

# **ATTACHMENT 3—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY ACT OF 2002**

## **TITLE V CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY**

### **SEC. 501. SHORT TITLE.**

This title may be cited as the “Confidential Information Protection and Statistical Efficiency Act of 2002”.

### **SEC. 502. DEFINITIONS.**

As used in this title:

(1) The term “agency” means any entity that falls within the definition of the term “executive agency” as defined in section 102 of title 31, United States Code, or “agency”, as defined in section 3502 of title 44, United States Code.

(2) The term “agent” means an individual—

(A)(i) who is an employee of a private organization or a researcher affiliated with an institution of higher learning (including a person granted special sworn status by the Bureau of the Census under section 23(c) of title 13, United States Code), and with whom a contract or other agreement is executed, on a temporary basis, by an executive agency to perform exclusively statistical activities under the control and supervision of an officer or employee of that agency;

(ii) who is working under the authority of a government entity with which a contract or other agreement is executed by an executive agency to perform exclusively statistical activities under the control of an officer or employee of that agency;

(iii) who is a self-employed researcher, a consultant, a contractor, or an employee of a contractor, and with whom a contract or other agreement is executed by an executive agency to perform a statistical activity under the control of an officer or employee of that agency; or

(iv) who is a contractor or an employee of a contractor, and who is engaged by the agency to design or maintain the systems for handling or storage of data received under this title; and

(B) who agrees in writing to comply with all provisions of law that affect information acquired by that agency.

(3) The term “business data” means operating and financial data and information about businesses, tax-exempt organizations, and government entities.

(4) The term “identifiable form” means any representation of information that permits the identity of the respondent to whom the information applies to be reasonably inferred by either direct or indirect means.

(5) The term “nonstatistical purpose”—

(A) means the use of data in identifiable form for any purpose that is not a statistical purpose, including any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent; and

(B) includes the disclosure under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act) of data that are acquired for exclusively statistical purposes under a pledge of confidentiality.

(6) The term “respondent” means a person who, or organization that, is requested or required to supply information to an agency, is the subject of information requested or required to be supplied to an agency, or provides that information to an agency.

(7) The term “statistical activities”—

(A) means the collection, compilation, processing, or analysis of data for the purpose of describing or making estimates concerning the whole, or relevant groups or components within, the economy, society, or the natural environment; and

(B) includes the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames.

(8) The term “statistical agency or unit” means an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes.

(9) The term “statistical purpose”—

(A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and

(B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in subparagraph (A).

#### SEC. 503. COORDINATION AND OVERSIGHT OF POLICIES.

(a) In General.--The Director of the Office of Management and Budget shall coordinate and oversee the confidentiality and disclosure policies established by this title. The Director may promulgate rules or provide other guidance to ensure consistent interpretation of this title by the affected agencies.

(b) Agency Rules.--Subject to subsection (c), agencies may promulgate rules to implement this title. Rules governing disclosures of information that are authorized by this title shall be promulgated by the agency that originally collected the information.

(c) Review and Approval of Rules.--The Director shall review any rules proposed by an agency pursuant to this title for consistency with the provisions of this title and chapter 35 of title 44, United States Code, and such rules shall be subject to the approval of the Director.

(d) Reports.—

(1) The head of each agency shall provide to the Director of the Office of Management and Budget such reports and other information as the Director requests.

(2) Each Designated Statistical Agency referred to in section 522 shall report annually to the Director of the Office of Management and Budget, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate on the actions it has taken to implement sections 523 and 524. The report shall include copies of each written agreement entered into pursuant to section 524(a) for the applicable year.

(3) The Director of the Office of Management and Budget shall include a summary of reports submitted to the Director under paragraph (2) and actions taken by the Director to advance the

purposes of this title in the annual report to the Congress on statistical programs prepared under section 3504(e)(2) of title 44, United States Code.

#### SEC. 504. EFFECT ON OTHER LAWS.

(a) Title 44, United States Code.--This title, including amendments made by this title, does not diminish the authority under section 3510 of title 44, United States Code, of the Director of the Office of Management and Budget to direct, and of an agency to make, disclosures that are not inconsistent with any applicable law.

