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Census 2000: Sampling as an Appropriations Issue In the 105th Congress

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Summary

The 105th Congress has debated the decennial census sampling issue mainly in the appropriations process, beginning with FY1997 supplemental appropriations legislation for disaster relief. In FY1998 appropriations for Commerce, Justice, and State, the Judiciary, and Related Agencies (CJS), the Senate (S. 1022) instructed the Bureau of the Census not to make “irreversible” Census 2000 sampling plans, while the House (H.R. 2267) sought a moratorium on these plans, pending expedited judicial review of their constitutionality and legality. As enacted (P.L. 105-119; 111 Stat. 2440), H.R. 2267 still provided for expedited judicial review, but allowed a limited test of sampling in the 1998 dress rehearsal for the census; the law also established a Census Monitoring Board. Sampling remains an issue in FY1999 CJS appropriations. The Senate passed S. 2260, approving the Clinton Administration’s \$848.5 million request for Census 2000 while expressing “grave concerns” about census plans. The House, approving H.R. 4276, recommended \$952 million but would withhold \$476 million of the total until Congress (by March 31, 1999, after a formal request by the President) passed legislation releasing the \$476 million. This report will be updated to reflect further developments. For related products, see CRS Report 97-137 GOV, *Census 2000: The Sampling Debate*; and CRS Report 94-89 GOV, *Decennial Census Coverage: The Adjustment Issue*.

Background

On February 28, 1996, the Bureau of the Census, in the Department of Commerce, announced its plans to conduct two new sample surveys connected with the 2000 decennial census. The final census results would incorporate data from these surveys into the initial headcount. The first survey, for “nonresponse followup,” would collect data from a sample of housing units whose occupants had not mailed back their census questionnaires to the bureau. In past censuses, the bureau has tried to contact persons in all these housing units. This process, never completely satisfactory, was especially difficult and expensive in 1990. The second survey, for “integrated coverage measurement,” would attempt to correct miscounts (undercounts and overcounts) in the

census figures. Miscounts, particularly undercounts of racial and ethnic minorities, have been a recurrent problem in the census.¹

Congress has given the bureau's new sampling plans a mixed reception.² Proponents maintain that sampling will reduce overall census costs as well as improve the headcount, resulting in a more accurate, more equitable census. Opponents have raised various questions about sampling in conjunction with the decennial census, which is the basis for reapportioning the House of Representatives and redrawing legislative districts within states. These questions include whether the plan is legal and constitutional, whether it is operationally feasible, and whether the proposed sampling methods are flawed. The 105th Congress has debated the 2000 census sampling issue chiefly in the appropriations process. This forum for the sampling debate is the subject of the present report.

FY1997 Supplemental Appropriations

Sampling became an appropriations issue in the 105th Congress with H.R. 1469, FY1997 supplemental appropriations legislation for disaster relief, which Congress approved on June 5, 1997. Four days later, President Clinton vetoed the bill, in part because it contained House language to ban the use of sampling in any census to determine the reapportionment population.³ A second bill passed by Congress, H.R. 1871, stipulated only that within 30 days of enactment, the Commerce Department give Congress a detailed report⁴ on the department's proposed methods for conducting the 2000 census, including estimates of sampling errors. The President signed this legislation the day Congress approved it, on June 12, 1997 (P.L. 105-18; 111 Stat. 158).

FY1998 Appropriations

Congress resumed the sampling debate in FY1998 appropriations bills for Commerce, Justice, and State, the Judiciary, and Related Agencies (CJS), H.R. 2267 and S. 1022. The House and the Senate took different positions about allowing the Census

¹ For a history of census nonresponse and miscounts, as related to the sampling issue, see: U.S. Library of Congress, Congressional Research Service, *Decennial Census Coverage: The Adjustment Issue*, by Jennifer D. Williams, CRS Report 94-89 GOV (Washington: July 23, 1996). For more information about the sampling issue in the upcoming census, see: U.S. Library of Congress, Congressional Research Service, *Census 2000: The Sampling Debate*, by Jennifer D. Williams, CRS Report 97-137 GOV (Washington: April 27, 1998).

