

## **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 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.]

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.

The process described in Section VI below recognizes that different uses, ranging from internal Census Bureau programs to externally-driven research projects conducted through the Center for Economic Studies [CES] and the Research Data Centers [RDCs], 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 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 return 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 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 CES or an RDC 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 meets one 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:

- Understanding and/or improving the quality of data produced through a Title 13, U.S.C., Chapter 5 survey, census or estimate;
- Leading to new or improved methodology to collect, measure, or tabulate a Title 13, U.S.C., Chapter 5 survey, census, or estimate;
- Enhancing the data collected in a Title 13, U.S.C., Chapter 5 survey or census. For example:
  - Improving imputations for non-response;
  - Developing links across time or entities for data gathered in censuses and surveys authorized by Title 13, U.S.C., Chapter 5.
- Identifying the limitations of, or improving the underlying business register, household Master Address File, and industrial and geographical classification schemes used to collect the data;
- Identifying shortcomings of current data collection programs and/or documenting new data collection needs;
- Constructing, verifying, or improving the sampling frame for a census or survey authorized under Title 13, U.S.C., Chapter 5;
- Preparing estimates of population and characteristics of population as authorized under Title 13, U.S.C., Chapter 5;
- Developing a methodology for estimating non-response to a census or survey authorized under Title 13, U.S.C., Chapter 5;
- Developing statistical weights for a survey authorized under Title 13, U.S.C., Chapter 5.

## **VI. Process**

1. With the exception of specific CES projects, detailed project descriptions of the Census Bureau's projects are provided in annual data request letters to IRS and in the Census Bureau's annual safeguard activity report. The Census Bureau is best positioned to determine whether a project is authorized by Title 13, U.S.C., Chapter 5 and that the procedural requirements of the I.R.C., its implementing regulations, and IRS Pub. 1075 are being followed. The Census Bureau accepts that responsibility. 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.

Therefore, the Deputy Director, Census Bureau, will certify by letter to the Director, SOI, IRS, ninety (90) calendar days 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 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 (RAS:S), 1111 Constitution Avenue N.W, Room 4100, Washington, DC 20224, in advance of the start of the project. Should this not prove practicable, the identification will be made within five (5) business days of the start of the project. If an SSE is assigned to a project after its start, identification of the SSE will occur within five (5) business days of the assignment.

The Director, SOI will certify to the Census Bureau, within sixty (60) calendar days, and before the commencement of the project, that the uses of FTI are authorized by Title 26 and implementing regulations.

Because letters of request are sent from the Secretary of Commerce to the Commissioner of the IRS requiring extensive clearance processes, the Census Bureau will provide program-level information in the letter requesting FTI and will simultaneously transmit the detailed project descriptions in separate letters to the Director, SOI and the Disclosure Office (1111 Constitution Ave., NW, Room 2012, Washington, DC 20224).

Before the commencement of any projects not known at the time of the annual data request letters, the Census Bureau will report such projects to IRS, using the same general reporting format described above. IRS will certify, within ten (10) business days, whether the uses of FTI satisfy section 6103(j)(1) and implementing regulations. The accepted projects will be included in the next annual needs-use report to IRS and in the Census Bureau's annual safeguard activity report. For projects that span more than one year, the request letters and annual reports will note their continuation, to the extent that the projects continue to require access to FTI.

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.

2. Specific CES projects are generally unanticipated at the time of the annual data request letters. Therefore, each project will be submitted to SOI for approval separately. The specific Census Bureau project review and approval process is not contained within this Agreement, but will be provided to IRS in a separate document within 30 business days of this Agreement being signed. The IRS will be notified in writing by the Census Bureau of any changes to this document prior to the submission of any project approved by Census under the new procedures.
3. The SOI Division 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) and implementing regulations.

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 with the CES, 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.

A list of Census reimbursable projects containing FTI will be sent to the Director, SOI on a quarterly basis.

Copies of the descriptions of the approved projects and disapproved projects are maintained by the Director, Safeguards and the Director, SOI for their respective files.

4. Data request letters for all Census Bureau projects will contain a statement of the Census Bureau's data retention procedures for the particular project.
5. 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.

6. Process for Certifying Uses of FTI.

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

| <b>Stage/Activity</b>                             | <b>Frequency</b>            | <b>Signatory</b>                | <b>Recipient</b>          |
|---------------------------------------------------|-----------------------------|---------------------------------|---------------------------|
| 1. Data Request*                                  | Annual                      | Secretary                       | Commissioner              |
| 1a. Detailed Project-Level Information*           | Annual                      | Director                        | SOI and Disclosure Office |
| 2. New Internal, Joint, and Reimbursable Projects | Prior to project commencing | Director                        | SOI and Disclosure Office |
| 3. External Projects                              | Prior to project commencing | Through existing review process | SOI                       |
| 4. Needs/Use Reports                              | Annual                      | Director                        | SOI and Safeguards        |
| 5. Safeguard Activity Report                      | Annual                      | Director                        | Safeguards                |

*\*Items 1 and 1a will be transmitted simultaneously*

7. 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). 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 by the Director, SOI if the Director, SOI determines that the SOI Division's review is necessary. Projects conducted by the Census Bureau under Title 15 are not permitted to use FTI.

**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).

The Census Bureau will provide written notification to the Director, SOI of all projects where SSEs will require access to FTI, including details of SSE access to and use of FTI, prior to implementation. All projects submitted for SOI Division review will contain the names of any SSEs involved in the project.

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 before an SSE may have access to FTI.
3. **Direct Control and Supervision.** The Census Bureau will ensure that all SSEs—during all times of access to FTI and at all Census Bureau locations (CES, RDCs, etc.)—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 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 Activity 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 Activity Report, especially with these emphases:
  - a. **SSE Research**—A report of all 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.

- b. 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.
- c. 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.

As provided by 26 U.S.C. § 6103(p)(4) and IRS Pub. 1075, the Census Bureau will provide safeguards for the FTI disclosed to it. 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; the furnishing of a report as requested by the Director, Safeguards describing the procedures used to maintain the confidentiality of return information; and other safeguards which the IRS deems necessary and appropriate. 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. In furtherance of this, for as long as it retains FTI, the Census Bureau agrees to provide to the IRS at a minimum annually, but also at the request of the Director of SOI, reports on the FTI provided under this Agreement. Such reports will include information on the number and location of all items of FTI provided. The reports will also include the type of computer system and type of medium on which the data is contained. The Census Bureau further agrees to provide a statement at that time of its need for continued retention and the specific uses of the data that require such retention.

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: Robert M. Green Date: 6/26/12  
Director, U.S. Census Bureau

APPROVED: Ray D. Mammone Date: 6/27/12  
Director, I.R.S. Research, Analysis  
And Statistics