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Misinformation Nation: The Threat to America's Federal Data and Civil Rights

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The Leadership Conference Education Fund is a 501(C)(3) organization that builds public will for federal policies that promote and protect the civil and human rights of all persons in the United States.

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Introduction

The federal government’s collection, reporting, and protection of accurate, comprehensive data is central to implementing, monitoring, and evaluating civil rights laws and policies. But the current administration is taking steps that undermine all of these pillars of data collection. This issue paper highlights the importance of data and the present threats.

The federal government collects, analyzes, and publishes a tremendous amount of statistical information on the U.S. population on everything from population size and distribution, to wages and employment, to housing conditions and housing finance, to health and medical needs, to crime rates. These data directly influence public policy, informing the evaluation and design of federal programs and providing the basis for allocating hundreds of billions of dollars of government funding each year. And – where the data show unjustified disparities or disproportionate harms – it can support federal and private enforcement of critical constitutional and statutory rights in voting, employment, housing, education, health and human safety, and more.

From fair political representation to voting rights, to equal opportunity in housing, education, health care, and the job market, the collection of data sets public policy. These data are central to public policy development; support advocacy for fairer and more effective public policies; assist civic and business leaders in promoting equality of opportunity and addressing the needs of a diverse population; allow for the evaluation of federal programs to test their effectiveness and strengthen their reach; provide evidence of potentially discriminatory impacts of government and private-sector actions; enable journalists and the public to hold public officials accountable; and form the basis for allocating half-a-trillion dollars in public spending every single year.

The collection and analysis of data by federal agencies can help implement and enforce civil rights laws

and help understand barriers to social and economic opportunity for our nation’s diverse communities. Rigorous collection of reliable and meaningful data for civil rights purposes must therefore remain a core activity of federal agencies.

In addition to the collection of relevant data, the government should generally make its data sources transparent and publicly available for policymakers and advocates, while also protecting sensitive or individualized data from improper disclosure. And in order to be considered credible and reliable, government data collection must remain divorced from partisan influence, including any political anti-civil rights agenda.

Unfortunately, the current administration has already begun taking steps that undermine each of these principles in connection with civil rights-related data collections. Among other troubling developments, the White House and federal agencies have canceled the collection of worker pay data by race and sex, undermining efforts to remedy the wage gap¹; discontinued the collection of key data on LGBT individuals and families, leaving the LGBT community more vulnerable to discrimination²; and removed dozens of data tables from the annual “Crime in the United States” report, weakening the ability to propose solutions to criminal justice trends.³

These rollbacks are just a few of this administration’s early efforts to undermine the collection and publishing of data critical to civil rights enforcement.

This issue brief provides an overview of the importance of federal data collections to promote and protect the civil rights of all persons and ensure compliance with federal law, and describes several existing threats to available data. Without these data, federal agencies would be unable to meet their legal obligations, and advocates’ work would be stymied. It is critically important that the scope, frequency, and public accessibility of existing data collections be maintained.

Federal agencies collect a huge array of critical civil rights data.

Congress and federal agencies have long recognized the importance of data collection to civil rights policy development and enforcement.

Our founders even recognized that some data collection efforts are so foundational to our democracy that they constitutionally mandated them: Article I, Section 2 of the Constitution provides for a decennial census for the purpose of apportioning representatives to Congress. And census data, of course, now go far beyond allocation of political representation among the states. Those data provide the foundation for virtually all demographic and socioeconomic information used by researchers and policymakers at all levels of government and civil society, including businesses, philanthropy, community groups, and state and local governments. The Census Bureau's American Community Survey today helps determine how approximately \$600 billion in federal and state funds are distributed annually for community development programs, transportation projects, and other public services.⁴

The census is the largest, best-known, and most expensive of the federal government's statistical programs, but it is just one of thousands of government data collection efforts. The federal government has an extensive and extremely decentralized data collection and statistical system – nearly 130 federal agencies and offices receive direct funding from Congress for “statistical activities,” defined by the Office of Management and Budget as survey and census design, data collection, data analysis, forecasting, and modeling.⁵ For the 2016 fiscal year, federal statistical programs were appropriated funding of about \$7.2 billion (a figure that typically doubles in decennial census years).⁶ Among this disparate and extensive data collection system are a number of federal efforts that are absolutely central to both public and private enforcement of civil rights.

