

Agreement for the Review and Approval
of U.S. Census Bureau Projects that use Federal Tax Information

I. Introduction

This Agreement describes the criteria that the U.S. Census Bureau [Census Bureau] and the Internal Revenue Service [IRS] will apply and the procedures the parties will follow in the review and approval of Census Bureau projects that request the use of Federal Tax Information [FTI] under 26 U.S.C. § 6103(j)(1)(A) [hereinafter section 6103(j)(1)(A)].

II. Purpose

The parties will use the criteria and procedures described in this Agreement to request and provide access to FTI for Census Bureau projects. The criteria are intended to be clear, consistent, and workable, in order to ensure that Census Bureau projects that use FTI can proceed in a timely manner and that the use of FTI for Census Bureau projects complies with the requirements of the Internal Revenue Code [I.R.C.], Title 26 U.S.C.

The safeguarding of FTI is of paramount importance. This Agreement ensures the safeguarding of FTI by enhancing the range of measures used to protect FTI. If experience with the criteria and procedures in this Agreement indicates that the Agreement hinders the completion of Census Bureau projects or that FTI is not properly used or safeguarded, the parties will discuss how the criteria and procedures in this Agreement can be modified, consistent with the requirements of the I.R.C.

This Agreement recognizes that different uses, ranging from internal Census Bureau programs to externally-driven research projects conducted in Federal Statistical Research Data Centers [FSRDCs], may present different levels of risk of unauthorized access or disclosure. The Census Bureau will implement additional reporting requirements and encourage increased IRS involvement at the outset of projects that present greater risk. Section V below provides the criteria for certifying the appropriate Title 13, Chapter 5 uses of FTI. So long as Title 13, U.S.C., Chapter 5 authorizes a project, the use of FTI in a project that also directly benefits parties other than the Census Bureau (*i.e.*, “dual purpose projects”) is permitted. No party involved with such “dual purpose projects” will have access to FTI unless 26 U.S.C. § 6103 authorizes such access.

III. Legal Authority

Section 6103(j)(1)(A) authorizes the disclosure of FTI to officers and employees of the Census Bureau for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities as authorized by law. Treasury Regulations promulgated under section 6103(j)(1)(A) allow the disclosure of certain enumerated items of FTI to the Census Bureau “to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code” censuses of business and governments every five years and the decennial and mid-decade censuses of populations and housing; interim estimates of population and population by

geographic area; surveys for interim data on subjects covered by censuses; and surveys and collections of statistics necessary for the initiation, taking, or completion of censuses.

IV. Definitions

1. Federal Tax Information (FTI). Federal tax information means returns and return information as defined in 26 U.S.C. §§ 6103(b)(1) and (2), respectively. FTI does not include return information in a form which cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. Returns include any tax or information return, estimated tax declaration, or refund claim (including amendments, supplements, supporting schedules, attachments, or lists) required or permitted by the I.R.C. and filed with the IRS by or on behalf of any person. Return information that may be disclosed to the Census Bureau under section 6103(j)(1)(A) includes but is not limited to the following---
 - Information on returns;
 - Information derived from processing returns; and
 - Information derived from the Social Security Administration and other sources for the purposes of establishing and maintaining taxpayer information relating to tax returns.
2. Related Statistical Activities. Activities conducted by the Census Bureau and authorized by Title 13, U.S.C., Chapter 5.
3. Special Sworn Employees [SSEs]. SSEs are individuals outside the Census Bureau with specialized expertise in research and/or information technology. SSEs may be employees of Federal, state, or local agencies or private organizations. These individuals are given SSE appointments by the Census Bureau when the Census Bureau determines that their expertise is necessary to the performance of a particular project. As Census Bureau employees, SSEs are subject to the direction and control of the Census Bureau for the duration of the project upon which the SSE's appointment is based. SSE appointments are generally for periods of six months or less, but the Census Bureau may extend an SSE's appointment if necessary.
4. Projects. Projects are sets of related tasks designed to achieve one or more objectives, conducted under the auspices of one or more Census Bureau programs.
5. Internal Projects. Internal projects are those Census Bureau activities, authorized by Title 13, U.S.C., Chapter 5, generally carried out in Census Bureau facilities by Census Bureau employees, which are essential to the planning, execution, and analysis of its core programs, including its work in support of the national economic accounts. Projects to evaluate past core programs and test new approaches to carrying out core programs also qualify as internal projects. Internal projects are part of the routine, ongoing process by which the Census Bureau designs, carries out, and evaluates its basic data collection and measurement responsibilities.