² For views on both sides of this issue that have carried over from the 104th to the 105th Congress, see: U.S. Congress, House Committee on Government Reform and Oversight, *Sampling and Statistical Adjustment in the Decennial Census: Fundamental Flaws*, H.Rept. 104-821, 104th Cong., 2nd sess. (Washington: GPO, 1996).

³ U.S. Congress, Conference Committee, 1997, *Making Emergency Supplemental Appropriations for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts*, conference report to accompany H.R. 1469, H.Rept. 105-119, 105th Cong., 1st sess. (Washington: GPO, 1997), pp. 66-67.

⁴ U.S. Bureau of the Census, *Report to Congress: The Plan for Census 2000* (Washington: July 1997, reissued Aug. 1997).

Bureau to proceed with its sampling plans; the House placed more explicit restrictions on these plans.

House Actions

H.R. 2267, as reported by the House Appropriations Committee on July 25, 1997,⁵ recommended \$381.8 million for Census 2000, \$27 million more than the Clinton Administration's requested \$354.8 million.⁶ The committee-approved bill, however, withheld all but \$100 million of the \$381.8 million, pending agreement between Congress and the Administration on 2000 census methods. Agreement was to consist of an act authorizing these methods. The bill further stipulated that none of the \$100 million could be spent to plan, test, or use sampling in the decennial census to determine the reapportionment population.

The House passed H.R. 2267 on September 30, 1997, approving the full \$381.8 million without the above limitations by the Appropriations Committee, but with new limitations (section 209) to counter the bureau's sampling plans. Section 209 provided that "Any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law, [in connection with the decennial census to determine the population for reapportionment or redistricting, might] ... in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method." A test of the method, such as in the dress rehearsal⁷ for Census 2000, would be considered equivalent to its use in connection with the census. Persons aggrieved by the method could include "any resident of a State whose congressional representation or district could be changed as a result of the use of a statistical method ... , any Representative or Senator in Congress ... , [and] either House of Congress."

If a civil action were initiated according to section 209, "No sums appropriated under this or any other Act [could] be used for any statistical method, [connected with the decennial census for reapportionment or redistricting] ... , until that method [had] been judicially finally determined to be authorized by the Constitution and by Act of Congress." The civil action would be "heard and determined" by a three-judge U.S. district court, and any order issued by the court "pursuant to an action brought under this section [would] be reviewable by appeal directly to the Supreme Court of the United States."

Senate Actions

⁵ U.S. Congress, House Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1998*, report to accompany H.R. 2267, 105th Cong., 1st sess., H. Rept. 105-207 (Washington: GPO, 1997), pp. 64-65.

⁶ The extra \$27 million was to enable the bureau to improve its housing-unit address list. A correct address list, the basis for mailing census questionnaires to the right housing units, is considered vital to an accurate census. (U.S. Congress, H.Rept. 105-207, p. 64.)

⁷ The dress rehearsal is a simulation of the census, conducted in test sites to see how well the process works and what modifications are needed. The Census 2000 dress rehearsal took place in the spring of 1998. (U.S. Bureau of the Census, press release issued July 8, 1998, <http://www.census.gov/Press-Release/cb98-o03.html>, visited July 10, 1998.)

As reported by the Senate Appropriations Committee on July 16, 1997, and passed by the Senate on July 29, S.1022 approved the Administration's request of \$354.8 million for Census 2000, with the proviso (section 209) that the bureau not make any "irreversible" plans for sampling in the census to determine the reapportionment population.⁸ The committee also noted its concerns about the bureau's ability to implement the census.

