



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of the Census**  
**Washington, D.C. 20533**  
**OFFICE OF THE DIRECTOR**

## **FACT SHEET**

### **1990 Census Residence Rules**

- o **The U.S. Constitution mandates a census every 10 years for the purpose of apportioning Representatives to Congress among the states.**
- o **The Congress has placed responsibility for conducting the census with the Secretary of Commerce, and has permitted the Secretary to delegate this authority to the Census Bureau.**
- o **In addition to conducting the census itself, the Census Bureau, operating solely in a ministerial role, calculates the Congressional apportionment based on the results of the census.**
- o **Federal law also requires the Census Bureau to provide population counts for small areas for use in drawing Congressional and legislative district boundaries.**
- o **The Census Act of 1790 covering the first decennial census established the concept of "usual residence" as the guiding principle. "Usual residence" is defined as where a person lives and sleeps most of the time. Usual residence is not necessarily the same as legal residence, voting residence, or the place where a person is found on Census Day.**
- o **"Usual residence" is the way the Census Bureau decides who should be counted in the census. If the usual residence is in the United States, we count the person. If it is outside the United States, we do not. This leads to the situation where undocumented immigrants living in the United States are counted. In contrast, military personnel living outside the United States are not. Specific examples are:**
  - Americans who are temporarily abroad on vacation, business trips, and so forth are counted at their usual residence in the United States.**
  - Immigrants, regardless of legal status, who have a usual residence in the United States are included.**
  - Persons from foreign countries temporarily visiting or travelling in the United States are not enumerated in the census because they have not established a residence.**
  - Americans who are overseas for an extended period (in the Armed Forces, working at civilian jobs, studying in foreign universities, and so forth) are not included because their usual residence is outside the United States.**

2. -Ask respondents whether they are U.S. citizens and count only resident citizens for apportionment purposes; count all residents for other purposes.

o In the history of the United States census, apportionment has never been based on citizens only.

o -The citizenship question in past censuses is known to have a very high rate of misreporting by aliens (legal and illegal).

o -Many of the problems listed for No. 1 above exist with this option. Because of confusion or deliberate misreporting, the apportionment counts could exclude an unknown number of citizens and include an unknown number of noncitizens.

3. Subtract illegal aliens from the census count. Get the number of legal aliens in the country from the Immigration and Naturalization Service (INS). Compare that number with the number of aliens, both legal and illegal, reported in the census. Subtract the difference from the census counts. The result is an estimate of the number of legal residents.

o The INS does not have counts of the number of legal aliens in the country now or on Census Day. They also do not know where most legal aliens reside. This information would be vital to implement this method.

o Even if INS could obtain this information in time for the census, the apportionment "counts" would be estimates. This would be the first time in the history of the census that Congress will have directed that the census be designed to use statistical estimates to apportion the House of Representatives.

o If the INS estimates of legal aliens are not complete and accurate, the Census Bureau's estimates of illegal aliens could be too high or too low. Thus, the Census Bureau could subtract too many or not enough people from the census. The numbers for apportionment might still include an unknown number of illegal aliens, or they might not include all legal residents.

o Apportionment could be challenged on the basis of different procedures used to estimate the number of legal residents.

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- o Since the first census in 1790, the census traditionally has included all persons who usually reside in the United States at the time of the census. Defining the usual residence is not always obvious, especially when people have more than one perceived usual residence. The Census Bureau must determine a set of rules to follow.
  - o For the census, the Census Bureau develops a set of rules covering special situations. These rules are called "residence rules." The residence rules define who should be counted and, for those that are covered, where they are counted. The Congress and the courts have reviewed these rules on occasion.
  - o For 1990, concerns have arisen over both the basic usual residence concept and the rules we established.

#### Issue 1: Including Military Overseas in the Apportionment Counts

- o In virtually every decennial census since 1790, the counts used for apportionment have not included the U.S. military living overseas. The 1970 census was an exception.
- o Even though not used for apportionment, we have determined a count of military overseas through the administrative records of the Department of Defense.
- o There is concern that the state reported by overseas military personnel as home of record in the United States, if any, is often not a usual residence. We understand that in many instances, the home of record is selected for a perceived benefit (e.g., lower or no state income tax) or some other reason.
- o In spite of quality concerns, it is possible to obtain counts for this population by state using the administrative records of the Department of Defense (DOD) and allocate this population to states, based on home of record, for apportionment purposes.

#### Issue 2. Including Military Overseas in the Redistricting Counts

- o In 1970, when the Census Bureau allocated the military overseas to states to include them in the apportionment counts, it did not include this population in the substate counts used for redistricting.
- o In order to allocate this population to locations below the state level, the Census Bureau would need exact street addresses. Even if this information is available from DOD administrative records, there would be timing and operational problems in performing the allocation. We have serious concerns that the operations could not be done with acceptable quality on the time schedule required.

