

Why is the Census Bureau's "Differential Privacy" Adjustment A Problem?

The United States Census Bureau (Bureau) plans to use a new Disclosure Avoidance System (DAS) in an effort to protect confidentiality when releasing data from the 2020 census. Research has shown that the Bureau's new disclosure avoidance methods will introduce significant inaccuracies in the redistricting data that the Bureau will deliver to states as required by Public Law 94-171. If realized, those inaccuracies will hamper the ability of states and localities to establish political districts that comply with the United States Constitution's "one-person, one-vote" principle and with the protections of the Voting Rights Act of 1965.

The Bureau has maintained a longstanding commitment to ensuring confidentiality as required by Title 13 of the United States Code when releasing data. The Bureau's mandate to protect confidentiality can be at tension with the need to release detailed data at small levels of geography. Unfortunately, the Bureau has not yet demonstrated that it can release accurate redistricting data at the census block level while using "differential privacy" as part of its DAS.

To help the research community understand the effects of differential privacy, the Bureau has released four demonstration datasets that took 2010 census data and applied new privacy measures. The Bureau has refined the differential privacy methodology in response to feedback that it received. Notwithstanding those changes, the most recent demonstration dataset released by the Bureau continues to show significant differences in total population by racial categories reported at census block and census tract levels when compared to the 2010 released data. These differences are especially significant at smaller levels of geography, and thus may substantially affect redistricting of small jurisdictions.

In addition to these general concerns about the challenges that differential privacy poses for redrawing political district boundaries, there are also implications for a new California policy that requires the adjustment of census data for redistricting purposes. Under that policy, people who were incarcerated in a state correctional facility on April 1, 2020 will be deemed to reside at their last known place of residence, rather than at the institution of their incarceration, for the purposes establishing political districts with equal populations. To implement this policy, state correctional facility population data from the California Department of Corrections and Rehabilitation (CDCR) will be used to reallocate population from the Bureau's group quarters counts for those correctional facilities.

In applying differential privacy, the Bureau has indicated that certain data points will be reported as enumerated, without any changes. Reportedly group quarters counts are not one of those data points. As a result, the Bureau's group quarters counts for California's correctional facilities are not expected to match the counts provided by the CDCR. In turn, it will be impossible to adjust census data as envisioned by California law without adding significant new inaccuracies to California's redistricting data.

The COVID-19 pandemic has created many challenges for the conduct of the 2020 census, and for the release of reapportionment and redistricting data. Last spring, when the Bureau

announced that census data collection and processing would be delayed due to the COVID-19 pandemic, the California Legislature took extraordinary steps to prepare for that forecasted delay. With the support of the California Citizens Redistricting Commission (Commission), the Legislature sought emergency relief—which the California Supreme Court granted—to adjust the relevant deadlines set by the California Constitution for the Commission to finalize the state’s congressional, legislative, and Board of Equalization districts. The state also enacted legislation to extend the deadlines for local governments to adjust the boundaries of their governing board districts (AB 1276, Chapter 90, Statutes of 2020), and to move the date of the state’s 2022 primary election from March to June (SB 970, Chapter 111, Statutes of 2020) to accommodate the anticipated delays in the adoption of new district boundaries. In taking these steps, the Legislature has demonstrated its commitment to an accurate and deliberative redistricting process.

An open dialogue between the Bureau and stakeholders about potential alternatives to, or significant modifications of, the differential privacy methodology is needed, including a serious consideration of returning the DAS to the system that was used in the 2010 census, known as ‘data swapping,’ perhaps in a modified way. If the Bureau rules out any alternative DAS as a viable method, then it should adjust the differential privacy methodology so that reported data will deviate only minimally from the reported counts and characteristics.

Additionally, the Bureau should consider using administrative records to improve the reapportionment counts, which would allow those records to be used to improve redistricting data. Finally, the Bureau should use the additional time before the data is released to improve the DAS that the Bureau uses to protect privacy when releasing 2020 census data.