

June 20, 2011

Dear Senator McConnell:

We are writing to call your attention to an unfortunate aspect of S. 679—a bill with the otherwise commendable intent of streamlining presidential appointments. Along with several hundred positions designated as not requiring Senate confirmation are two positions that clearly should continue to require confirmation: the position of U.S. Commissioner of Education Statistics and the Director of the Bureau of Justice Statistics. We hope that further consideration and deliberation on the bill will lead you to join other Senators in removing these exceptional positions from those addressed by the bill.

The bill is appropriately directed to several hundred “junior officials or PR officers”<sup>193</sup> whose functions, span of authority, and accountability for financial and human resources do not require Senate confirmation. There are over 400 posts so classified, and we concur with the logic and motivation in determining that Senate confirmation is not necessary for such appointments. The heads of the National Center for Education Statistics (NCES) and Bureau of Justice Statistics (BJS) are, however, materially different in scope, stature, and government-wide responsibility than the myriad of other presidential appointed positions that support executive branch operations.

There are 13 agencies that are deemed to be the principal statistical agencies of the US government, with 5 such agencies, including the National Center for Education Statistics and the Bureau of Justice Statistics, benefitting for more than three decades from having their heads confirmed by the Senate. Moreover, NCES and only one other federal statistical agency (the Bureau of Labor Statistics) meet all three criteria set forth by the National Academies (presidentially appointed, Senate confirmed, and fixed term) to ensure the appropriate stature, authority, and autonomy of these agencies.

The unique mission, charge, and mandated purpose of statistical agencies within the federal government commend that these heads continue to be reviewed and confirmed by the Senate or, at a minimum, that this issue receives separate and serious consideration with benefit of the advice of those who have centrally led and depended upon the federal statistical system of agencies.<sup>194</sup> It is our belief that any such analysis would lead to bi-

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<sup>193</sup>Alexander, Sen. [TN]. (2011, 30 March). Statements on introduced bills and joint resolutions. In *Congressional Record*, 157, S1986.

<sup>194</sup>NCES and BJS are among the statistical agencies that have legislatively mandated reporting requirements to Congress.

partisan agreement that the heads of NCES and BJS remain Senate confirmed and accountable to Congress as well as to the executive branch (both the departments in which they reside and the Interagency Council on Statistical Policy that operates under the leadership of Office of Management and Budget). Whatever the outcome of such a separate examination would be, if pursued, we urge that the Senate appreciate the distinctiveness and centrality of federal statistical agencies and, with the same bi-partisan spirit that led to this bill, remove both NCES and BJS heads from S. 679.

There is compelling logic underlying the long-established process of appointment by and with the consent of the Senate for the U.S. Commissioner of Education Statistics and the Director of BJS. The fourth edition of the National Research Council's *Principles and Practices for a Federal Statistical Agency* (2009) sets forth four guiding principles fundamental to a strong and vital statistical agency: (1) position[ed] to provide objective information that is relevant to issues of public policy, (2) credibility with those who use its data and information, (3) the trust of those whose information it obtains, and (4) a strong position of independence within the government. It is uncanny that, when there are problems with 1-3, it is typically due to inadequate independence provided for that statistical unit (see Principle 4 set forth in Attachment A).

In 1986, the National Research Council's report *Creating a Center for Education Statistics: A Time for Action* set in motion a process of change that transformed NCES from a problematic statistical agency to one that has functioned as a model and leader for many years. Since passage of the Education Sciences Reform Act of 2002 (P.L. 107-279), there are indicators of the erosion of NCES and the diminished independent and autonomous role of the NCES Commissioner. The American Educational Research Association directly addressed this issue in its *Report and Recommendations for the Reauthorization of the Institute of Education Sciences* (see Attachment B).

It would be unfortunate if passage of S. 679 further diminished the role of the NCES Commissioner just as the IES reauthorization process is about to take place and just as the scientific community has expressed concerns about ensuring that NCES remain a leading statistical agency of significant stature. In September, 2010, OMB issued the Fiscal Year 2011 report on *Statistical Programs of the United States Government*. The report provides financial data for 90 federal statistical agencies with annual budgets of over \$500,000. Of these, only two have larger budgets than NCES's annual appropriation of \$340 million: the Census Bureau and the Bureau of Labor Statistics.