Since 1968, for example, the U.S. Department of

Education has collected data on civil rights indicators related to educational opportunity from all public local educational agencies, from early childhood through grade 12 levels. These data inform the department's efforts to ensure that programs receiving federal financial assistance do not discriminate on any prohibited grounds, including race, ethnicity, sex, language status, and disability. They are also studied extensively by advocates, parents, educators, researchers, and policymakers to identify and propose ways to address barriers to educational opportunity. In recent years, the public accessibility of the department's Civil Rights Data Collection has allowed advocates to highlight and combat racial disparities in school discipline policies, shortfalls in educational services for English learners, and the racial distribution of children who are enrolled in advanced courses.

Even when not made publicly available, federal data collection requirements often form the basis for enforcement of critical statutory protections, like those codified in the Voting Rights Act of 1965 (VRA). Shortly after Congress enacted the Civil Rights Act of 1957 to strengthen voting rights enforcement and establish a Civil Rights Division within the U.S. Department of Justice, Congress recognized that enforcement authority alone would be toothless unless paired with access to the information needed to identify violations. The Civil Rights Act of 1960 addressed that need by requiring election officials to retain all registration- and voting-related records for a specified time period, and to present those records to the U.S. Attorney General on demand.⁷ Combined with the additional statutory protections established by Congress in the VRA, the records-retention and data-collection requirements in the 1960 Civil Rights Act have supported literally thousands of federal voting rights enforcement efforts over the past six-plus decades.

Other data sources that have been central to efforts by advocates, policymakers, and law enforcement agencies to promote and protect civil rights in America include:



- Data on home mortgage lending collected from financial institutions by federal banking and financial regulators pursuant to the Home Mortgage Disclosure Act, which housing advocates and litigators rely on to identify possible discriminatory lending patterns and enforce fair housing laws;
- Information on tribal crime rates, violence against women, crime against people with disabilities, and other statistics collected by the DOJ Bureau of Justice Statistics, which inform efforts by criminal justice advocates and service providers to better protect vulnerable populations, and help law enforcement agencies better target their resources;
- Data on toxic chemical releases and sources of environmental contamination, which have contributed to public understanding of the disproportionate environmental harms that burden communities of color and low-income communities;
- Data on earnings, employment, and unemployment rates by race, sex, and age, which highlight persistent opportunity gaps in employment and pay for women, people of color, and youth; and
- Performance indicators for federal job-training programs, which allow policymakers and advocates to assess the effectiveness of these programs at strengthening employment and earnings outcomes for people with disabilities, older working people, formerly incarcerated people, trade-affected working people, and other populations with barriers to employment.

Even this cursory roster illustrates the extent of civil-rights related data collection by federal agencies, and highlights the need to protect and preserve these efforts.

The current administration poses a unique threat to civil rights-related data collection.

According to the National Academy of Sciences, federal statistical efforts are expected to adhere to four key principles: agencies should collect data that are relevant to policy issues, be transparent about data sources and limitations, protect sensitive data from harmful disclosure or unwarranted uses, and maintain independence from partisan influence.⁸ The present administration has been disregarding each of these principles.

Collection of relevant data. The central goal of federal data-collection efforts is to provide accurate and objective information that is relevant to public policy issues affecting all of the government's stakeholders. But this administration has taken significant steps to undermine the relevance of federal data for critical policy discussions by, among other measures, curtailing the disaggregation of demographic data and eliminating questions on key surveys. For example:

- In September 2016, the Equal Employment Opportunity Commission finalized an effort to collect summary pay data, disaggregated by sex and race, from businesses with 100 or more employees. This information would serve to help identify unjustified pay disparities for possible enforcement efforts, and also to allow employers to identify disparities in their own pay practices. In August of this year, however, the White House announced – with no prior notice – that it was rescinding the EEOC's data effort.⁹
- The administration has also discontinued several data collection efforts regarding the health, housing, and other circumstances of LGBT individuals. The U.S. Department of Health and Human Services (HHS) has proposed ending the collection of data on LGBT individuals from the survey that evaluates the effectiveness of HHS programs serving people with disabilities.¹⁰ HHS has also removed questions on gender iden-

ity from the survey that identifies people who receive services funded by the Older Americans Act (including home care services and senior centers).¹¹ And the U.S. Department of Housing and Urban Development (HUD) withdrew two data collection proposals – including a survey on LGBT youth homelessness prevention and a survey on equal access to HUD programs regardless of sexual orientation and gender identity – that would have helped HUD and housing advocates better understand LGBT housing needs and homelessness rates.¹²