Conference Committee Actions

When H.R. 2267 and S. 1022 moved to conference, the House-approved section 209 was widely considered by the press more likely to trigger a presidential veto than was the Senate-passed version.⁹

As reported out of conference on November 13, 1997, section 209¹⁰ retained the House's stipulation that "Any person aggrieved by the use of any statistical method," connected with the decennial census for reapportionment or redistricting, might bring a civil action against the use of the method. The committee, like the House, provided for expedited judicial review of the civil action. In the committee's words, "It shall be the duty of a United States district court hearing an action brought under this section and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any such matter."¹¹ New language in the conference report stated that the Speaker of the House might initiate or join in the civil action, on behalf of the House, and that "It shall be the duty of the Office of General Counsel of the House of Representatives to represent the House in such civil action" New as well in the report was the statement that the Census Bureau's *Report to Congress: The Plan for Census 2000*, which was required by the FY1997 supplemental appropriations legislation (P.L. 105-18; 111 Stat. 158), and the bureau's operational *Plan for Census 2000* "shall be deemed to constitute the final agency action regarding the use of statistical methods in the 2000 decennial census, thus making the question of their use

⁸ U.S. Congress, Senate Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Bill, 1998*, report to accompany S. 1022, 105th Cong., 1st sess., S.Rept. 105-48 (Washington: GPO, 1997), p. 63.

⁹ See: Dan Carney, "House Fights Off Opposition to Move Commerce Bill," *Congressional Quarterly Weekly Report*, vol. 55, Oct. 4, 1997, p. 2411; John Mercurio, "House Republicans Win Anti-Sampling Battle, but Clinton Veto down the Road," *Roll Call*, Oct. 2, 1997, p. 3.

¹⁰ U.S. Congress, Conference Committee, 1997, *Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for Other Purposes*, conference report to accompany H.R. 2267, H.Rept. 105-405, 105th Cong., 1st sess. (Washington: GPO, 1997), pp. 43-46.

¹¹ For a legal analysis of this provision, see: U.S. Library of Congress, Congressional Research Service, "Questions re Legislative Provision for Expedited Judicial Review of Use of Sampling and Statistical Adjustment in Year 2000 Census," by Johnny H. Killian, memorandum (Washington: Sept. 29, 1997), reprinted in the *Congressional Record*, daily edition, vol. 143, Sept. 30, 1997, pp. H8220-H8225.

in such census sufficiently concrete and final to now be reviewable in a judicial proceeding.”¹²

The committee’s version of section 209 did not retain the House-approved language that would have prohibited the bureau from using appropriated funds to test sampling during the judicial review period. Instead, the committee added statements that reapportionment is “the sole constitutional purpose of the decennial enumeration ...”; that “article I, section 2, clause 3 of the Constitution clearly requires an ‘actual Enumeration’ of the population ...”; and that “the use of statistical sampling or statistical adjustment in conjunction with an actual enumeration to carry out the census with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstitutional census....” The committee also stipulated that the bureau use “Sufficient funds appropriated under this Act or under any other Act for purposes of the 2000 decennial census ... to plan, test, and become prepared to implement a ... census, without using statistical methods, which shall result in the percentage of the total population actually enumerated being as close to 100 percent as possible.” Further, in the 2000 census and “any dress rehearsal or other simulation” in preparation for the census, “the number of persons enumerated without using statistical methods must be publicly available for all levels of census geography....” Data to which this directive applies include the official state populations used for reapportionment and the data used for within-state redistricting.

Also new in the conference report was section 210,¹³ which established a Census Monitoring Board to “observe and monitor all aspects of the preparation and implementation of the 2000 decennial census” The board has eight members: two appointed by the Senate majority leader; two by the Speaker of the House; and four by the President, one at the recommendation of the Senate minority leader and one at the recommendation of the House minority leader. The board has appointed two co-chairmen and has a staff. Both co-chairmen and designated staff members are to have access to any Census Bureau “data, files, information, or other matters” that they request, “subject to such regulations as the Board may prescribe in consultation with the Secretary of Commerce.” The board may hold hearings and conduct activities that it considers “necessary to carry out its duties,” and is to issue a series of interim reports to Congress. A final report, containing the board’s detailed findings and conclusions, is due by September 1, 2001. All reports are to address, among other topics, the degree to which the bureau’s preparations will produce a 2000 census that “shall achieve maximum possible accuracy at every level of geography ...”; “shall be taken by means of an enumeration process designed to count every individual possible ...”; and “shall be free from political bias and arbitrary decisions” The board will go out of existence on September 30, 2001.

