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Mr. Brian Harris-Kojetin
OMB Desk Officer for the Census Bureau
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725 17th St NW
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Dear Mr. Brian Harris-Kojetin

I am writing in response to the Federal Register Notice Vol. 81, No. 236, pgs. 88662-88663 dated December 8, 2016, *"Proposed Information Collection; Comment Request; Longitudinal Employer-Household Dynamics (LEHD)"*.

The Census Bureau's Longitudinal Employer-Household Dynamics (LEHD) program, at its core, consists of State Unemployment Insurance (UI) employer tax files which are edited by state Labor Market Information (LMI) employees under contract to the Bureau of Labor Statistics (BLS). State LMI staff use BLS statistical rules and a knowledge of state UI business practices to transform these tax files into records that make up the BLS Quarterly Census of Employment and Wages (QCEW) program. As part of quarterly tax filings, employers include a listing of employee earnings and social security numbers. These employee earnings are referred to as wage records. Wage credits are used to determine eligibility for UI weekly payments should a worker become unemployed.

Wage records are not edited by UI at the time of collection and therefore may be duplicates of the prior quarter tax filing or out of scope of normal values, contain invalid characters, have transposed values, or contain values which deviate widely from historic trend. Nor, unlike the QCEW, are they edited by the states as part of a nationwide statistical program. UI administrative records (in any state) are subject to revision, amendment, and collection of delinquent reports over six calendar quarters. Under the terms of the now expired LEHD Memorandum of Understanding (MOU) with Wyoming, Census received one copy of the wage records file early in the six quarter tax filing period. Given the timing of states wage record delivery to LEHD during the state tax collection process, additional issues of UI data integrity, and the different Information Technology (IT) and management systems states use to collect tax information, questions arise regarding the completeness, accuracy, and interstate comparability of LEHD products. Clearly these features of LEHD represent threats to the utility value of LEHD's wage records products.

At the conceptual level, wage records are a relatively straightforward proposition. However, at the level of practice among the states, what is collected, the application of collection standards, management, use, and interpretation is much more complicated.

After the second election of President George W. Bush, the U.S. Department of Labor's Assistant Secretary at the Employment and Training Administration (ETA) mustered enough support to push state LMI office participation in LEHD above 90%. This move was critical in establishing a bandwagon effect used by Regional ETA administrators to persuade appointees heading state workforce agencies of LEHD's benefits. By this time (2003-05), ETA was assisting in funding LEHD thereby investing in a competition between Census and BLS, which was at that point advancing its own version of a State-Federal program regarding the sharing and use of wage records. (Design documentation from the State-BLS Wage Records Committee which lists state and federal members, dated 3/15/04 is enclosed.)

LEHD began as a quasi-voluntary program for many state LMI shops especially for larger states in the late 1990s and early part of the following decade. The program was based on an alliance between ETA's Assistant Secretary and the Commerce Department to push an agenda of adding jobs to the U.S. economy following the 2001 recession during the first Bush administration. LEHD played the role of the bright shiny object, giving public testimony to the Bush jobs agenda. LEHD was a manifestation of the jobs-at-any-price initiative bringing with it a new (hoped for) compelling language of business "births and deaths, job churning, and quarterly indicators." LEHD has always been as much about political policy rather than statistical goals. Unfortunately for the states, the latter has been sacrificed for purposes of the former.

Academics who stood to gain by publishing research from access to confidential LEHD files often pressured state LMI offices to sign MOUs. For academic researchers, LEHD access was based on credentials gained as consultants to, and grantees of, ETA and/or the Census Bureau. Staff in the Austin based Ray Marshall Center applied pressure through the Governor's office on Texas Workforce Commission LMI staff to join LEHD. Therefore, referring to the LEHD program as a State-Federal "partnership" misleads history.

In other instances, some politically vulnerable LMI directors were persuaded that for the cost of providing UI administrative files to Census, the LMI office could receive dynamic, descriptive "quarterly indicators" from a prestigious federal statistical agency, the Census Bureau. These "indicators" could service the interests of gubernatorial appointed employment and training advisory boards. An academic from Northern Illinois University was particularly persuasive in delivering both a message of status reward as well as implied threat to a large state LMI director.

LEHD did not exist as a nationwide system until the middle of the last decade. The necessity to the statistical functioning of Census is challenged by the neglected issue of wage record data quality. Its necessity as a statistical initiative is also questionable given that it came into being through force directed by the Bush administration on lower level state bureaucrats – many of whom resisted these Census MOUs for years. LEHD today is sustained through the inertia created by MOUs ten years in duration. Few of the LMI directors currently in service were LMI directors when LEHD MOUs were first

signed, reinforcing the perception of an institutionalized LEHD whose structure, function, and persistence is largely unquestioned.

