



U. S. Department of Justice

Justice Management Division

Office of General Counsel

Washington, D.C. 20530

JUN 25 2014

Mr. Kelly R. Welsh
General Counsel
U.S. Department of Commerce
Office of the General Counsel
1401 Constitution Ave., NW
Washington, DC 20230

Re: Legal Authority for American Community Survey Questions

Dear Mr. Welsh:

I have been asked to respond to your letter of May 9, 2014, to Attorney General Holder, in which you requested a review of the questions asked in the American Community Survey (ACS) on behalf of the Department of Justice (DOJ), as well as an affirmation that the questions remain relevant and the legal authorities supporting DOJ's use of the information are accurate and complete. I apologize for the delay in providing this response, which was due to the decentralization of DOJ's relevant programs. We sincerely appreciate your office's flexibility with respect to the timing of this response.

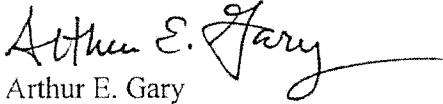
In undertaking this review, working through DOJ's point of contact for this ACS review, Mr. William Sabol, we asked DOJ component organizations to identify whether they rely on ACS information, and to provide the requested assurances. Ultimately, only two DOJ components indicated that they use ACS information: the Civil Rights Division (CRT) and the Office of Justice Programs (OJP). Within OJP, only the Bureau of Justice Statistics (BJS) uses ACS information. Both CRT and OJP/BJS have described their current needs for relevant ACS information and have provided assurances that the authorities for such uses remain current. I have attached a document describing CRT's numerous uses of ACS information and the relevant current statutory authorities.

With respect to OJP/BJS, that organization has advised me that it is authorized under 42 U.S.C. § 3732 to collect a wide range of data relating to crime and the criminal justice system, and is specifically directed to collect victimization statistics regarding individuals with developmental disabilities under the Crime Victims with Disabilities Awareness Act of 1998, Pub. L. 105-301, Oct. 27 1998; 112 Stat. 2838 as amended; *see* 42 U.S.C. § 3732 (Note). Further, while there is no specific statute directly referencing use of the ACS, BJS is authorized under 42 U.S.C. § 3732(d) to enter agreements with any federal agency for assistance in data collection and analysis necessary to perform its multi-faceted mission.

Accordingly, please accept this letter as DOJ's affirmation that it continues to need relevant information as described above and in the attachment, and that the legal authorities for the use of such information are accurate, current and complete. Mr. Sabol has transmitted the information about the legal authorities to the ACS Content Review staff at Census.

Please let me know if you have any questions about this letter. I can be reached at (202) 514-3452, or at Arthur.Gary@usdoj.gov.

Sincerely yours,

A handwritten signature in black ink, reading "Arthur E. Gary". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Arthur E. Gary
General Counsel

Attachment

Cc: Jocelyn Samuels, CRT
Lee Lofthus, JMD
Karol Mason, OJP
Ben Mizer, OAG
William Sabol, BJS

DEPARTMENT OF JUSTICE, CIVIL RIGHT DIVISION
REQUIREMENTS FOR AMERICAN COMMUNITY SURVEY DATA

Statutory Requirement		Classification	Uses	Lowest geography	ACS Characteristics	Frequency
Title	Citations					
Voting Rights Act of 1965	42 U.S.C. 1973 <i>et seq.</i> ; 28 C.F.R. Part 51; <i>Bartlett v. Strickland</i> , 556 U.S. 1 (2009); LULAC v. Perry, 548 U.S. 399 (2006); <i>Johnson v.</i> <i>DeGrandy</i> , 512 U.S. 997 (1994); <i>Thornburg v.</i> <i>Gingles</i> , 478 U.S. 30 (1986)	R	Used in the enforcement responsibilities under the Voting Rights Act to determine eligible voting populations for analysis and for presentation in federal litigation	Census block group	AGE, RACE, HISP, CIT	Annual
Voting Rights Act of 1965	42 U.S.C. 1973 <i>et seq.</i> ; 28 C.F.R. Part 51; <i>LULAC v. Perry</i> , 548 U.S. 399 (2006); <i>Johnson v. DeGrandy</i> , 512 U.S. 997 (1994); <i>Thornburg v.</i> <i>Gingles</i> , 478 U.S. 30 (1986)	R	Used in the enforcement responsibilities under the Voting Rights Act to determine disparities in voter participation rates for analysis and for presentation in federal litigation	Census block group American Indian/ Alaskan Native area	AGE, RACE, HISP, CIT, INC, ATT, LAN, AUTO, PHONE, TEN	Annual
Voting Rights Act of 1965, Section 203	42 U.S.C. 1973aa-1a; 28 C.F.R. Part 55	M	Used in the enforcement responsibilities under the Voting Rights Act's bilingual requirements	Census tract American Indian/ Alaskan Native area	AGE, RACE, HISP, CIT, ATT, LAN,	Annual

