



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT

January 29, 2020

To Institutions of Higher Education or IHEs:

I write to include two updates to my January 14, 2020 letter to IHEs regarding the Decennial 2020 Census. Specifically, the Student Privacy Policy Office (SPPO or the Office) of the U.S. Department of Education (Department) attached the enclosed letter of the U.S. Census Bureau (Bureau), to the Student Housing Administrator at each postsecondary institution and I identified applicable provisions of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) to the disclosure by IHEs or postsecondary institutions of certain personally identifiable information (PII) from student education records to representatives of the U.S. Census Bureau (Bureau) in connection with the 2020 Census.¹

The first update is to note that Bureau will contact colleges and universities in two not three phases and this completion timeline is June 5, 2020 (although the Bureau is aiming for May 15, 2020 for IHEs). The two phases are the first during the Group Quarters Advance Contact Operation and the second during the Group Quarters Enumeration Operation. The Group Quarters Advance Contact operation will occur between February 3, 2020, and March 6, 2020. Bureau representatives will contact institutions by telephone to determine if group living quarters, such as college residence halls and dormitories, exist at the school. If so, Bureau representatives intend to verify and collect information about colleges' and universities' student housing, such as the name and address of the residence halls, the number of residence halls, the number of students living in those group quarters, contact information (i.e., Resident Assistant (RA)) for each group housing, and a preferred enumeration method. In addition, Bureau representatives will schedule a date and time to conduct the enumeration and address any confidentiality concerns. If Bureau representatives are unable to make contact by phone, they will make an in-person visit to the colleges and universities to gather the above-mentioned information as part of the last phase. The Group Quarters Enumeration operation will occur between April 2, 2020 and June 5, 2020. The Bureau has indicated that the completion timeline for this whole process for conducting these two phases is June 5, 2020.

The second update is to respond to questions from IHEs and others regarding the ability to report de-identified aggregated data that is disaggregated by race/ethnicity and gender. To assist the Census Bureau in its goal of obtaining a complete and accurate enumeration of students residing on campus, postsecondary institutions may provide the Census Bureau with de-identified data about their students, as defined in 34 CFR 99.31(b)(1). Thus, postsecondary institutions may provide aggregate institution-level enrollment data disaggregated by race/ethnicity and gender if

¹ Please note that this document updates the April 2010 letter issued by SPPO's predecessor office, the Family Policy Compliance Office, regarding disclosures to the Bureau for the 2010 Census. Other than statutory and regulatory requirements included in the document, the contents of the guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

such data is de-identified, as defined in 34 CFR 99.31(b)(1). The Bureau has indicated it will consider that data as one source.

With respect to individual student data, the specific provisions of the January 14, 2020 letter are unchanged and as explained more fully below, FERPA permits a school, including an IHE, to disclose properly designated “directory information” on students, without consent, provided that the student has not opted out of directory information disclosures.

FERPA is a Federal law that protects a student’s PII in his or her “education records.” At the postsecondary level, FERPA provides that IHEs or postsecondary institutions may disclose PII from education records only if an eligible student has provided prior written consent, or if a specific exception applies. *See* 20 U.S.C. § 1232g(b)(1) - (b)(3), (b)(5) - (b)(7), (h), (i), and (j). *See also* 34 CFR §§ 99.30 and 99.31.

An “eligible student” is one who is at least 18 years of age or attends a postsecondary institution. *See* 20 U.S.C. § 1232g(d); 34 CFR § 99.3 “Eligible student.” The term “education records” is defined, with certain exceptions, as those records that are:

- (a) Directly related to a student; and
- (b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3 “Education records.” Section 99.3 of the FERPA regulations also defines “personally identifiable information” as information that includes, but is not limited to:

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

As noted above, FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from education records, unless a specific exception applies. *See* 20 U.S.C. § 1232g(b), (h), (i), and (j); 34 CFR § 99.31. Accordingly, if one or more of the exceptions are met, an educational agency or institution may disclose personally identifiable information from education records, without prior written consent. One exception to the general prior consent rule is the nonconsensual disclosure of personally identifiable information from education records that has been appropriately designated as “directory information” by the educational agency or institution. 20 U.S.C. § 1232g(b)(1) and (b)(2); 34 CFR §§ 99.31(a)(11) and 99.37.

