I think the numbers speak for themselves on the success of the Internet as a response option. Of our 99 million self-responses, 79 million came through the Internet.

TM: 09:08

Ed: Well, I know I filled out the census online and it literally could not have been easier, so certainly success from my point of view.

Now, our focus here is on reapportionment and redistricting data, but I'm wondering what other data resources the census has that might be helpful to states.

James: I think that can actually be a podcast all of its own. The Census Bureau provides an almost continuous stream of data that can be useful to the states. The partner survey to the decennial census is the American Community Survey, which if people remember censuses from long ago, we used to have a long form and the American Community Survey is sort of a replacement for that long form.

It's a sample survey that provides an annual refresh of data about a wide range of topics on housing, households, economics and population. Different publications of the American Community Survey data allow for both current data for states and granular data, geographically granular data for small areas within the states collected over a longer period of time.

Another survey that's likely of interest to states was created by the Census Bureau in partnership with other federal agencies. It's called the Household Poll Survey. It measures the impact of the coronavirus pandemic on people's lives, and it's refreshed about every two weeks.

And then we have the annual census population estimates, which provide updates to population numbers for states, counties, cities and towns, and these are often numbers that are used to update funding formulas. And that doesn't even get into the economic census, which has its own publication of data that includes information on businesses, business formation, state taxes, state tax collection, pension funding, and a whole bunch of other economic information.

TM: 10:43

Ed: Now, I know a lot of people at the Census Bureau are history buffs and I'm wondering from an historical perspective if the census has ever faced a challenge on the scale you did in 2020.

James: Well, every census has its own challenges. The results of the very first census were questioned by George Washington and Thomas Jefferson. The 1920 Census was not used to apportion Congress, and the 2000 Census ended up at the Supreme Court for a decision about whether statistical sampling could be used such as counts for congressional apportionment.

However, I think when history looks back, the 2020 Census will have a place alongside the censuses that are considered the most challenging. As someone who works here, it makes me very proud that despite the challenges we faced, we were able to complete the collection of the data we needed and we're well on our way to getting that high-quality data back to the American people.

TM: 11:29

Ed: Well, James, as you know, our audience is mainly legislators and legislative staff and other state policymakers, and they all have a keen interest in getting the census data. So, before we wrap up, I'm wondering what else you'd like to share with them.

James: As the program manager for the redistricting data program, I want to reiterate what I put into the blog that we published a few weeks ago on the timing and for the publication of the redistricting data.

The September 30th timeframe we announced is the time that will allow us to provide the states and the public with the accurate, high-quality, fit-for-use data that are needed not just for redistricting, but for funding, for calculations on business activity and other activities for which census data is used.

Ed: Well, James, thanks so much for taking the time to share your expertise and take care. I'll be back after this with Wendy Underhill.

MUSIC & Gene VO

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Ed: I'm back with Wendy Underhill from NCSL. Wendy, welcome back to the podcast.

Wendy: Oh, it's good to be here with you, Ed. Thanks very much for the invitation.

TM: 12:59

Ed: Well, Wendy, this census saga over the past year has had more twists and turns than a John le Carré novel. Earlier on this podcast, I talked with James Whitehorne from the Census about the delays and when states are going to get the data that they need to do both reapportionment and redistricting.

And I'm wondering: What does this mean for the states?

Wendy: It's pretty big news in all the states. Let's take those two things one by one. On the reapportionment, the distribution of seats in the U.S. House to the states, that information should be in our hands at the end of April, and the states really don't have to do much about it. They get told how many seats they'll have. Some states will gain, some states will lose.

On the redistricting side, they do draw the lines for all of those congressional districts and they also draw the lines for state House and state Senate districts. That information comes now on September 30th, six months later than expected, and that's where the real action is going to be as the states try to figure out how to get all the work done associated with redistricting in time so that they can run their 2022 elections.

TM: 14:07

Ed: Well, six months is a pretty big delay. What have you heard so far about how states plan to manage that?

Wendy: It is a big delay and it's, of course, because of the pandemic and all of the things going on last year. So, how can states respond? Some of them may be fine; let's start with that. Some may

just find that they have to squeeze a little bit on both sides of getting the data and that they're going to be okay.

Some are likely to use a special session, and that would be in the fall. So, if the data comes, let's say September 30th, which is when we expect it, they might need two to six weeks for that data to be entered in with their own data from their state, and then they can have a special session in, let's say November or even early December to adopt their plan. So that's a likely scenario for some states.

A few states might wait till the beginning of 2022 if they don't have their primaries until summer, or there are a few states that hold primaries in September. They might be able to do this at the beginning of their 2022 session.

I'm kind of going in the order of easiest to hardest here. There is talk that the primary dates could be shifted. We don't know of any state that's going to do that yet. That would give them more time to get the work done.

And then it's not really just the primary date that matters; it's the filing deadlines. People need to know which district they live in and which district they can serve in. So, you could move those deadlines, maybe even shorten the window when filings can be done – that's an idea.

California asked its state supreme court for relief. California is one of the states that has a constitutionally set deadline for when redistricting is supposed to take place, and we are going to blow right by it even before the data arrives. So, in advance they asked their supreme court for relief on those deadlines and that relief was granted. They may even need to ask for a second bite at that apple, but we don't know yet.

And then the last option I want to offer is something we're calling the twostep. This means that a state which has some of those tight deadlines that are constitutionally set or even set by statute might decide to go ahead and redistrict with some other data other than the official decennial census data. That would probably draw lawsuits, but we do have to step back for a moment and recognize that lawsuits are very common in redistricting no matter how you do it. And they could take a second bite out of themselves after the census data arrives.