(b) Title 13 and Title 44, United States Code.--This title, including amendments made by this title, does not diminish the authority of the Bureau of the Census to provide information in accordance with sections 8, 16, 301, and 401 of title 13, United States Code, and section 2108 of title 44, United States Code.

(c) Title 13, United States Code.--This title, including amendments made by this title, shall not be construed as authorizing the disclosure for nonstatistical purposes of demographic data or information collected by the Census Bureau pursuant to section 9 of title 13, United States Code.

(d) Various Energy Statutes.--Data or information acquired by the Energy Information Administration under a pledge of confidentiality and designated by the Energy Information Administration to be used for exclusively statistical purposes shall not be disclosed in identifiable form for nonstatistical purposes under

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(1) section 12, 20, or 59 of the Federal Energy Administration Act of 1974 (15 U.S.C. 771, 779, 790h);

(2) section 11 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796); or

(3) section 205 or 407 of the Department of the Energy Organization Act of 1977 (42 U.S.C. 7135, 7177).

(e) Section 201 of Congressional Budget Act of 1974.--This title, including amendments made by this title, shall not be construed to limit any authorities of the Congressional Budget Office to work (consistent with laws governing the confidentiality of information the disclosure of which would be a violation of law) with databases of Designated Statistical Agencies (as defined in section 522), either separately or, for data that may be shared pursuant to section 524 of this title or other authority, jointly in order to improve the general utility of these databases for the statistical purpose of analyzing pension and health care financing issues.

(f) Preemption of State Law.--Nothing in this title shall preempt applicable State law regarding the confidentiality of data collected by the States.

(g) Statutes Regarding False Statements.--Notwithstanding section 512, information collected by an agency for exclusively statistical purposes under a pledge of confidentiality may be provided by the collecting agency to a law enforcement agency for the prosecution of submissions to the collecting agency of false statistical information under statutes that authorize criminal penalties (such as section 221 of title 13, United States Code) or civil penalties for the provision of false statistical information, unless such disclosure or use would otherwise be prohibited under Federal law.

(h) Construction.--Nothing in this title shall be construed as restricting or diminishing any confidentiality protections or penalties for unauthorized disclosure that otherwise apply to data or information collected for statistical purposes or nonstatistical purposes, including, but not limited to, section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103).

(i) Authority of Congress.--Nothing in this title shall be construed to affect the authority of the Congress, including its committees, members, or agents, to obtain data or information for a statistical purpose, including for oversight of an agency's statistical activities.

## **Subtitle A--Confidential Information Protection**

### **SEC. 511. FINDINGS AND PURPOSES.**

#### **(a) Findings.--The Congress finds the following:**

- (1) Individuals, businesses, and other organizations have varying degrees of legal protection when providing information to the agencies for strictly statistical purposes.
- (2) Pledges of confidentiality by agencies provide assurances to the public that information about individuals or organizations or provided by individuals or organizations for exclusively statistical purposes will be held in confidence and will not be used against such individuals or organizations in any agency action.
- (3) Protecting the confidentiality interests of individuals or organizations who provide information under a pledge of confidentiality for Federal statistical programs serves both the interests of the public and the needs of society.
- (4) Declining trust of the public in the protection of information provided under a pledge of confidentiality to the agencies adversely affects both the accuracy and completeness of statistical analyses.
- (5) Ensuring that information provided under a pledge of confidentiality for statistical purposes receives protection is essential in continuing public cooperation in statistical programs.

#### **(b) Purposes.--The purposes of this subtitle are the following:**

- (1) To ensure that information supplied by individuals or organizations to an agency for statistical purposes under a pledge of confidentiality is used exclusively for statistical purposes.
- (2) To ensure that individuals or organizations who supply information under a pledge of confidentiality to agencies for statistical purposes will neither have that information disclosed in identifiable form to anyone not authorized by this title nor have that information used for any purpose other than a statistical purpose.
- (3) To safeguard the confidentiality of individually identifiable information acquired under a pledge of confidentiality for statistical purposes by controlling access to, and uses made of, such information.