- The administration has delayed a decision on proposed changes to the census that were designed to more accurately collect race and Hispanic origin information.¹³

Ensuring data are publicly available. Federal agencies are also obligated to maintain credibility by being transparent about data sources and by preserving data for future use. This administration has, however, commenced an unprecedented effort to remove data sources from public accessibility:

- The Environmental Protection Agency announced in April that it was removing from its website several agency databases containing detailed climate data, including information on the effect of greenhouse gas emissions on communities of color and low-income communities.¹⁴
- And in October, the FBI published its annual “Crime in the United States” report, but omitted nearly 70 percent of the data tables that were included in prior annual reports.¹⁵ Among the data excluded from the report are statistics regarding the relationship between victims and offenders; the age, sex, race, and ethnicity of victims and offenders; and data used to identify the number

of women murdered by their partners.¹⁶

Protecting sensitive data and maintaining political independence. Finally, to be credible and trustworthy, federal agencies must protect sensitive data from harmful disclosures and must maintain independence from partisan or political influences. There are troubling signs that this administration is unwilling to meet these obligations as well.

- The recently formed Presidential Advisory Commission on Election Integrity, for example, is seeking to collect sensitive personal information on every registered voter in the country, with no public explanation of how that information would be analyzed, no description of how individualized records would be kept safe from unauthorized public disclosure, and using a process its own lawyers described in a recent court hearing as “chaotic.”¹⁷ Concerns about this commission’s motives and its ability to protect sensitive data have already had a chilling effect on political participation: Secretaries of state from across the country have reported thousands of voter registration withdrawal requests by individuals who do not want their personally identifiable information handed over to the commission.¹⁸

Political independence and protection of individually identifiable data are critical to ensuring that government data sources are not put to any use that perpetuates discrimination or allows marginalized communities to be targeted for disparate treatment. In this regard, The Leadership Conference on Civil and Human Rights (The Leadership Conference) and The Leadership Conference Education Fund (The Education Fund) previously developed a set of civil rights principles for big data,¹⁹ including:

- Ending high-tech profiling;
- Greater scrutiny of computerized decisionmaking that shapes government decisions like access to credit;
- Continued protection of constitutional rights to privacy and free association;
- Greater individual control over personal information collected by the government; and
- Protection of disadvantaged groups from harms that may follow from inaccurate data.

These principles cannot be upheld if government agencies lack adequate norms and controls for protecting sensitive data and maintaining independence from political influence.



Conclusion

The National Academy of Sciences has explained that “the effective operation of a democratic system of government depends on the unhindered flow of statistical information to its citizens.”²⁰ The looming threat to the collection and analysis of civil rights data across the federal government undermines not only equal opportunity, but our democratic system itself. Without accurate and reliable data, we will be unable to ensure the fair distribution of hundreds of billions of dollars in federal funding, and will be hamstrung in our efforts to identify and remedy disparities that may harm vulnerable communities. The Education Fund will highlight the stakes and will fight to preserve civil rights data efforts that promote opportunity and protect against discrimination.

Endnotes

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 3. See Clare Malone & Jeff Asher, The First FBI Crime Report Issued Under Trump is Missing a Ton of Info, FiveThirtyEight.com (Oct. 27, 2017), at <https://fivethirtyeight.com/features/the-first-fbi-crime-report-issued-under-trump-is-missing-a-ton-of-info/>.
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 7. See Civil Rights Act of 1960, at §§ 301-306, Pub. L. No. 86-449, 74 Stat. 86, 88-89, codified at 52 U.S.C. §§ 20701-20706.
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 10. See Matt Sedensky, Federal Surveys Trim LGBT Questions, Alarming Advocates (Mar. 20, 2017), at <https://www.usnews.com/news/us/articles/2017-03-20/federal-surveys-trim-lgbt-questions-alarming-advocates>.
 11. See, e.g., Revision of a Currently Approved Collection, National Survey of Older Americans Act Participants, 82 Fed. Reg.
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12. See Notice of Proposed Information Collection: Notice on Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's Community Planning and Development Programs, Withdrawal, 82 Fed. Reg. 13,359 (Mar. 10, 2017); Notice of Proposed Information Collection: Implementation Phase Review of the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Youth Homelessness Prevention Initiative, Withdrawal, 82 Fed. Reg. 13,359 (Mar. 10, 2017).
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