FERPA defines “directory information” as information contained in an education record of a student which information would not generally be considered harmful or an invasion of privacy if it were disclosed. 34 CFR § 99.3 “Directory information.” Directory information may include, but is not limited to, a student’s name, address, telephone number, date and place of birth, participation in officially recognized activities and sports, and dates of attendance. *Id.* FERPA provides that a school may disclose directory information if it has given public notice of the types of information which it has designated as “directory information,” the student’s right to restrict the disclosure of such information, and the period of time within which a student has to notify the school in writing that he or she does not want any or all of those types of information about him or her designated as “directory information.” 20 U.S.C. § 1232g(a)(5)(B); 34 CFR § 99.37(a).

Accordingly, postsecondary institutions may disclose, without prior written consent, properly designated “directory information” on those students who have not opted out of “directory information” disclosures to representatives of the Bureau. That is, a school official, including an RA, who meets the criteria for a school official with a legitimate educational interest as set forth in the postsecondary institution’s annual notification of FERPA rights, may make the required limited disclosure to Bureau representatives; specifically this would include providing the names and campus addresses of students (who have not opted out of the disclosure of directory information), assuming that the institution has a “directory information” policy and has designated names and addresses as “directory information” items in its policy. If the student does not complete the Individual Census Questionnaire (ICQ) and the Bureau representatives request that a school official, including an RA, fill out the census questionnaire in the student’s absence, then the school official may only disclose, without prior written consent, to the Bureau representatives that information that is properly designated as “directory information” that the student has not opted out of having disclosed. Information requested on the ICQ includes name, age, date of birth, and address data if the student lives or stays somewhere else.

The ICQ also asks for information about the student’s sex, Hispanic, Latino, or Spanish origin, and race. However, school officials may not disclose this information, without prior written consent from the student, to Bureau representatives because these items of information may not be designated as “directory information.” The Department, through letters, guidance, and compliance training, since at least 1991, has consistently advised that the disclosure of a student’s sex, ethnicity, or race as directory information would not comply with the regulatory definition, which provides that directory information is information that would not generally be considered harmful or an invasion of privacy if disclosed.

In addition, although school officials advised the Department that they believed in some cases that local Bureau representatives may have specifically requested the students’ Social Security numbers (SSNs), the Census Bureau has confirmed to the Department that it does not request Social Security Numbers from residents or from postsecondary institutions. Institutions should be aware that, as previously explained, they may only disclose, without the student’s consent, properly designated “directory information” to the Bureau. As the Department has advised previously and as stated in a recent amendment to the FERPA regulations, SSNs may not be designated as “directory information” and disclosed without consent. *See* 34 CFR § 99.3 “Directory information” (b)(1). The FERPA regulations also prohibit a school from using a

student's SSN to disclose or confirm "directory information," unless the eligible student has provided written consent. The provision in 34 CFR § 99.37(e) states the following:

An educational agency or institution may not disclose or confirm directory information without meeting the written consent requirements in § 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.

Accordingly, postsecondary institutions may – to the extent allowed by FERPA – provide information to and cooperate with the Decennial 2020 Census Bureau representatives. That is, a postsecondary institution subject to FERPA may disclose, without prior written consent, properly designated "directory information" to Bureau representatives on those students who have not opted out of the disclosure of such items of "directory information." However, if an institution does not have a "directory information" policy under FERPA, it may not disclose any of the requested contact information without prior written consent. If an institution has a "directory information" policy but does not designate all of the items being requested by Bureau representatives as "directory information," then it may disclose to Bureau representative, without prior written consent, only those items of "directory information" that it has so designated in its public notice and only on those students who do not opt out of the disclosure of those items. Moreover, the institution may not utilize SSNs provided by the requester to locate the "directory information" on the students.