LEHD as a necessary nationwide system for the performance of a federal agency's functioning is questionable. When Wyoming's LEHD MOU ended in September 2015, nothing happened. LEHD is not required in the Federal-State Cooperative Program for Population Estimates, nor does it have a role in population projections. Many state agencies including those with authority for homeland security functions, agricultural extension economics, community housing and traffic planning do not use or depend on LEHD. No federal fund levels, federal fund allocations, charitable organizations, or Congressional committee decisions were affected by the existence or lack of an LEHD MOU with the State of Wyoming. LEHD is neither necessary for the functioning of Census, nor necessary to states or localities. And given questionable data validity, it may be more dangerous than helpful for the states.

Because of gaps in wage record-based employment coverage in LEHD, a lack of uniformity among the states in the collection of wage records, and the absence of a wage records edit program to address data quality, it is just as well that LEHD's use be restricted to a non-essential descriptive statistical role. LEHD's focus on the development of research databases of state files for itself while limiting states to access only descriptive statistics is a barrier to the advancement and development of the states.

As useful as wage records are as the basis for the calculation and payment of UI weekly benefits to eligible unemployed workers, the Department of Labor's Inspector General (IG) has identified "Reducing Improper [UI benefit] Payments" as one of seven of the "... most serious management and performance challenges facing the Department."¹ Improper UI payments comprise about 10 percent of all payments, and can be attributed to fraud, mistakes on the part of employers, mistakes made by state agencies administering the UI program, and the absence of UI wage record collection edits. Mistakes and errors due to the absence of data collection edits are probably less likely to be random than systematically unique to each state across the country. Error is systematically unique to the data capture systems, business rules, and extent of UI understaffing in each state, serving as an impediment of unknown magnitude to interstate comparability, and thus national character of LEHD products.

UI claims draw on a non-representative sample of wage records. However, the example serves to provide independent insight into the issue of data quality. During fall 2016 testimony before the House Ways and Means Committee, Human Resources Subcommittee, the National Employment Law Project (NELP) pointed out that "the majority of [UI] overpayments are not due to claimant fraud." NELP's testimony attributes overpayments (at the time of their analysis between 10% and 12.4% of all claims) to employer reporting and state UI agency management error.² NELP's analysis also touches on claims underpayments attributable to errors in wage records and employer fraud. This independent analysis of errors in wage records supplements enclosed documentation relating to error detection at the point of wage record tax collection in the proposed State-BLS wage records program.

¹ Top Management and Performance Challenges Facing the U.S. Department of Labor (November 2016) Retrieved 1/09/17 from <http://www.oig.dol.gov/public/topchallenges/2016.pdf>

² pp 8-9 "Unemployment Insurance: An Overview of the Challenges and Strengths of Today's System" Retrieved 1/30/17 from <https://waysandmeans.house.gov/wp-content/uploads/2016/09/20160907HR-Testimony-Conti.pdf>

LEHD's indifference to wage records data quality raises questions regarding statistical validity, inter-state comparability, and a much larger question regarding why LEHD would demonstrate such indifference. While we cannot infer intent from behavior, we can identify its consequences. One consequence is that LEHD keeps the states dependent on the Census Bureau for a wage records descriptive statistical program. State LMI operations are not specifically funded to carry out or develop research utilizing wage records, nor is there a strong tradition among the states to move beyond statistical description. LEHD is less about developing research capacity in the states than it is about the control of state UI administrative files which, after all was its genesis.

A second consequence of the LEHD program is that there is no QCEW-like state level edit program for wage records. A result is an unwarranted number of errors in UI benefit payments. When employers submit a duplicate wage records file for two quarters in a row, and then experience second quarter employee turnover, there is a high probability that the UI system will grant claimants wage credits for the full duplicate second quarter even to claimants who worked less than a full quarter. This circumstance creates UI benefit overpayments. The same problem can occur when employers fail to submit a wage records file in a timely manner and claims are filed against those employers. One of the most important management challenges facing the U.S. Department of Labor, according to the IG, is improper UI payments. A statistical editing program on the front end of wage records collection at the state level would directly and positively affect UI benefit errors.