So, either that first set of maps would be sort of estimated maps, or they could literally adopt them with some other data source, and then they could readopt new maps that would be similar, but more precise and which meet legal requirements.

So, those are a lot of different options for states, and we don't really know yet who is going to be doing which of these. It's mostly in the "Oh, my goodness, how are we going to adjust?" phase at this point.

TM: 16:57

Ed: Well, this may be more of a counter-intuitive notion, but is there any upside to the delays?

Wendy: I love that question. Let's look for the silver lining on this for sure. One upside is that it's an opportunity, during this extra few months, to be sure that you really understand all of the

processes and have all of the data and the staffing in place. So, there is preparatory stuff, and I would offer that many states were maybe a little behind where they were a decade ago on that because states were dealing with COVID. So, there are just a lot of delays that might have taken place at the state level.

So, do you have your staff trained, ready to go? Do you have your vendor selected and know how to use that software? Do you have all of the data that is outside of the census data brought in and in the framework that you'd like it? That kind of preparatory stuff isn't very exciting, but it certainly is important.

Then you could also do some preliminary map drawing. You can talk to your state demographer and you'll know pretty darn well where the population is shifting in your state. Of course, in general it's from rural areas to urban areas, but the specificity in your state will make a big difference.

So, you can learn a lot about where you might need to be making the changes on the maps based on prior knowledge that the demographer can offer you or that you can get from other census data sources other than the decennial census.

And it's also an opportunity to hear from the communities about what matters to them. Public input is very important in the redistricting process and states do try to make opportunities to hear from constituents. That could be individuals; that could be groups. And a lot of that takes place after the maps are drawn, but really, it's great to hear from those groups in advance.

What are the communities of interest that they really care about? How do they define the borders of groups that have shared interests? And where do they think existing districts are working well or where they see problems currently?

So, the more of that kind of information you can gather on the front end, the cleaner the maps can be when you get to actually drawing the final ones with the decennial census data.

TM: 19:07

Ed: I know NCSL doesn't tell states what they should do, but what can NCSL do to help out states in this situation?

Wendy: I guess the number one thing I'd offer is that we're happy to talk with each state about its specific situation. We've had several states in just the last few weeks ask us to talk about what the census delays might mean, and we're happy to share that kind of information either formally through testimony or informally through a presentation or just a phone call or an email with anyone who is interested in that.

So, we are available for our members certainly to talk about the ins and outs and as we hear what states are doing, we'll be sharing that information.

We also have a number of resources that are online that might be of use. Some of those are session recordings from our redistricting seminars. We have another seminar coming up in August which we would not have been able to have if there hadn't been a delay. Maybe we'll

put that in the silver linings category, that there is room for one more redistricting seminar for anyone who is coming up to speed.

And then we have the Redistricting Law 2020 book, which is available to legislators and legislative staff for no fee, and we're happy to ship that out. You can find that online.

So, we've got quite a few things to offer. What we won't offer is advice.

TM: 20:25

Ed: Well, as always, we'll link to those resources from the podcast on the NCSL website.

NCSL's focus of course is state legislatures, but I'm wondering how these delays might affect government at the local level.

Wendy: There are a couple of things to offer there. One is that there is redistricting that takes place in many local communities, so a county might easily have its commissions defined by geography. So, those local entities will also be doing redistricting. They also have to wait for the data, and they may even want to wait until the congressional and legislative districts are drawn.

But there's another reason that this matters and that's that the data that will be released with the decennial census will determine the distribution of 1.5 trillion dollars in federal funds every year for the next decade. So, localities are quite interested in making sure that the data is correct, and that might mean that they're fine with a little bit of a delay if the delay is going to get more accurate information out there so that they get their fair share of those federal funds.

TM: 21:27

Ed: Well, that's a great point. I think sometimes we overfocus on the redistricting aspect and forget that the census is the basis for distributing a massive amount of money over the next decade.

You and I have talked before about data quality, and I'm wondering if that's still a hot topic.

Wendy: Yes, it is a hot topic. There are a few different pieces in that, but it is true that the reason the census has this delay is so that they can work on some data quality issues. And I'm not in a position to be able to say that it's going to be perfect, but I can say that there has never been a perfect census. It is never possible to count every single person in the country where they were sleeping on April 1st or any other single day.

So, there's always a little bit of, I hate to use the word inaccuracy because it's as accurate as we can get, but the data quality question is always there a little bit, this year maybe more so than other times because in addition to the delays and the confusion created by the pandemic, there is a new processing system for protecting the privacy of the respondents, and that is causing some issues around small jurisdictional areas and small ethnic groups.

So, I know that people are going to be looking very carefully at the data quality. I imagine that in addition to the usual onslaught of lawsuits that come with any redistricting cycle, some this year

may be aimed at the census in regard to the data, and I just can't tell you too much about it in part because the data isn't out there yet, so there's nothing to compare it to, yet.

TM: 22:57

Ed: So, Wendy, before we wrap up, is there anything else you'd like to share with our listeners?

Wendy: I guess I just offer that when the census became part of my portfolio, I thought yawn, that's okay, it's important. But it's turned out to be the most exciting thing going, which has been true for more than a year that the census is making front-page news, everybody is paying attention, and for me to be able to follow it has been if not at joy, at least a deep satisfaction.

Ed: Well, it has been a year full of surprises with the census among them. Wendy, thanks again for taking the time to share what's going on with the states. Take care.

MUSIC

Ed: And that concludes this edition of our podcast. We encourage you to review and rate our episodes on iTunes, Google Play or Spotify. You may also go to Google Play, iTunes or Spotify to have these episodes downloaded directly to your mobile device when a new episode is ready. For the National Conference of State Legislatures, this is Ed Smith. Thanks for listening and being part of "Our American States."