Appendix H.

Confidentiality Certifications

42 U.S.C. 1306

§ 1306. Disclosure of information in possession of Social Security Administration or Department of Health and Human Services

(a) Disclosure prohibited; exceptions

(1) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the head of the applicable agency by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the head of the applicable agency or by any officer or employee of the applicable agency in the course of discharging the duties of the head of the applicable agency under this chapter, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the head of the applicable agency or from any officer or employee of the applicable agency, shall be made except as the head of the applicable agency may by regulations prescribe and except as otherwise provided by Federal law. Any person who shall violate any provision of this section shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(2) For purposes of this subsection and subsection (b) of this section, the term "applicable agency" means—

(A) the Social Security Administration, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Administration, or

(B) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department.

(b) Requests for information and services

Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the head of the applicable agency to avoid undue interference with his functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the head of the applicable agency. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the head of the applicable agency, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the applicable agency which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of subchapter IV of this chapter for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of subchapter IV of this chapter.

(c) Cost reimbursement

Notwithstanding sections 552 and 552a of title 5 or any other provision of law, whenever the Commissioner of Social Security or the Secretary determines that a request for information is made in order to assist a party in interest (as defined in section 1002 of title 29) with respect to the administration of an employee benefit plan (as so defined), or is made for any other purpose not directly related to the administration of the program or programs under this chapter to which such information relates, such Commissioner or Secretary may require the requester to pay the full cost, as determined by such Commissioner or Secretary, of providing such information.

(d) Compliance with requests

Notwithstanding any other provision of this section, in any case in which—

(1) information regarding whether an individual is shown on the records of the Commissioner of Social Security as being alive or deceased is requested from the Commissioner for purposes of epidemiological or similar research which the Commissioner in consultation with the Secretary of Health and Human Services finds may reasonably be expected to contribute to a national health interest, and

(2) the requester agrees to reimburse the Commissioner for providing such information and to comply with limitations on safeguarding and rerelease or redisclosure of such information as may be specified by the Commissioner,

the Commissioner shall comply with such request, except to the extent that compliance with such request would constitute a violation of the terms of any contract entered into under section 405(r) of this title.

(e) Public inspection

Notwithstanding any other provision of this section the Secretary shall make available to each State agency operating a program under subchapter XIX of this chapter and shall, subject to the limitations contained in subsection (e)[1] of this section, make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by subchapters XVIII and XIX of this chapter—

(1) individual contractor performance reviews and other formal evaluations of the per-

[1] So in original. Probably should be subsection "(f)".

formance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;

(2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and

(3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

(f) Opportunity for review

No report described in subsection (e) of this section shall be made public by the Secretary or the State subchapter XIX agency until the contractor or provider of services whose performance is being evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public report; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

(Aug. 14, 1935, ch. 531, title XI, § 1106, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398; amended Aug. 28, 1950, ch. 809, title IV, § 403(d), 64 Stat. 559; Pub. L. 85–840, title VII, § 701, Aug. 28, 1958, 72 Stat. 1055; Pub. L. 89–97, title I, § 108(c), title III, § 340, July 30, 1965, 79 Stat. 339, 411; Pub. L. 90–248, title I, § 168, title II, § 241(c)(1), Jan. 2, 1968, 81 Stat. 875, 917; Pub. L. 92–603, title II, § 249C(a), Oct. 30, 1972, 86 Stat. 1428; Pub. L. 93–647, § 101(d), Jan. 4, 1975, 88 Stat. 2360; Pub. L. 97–35, title XXII, § 2207, Aug. 13, 1981, 95 Stat. 838; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(ii), (*l*), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 103–296, title I, § 108(b)(2)–(5), title III, §§ 311(a), 313(a), Aug. 15, 1994, 108 Stat. 1481, 1482, 1525, 1530.)

REFERENCES IN TEXT

Title VIII of the Social Security Act, referred to in subsec. (a)(1), probably refers to former title VIII of the Act, which was classified to subchapter VIII (§ 1001 et seq.) of this chapter prior to its omission from the Code as superseded by the provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1986.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Part D of subchapter IV of this chapter, referred to in subsec. (b), is classified to section 651 et seq. of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 313(a), in par. (1), substituted "felony" for "misdemeanor", "$10,000 for each occurrence of a violation" for "$1,000", and "5 years" for "one year".