### **SEC. 512. LIMITATIONS ON USE AND DISCLOSURE OF DATA AND INFORMATION.**

**(a) Use of Statistical Data or Information.--Data or information acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes shall be used by officers, employees, or agents of the agency exclusively for statistical purposes.**

#### **(b) Disclosure of Statistical Data or Information.—**

- (1) Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent.
- (2) A disclosure pursuant to paragraph (1) is authorized only when the head of the agency approves such disclosure and the disclosure is not prohibited by any other law.

(3) This section does not restrict or diminish any confidentiality protections in law that otherwise apply to data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes.

(c) Rule for Use of Data or Information for Nonstatistical Purposes.--A statistical agency or unit shall clearly distinguish any data or information it collects for nonstatistical purposes (as authorized by law) and provide notice to the public, before the data or information is collected, that the data or information could be used for nonstatistical purposes.

(d) Designation of Agents.--A statistical agency or unit may designate agents, by contract or by entering into a special agreement containing the provisions required under section 502(2) for treatment as an agent under that section, who may perform exclusively statistical activities, subject to the limitations and penalties described in this title.

#### SEC. 513. FINES AND PENALTIES.

Whoever, being an officer, employee, or agent of an agency acquiring information for exclusively statistical purposes, having taken and subscribed the oath of office, or having sworn to observe the limitations imposed by section 512, comes into possession of such information by reason of his or her being an officer, employee, or agent and, knowing that the disclosure of the specific information is prohibited under the provisions of this title, willfully discloses the information in any manner to a person or agency not entitled to receive it, shall be guilty of a class E felony and imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

#### **Subtitle B--Statistical Efficiency**

#### SEC. 521. FINDINGS AND PURPOSES.

(a) Findings.--The Congress finds the following:

(1) Federal statistics are an important source of information for public and private decision-makers such as policymakers, consumers, businesses, investors, and workers.

(2) Federal statistical agencies should continuously seek to improve their efficiency. Statutory constraints limit the ability of these agencies to share data and thus to achieve higher efficiency for Federal statistical programs.

(3) The quality of Federal statistics depends on the willingness of businesses to respond to statistical surveys. Reducing reporting burdens will increase response rates, and therefore lead to more accurate characterizations of the economy.

(4) Enhanced sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics for exclusively statistical purposes will improve their ability to track more accurately the large and rapidly changing nature of United States business. In particular, the statistical agencies will be able to better ensure that businesses are consistently classified in appropriate industries, resolve data anomalies, produce statistical samples that are consistently adjusted for the entry and exit of new businesses in a timely manner, and correct faulty reporting errors quickly and efficiently.

(5) The Congress enacted the International Investment and Trade in Services Act of 1990 that allowed the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to share data on foreign-owned companies. The Act not only expanded detailed industry coverage from 135 industries to over 800 industries with no increase in the data collected from respondents but also demonstrated how data sharing can result in the creation of valuable data products.

(6) With subtitle A of this title, the sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics continues to ensure the highest level of confidentiality for respondents to statistical surveys.

(b) Purposes.--The purposes of this subtitle are the following:

(1) To authorize the sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics for exclusively statistical purposes.

(2) To reduce the paperwork burdens imposed on businesses that provide requested information to the Federal Government.

(3) To improve the comparability and accuracy of Federal economic statistics by allowing the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to update sample frames, develop consistent classifications of establishments and companies into industries, improve coverage, and reconcile significant differences in data produced by the three agencies.

(4) To increase understanding of the United States economy, especially for key industry and regional statistics, to develop more accurate measures of the impact of technology on productivity growth, and to enhance the reliability of the Nation's most important economic indicators, such as the National Income and Product Accounts.

#### SEC. 522. DESIGNATION OF STATISTICAL AGENCIES.

For purposes of this subtitle, the term "Designated Statistical Agency" means each of the following:

(1) The Bureau of the Census of the Department of Commerce.

(2) The Bureau of Economic Analysis of the Department of Commerce.

(3) The Bureau of Labor Statistics of the Department of Labor.