6. Joint Projects. The Census Bureau carries out some projects jointly with other Federal agencies. Such projects are authorized to be conducted by the Census Bureau under Title 13, U.S.C., Chapter 5, and are also authorized to be conducted by the other agencies' enabling statutes ("dual purpose" projects). They are joint projects in the sense that the other Federal agencies provide access to their own databases as part of the projects. Employees of other Federal agencies that are involved in a joint project must be appointed by the Census Bureau as SSEs if the Census Bureau determines that these employees need access to FTI as part of their role in the joint project.
7. Reimbursable projects. Reimbursable projects are defined as surveys, censuses, special studies, reports, or statistical research authorized by Title 13, Chapter 5, Sections 182 and 193, but funded in whole or in part by other agencies or organizations. Reimbursable projects grow out of, are supplements to, and/or provide a more complete picture of the topics covered by the Census Bureau's censuses. Sponsors of reimbursable projects do not get access to FTI.
8. External research projects. External research projects are statistical analyses with benefits related to the Census Bureau's mission, but proposed by someone outside the Census Bureau. Once approved, these projects are generally conducted at FSRDCs by the proposal author, including those from other Federal agencies or academic institutions. External projects may use FTI if the external project is authorized by Title 13 U.S.C., Chapter 5. Employees of other Federal agencies or academic institutions that are involved in external research projects authorized by Title 13, U.S.C., Chapter 5, must be appointed by the Census Bureau as SSEs if the Census Bureau determines that these employees need access to FTI as part of their role in the external research project.

V. Criteria

All projects using FTI must be a census, survey or other statistical program authorized under Title 13 U.S.C., Chapter 5. The one exception is the Quarterly Financial Report [QFR] program, which is authorized under Title 13, U.S.C., Chapter 3. Section 91(c) of Title 13, Chapter 3 says that for purposes of 26 U.S.C. § 6103(j)(1), the QFR program will be considered a related statistical activity authorized by law. The criteria and procedures described herein apply to the QFR program as well as all other projects authorized under Title 13, U.S.C., Chapter 5.

The criteria used to judge whether projects can use FTI are explicit and specific, as agreed to herein by the Census Bureau and IRS. If a project's predominant purpose meets at least one (1) of the following criteria, then access to FTI will be permitted to the extent necessary (i.e., helpful and appropriate) in the preparation for, or conduct of, a census, survey, or other statistical program authorized under Title 13, Chapter 5:

- A. The project benefits the Census Bureau by helping to understand or improve the quality of data the Census Bureau collects or acquires;

- B. The project benefits the Census Bureau by leading to new or improved methodology to collect or tabulate data;
- C. The project benefits the Census Bureau by enhancing the data it collects, acquires or publishes. This includes, but is not limited to: improving imputations for non-response; and developing links across time or entities for data gathered in censuses and surveys;
- D. The project benefits the Census Bureau by identifying the limitations of, or improving the underlying Business Register, household Master Address File, and industrial and geographical classification schemes used to collect and code the data;
- E. The project benefits the Census Bureau by identifying the shortcomings of current data collection programs and/or documenting new data needs;
- F. The project benefits the Census Bureau by constructing, verifying, or improving the sampling frame for a Census Bureau data collection;
- G. The project benefits the Census Bureau by preparing population estimates and describing characteristics of the population;
- H. The project benefits the Census Bureau by developing methods to address census or survey non-response to improve estimates;
- I. The project benefits the Census Bureau by developing statistical weights for a data collection or analysis conducted by the Census Bureau.

VI. Process

Requesting FTI use in projects

The Census Bureau is best positioned to determine whether a project is authorized by Title 13, U.S.C., Chapter 5. The Census Bureau accepts responsibility for following the procedural requirements of the I.R.C., its implementing regulations, and IRS Pub. 1075. The Census Bureau acknowledges IRS's responsibility to ensure that the Census Bureau's uses of FTI are consistent with the I.R.C., its implementing regulations, and IRS Pub. 1075. The Director, Statistics of Income [SOI] will approve the use of FTI after certifying that the Census Bureau has documented, following standards developed jointly between the Bureau and SOI, that each project requesting the use of tax data satisfies at least one of the criteria contained in this Agreement. The IRS Office of Safeguards Review will implement audit and enforcement procedures to ensure that the Census Bureau is complying with IRS standards for safeguarding Federal Tax Information, including physical and cyber security, access control, and appropriate use.