The Bureau of Justice Statistics is a smaller agency in terms of resources but like NCES is significant nationally and internationally. The importance of BJS and yet the challenges it has faced as a statistical agency can readily be seen from a 2009 National Research Council report *Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics*. The abstract on page 9 opens with the following:

BJS generally espouses the principles and practices of a federal statistical agency, but it has sustained major shocks to its position of independence as a national statistical resource in recent years. We suggest two strong organizational

measures to reduce the likelihood that BJS and its officials are inappropriately treated in the future. Concluding that BJS’s current administrative position within the Office of Justice Programs (OJP) is detrimental to the agency’s function, we recommend that BJS be moved out of OJP. We further recommend that the position of BJS director be made a fixed-term presidential appointment with Senate confirmation.

Currently the BJS Director is Senate confirmed but with no fixed term. The NRC report emphasizes that a fixed term is important to BJS and indeed cited NCES and BLS as having benefitted from both a head that is Senate confirmed and fixed term. As with the recent AERA report that offers recommendations to strengthen the independence of NCES as a statistical agency, the NRC report speaks to similar issues for BJS<sup>195</sup> (see Attachment C).

For the reasons outlined above and as buttressed by the information attached, we respectfully submit that it would be a mistake to include the Commissioner of Education Statistics and the Director of the Bureau of Justice Statistics in the provisions of S. 679. We ask that the Senators who so ably led in crafting this bi-partisan bill support removal of the NCES and BJS posts and seek adoption of S. 679 without their inclusion. Please do not hesitate to contact us if you wish further information. There is much to say about the need for the legitimacy, authority, and independence conferred by Senate confirmation.

Sincerely,

American Educational Research Association  
American Sociological Association  
American Statistical Association  
Association of Population Centers  
Consortium of Social Science Associations  
Council of Professional Associations on Federal Statistics  
Federation of Associations in Behavioral and Brain Sciences  
Population Association of America

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<sup>195</sup> The NRC report was commissioned to examine the Bureau of Justice Statistics. In that context, the report more generally observed the problem of “administrative layering of statistical agencies” in recent years that “has become a subtle, but increasingly common, threat to the position of independence of federal statistical agencies. Agencies are diminished in their perceived importance, their claim to budgetary resources, and their attention from departmental policy makers through placement further down in a department’s organizational hierarchy. In 2002, the National Center for Education Statistics was redesignated by P.L. 107-279 as a unit of a new Institute of Education Sciences [p. 226].” The same report goes on to note in footnote 13, p. 243, “Ironically, the same legislation that positioned the National Center for Education Statistics under a new administrative layer—the Institute of Education Sciences—also extended the length of the fixed term for the commissioner of education statistics. Prior to 2003, commissioners served a 4-year term rather than a 6-year term.”

**Attachment A**  
**National Research Council Recommendations on Significance of Presidential Appointment,  
Senate Confirmation, and Fixed Terms for Statistical Agencies**

Excerpted from pages 22-23. National Research Council. (2009). *Principles and Practices for a Federal Statistical Agency, Fourth Edition*. Committee on National Statistics. Constance F. Citro, Margaret E. Martin, and Miron L. Straf, Editors. Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

***Principle 4: A federal statistical agency must have a strong position of independence within the government.***

A statistical agency must be able to provide credible information that may be used to evaluate the program and policies of its own department or the government as a whole. More broadly, a statistical agency must be a trustworthy source of objective, accurate information for decision makers, analysts, and others inside and outside the government who want to use statistics to understand present conditions, draw comparisons with the past, and help guide plans for the future.<sup>3</sup> For these purposes, a strong position of independence for a statistical agency is essential.

Statistical agency independence must be exercised in a broad framework. Legislative authority usually gives ultimate responsibility to the secretary of the department rather than the statistical agency head. In addition, an agency is subject to the normal budgetary processes and to various coordinating and review functions of OMB, as well as the legislative mandates, oversight, and informal guidance of Congress.

Within this broad framework, a statistical agency must work to maintain its credibility as an impartial purveyor of information. In the long run, the effectiveness of an agency depends on its maintaining a reputation for impartiality; thus, an agency must be continually alert to possible infringements on its credibility and be prepared to argue strenuously against such infringements.

