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Census Questionnaire - Am I Required to Answer?

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Liberty Counsel has received numerous inquiries from concerned individuals about whether they are required to answer the United States Census Questionnaire. This questionnaire is sent out by the United States Department of Commerce, Bureau of the Census. Every household will receive a letter inviting individuals to answer the 2020 Census questionnaire online in order to conserve resources. If the questionnaire is not completed online, a paper version will then be mailed to that house.

The letter requesting that the questionnaire be completed online states that the Census is used to count everyone in the United States. It further indicates that the purpose of the Census is in part because the number of representatives each state has in Congress depends on the number of people living in the state. The letter goes on to state that the Census plays a role for you and your community in terms of government funding. The letter also states that answers are kept confidential and then further states that "your response is required by law."

The short form questionnaire begins by asking how many people are living or staying in the house, apartment, or mobile home as of April 1, and goes on to ask whether the house is owned by you or someone else in the household with a mortgage or loan, is owned free and clear, is rented for cash, or is rented or occupied without payment of cash. The questionnaire also asks for your name, telephone number, sex, age, date of birth, race, and continues with several other entries so that each person in the home, apartment, or mobile home must fill out separate sections for themselves.

Some people will receive a long form questionnaire called the "American Community Survey," which contains a larger number of questions. It is considered part of the census and compliance is enforceable under the same code provisions as the decennial census. Rather than occurring once every ten years, it is sent to randomly selected households every year.

The long questionnaire included in the American Community Survey asks more intrusive questions such as education, place of birth, citizenship, number of marriages, place of residence one year ago, types of electronic devices owned, disabilities or illnesses, and whether a grandparent or grandchild is living in the home. The long form questionnaire also asks whether the resident or occupant worked during the previous

week for pay, where the person worked, the location of the work, the mode of transportation to work, when they left home for work, and the length of travel to work. It asks whether the person has been laid off from work and for a description of their job activity. The long form also asks questions regarding income, interest, dividends, or rental income, including government income from disability or retirement programs. In addition, it asks about the age of the building the resident occupies, the number of bedrooms, the utilities and the cost of the utilities including sewage and water, the amount of monthly rent or mortgage, and the property value. The intrusive nature of the questions contained in the long form far surpasses that of the questions contained in the short form.

While it is understandable that the government may want to know how many people live in a particular area, the question arises as to what business it is of the government to delve into other more intrusive matters. It is also curious as to why the government needs to know your telephone number. It does not seem that this extra information is necessary to count the number of people located in a certain area for purposes of the number of representatives in Congress or for government funding.

The Census Bureau admitted that it provided information to help the military detain Japanese-Americans during World War II. Martina Hone, associate undersecretary for the Commerce Department, which oversees the Census Bureau, stated, "We deeply regret any role that the Census Bureau played in a really sad, sad (time) in our history." A research paper, authored by professors William Seltzer of Fordham University and Dr. Margo Anderson of the University of Wisconsin - Milwaukee, stated that the Census Bureau supplied demographic information to the War Department following the bombing of Pearl Harbor. The paper quotes Dr. Leon Truesdell, the then-Census Bureau's chief population statistician, saying to the Census Advisory Committee in January 1942: "We got a request yesterday, for example, from one of the Navy officers in Los Angeles, wanting figures in more or less geographic detail for the Japanese residents in Los Angeles, and we're getting that out." For more information, visit our website at www.LC.org.

We have received a number of questions as to whether it is obligatory to answer the Census. Of the inquiries we have received, one of the more interesting comments by someone was as follows:

- He suggested he was not going to send the Census back in the self-addressed, stamped envelope. He reasoned that if he partially filled out the information and objected to portions, the partially completed questionnaire would attract more attention than no questionnaire. He told us that he was not going to fill out the questionnaire because there would have to be some kind of a due date (April 1) for the questionnaires to be returned, and then someone would have to check which questionnaires were not returned, thus prolonging the process and raising less attention to the non-returned questionnaire.
- He stated that if someone came knocking on his door requesting that the Census be completed, he was not going to answer the door. He reasoned that obviously the Department of Commerce is not going to get a search warrant to come into his residence simply to determine whether he completed or would complete the questionnaire.