The Deputy Director, Census Bureau, will certify by letter to the Director, SOI, IRS, before a project begins, that the requested FTI is necessary for the structuring of censuses and national economic accounts or related statistical activities authorized by Title 13, U.S.C., Chapter 5. For joint, reimbursable, and external projects, the Deputy Director, Census Bureau, will also articulate, in writing, that the proposed project for which FTI is requested is important to the mission of the Census Bureau and, but

for resource limitations, would be conducted as an internal project. If SSEs are involved in the project, the Deputy Director will also indicate that but for the lack of existing Census resources or skills, the project would be conducted by non-SSE Census employees. The process ensures, prior to a project commencing, that letters requesting FTI:

- Clearly acknowledge that the specified FTI is intended to be used solely for the project and is necessary for the project;
- Certify that the project is expected to be used to prepare and/or conduct a census, survey, or other statistical program under Title 13, U.S.C., Chapter 5 according to the criteria listed in section V;
- Identify which Census Bureau project/program is anticipated to benefit from the research and how it will benefit.
- Include project descriptions in sufficient detail to confirm that the project is authorized by Title 13; and
- Identify those people appointed as SSEs who need to be associated with the project and the location where FTI will be accessed. Every effort will be made to identify SSEs in a written notification to the Director, SOI, in advance of the start of the project.

The SOI project approval review will be limited to specific items within its expertise or authority, *i.e.*, that the uses of FTI are consistent with section 6103(j)(1)(A) and its implementing regulations. The Director, SOI, will certify to the Census Bureau, before the commencement of the project that the uses of FTI are authorized by Title 26 and its implementing regulations. After a project has commenced, should the Census Bureau determine that the scope of the project has expanded (i.e. alternative project goals, additional research initiatives, new or enhanced predominant purpose) the Deputy Director, Census Bureau will send a new letter to the Director, SOI, to certify that the use of FTI to support the expanded scope is necessary for the structuring of censuses and national economic accounts or related statistical activities authorized by Title 13. Copies of the descriptions of the approved projects and disapproved projects are maintained by the Director, Census Bureau and the Director, SOI for their respective files.

Reimbursable, Joint, and External Projects

The Census Bureau acknowledges that joint, reimbursable, and external projects may have inherent risks of unauthorized access to, or unauthorized disclosure of, FTI beyond the risks associated with an internal project. Therefore, the Census Bureau will provide an additional level of detail in its reporting to the IRS, especially about intended safeguarding methodology, including the physical location of FTI, specific safeguarding arrangements, intended period of use, and the SSEs who will have access to FTI.

For reimbursable projects, the Census Bureau may generally designate no more than ten (10) technical experts from sponsoring agencies as SSEs to facilitate their role in ensuring quality control of these projects, unless the Director, SOI provides prior written approval of the designation of more than ten (10) technical experts.

Sponsors of reimbursable projects do not get access to FTI. Project sponsors receive data only in a form that cannot be associated with or otherwise identify any taxpayer (so-called aggregate data).

Specific FSRDC external projects will be submitted to SOI for approval using agreed-upon templates and protocols.

External proposals must also contain a commitment by the investigator that at the end of the research project he or she will include, as part of the findings that investigators are required to file for FSRDC projects, a memorandum or report describing how the research project furthered a census, survey or other statistical program authorized under Title 13, U.S.C., Chapter 5, including ways not anticipated at the outset of the research project. The Census Bureau will describe the impact of the research project on the Census Bureau's Title 13, U.S.C., Chapter 5 programs to the Director, SOI.

Reporting on FTI use in projects

A quarterly report of Census projects containing FTI will be sent to the Director, SOI. The list will indicate the type of project (i.e., internal, joint, reimbursable, external).

A quarterly report of SSEs for Census projects containing FTI will be sent to the Director, SOI. All SSEs added and removed from existing projects during the quarter should be noted in the quarterly report.