Pub. L. 103–296, § 108(b)(2), designated existing provisions as par. (1), substituted "head of the applicable agency" for "Secretary" wherever appearing and "employee of the applicable agency" for "employee of the Department of Health and Human Services" in two places, and added par. (2).

Subsec. (b). Pub. L. 103–296, § 108(b)(3), substituted "head of the applicable agency" for "Secretary" wherever appearing and "applicable agency which" for "Department of Health and Human Services which".

Subsec. (c). Pub. L. 103–296, § 108(b)(4), substituted "the Commissioner of Social Security or the Secretary" for "the Secretary" where first appearing and "such Commissioner or Secretary" for "the Secretary" where appearing subsequently in two places.

Subsec. (d). Pub. L. 103–296, § 311(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 103–296, § 108(b)(5) in subsec. (d) as added by Pub. L. 103–296, § 311(a)(3), in par. (1) substituted "Commissioner of Social Security" for "Secretary" after "records of the", "Commissioner" for "Secretary" after "from the", "Commissioner in consultation with the Secretary of Health and Human Services" for "Secretary" after "which the", and in par. (2) and closing provisions substituted "Commissioner" for "Secretary" wherever appearing.

Subsec. (e). Pub. L. 103–296, § 311(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 103–296, § 311(a)(1), (2), redesignated subsec. (e) as (f) and substituted "subsection (e)" for "subsection (d)".

1984—Subsec. (a). Pub. L. 98–369, § 2663(*l*), substituted "Secretary" and "Department of Health and Human Services" for "Administrator" and "Federal Security Agency", respectively, wherever appearing.

Subsec. (b). Pub. L. 98–369, § 2663(j)(2)(D)(ii), substituted "Health and Human Services" for "Health, Education, and Welfare".

1981—Subsec. (a). Pub. L. 97–35, § 2207(1), substituted "as otherwise provided by Federal law" for "as provided in part D of subchapter IV of this chapter".

Subsec. (c). Pub. L. 97–35, § 2207(2), added subsec. (c).

1975—Subsec. (a). Pub. L. 93–647, § 101(d)(1), inserted "and except as provided in part D of subchapter IV of this chapter" after "may by regulations prescribe".

Subsec. (b). Pub. L. 93–647, § 101(d)(2), inserted provision relating to compliance with requests for information made pursuant to part D of subchapter IV of this chapter for purpose of using Federal records to locate parents.

Subsec. (c). Pub. L. 93–647, § 101(d)(3), repealed subsec. (c) relating to requests by State or local agencies for most recent address of any individual maintained pursuant to section 405 of this title and requirements for release of such information.

1972—Subsecs. (d), (e). Pub. L. 92–603 added subsecs. (d) and (e).

1968—Subsec. (c)(1). Pub. L. 90–248, § 241(c)(1), struck out "IV," after "I," and inserted "or part A of subchapter IV of this chapter," after "XIX of this chapter,".

Subsec. (c)(1)(A), (B). Pub. L. 90–248, § 168(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv) thereof, and added subpar. (B).

Subsec. (c)(2). Pub. L. 90–248, § 168(b)(1), substituted "(and, in the case of a request under paragraph (1)(A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof)" for ", and shall be accompanied by a certified copy of the order referred to in paragraph (1)(A) of this subsection".

Subsec. (c)(3). Pub. L. 90–248, § 168(b)(2), substituted "authorized by subparagraph (A)(iv) or (B)" for "authorized by subparagraph (D)".

1965—Subsec. (b). Pub. L. 89–97, § 108(c), provided for use of special deposit in the Treasury (made up of payments for information and services furnished) to reimburse authorizations to make expenditures from the Federal Hospital Insurance Trust Fund and the Supplementary Medical Insurance Trust Fund.

Subsec. (c). Pub. L. 89–97, § 340, added subsec. (c).

1958—Subsec. (b). Pub. L. 85–840 amended subsec. (b) generally, authorizing compliance with requests for services if the agency, person, or organization making the request agrees to pay for the services.