### Issue 3. Including Undocumented Immigrants in the Apportionment Counts

- o For every census since the first one in 1790, the decennial census has included all residents, regardless of legal status.
- o The most recent review of this issue by a court occurred in connection with the 1980 census. Although decided on procedural grounds, the U.S. District Court did address the issue. The opinion in Federation for American Immigration Reform v. Klutznick says: "It [the Constitution] requires the counting of the 'whole number of persons' for apportionment purposes, and while illegal aliens were not a component of the population at the time the Constitution was adopted, they are clearly 'persons'." D.C.D.C. (1980) 486 F. Supp. 664
- o There is not an acceptable method to exclude undocumented immigrants from the apportionment counts even if the Census Bureau were directed to do so. One seemingly plausible approach would be to determine the legal status of every person. This causes both perceptual and operational problems that could jeopardize our ability to take the census. Asking about legal status could result in the misperception that the information we collect is used for enforcement. This could seriously threaten cooperation even among legal residents. The answers obtained from such an inquiry would be questionable at best. Indeed, many respondents simply would not be willing or able to answer honestly or accurately. We would be asking respondents to make a legal determination, a process that normally follows a judicial procedure. We face similar problems if we direct undocumented immigrants simply to exclude themselves. Legal residents may find this a convenient way to excuse themselves from participating. Because the Census Bureau could not distinguish the legal and illegal resident nonparticipants, there could be a large undercount among legal residents.
- o Another hypothetical procedure might be to estimate the number of undocumented immigrants from a separate information source and subtract them from the census totals. Concerns with possible alternatives for making these estimates include the lack of an appropriate information source, timing (the estimates could not be developed until the census is complete, thus delaying delivery of apportionment and redistricting counts); and the possibility that the resulting estimates would contain errors serious enough to affect the allocation of Congressional seats.

U.S. Bureau of the Census  
December 7, 1987

LEGAL MANDATES

ARTICLE 1, SECTION 2

UNITED STATES CONSTITUTION

"Representatives...shall be apportioned among the several states...according to their respective numbers...The actual enumeration shall be in such manner as they (the Congress) shall by law direct"

FIRST CENSUS ACT OF MARCH 1, 1790

"Every person whose usual place of abode shall be in any family...shall be returned as of such family...and the name of every person, who shall be an inhabitant of every district, but without a settled place of residence shall be inserted...in that division where he or she shall be..., and every person occasionally absent at the time of the enumeration as belonging to that place in which he usually resides in the United States."

### **Why the Census Bureau Cannot Exclude Illegal Aliens from the 1990 Census .**

**There is no acceptable method to exclude illegal aliens from the apportionment counts even if the Census Bureau were directed to do so. Any proposed method would be likely to have significant errors that could affect the allocation of one or more Congressional seats. How many seats and which states might be affected cannot be forecast with certainty.**

**People are suggesting ways to exclude illegal aliens from the census counts. None of these suggested methods can be accomplished with the degree of success that is required for purposes of apportionment. The result would be that census counts used for apportionment would likely contain more errors than in recent censuses. Further, the census is used for many purposes involving data for areas smaller than states, such as redistricting. The errors would have an even greater effect for such uses.**

**Suggested methods and comments on each follow.**

- 1. Ask respondents whether they are legal residents of the United States and count only the legal residents for apportionment purposes; count all residents for other purposes.**
  - o A census of only legal residents cannot be done as accurately as a census of all residents. People who are illegal aliens may either avoid the census altogether or deliberately misreport themselves as legal residents in the census.**
  - o The 1990 census counts for some cities and states may be lower than expected. Legal residents may be confused about why the Government is asking whether a person is here legally. Legal residents, therefore, may misunderstand or mistrust the census and fail to respond.**
  - o The census would be less accurate because the Census Bureau could not check on whether all legal residents had been included. The Census Bureau would not know whether a specific housing unit contained legal residents who had failed to answer the census or illegal residents who avoided the census.**
  - o Illegal aliens are unlikely to report to the Census Bureau, a Government authority, that they are in the country illegally. If they are not correctly identified, the Census Bureau would have no way to exclude illegal aliens from the census counts for apportionment but include them for other purposes.**
  - o If large proportions of illegal aliens avoid the census, the Census Bureau will not know at the time of apportionment whether lower 1990 census counts than cities and states expect result from undercount of legal residents or from illegal aliens who avoided the census. Those who avoid the census would not be included in any counts, even for purposes other than apportionment.**