The Census Bureau and SOI will conduct a quarterly reconciliation of the project inventory. Results of the reconciliation will be discussed with the Director SOI, and Census Bureau Deputy Director at quarterly meetings.

Annual progress reports for all approved projects with outside researchers will be sent to the Director, SOI. Project reports will include the project start date, describe any deviation from the timeline and milestones in the Predominant Purpose Statement (PPS), and describe how FTI has been used to date to achieve stated Title 13 benefits.

A Post Project Certification (PPC) will be sent to the Director, SOI, within one year of each project's completion date. The PPC will describe the ways FTI contributed to Title 13 benefits realized and how any products produced using FTI have been made available to Census and/or the public.

Annual data request letters and interagency agreements for all datasets used in Census Bureau projects will contain a statement of the Census Bureau's data retention procedures and details of the specific request for the particular data set.

The authority level for certifying Title 13, U.S.C., Chapter 5 uses of FTI will be as follows:

Table: Items			
Items	Frequency	Signatory	Recipient
Disclosure Authorization	Annual	Secretary of Commerce	Commissioner of the IRS
Data Request	Annual	Director	RAAS
Project Request	As needed	Deputy Director	SOI, Disclosure
Interagency Agreement	Annual	ADRM, ECON	SOI
Safeguard Security Report	Annual	Associate Director	Safeguards
Detailed Project Information	Annual	Deputy Director	SOI, Disclosure

To ensure that data is properly aggregated so that it cannot identify any taxpayer, such data is reviewed by the Census Bureau's Disclosure Review Board and, if SOI determines that the SOI Division's review is necessary, by the Director, SOI.

VII. Special Sworn Employees [SSEs]

In accordance with its authorization under Title 13, U.S.C., Section 23(c), and Title 13, U.S.C., Section 9, the Census Bureau requires individuals who are appointed as SSEs to take an oath to uphold the confidentiality of data. Individuals who are appointed as SSEs are subject to the same confidentiality requirements, disclosure penalties, and other limitations as all other Census Bureau employees for data protected under Titles 13 and 26. The Census Bureau fully understands and appreciates its obligation to the IRS to exercise clear and prudent judgment regarding the SSEs to whom it provides access to FTI and will ensure compliance with the terms of this Agreement.

For purposes of this Agreement, SSEs are employees of the Census Bureau and are subject to the same penalties as other Census Bureau employees for the unauthorized disclosure and inspection of data, including FTI, protected under Titles 13 and 26. Unauthorized inspections or disclosures of FTI by Census Bureau employees, including SSEs, may be actionable against the United States under 26 U.S.C. § 7431(a)(1), and may subject these employees to the criminal penalties set forth in 26 U.S.C. §§ 7213A and 7213(a)(1).

Prior to implementation, the Census Bureau will provide written notification to the Director, SOI of all projects where SSEs will require access to FTI, including names and details of SSE access to and use of FTI.

When the Census Bureau utilizes SSEs to conduct censuses, surveys, or other statistical programs authorized under Title 13, U.S.C., Chapter 5, such individuals' access to, and disclosure of, FTI is authorized only upon meeting the following additional conditions:

1. **Training.** Proper training on FTI access, including necessary safeguards information, will be provided by the Census Bureau appropriate to the background and experience level of the SSE. SSEs from outside the Federal Government, with no experience accessing sensitive information,

may require more training than Federal employees accustomed to dealing with such sensitive information and corresponding safeguard procedures. IRS will provide training materials and other support to the Census Bureau as needed.