An agency head's independence can be strengthened by being appointed for a fixed term by the President, with approval by the Senate, as is the case with the heads of the Bureau of Labor Statistics and the National Center for Education Statistics. For a fixed term, it is desirable that it not coincide with the presidential term so that professional considerations are more likely to be paramount in the appointment process. In contrast, the heads of the Bureau of Justice Statistics, the Census Bureau, and the Energy Information Administration are presidential appointees, but their terms are not fixed and usually end with a change of administration. In some instances, heads of statistical agencies are career senior executives.

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<sup>3</sup> See the Fundamental Principles of Official Statistics of the United Nations Statistical Commission in Appendix C.

**Attachment B**  
**American Educational Research Association Recommendations to Avert Diminished  
Autonomy, Authority, and Credibility of the National Center for Education Statistics**

Excerpted from page 25, American Educational Research Association. (2011). *Report and recommendations for the reauthorization of the Institute of Education Sciences*. Washington, DC: American Educational Research Association.

Since the inception of NCES, Congress has sought a robust and independent agency of education statistics. Achieving this goal requires adherence to the structure and processes developed over the past two decades and having NCES report directly to the Office of the Secretary of Education.

To return NCES to the degree of independence, operating autonomy, resource sufficiency, and leadership and effectiveness among federal statistical agencies existing prior to 2002, the following is recommended:

**Recommendation 1.** The Commissioner of Education Statistics should report directly to the Secretary of Education, while continuing to be appointed by the President and confirmed by the Senate for a six-year term.

**Recommendation 2.** The Secretary of Education should appoint a board of advisors for the National Center for Education Statistics composed primarily of distinguished education statistics experts.

**Recommendation 3.** The Commissioner of Education Statistics should be charged with developing and maintaining high standards of quality and be responsible for their implementation within the National Center for Education Statistics.

**Recommendation 4.** The responsibility assigned to the National Center for Education Statistics in current legislation for working with states and districts to develop long-range and statewide databases should be clarified and strengthened.

**Recommendation 5.** The Commissioner of Education Statistics should be responsible for review and release of all statistical reports and data releases of the National Center for Education Statistics.

**Recommendation 6.** The Commissioner of Education Statistics should be an ex officio member of the National Assessment Governing Board.

**Attachment C**  
**National Research Council Recommendations to Strengthen the Autonomy, Authority and Credibility of the Bureau of Justice Statistics**

Excerpted from page 330, National Research Council. (2009). *Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics*. Panel to Review the Programs of the Bureau of Justice Statistics. Robert M. Groves and Daniel L. Cork, eds. Committee on National Statistics and Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

**Finding 5.3:** The placement of BJS within the Office of Justice Programs has harmed the agency's ability to innovate in data collections and expand the efficiency of achieving its statistical mission. It suffers from a zero-sum game in competition with programs of direct financial benefit to states and localities.

**Recommendation 5.3:** BJS should be administratively moved out of the Office of Justice Programs, reporting to the attorney general or deputy attorney general.

**Finding 5.4:** Under current law, the director of the Bureau of Justice Statistics serves at the pleasure of the president; the director is nominated to an unspecified term by the president, with the advice and consent of the Senate (42 USC § 3732(b)).

**Recommendation 5.4:** Congress and the administration should make the BJS director a fixed-term presidential appointee with the advice and consent of the Senate. To insulate the BJS director from political interference, the term of service should be no less than 4 years.

**Recommendation 5.5:** The BJS director needs to reach out to other agencies within DOJ, forming partnerships to propose initiatives for information collection that are relevant to policy needs.

**Recommendation 5.6:** The Department of Justice should build provisions for BJS collection of data and statistical information into its program initiatives aimed at crime reduction. These are not intended as program evaluation funds, but rather as funds for the basic monitoring and assessment of the phenomena targeted by the initiative.

**Recommendation 5.7:** To effectively get input on contemporaneous topics of interest, BJS should regularly convene ad hoc stakeholder workshops to suggest areas of immediate data needs.

**Recommendation 5.8:** BJS should establish an Advisory Group under the Federal Advisory Committee Act to provide guidance to BJS on the addition of new data collection efforts and the modification of current ones in light of needs identified by the group. Membership in the group should include, at a minimum, leaders and practitioners from each of the major subject matters covered by BJS data, as well as those with statistical and other types of academic expertise in these subject matters. The members of the group should be selected by the BJS director and the group should provide the director with at least two reports each year that contain its recommendations.