

Constitutional Topic: The Census

The Constitutional Topics pages at the USConstitution.net site are presented to delve deeper into topics than can be provided on the [Glossary Page](#) or in the [FAQ pages](#). This Topic Page concerns the census. The Census is mentioned in [Article 1, Section 2](#) and in passing in the [14th Amendment](#).

The Constitution includes the phrase "[An] Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct." Congress first met in 1789, and the first national census was held in 1790.

There was actually some debate about whether how and on what time table a census should have been held. In early 1790, several Congressmen argued against a census prior to the next election. Some in the Congress, who advocated an immediate census, noted that those who did not want one were the people from states which were generally regarded as being over-represented in the Congress based on the initial figures provided for in the Constitution. Others were concerned that the questions to be asked in the census, while others felt that more questions should be asked to get a better picture of the citizenry.

For example, on February 2, 1790, Samuel Livermore of New Hampshire lamented that the question about profession would be hard for his constituents to answer, since some had three or four professions, depending on the season. Connecticut Representative Theodore Sedgwick, on the same day, wondered why the questions were not extended further - "The state of society could be ascertained, perhaps, in some degree, by observing [the] proportions."

The final bill, Statute 2 of March 1, 1790, provided that census marshals be appointed, directed to "cause the number of the inhabitants within their respective districts to be taken; omitting in such enumeration Indians not taxed, and distinguishing free persons, including those bound to service for a term of years, from all others; distinguishing also the sexes and colours of free persons, and the free males of sixteen years and upwards from those under that age." The act directed that the names of the heads of families be recorded, the number of white males sixteen and older, the number of white males under sixteen, the number of white females, the number of all other free persons, and the number of slaves. Failure of an assistant marshal to make a return, or to make a false return, was punishable by a \$200 fine. Failure of a marshal to do the same was punishable by up to an \$800 fine. The questions about profession, and other information Representative Sedgwick spoke of, were not made part of the final census. Census day was set at the first Monday in August, 1790. Failure to cooperate with a marshal or assistant was punishable by a \$20 fine.

Today, the controlling law for the U.S. Census is Title 13 of the U.S. Code. There is a lot of census data collected in the United States today, such as economic figures, sales and production figures, and agricultural statistics. Still, the head count is the only part of the census that is called for by the Constitution. The code for the enumeration can be found in [13 USC 141](#). In this code, the census is

directed to be taken in 1980 and every ten years thereafter, and that the count is to be taken on April 1. The returns must be completed within nine months for use in apportionment of representatives. The code also specifies a mid-decade census be taken in 1985 and every ten years thereafter. This count need not be a head count (sampling may be used) though the data cannot be used for apportionment.

The code, at §141(g), notes that "As used in this section, 'census of population' means a census of population, housing, and matters relating to population and housing."

There are fines for non-response and for false response as well, though the amount has risen from the 1790's \$20. Today failure to respond can result in a \$100 fine; providing false answers is a more severe offense, and carries a \$500 fine. Recent news reports, however, indicate that punishment for failure to respond is not usually enforced. The controlling section of the Code is [13 USC 221](#).

Today, all persons are counted as whole persons - the original census counted "other persons" (slaves) as three-fifths persons for the purposes of apportionment. This fractionalization was removed by the [14th Amendment](#). The Attorney General ruled, in 1940, that there were no longer any Indians in the United States who could be classified as "not taxed." In the Constitution, non-taxed Indians are not counted.

In 2000, a group of citizens are suing the Census over the questions on the long form - a form sent to one out of every six households. Though the 2000 log form is 18 questions shorter than the long form in 1990, and the shortest since the 1940 census, distrust of the Census Bureau's ability to keep the data private have many people up in arms about the questions. The suit challenges the ability of the census to ask all of the questions asked. The biggest problem for the suit is the Constitution itself: "[The Census] shall be made ... in such Manner as [Congress] shall by Law direct."

The questions on the long form are there because of legislation duly enacted into law by the Congress and signed by the President. Though the ire of citizens is being directed at the Bureau, the Bureau itself says that the Congress is to blame. The Census Bureau is looking to find ways to collect the data on the long form in other manners, such as polling and sampling. Though there is a possible \$100 fine for failing to file with the Census, the Bureau also notes that no one has been penalized for failing to file in the past. The fine is more of a psychological reminder of the importance of the census than a source of income for the government.

Advice to leave the form blank or to fail to fill it in may actually bring more of the government into your life than you want - unfiled and incomplete forms will be followed-up upon by actual census workers, either in person or by telephone.

The U.S. Census Bureau has a web site at [Census.gov](#) and also has [lots of data](#) about the 2000 Census.

The 2000 census data, along with data from other sources, has been compiled into a user-friendly web-based database by [LocalCensus.com](#).

The data in the following table was provided by the U.S. Census Bureau.

Year	Population	Increase	Percent
2000	281,421,906	32,712,033	13.2
1990	248,709,873	22,167,674	9.8
1980	226,542,199	23,240,168	11.4
1970	203,302,031	23,978,856	13.4
1960	179,323,175	27,997,377	18.5
1950	151,325,798	19,161,229	14.5
1940	132,164,569	8,961,945	7.3
1930	123,202,624	17,181,087	16.2
1920	106,021,537	13,793,041	15.0
1910	92,228,496	16,016,328	21.0
1900	76,212,168	13,232,402	21.0
1890	62,979,766	12,790,557	25.5
1880	50,189,209	11,630,838	30.2
1870	38,558,371	7,115,050	22.6
1860	31,443,321	8,251,445	35.6
1850	23,191,876	6,128,523	35.9
1840	17,063,353	4,202,651	32.7
1830	12,860,702	3,222,249	33.4
1820	9,638,453	2,298,572	33.1
1810	7,239,881	1,931,398	36.4
1800	5,308,483	1,379,269	35.1
1790	3,929,214	-	-

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