



To: Mayor and Commissioners

From: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding use of U.S. Census Bureau's Population Estimate for purposes of MPO Membership

Date: May 25, 2017

Please see the attached legal memorandum from special counsel regarding use of the U.S. Census Bureau's Population Estimate for purposes of MPO membership. The memorandum explains why the U.S. Census Bureau's Population Estimate is the appropriate and best estimate to use to determine a municipality's population for purposes of MPO membership. I reviewed and contributed to the memorandum and hereby adopt it as a City Attorney Opinion pursuant to section 2-201(e)(1) and (8) of the City Code.

I will be providing the City Attorney Opinion to Miami-Dade County with the hope they will agree with this analysis. I will also note that the City is appreciative of the fact that the County is reviewing use of a census estimate instead of an interdecennial census, which is cost prohibitive.

MEMORANDUM

To: Craig Leen
From: Coral Lopez-Castro
Date: May 25, 2017
Re: Membership of the City of Coral Gables on MPO

In connection with the negotiations between Miami-Dade County and the City of Coral Gables (the “City”) relating to the City’s voting membership with the metropolitan planning organization (“MPO”), we have analyzed two sets of data relating to the population estimate of the City. The issue is significant because the City qualifies for a voting membership under the Florida Transportation Code if its population is 50,000 or more. According to the most recent estimate published by the United States Census Bureau (the “Bureau”) through its Population Estimates Program (“PEP”), the City had a population of 51,177 as of July 1, 2015. In contrast, a population estimate published by the Bureau of Economic and Business Research at the University of Florida (“BEBR”) estimates the City’s population to be 49,449 as of April 1, 2016. Having reviewed the methodologies used by the Bureau and BEBR, the purpose and use of the PEP estimates, the Florida Transportation Code, and various administrative code provisions, we believe that reliance on the Bureau’s population estimate is appropriate for the following reasons.

The Bureau is the leading source of statistical information about the nation’s population.¹ Each year, the PEP utilizes current data on births, deaths, and migration to calculate population changes since the most recent decennial census.² The data used to update the decennial census comes from numerous sources including annual surveys (such as the American Community Survey and the Current Population Survey), and the periodic Survey of Income and Program Participation.³ According to the Bureau’s own website, new estimates supersede any previous figures and incorporate the most up-to-date input data and methodological improvements.⁴

¹ <https://www.census.gov/topics/population.html>.

² <https://factfinder.census.gov/faces/nav/jsf/pages/programs.xhtml?program=pep>

³ <https://www.census.gov/topics/population.html>.

⁴ *Id.*

PEP statistics are used by the federal government to help allocate over \$400 billion in federal funds each year.⁵ In addition, PEP estimates are used as “survey controls, as denominators for vital rates and per capita time series, and as indicators of recent demographic changes.”⁶ Regional, state and local government agencies, as well as businesses, universities, international organizations, and researchers rely on the Bureau’s statistics for purposes of allocating funds to aid in city planning and to assist with policy decisions.⁷

Utilization of the Bureau’s statistical estimate is consistent with the Florida Transportation Code provisions governing the creation and membership composition of an MPO. Section 339.175(3) sets forth the initial criteria for establishing the voting membership of an MPO, while § 339.176 provides for the inclusion of additional members representing cities with a population of 50,000 or more residents. Once an MPO is established its composition of members is reviewed in conjunction with the Bureau’s decennial census, and its membership is to be reapportioned as necessary to comply with § 339.175(3).⁸

In fact, numerous references to the Bureau appear in the Florida Transportation Code,⁹ while the BEBR study is never mentioned. Considering the repeated reference to the Bureau in the Florida Transportation Code, and the fact that the composition of an MPO is based on the Bureau’s decennial census, logic dictates that any intermediate changes in membership should be based on the Bureau’s most recent data. There is no basis for utilizing data outside of the estimates determined by the Bureau, and had the City relied on the BEBR estimate or an estimate from

⁵ “U.S. Census Bureau Strategic Plan FY 2013-2017” (<https://www.census.gov/content/dam/Census/about/about-the-bureau/PlansAndBudget/strategicplan.pdf>).