Should you have questions about the Decennial 2020 Census in general or concerns about a Census Bureau representative asking for information outside the scope of what the Bureau has indicated it needs, you may contact the following Census Bureau official: Dora B. Durante, Chief, Special Enumerations Branch, Decennial Management Division, Bureau of the Census. Mrs. Durante may be reached by telephone at 301-763-9371 or by email at dora.b.durante@census.gov. You may also contact Alysia D. Blake, Special Enumerations Branch, Decennial Management Division, Bureau of the Census by phone at 301-763-0300 or by email at alysia.d.blake@census.gov.

I trust that this information will be helpful to you as you work with the Bureau in completing the 2020 Census. If school officials need further guidance on FERPA, please do not hesitate to contact the Department's Student Privacy Policy Office at (202) 260-3887 or by email at FERPA@ED.gov.

Sincerely,



Kala Shah Surprenant
Acting Director
Student Privacy Policy Office

Enclosure:
Notice to Student Housing Administrator -- 2020 Census



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2020**

U.S. Census Bureau

Washington, DC 20233-0001

Office of the Director

To Student Housing Administrator:

We need your help to count everyone in the United States by providing basic information about all the people living or staying at this facility. The **2020 Census** includes people who live or stay in group quarters, such as college or university residence halls, nursing/skilled-nursing facilities, group homes, residential treatment centers, workers' group living quarters, and correctional facilities.

A Census Bureau worker will contact you to:

- Make or confirm an enumeration appointment.
- Verify your enumeration method.
- Collect information about the residents who live or stay at your facility.
- Answer any questions you may have about the 2020 Census.

It is important to remember that for census purposes, college/university students living in student housing are considered residents of the place where they live while attending school. Students are not counted at their parents' addresses.

It is vital that the Census Bureau has an accurate and complete count of everyone living in student housing at your college/university. Many federal laws require the use of census data to distribute funding, monitor important programs, and enforce laws against discrimination. States, cities, counties, and tribal governments use census data to plan future programs, services, and development.

The Census Bureau collects data in compliance with the Family Educational Rights and Privacy Act (FERPA). For students who do not respond, FERPA permits colleges and universities to disclose appropriately designated directory information from students' education records to the Census Bureau without the consent of the student. Depending on the institution's directory information policy, directory information could include a student's name, date of birth, address, and dates of attendance. For questions about this permitted disclosure under FERPA, school officials may email <FERPA@ed.gov>.

The Census Bureau is required by law to protect this information (Title 13, U.S. Code, Section 9). The Census Bureau is not permitted to publicly release your responses in a way that could identify anyone. We are conducting the 2020 Census under the authority of Title 13, U.S. Code, Sections 141, 193, 221, and 223. By law, the Census Bureau can only use responses to produce statistics. Per the Federal Cybersecurity Enhancement Act of 2015, data are protected from cybersecurity risks through screening of the systems that transmit data. All web data submissions are encrypted in order to protect your privacy.

Title 13 of the U.S. Code protects the confidentiality of all this information. Violating the confidentiality of a respondent is a federal crime with serious penalties, including a federal prison sentence of up to five years, a fine of up to \$250,000, or both. Only authorized individuals have access to the stored data, and the information provided to the Census Bureau may only be used by a restricted number of authorized individuals who are sworn for life to protect the confidentiality of individual responses.

For more information about how we protect this information, please visit our Web site at [census.gov](https://www.census.gov) and click on "Data Protection and Privacy Policy" at the bottom of the home page. This page also includes information about the collection, storage, and use of these records. Click on "System of Records Notices (SORN)" and look for Privacy Act System of Records Notice COMMERCE/CENSUS-5, Decennial Census Program.

Please visit our Web site at [2020census.gov](https://www.2020census.gov) for more information about the 2020 Census. Additional questions can be answered when a Census Bureau worker contacts you.

Thank you for your cooperation, and we look forward to working with you.

Sincerely,

Steven D. Dillingham
Director

[census.gov](https://www.census.gov)



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**Census
2020**

U.S. Census Bureau

Washington, DC 20233-0001

Office of the Director

Estimado(a) Administrador(a) de esta residencia de estudiantes:

Necesitamos su ayuda para contar a todos en los Estados Unidos al proveer información básica sobre todas las personas que viven o se quedan en esta instalación. Para el **Censo del 2020**, necesitamos incluir a las personas que viven o se quedan en alojamientos de grupo, tales como residencias universitarias, hogares de ancianos o centros de atención médica especializada, hogares de grupo, centros de tratamiento residenciales, alojamientos de grupo para trabajadores e instalaciones correccionales.