#### SEC. 523. RESPONSIBILITIES OF DESIGNATED STATISTICAL AGENCIES.

The head of each of the Designated Statistical Agencies shall—

(1) identify opportunities to eliminate duplication and otherwise reduce reporting burden and cost imposed on the public in providing information for statistical purposes;

(2) enter into joint statistical projects to improve the quality and reduce the cost of statistical programs; and

(3) protect the confidentiality of individually identifiable information acquired for statistical purposes by adhering to safeguard principles, including—

(A) emphasizing to their officers, employees, and agents the importance of protecting the confidentiality of information in cases where the identity of individual respondents can reasonably be inferred by either direct or indirect means;

(B) training their officers, employees, and agents in their legal obligations to protect the confidentiality of individually identifiable information and in the procedures that must be followed to provide access to such information;

(C) implementing appropriate measures to assure the physical and electronic security of confidential data;

(D) establishing a system of records that identifies individuals accessing confidential data and the project for which the data were required; and

(E) being prepared to document their compliance with safeguard principles to other agencies authorized by law to monitor such compliance.

#### SEC. 524. SHARING OF BUSINESS DATA AMONG DESIGNATED STATISTICAL AGENCIES.

(a) In General.--A Designated Statistical Agency may provide business data in an identifiable form to another Designated Statistical Agency under the terms of a written agreement among the agencies sharing the business data that specifies—

- (1) the business data to be shared;
- (2) the statistical purposes for which the business data are to be used;
- (3) the officers, employees, and agents authorized to examine the business data to be shared; and
- (4) appropriate security procedures to safeguard the confidentiality of the business data.

(b) Responsibilities of Agencies Under Other Laws.--The provision of business data by an agency to a Designated Statistical Agency under this subtitle shall in no way alter the responsibility of the agency providing the data under other statutes (including section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), and section 552b of title 5, United States Code (popularly known as the Privacy Act of 1974)) with respect to the provision or withholding of such information by the agency providing the data.

(c) Responsibilities of Officers, Employees, and Agents.--Examination of business data in identifiable form shall be limited to the officers, employees, and agents authorized to examine the individual reports in accordance with written agreements pursuant to this section. Officers, employees, and agents of a Designated Statistical Agency who receive data pursuant to this subtitle shall be subject to all provisions of law, including penalties, that relate—

- (1) to the unlawful provision of the business data that would apply to the officers, employees, and agents of the agency that originally obtained the information; and
- (2) to the unlawful disclosure of the business data that would apply to officers, employees, and agents of the agency that originally obtained the information.

(d) Notice.--Whenever a written agreement concerns data that respondents were required by law to report and the respondents were not informed that the data could be shared among the Designated Statistical Agencies, for exclusively statistical purposes, the terms of such agreement shall be described in a public notice issued by the agency that intends to provide the data. Such notice shall allow a minimum of 60 days for public comment.

#### SEC. 525. LIMITATIONS ON USE OF BUSINESS DATA PROVIDED BY DESIGNATED STATISTICAL AGENCIES.

(a) Use, Generally.--Business data provided by a Designated Statistical Agency pursuant to this subtitle shall be used exclusively for statistical purposes.

(b) Publication.--Publication of business data acquired by a Designated Statistical Agency shall occur in a manner whereby the data furnished by any particular respondent are not in identifiable form.

#### SEC. 526. CONFORMING AMENDMENTS.

(a) Department of Commerce.--Section 1 of the Act of January 27, 1938 (15 U.S.C. 176a) is amended by striking "The" and inserting "Except as provided in the Confidential Information Protection and Statistical Efficiency Act of 2002, the".

(b) Title 13.--Chapter 10 of title 13, United States Code, is amended—

(1) by adding after section 401 the following:

"Sec. 402. Providing business data to Designated Statistical Agencies

"The Bureau of the Census may provide business data to the Bureau of Economic Analysis and the Bureau of Labor Statistics ('Designated Statistical Agencies') if such information is required for an authorized statistical purpose and the provision is the subject of a written agreement with that Designated Statistical Agency, or their successors, as defined in the Confidential Information Protection and Statistical Efficiency Act of 2002."; and

(2) in the table of sections for the chapter by adding after the item relating to section 401 the following:

"402. Providing business data to Designated Statistical Agencies."

Approved December 17, 2002.