2. Background Checks. The Census Bureau must complete background checks for SSEs, as described in IRS Publication 1075 Section 5.1.1, before an SSE may have access to FTI.
3. Direct Control and Supervision. The Census Bureau will ensure that SSEs at any Census Bureau location (e.g., FSRDC) who have access to FTI are under the direct control and supervision of Census Bureau management, including but not limited to the use/review of audit trails to monitor access to FTI, routine internal inspections of all Census Bureau locations, periodic project reviews, and the implementation of the Census Bureau on-line project monitoring program. Except as otherwise approved by IRS in writing, SSEs will only have access to FTI at Census Bureau locations. Where the IRS approves an SSE's access to FTI at another location, such FTI remains subject to all of the safeguard provisions as provided by 26 U.S.C. § 6103(p)(4) and IRS Pub. 1075, including IRS Safeguards employees' and contractors' access to facilities and systems at the SSE's off-site location. IRS Safeguards employees and contractors will be granted access to the SSE's location, including any of its facilities and systems deemed necessary by IRS Safeguards personnel, within 24 hours of notification, to conduct the safeguards review in accordance with 26 U.S.C. § 6103(p)(4) and IRS Pub. 1075. Except as otherwise required by law, no conditions will be imposed on IRS Safeguard personnel's IRS access to facilities and systems necessary for the conduct of the safeguards review.
4. Safeguard Security Reports. As part of its commitment to exercise prudent judgment with regard to SSEs' access to FTI, the Census Bureau will provide the elements detailed below in its annual Safeguard Security Report, especially with these emphases:
 - SSE Research—A report including lists of SSEs conducting or having conducted research requiring access to FTI during the previous calendar year, their affiliation, the Census Bureau project on which they are working, and the data sets of FTI they used.
 - SSE Information Technology—A report of SSEs providing support to the Census Bureau's computer systems in which FTI is housed, and a description of major incidences of failure of those systems, if any.
 - SSE Other—A report, by category, of any other SSEs with access to FTI who provide support to the Census Bureau.

VIII. Safeguards Requirements

Access by Census Bureau employees to FTI is on a strict need-to-know basis only. The Census Bureau will evaluate the need for FTI before the Census Bureau requests FTI or disseminates FTI to employees, or includes FTI in computer systems and databases.

In accordance with 26 U.S.C. § 6103(p)(4) and IRS Pub. 1075, the Census Bureau will provide safeguards for the FTI received. Such safeguards will include the maintenance by the Census Bureau of a permanent system of standardized records with respect to any request, including the date of the request and any disclosure that resulted from the request; a secure area to store the FTI; restriction of access to the FTI to only those whose responsibilities and duties require access; and the furnishing of all required reports listed in IRS Pub. 1075. The Census Bureau will advise its employees of their responsibility for handling FTI and will conduct an annual certification to ensure that all employees who access FTI are advised about their obligation to protect this information.

Prior to the commencement of any project, the Census Bureau will ensure that appropriate safeguard controls, as required by IRS Pub. 1075, for limiting access and use of FTI are in place, including:

- Physical security safeguards
- Computer security safeguards
- Approved method of data transmittal
- Site approval (valid security plan in place)
- Oversight of SSEs using FTI (training and supervision)
- Approved disclosure protections applied to data products.
- Process for Certifying Uses of FTI.

To the extent practicable, the Census Bureau will keep FTI separate from other information to minimize the risk of inadvertent inspection or disclosure. If physical separation of FTI from other data maintained by the Census Bureau (whether in case files, in automated systems, or otherwise) is impracticable, the files or systems are to be clearly labeled to indicate that FTI is included and that the entire file or system must be safeguarded in accordance with IRS Pub. 1075. Before the release of such files to, or access to such systems by, an individual or entity that does not have the authority to access FTI, the FTI must be removed.

IX. Other Provisions

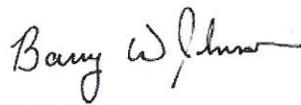
1. The Census Bureau and the IRS will coordinate, in advance, any plans for the release of any information that contains aggregate data so as to ensure that any release of such data does not violate section 6103; *i.e.*, that it is appropriately aggregated and cannot identify any particular taxpayer.

2. The Census Bureau and the IRS will be liable for the acts and omissions of its own employees under this Agreement.
3. This Agreement does not confer any rights or benefits on any third party.
4. This Agreement will be reviewed every five (5) years, or sooner if there is a change in intervening legal authorities, to ensure consistency with the I.R.C. and implementing regulations as well as all other applicable laws and regulations.
5. All parties agree to comply with the requirements of the Federal Information Security Management Act (PL 107-347, Title III, section 301) as it applies to the electronic storage, transport of records between agencies, and the internal processing of records received by all agencies under the terms of this Criteria Agreement.

X. Signatures

The signatures below warrant and represent that they have the competent authority on behalf of their respective agencies to enter into the obligations set forth in this Agreement.

APPROVED:  Date: 3/6/18
Performing the non-exclusive functions and duties
of the Director of the U.S. Census Bureau

APPROVED:  Date: 2/21/2018
Director, IRS Statistics of Income