Un empleado de la Oficina del Censo se comunicará con usted para:

- Hacer o confirmar una cita para la enumeración.
- Verificar su método de enumeración.
- Recopilar información sobre los residentes que viven o se quedan en su instalación.
- Responder a cualquier pregunta que usted pueda tener sobre el Censo del 2020.

Es importante recordar que, para propósitos del censo, los estudiantes de un colegio universitario o universidad se consideran residentes del lugar donde viven mientras asisten a la institución. Los estudiantes no se cuentan en los domicilios de sus padres.

Es indispensable que la Oficina del Censo tenga un conteo preciso y completo de todas las personas que vivan en residencias para estudiantes en su colegio universitario o universidad. Muchas leyes federales requieren el uso de los datos del censo para la distribución de fondos, el monitoreo de programas importantes y la aplicación de leyes contra la discriminación. Los estados, las ciudades, los condados y los gobiernos tribales usan los datos del censo para planificar futuros programas, servicios y desarrollo.

La Oficina del Censo recopila información en cumplimiento con la Ley de Derechos Educativos y Privacidad de las Familias (FERPA, por sus siglas en inglés). Para los estudiantes que no respondan, FERPA permite a las universidades divulgar información de directorio de los archivos de los estudiantes designada según corresponda a la Oficina del Censo sin el consentimiento previo de los estudiantes. Según la norma de la institución, la información de directorio puede incluir el nombre, la fecha de nacimiento, la dirección y fechas de asistencia de un estudiante. Para preguntas acerca de esta divulgación permitida por FERPA, los funcionarios de la escuela pueden enviar un correo electrónico a <FERPA@ed.gov>.

La Oficina del Censo está obligada por ley a proteger esta información (Sección 9 del Título 13 del Código de los EE. UU.). A la Oficina del Censo no se le permite divulgar sus respuestas de manera que nadie pudiera ser identificado. Estamos realizando el Censo del 2020 en conformidad con las Secciones 141, 193, 221 y 223 del Título 13 del Código de los EE. UU. Por ley, la Oficina del Censo solo puede usar respuestas para producir estadísticas. Según la Ley Federal para el Fortalecimiento de la Seguridad Informática de 2015, los datos están protegidos de los riesgos de la seguridad en la internet mediante controles en los sistemas que transmiten los datos. Todos los datos enviados a través de la internet son codificados para proteger su privacidad.

El Título 13 del Código de los EE. UU. protege la confidencialidad de toda esta información. Violar la confidencialidad de una persona encuestada es un delito federal con serias sanciones, incluyendo una condena de hasta cinco años en una prisión federal, una multa de hasta \$250,000 o ambas. Solo personas autorizadas tienen acceso a los datos recopilados, y la información que se proporcione a la Oficina del Censo puede ser usada solamente por un número limitado de personas autorizadas que han jurado de por vida proteger la confidencialidad de las respuestas individuales.

Para obtener más información sobre cómo protegemos esta información, visite nuestro sitio web [census.gov](https://www.census.gov) y haga clic en "Data Protection and Privacy Policy" (Normas de protección de datos y privacidad) en la parte inferior de la página principal. La página sobre protección de datos y normas de privacidad también incluye información sobre la recopilación, almacenamiento y uso de esos registros. Haga clic en "System of Records Notices (SORN)" (Avisos sobre el Sistema de Registros Escritos) y busque Privacy Act System of Records Notice COMMERCE/CENSUS-5, Decennial Census Program (Aviso sobre el Sistema de Registros de la Ley sobre la Privacidad COMMERCE/CENSUS-5, Programa del Censo Decenal).

Visite nuestro sitio web [2020census.gov](https://www.census.gov) para más información sobre el Censo del 2020. El empleado de la Oficina del Censo que se ponga en contacto con usted podrá contestar otras preguntas.

Gracias por su cooperación, y esperamos poder trabajar con usted.

Atentamente,

Steven D. Dillingham
Director

[census.gov](https://www.census.gov)