



May 14, 2020

The Honorable Carolyn Maloney
Chair, House Committee on
Oversight and Reform
2308 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member, House Committee on
Oversight and Reform
2056 Rayburn House Office Building
Washington, D.C. 20515

Robin Vos
Assembly Speaker
Wisconsin
President, NCSL

Martha R. Wigton
Director
House Budget & Research
Office
Georgia
Staff Chair, NCSL

Tim Storey
Executive Director

Dear Chair Maloney and Ranking Member Jordan:

On behalf of the nation's state legislatures, I write to you to express the National Conference of State Legislatures' (NCSL) concerns regarding two issues of grave importance to states—U.S. Census Bureau delays and their state impact on redistricting and the bureau's use of differential privacy as its statistical method for protecting individual data. These two issues present a conundrum for many states—Census delays present serious hurdles for states constrained by state constitutional and statutory requirements for districting and elections. The use of differential privacy has caused state concerns regarding the accuracy of the data they will receive. NCSL respectfully asks that the Census Bureau engage in meaningful consultation with states to work through state concerns with Census delays and amend the differential privacy algorithm to provide states with total population at the block level. We ask that Congress provide frequent and comprehensive oversight of bureau operations to ensure best practices and appropriate consultation with states on Census issues.

NCSL greatly values the close working relationship we have had with the U.S. Census Bureau throughout the decades. The Redistricting Data Office staff has provided its expertise to our membership several times per year throughout the decade. Most recently the bureau has become a sponsor of this year's redistricting seminar series. We appreciate our strong connection with the bureau as a whole, and with the Redistricting and Voting Rights Data Office in particular.

Census Delays

State legislators and legislative staff are acutely aware that the Coronavirus (Covid-19) is requiring changes in virtually every aspect of our everyday lives, including conducting the Census. Therefore, the bureau's April 13 announcement of its decision to delay its operational timeline, as well as its request to Congress for permission to make further adjustments to its timelines, was not a surprise. It does, however, present difficulties for states. We respectfully request timely and meaningful consultation between NCSL and the Census Bureau that will reflect the best solution for states under these unprecedented circumstances.

The bureau's request to Congress for a four-month delay in the required release of apportionment data, from Dec 31, 2020 to April 30, 2021, and a four-month delay in the release of the P.L. 94-171 redistricting data, from a final release deadline of March 31, 2021 to July 31, 2021, will cause challenges for states as they prepare to conduct redistricting.

Many states have long-established timelines that begin when the P.L. 94-171 data is released and end with their first post-census election. Many states developed their redistricting schedules knowing that the April 1 P.L. 94-171 data delivery deadline was set by federal law.

Two states—New Jersey and Virginia—have planned to hold November 2021 state legislative elections with new district lines, in accordance with their constitutions. The timeline was already remarkably short for these states, and in fact was shortened by several weeks from the previous cycle. With delays, these states face constitutional dilemmas.

State constitutions such as those in Alabama, Arkansas, Connecticut, Indiana, Michigan, Minnesota, Nevada, New Hampshire, North Dakota, Oklahoma, and Oregon include redistricting deadlines that are likely to be impossible to meet because they require redistricting in the year following the census (not the release of census data) and their 2021 sessions will be completed before July 31. Six states—Delaware, Iowa, Ohio, South Dakota, Vermont and Washington have exact dates set in their constitutions or statutes, which will be hard to meet with the proposed release delays.

All states will find their current timelines are compressed, which may have an impact on the comprehensiveness of the analysis used to produce new districts.

NCSL understands the gravity of the COVID-19 crisis, and that delays are inevitable. Even so, we ask if a full 4-month extension on data release is necessary when only three months is needed for the data-gathering phase? Can the bureau commit to a timeline for a state-by-state release of data, with the states that are most immediately impacted receiving their data at least six weeks prior to the end of the extension?

Disclosure Avoidance and Differential Privacy

Another change this year creates equal, or perhaps greater concern on the part of states as they prepare for redistricting. The Census Bureau's decision to use differential privacy as its statistical method to meet the goal of avoiding the disclosure of individual responses may not be the best method to ensure states receive the most accurate data for redistricting purposes. NCSL understands and respects that the bureau is governed by 13 U.S.C.S. § 9 (Title 13, U.S. Code Section 9), which states that the bureau is prohibited from making "any publication whereby the data furnished by any particular establishment or individual under this title can be identified," and P.L. 94-171, which requires the bureau to provide accurate census block level data to the states for redistricting purposes.

These two laws appear to be in conflict this decade, and it appears that the bureau has favored the first over the second. A demonstration data set based on the 2010 census has been provided to the states, and redistricters and demographers have found it lacking. The variation from the 2010 data release is simply too large to be of use for redistricting purposes. While the demonstration dataset highlighted many shortcomings, the one of concern for redistricters is the distortion of population at the block level—the data called for in P.L. 94-171.

States are required to comply with the U.S. Constitution's "one-person, one-vote" principle and with the protections provided by the Voting Rights Act of 1965 (as amended). If block-level census data is released in a form that is known to not represent the actual number of people enumerated at the block level, states may find themselves litigating based on the quality and accuracy of federal census data before plans are drawn and even afterwards.

The bureau has assured data users that it is aware of the problems in the demonstration data set and is working to improve its differential privacy process and therefore the accuracy of the data. NCSL submits that the bureau could provide such assurances if it released a second demonstration data set. To date, the bureau has not made plans to do so and NCSL urges a reconsideration of that decision given that an additional 120 days will most likely be added to its timeline.

NCSL staff look forward to additional engagement with you on these two topics—the census delays and differential privacy—both of which add uncertainty to the redistricting cycle that begins next year. Please contact Susan Parnas Frederick, susan.frederick@ncsl.org or Wendy Underhill, wendy.underhill@ncsl.org with any questions or follow-up.

Sincerely,

A handwritten signature in blue ink that reads "Tim Storey". The signature is written in a cursive, flowing style.

Tim Storey
Executive Director, NCSL