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Title	Citations					
Title VI of Civil Rights Act of 1964 (Nondiscrimination in federally assisted programs and activities)	42 USC 2000d to 2000d-7; <i>Lau v. Nichols</i> , 414 U.S. 563 (1974); 28 CFR 42.101 to 42.112; 28 CFR 42.401 to 42.415; 28 CFR 50.3; 67 Fed. Reg. 41,555 (June 18, 2002)	R	Used by the Department of Justice, other federal agencies that offer federal financial assistance, and recipients of federal financial assistance to comply with and enforce the prohibition against discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.	Census block group	RACE, ANC, LAN, INC, AGE, HIS	Annual
Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency	65 Fed. Reg. 50,121 (August 16, 2000)	R	Used by federal agencies and recipients of federal financial assistance to provide, identify any need for services to those with limited English proficiency (LEP) in order to comply with the prohibition against national origin discrimination programs and activities receiving federal financial assistance and federally-conducted programs and activities.	Census block group	ANC, LAN, INC, AGE, HIS	Annual
Fair Housing Act of 1968	42 U.S.C. 3601 et seq.; 24 C.F.R. 100.500	P	Used in enforcement efforts to eliminate and remedy unlawful discrimination in housing.	Census block group	SEX, HISP, RACE, ANC, DIS, INC, HHREL, STRUC, YRBUILT, TEN, VAL, RENT	Annual
Equal Credit Opportunity Act	15 U.S.C. 1691 et seq.	P	Used in enforcement efforts to eliminate and remedy unlawful discrimination in lending.	Census block group	SEX, AGE, HISP, RACE, VAL, ANC, MS, INC, TEN	Annual

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Title	Citations					
Americans with Disabilities Act of 1990 (ADA)	Titles II and III; 42 U.S.C. 12131-12189; 28 C.F.R. Parts 35 and 36	P	Used to assist generally with ADA enforcement responsibilities (including evaluating the impact of discriminatory policies and practices on affected populations of persons with disabilities) and to evaluate the impact of proposed regulatory changes to implement the requirements of titles II and III of the ADA.	Census tract	AGE, SEX, RACE, HISP, ATT, DIS, COW, LF, POW, JTW, OCG, IND, INC, WSLY.	Annual
Civil Rights Act of 1964 (Rights to Public Education and Equal Educational Entitlement)	42 U.S.C. 2000c et seq.	R	Used in the enforcement of nondiscrimination in education by state and local governments, including monitoring desegregation	Place	AGE, SEX, RACE, ANC, HISP, ATT, ENR,	Annual
Equal Educational Opportunities Act of 1974	20 U.S.C. 1701 et seq.; <i>Castaneda v. Pickard</i> , 648 F.2d 989 (1981)	R	Used in the enforcement of nondiscrimination in education by state and local governments, including ensuring appropriate action to assist English language learners in overcoming language barriers	Place	AGE, SEX, RACE, ANC, HISP, ATT, ENR, LAN	Annual
Title IX of the Education Amendments of 1972	20 U.S.C. 1701 et seq.	R	Used to enforce the prohibition against discrimination on the basis of sex in education programs and activities receiving federal financial assistance	Census block group	SEX	Annual

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Statutory Requirement		Classification	Uses	Lowest geography	ACS Characteristics	Frequency
Title	Citations					
Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e <i>et seq.</i>	R	Used to determine compliance with consent decrees entered by federal courts in pattern or practice employment discrimination lawsuits	Place	SEX, AGE, HISP, RACE, CIT, ATT, VET, LF, POW, JTW, IND, OCC	Annual
Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e <i>et seq.</i>	R	Used to determine whether group is underrepresented in employer's workforce	Place	SEX, AGE, HISP, RACE, CIT, ATT, VET, LF, POW, JTW, IND, OCC	Annual
Section 707 of Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e-6	P	Used to plan enforcement of prohibition against pattern or practice employment discrimination	Place	SEX, AGE, HISP, RACE, CIT, ATT, VET, LF, POW, JTW, IND, OCC	Annual
Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e <i>et seq.</i> ; <i>Wards Cove Packing Co. v. Atonio</i> , 490 U.S. 642 (1989)	R	Used, in conjunction with other data, to demonstrate prima facie case of employment discrimination	Place	SEX, AGE, HISP, RACE, CIT, ATT, VET, LF, POW, JTW, IND, OCC	Annual
Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e-5(g)(1)	P	Used to calculate classwide wages lost due to pattern or practice of employment discrimination.	Place	SEX, AGE, HISP, RACE, ATT, LF, YRLW, WSLY, IND, OCC, INC	Annual