⁶ <https://www.census.gov/programs-surveys/popest/about.html>.

⁷ *Id.*

⁸ See § 229.175(4): Each M.P.O. shall review the composition of its membership in conjunction with the decennial census, as prepared by the United States Department of Commerce, Bureau of the Census, and with the agreement of the Governor and the affected general-purpose local government units that constitute the existing M.P.O., reapportion the membership as necessary to comply with subsection.

⁹ See e.g. § 334.03(6) (“Consolidated metropolitan statistical area” means two or more metropolitan statistical areas that are socially and economically interrelated as defined by the United State Bureau of the Census”); § 334.03(16) (“Metropolitan statistical area” means an area that includes a municipality of 50,000 persons or more, or an urbanized area of at least 50,000 persons as defined by the United States Bureau of the Census, provided that the component county or counties have a total population of at least 100,000); § 334.03(31) (“Urban area” means a geographic region comprising as a minimum the area inside the United States Bureau of the Census boundary of an urban place with a population of 5,000 or more persons, expanded to include adjacent developed areas. . . .”); § 334.03(35) (“Urbanized area” means a geographic region comprising as a minimum the area inside an urban place of 50,000 or more persons, as designated by the United States Bureau of the Census. . . .”).

another source as a basis for asserting a right to membership on the MPO, the City's choice of an alternative study would undoubtedly be challenged.

Had the legislature intended the BEBR estimate (or any other estimate) to be controlling, it could have easily inserted such language into the Florida Transportation Code. The BEBR estimate is expressly mentioned in several administrative code provisions, thus indicating that the alternative population study will be plainly identified only when its use is mandated. For example, eligibility requirements for the Florida Main Street Program, Fla. Admin. Code 1A-36.005(2) provides:

The Main Street Approach has been shown to be most successful in communities with populations between 5,000 and 50,000. . . . For the purpose of the applications preparation, required population statistics shall be based on the most recent "Florida Estimates of Population" compiled by the Population Program, Bureau of Economic and Business Research, University of Florida.

Similarly, for purposes of the Preservation 2000 Program, the term "population" is "based upon the most recent edition of the Florida Estimates of Population as published annually by the Population Division, Bureau of Economic and Business Research, University of Florida." Fla. Admin. Code 62-815.002(25). *See also* Fla. Admin. Code 27P-19.002(11) ("Population" means that number identified in the Florida Estimates of Population published annually by the Population Division, Bureau and Business Research, University of Florida.").

Comparing the framework of the Florida Transportation Code to the administrative code provisions that require the use of the BEBR estimate, we believe that reliance on the Bureau's population estimate is more consistent with legislature intent. The Bureau is confident in its methodology, and the updated statistics published on its website. Given that the composition of the MPO is tied to the decennial census conducted by the Bureau, the Bureau's revised figures should be utilized when membership decisions are made.

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: Fwd: City Attorney Opinion regarding use of U.S. Census Bureau's Population Estimate for purposes of MPO Membership
Date: Thursday, May 25, 2017 1:26:52 PM
Attachments: [CCG Statistics.pdf](#)
[ATT00001.htm](#)

Please publish.

Sent from my iPhone

Begin forwarded message:

From: <cleen@coralgables.com>
Date: May 25, 2017 at 1:26:22 PM EDT
To: <Commissioners1@coralgables.com>
Cc: <cswanson@coralgables.com>, <wfoeman@coralgables.com>, Miriam Ramos <mramos@coralgables.com>, Cori Lopez-Castro <CLC@kttlaw.com>
Subject: **City Attorney Opinion regarding use of U.S. Census Bureau's Population Estimate for purposes of MPO Membership**

Mayor and Commissioners,

Please see the attached legal memorandum from special counsel regarding use of the U.S. Census Bureau's Population Estimate for purposes of MPO membership. The memorandum explains why the U.S. Census Bureau's Population Estimate is the appropriate and best estimate to use to determine a municipality's population for purposes of MPO membership. I reviewed and contributed to the memorandum and hereby adopt it as a City Attorney Opinion pursuant to section 2-201(e)(1) and (8) of the City Code.

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Please do not reply to all.

Craig E. Leen
Coral Gables City Attorney