A state level statistical wage record program could have benefits for other parts of the state administered employment and training system. The enactment of the Workforce Innovation and Opportunity Act (P.L. 113-128) in July 2014 brought about a renewed requirement for states to carry out employment and training program impact evaluations. WIOA also expanded the number of employment and training programs subject to wage records based performance reporting. The accuracy and quality of impact evaluations and performance reporting (and the accuracy of reporting to Congress under part 6 of OMB Circular A-11) are negatively affected by poor data quality in wage records. Moreover, with a systematic but unknown level of bias in each state's wage records data collection system, the equity of the system as a tool in the federal management of WIOA resources for the states (sanctioning under-performance) is under question.

Random assignment to controls and WIOA experimental groups, or quasi-experimental designs based on matching characteristics between the two groups, are most effective when the controls come from the population at large because population based controls permit generalizing impact results to the broadest constituencies for which state Labor agencies are responsible. Selected state LMI offices obtain comprehensive demographic files from state agencies that administer drivers' licenses, labor exchange, New Hires, and other social programs which when added to the UI claims file results in a near census of population demographics for the wage records file for use in program evaluation. However, the majority of states do not receive demographics from state sources, and LEHD refuses to provide demographics to these state LMI offices under the terms of the LEHD MOUs.

All of the state LMI offices from which LEHD receives UI administrative records are staffed by sworn agents of the Commissioner of the BLS. Under PL 107-347, Title V – Confidential Information Protection

and Statistical Efficiency Act (CIPSEA) section 501(2) BLS defines state agency staff as agents who under contract perform exclusively statistical functions accessing BLS confidential information. The Census Bureau could enroll the same state staff that BLS enrolls as agents, as LEHD agents for purposes of providing state staff with demographics for use in WIOA program evaluation and for other statistical purposes. If the LEHD program was about facilitating the role of state LMI offices, advancing the goal of evidence based policy making, it would be providing unit record demographics for use in program evaluation.

Program impact evaluation carried out by the states under WIOA, and its predecessor legislation (P.L. 105-220, the Workforce Investment Act of 1998) is rare. One of the reasons for the paucity of study is the absence of demographics attached to wage records held by the states. Scarcity of study itself becomes a barrier to adoption and diffusion of evidence based policy making in the state employment and training community. LEHD's exclusive emphasis on the provision of wage records descriptive statistics to the states has the consequences of minimizing the illustration of the potential that wage records offer the states in their attempt to improve employment and training outcomes.

Decreasing computing costs, the increased emphasis on state capacity to carry out WIOA causal analysis based on administrative records, and an increased credentialing among state staff (there are several PhDs leading LMI offices or the program evaluation unit who were not part of the LMI office when LEHD MOUs were signed) changes the environment in which LEHD is viewed. WIOA emphasizes program impact evaluation which most efficiently relies upon wage records. However, LEHD fails to support state efforts to engage in evidence based policy making. In sum, the circumstances that created the opportunity for LEHD to come into being a decade ago in every state are receding into the background.

Because LEHD impedes state statistical progress, the question becomes: What should be done to either transform or discard LEHD? How should we begin the process? Because the paperwork burden on the states is not identified in a clearance process and is therefore absent from the burden documentation provided to Congress, it appears that state burden needs to be identified. This burden includes the time state staff, including council, spends on MOU review. Collection hours need to be ascertained.

An OMB control number should not be issued for a period extending beyond a three year collection cycle. A three year cycle would limit the occasions where an MOU spans the succession of state leadership at either the LMI or Workforce agency administrative level. Ten year MOUs have the consequence of avoiding state oversight and accountability to the public.

The clearance process should also require that Census request statements from the states regarding the following facts:

Census has had ample opportunity to utilize wage records for its own purposes while making no investment in state capacity to move beyond descriptive analysis. This fact raises the concern that LEHD functions less as a statistical program than it serves as a means of controlling a strategic asset, UI administrative records, which should serve the informed decision making needs of the states as well as the federal government. If Census is unable or unwilling to charter state LMI staff as agents under CIPSEA, fails to invest in a wage records state edit for UI and WIOA performance reporting integrity

purposes, and fails to provide demographics to the states in support of evidence based policy making in employment and training programs, then it is time for the states to seek an alternative federal partner for a nationwide wage records program.

Sincerely,

Tom Gallagher
Manager Research & Planning

CC: State LMI Directors

Mr. Scott S. Dahl, Inspector General, U.S. Department of Labor

Ms. Katherine Astrich, OMB Desk Officer for Department of Labor-Employment and Training
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Jennifer Jessup, Census Bureau Departmental Paperwork Clearance Officer

Enclosure