- He stated that even if he did answer the door, he would simply request another Census and politely ask the individual to leave, thus allowing him time to review the contents, but again, he would not complete the form.
- He said that he was going to keep the zip code on the self-addressed, stamped envelope for the return address, and if in the future he received certified mail with the same zip code, he would not pick up the certified mail.
- If the issue ever arose, he would argue that there was no proof he was sent a Census, or if he was sent a Census, whether he received the Census. Moreover, there was no proof that he did not send the Census back, only to have it lost in the mail.
- He then stated that even if there was a small monetary penalty, he would be willing to pay the penalty. However, he also stated that his position was that the penalty was probably not enforceable because the Department of Commerce would have a difficult time proving its case.

After receiving many calls, including the interesting scenario above, we turned to the federal Code. Under 13 U.S.C. §221(a), the federal statute states as follows:

Whoever, being over eighteen years of age, refuses or willfully neglects, when requested by the Secretary, or by any other authorized officer or employee of the Department of Commerce or bureau or agency thereof acting under the instruction of the Secretary or authorized officer, to answer, to the best of his knowledge, any of the questions on any schedule submitted to him in connection with any Census or survey provided for by subchapters I, II, IV, and V of chapter 5 of this title applying to himself or to the family to which he belongs or is related, or to the farm or farms of which he or his family is the occupant, shall be fined not more than \$100.

Under §221(b), anyone who willfully gives any answer that is false, shall be fined not more than \$500.¹ Last, under §221(c), no person shall be compelled to disclose information relative to his religious beliefs or to membership in a religious body.

First, the maximum civil fine for refusal to fill out the form or any part of the form is \$100. Second, if you fill out the form but willfully insert a false answer, the fine shall be not more than \$500. Thus, choosing between the two, if one simply does not fill out the form, the fine is less, but if you fill out part of the form and place a false answer in part of the form, the fine will be higher.

The question is, even with a possible fine of \$100, will the federal government enforce the civil fine, and if it enforces it, how will the government enforce the fine? It does not appear that the government can enforce this through a tax that the IRS can enforce for failure to pay on time. The Department of Commerce is totally different than

¹ It must be noted that, notwithstanding the express limitations in Title 13 governing the census, the Census Bureau recently has claimed authority on its website under Title 18 U.S.C. §3571 to impose criminal fines up to \$5,000 for these same civil violations regarding the census. Because Congress eliminated the criminal penalties of imprisonment in 1976, we conclude it is improper to resort to the penalties for crimes under Title 18 to determine penalties for civil offenses punishable only by fine.

the Department of the Internal Revenue Service. **According to an interview with Neil Tillman in 2000, Media Relations Director for Census 2000, the Census Bureau did not enforce noncompliance with the questionnaires and no fines were levied for that year.** Reportedly, the Census Bureau received more than 600,000 telephone calls in one day from callers lodging complaints about the probing nature of the Census questionnaires. It's up to you to decide whether to provide the information requested by the Census Bureau. Reportedly the Census Bureau will not enforce the fine, but some people believe that even if they had to pay \$100, that's a small price for privacy.

Previously, the federal law did contain criminal provisions for failure to respond to the Census. There are only a few reported cases regarding criminal prosecutions for failure to respond to the Census questionnaire. One case involved a person who was a leader of a Census Questionnaire Resistance Movement. The federal government selected only a few people to prosecute who were part of the Movement. The case was dismissed based on selective prosecution.

The criminal penalties were repealed from the statute in 1976, and now the statute only contains civil fines. Though the Census Bureau's website states that its goal is 100% participation, statistics over the past several years indicate a declining response to the Census. In 1970, there was an 85% response, but in 1980, that declined to 75% and in 1990, that declined another 10% to 65%. There has been a declining response to the Census over the past 30 years.

The Census questionnaires are due by April 1. Presumably sometime between April 1 and July (when the Census is due to be complete), the Bureau will send out additional questionnaires to non-respondents or send out people to make personal inquiries of those residents that have not responded. If there are approximately 100 million homes in America, and if there is a 65% response rate, that means 35% or 35 million homes will not respond. It's questionable whether the Bureau can canvas 35 million homes in a four-month period.

You should not intentionally fill out the form with misleading or false information.

The information contained herein is not intended to render legal advice. Factual and legal issues may arise that must be considered in each circumstance. If legal advice is necessary, the services of a competent attorney should be sought.