¹² Two suits have been filed in accordance with section 209: *Glavin v. Clinton*, no. 98-207-A (D.VA filed Feb. 12, 1998), and *U.S. House of Representatives v. U.S. Department of Commerce*, no. 1:98CV00456 (D.DC filed Feb. 20, 1998). Both suits seek to prevent the use of sampling in the decennial census to determine the reapportionment population. On August 24, 1998, a three-judge panel ruled unanimously in the second case that the census statute (13 U.S.C.) prohibits this use of sampling; the court did not address the constitutional question. The case is expected to proceed to the U.S. Supreme Court.

¹³ U.S. Congress, H.Rept. 105-405, pp. 46-49.

The conference committee recommended \$389.9 million for Census 2000 in FY1998, about \$8.1 million more than the House-approved H.R. 2267 and almost \$35.1 million more than the Senate-passed S. 1022 and the Administration's requested \$354.8 million. Of the \$389.9 million, \$27 million was designated for the bureau to "develop a contingency plan in the event sampling is not used in the 2000 decennial census"; almost \$4.1 million was for "modifications to the dress rehearsal" (modifications entailing less sampling than the bureau originally intended); and \$4 million was "to be transferred to the Census Monitoring Board."¹⁴ President Clinton signed this legislation on November 26, 1997 (P.L. 105-119; 111 Stat. 2440).

FY1999 Appropriations

The Administration requested \$848.5 million for FY1999 decennial census activities, \$493.7 million more than the FY1998 request of \$354.8 million.¹⁵ The large increase over the FY1998 request reflects the bureau's "ramp up," or increased functions, as the census year approaches. The Administration noted that the FY1999 request "assumes the use of sampling in the 2000 Census," but includes funds to comply with the agreement between Congress and the Administration "to maintain 'two tracks' [preparation for a census with and without sampling] and allow for a final decision on the use of sampling by March 1, 1999."¹⁶

The Senate Appropriations Committee, reporting S. 2260 on July 2, 1998, recommended the Administration's requested \$848.5 million for Census 2000. The Senate committee did not make a final judgment about sampling, but did note its "grave concerns about plans for the decennial census."¹⁷ The Senate passed S. 2260 on July 23. Reporting H.R. 4276 on July 15, the House Appropriations Committee recommended \$952 million for the 2000 census, with an additional \$4 million for the Census Monitoring Board. Although \$952 million far exceeds the Administration's request, \$476 million of the total would be withheld until Congress (by March 31, 1999, after a formal request by the President, including updated cost estimates for completing the census) passed legislation to release the \$476 million. The House committee stated that "a final agreement must be reached on the conduct of the decennial census, and better information provided on funding requirements, prior to the expenditure of billions of [taxpayers'] dollars"¹⁸ The House approved H.R. 4276 on August 5, 1998.

¹⁴ Ibid., p. 139.

¹⁵ "Overview — FY1999 Budget Request," facsimile transmission from the U.S. Dept. of Commerce, Feb. 27, 1998.

¹⁶ Office of Management and Budget, *Budget of the United States Government, Fiscal Year 1999, Appendix* (Washington: GPO, 1998), pp. 192-193.

¹⁷ U.S. Congress, Senate Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Bill, 1999*, report to accompany S. 2260, 105th Cong., 2nd sess., S.Rept. 105-235 (Washington: GPO, 1998), p. 78.

¹⁸ U.S. Congress, House Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1999*, report to accompany H.R. 4276, 105th Cong., 2nd sess., H.Rept. 105-641 (Washington: GPO, 1998), pp. 70-71.