1950—Act Aug. 28, 1950, amended section generally, designating existing provisions as subsec. (a), substituting "under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939" for "the Federal Insurance Contributions Act," reflecting the transfer of functions from the Social Security Board to the Federal Security Administrator and the Federal Security Agency, and adding subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(2)–(5) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 311(a) of Pub. L. 103–296, applicable with respect to requests for information made after Aug. 15, 1994, see section 311(c) of Pub. L. 103–296, set out as a note under section 6103 of Title 26, Internal Revenue Code.

Section 313(c) of Pub. L. 103–296 provided that: "The amendments made by this section [amending this section and section 1307 of this title] shall apply to violations occurring on or after the date of the enactment of this Act [Aug. 15, 1994]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under section 651 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 249C(b) of Pub. L. 92–603 provided that: "The provisions of subsection (a) [amending this section] shall apply with respect to reports which are completed by the Secretary after the third calendar month following the enactment of this Act [Oct. 30, 1972]."

§ 1306a. Public access to State disbursement records

No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to subchapter I (other than section 303(a)(3) thereof), IV, X, XIV, or XVI (other than section 1383(a)(3) thereof) of this chapter, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

(Oct. 20, 1951, ch. 521, title VI, § 618, 65 Stat. 569; Pub. L. 86–778, title VI, § 603(a), Sept. 13, 1960, 74 Stat. 992; Pub. L. 87–543, title I, § 141(e), July 25, 1962, 76 Stat. 205.)

REFERENCES IN TEXT

Section 303(a)(3), referred to in text, was repealed by Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

Section 1383(a)(3), referred to in text, was in the original a reference to section 1603(a)(3) of the Social Security Act as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 200, and amended. That section was amended generally by Pub. L. 92–603, § 301, Oct. 30, 1972, 86 Stat. 1478. However, the amendment by Pub. L. 92–603 was inapplicable to Puerto Rico, Guam, and the Virgin Islands, so that the prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

CODIFICATION

Section was enacted as part of act Oct. 20, 1951, popularly known as the Revenue Act of 1951, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1962—Pub. L. 87–543 substituted "XIV, or XVI (other than section 1383(a)(3) thereof)" for "or XIV".

1960—Pub. L. 86–778 inserted "(other than section 303(a)(3) thereof)" after "pursuant to subchapter I".

EFFECTIVE DATE OF 1960 AMENDMENT

Section 603(b) of Pub. L. 86–778 provided that: "The amendment made by subsection (a) [amending this section] shall take effect October 1, 1960."

§ 1306b. State data exchanges

Whenever the Commissioner of Social Security requests information from a State for the purpose of ascertaining an individual's eligibility for benefits (or the correct amount of such benefits) under subchapter II or XVI of this chapter, the standards of the Commissioner promulgated pursuant to section 1306 of this title or any other Federal law for the use, safeguarding, and disclosure of information are deemed to meet any standards of the State that would otherwise apply to the disclosure of information by the State to the Commissioner.

(Pub. L. 106–169, title II, § 209, Dec. 14, 1999, 113 Stat. 1842.)

CODIFICATION

Section was enacted as part of the Foster Care Independence Act of 1999, and not as part of the Social Security Act which comprises this chapter.

§ 1307. Penalty for fraud

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this chapter, of chapter 2, 21, or 23 of the Internal Revenue Code of 1986, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the social security account number,

5 U.S.C. 552 (Freedom of Information Act)

5 U.S.C. 552(a) (Privacy Act of 1974)

strued to prevent an agency from admitting any person or agency as a party for limited purposes".

In paragraph (9), a comma is supplied between the words "limitation" and "amendment" to correct an editorial error of omission.

In paragraph (10)(C), the words "of any form" are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 551 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2242 of Title 7, Agriculture.

AMENDMENTS

1994—Par. (1)(H). Pub. L. 103–272 substituted "subchapter II of chapter 471 of title 49; or sections" for "or sections 1622,".

1976—Par. (14). Pub. L. 94–409 added par. (14).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94–409, set out as an Effective Date note under section 552b of this title.

STUDY AND REPORTS ON ADMINISTRATIVE SUBPOENAS

Pub. L. 106–544, § 7, Dec. 19, 2000, 114 Stat. 2719, provided that:

"(a) STUDY ON USE OF ADMINISTRATIVE SUBPOENAS.—Not later than December 31, 2001, the Attorney General, in consultation with the Secretary of the Treasury, shall complete a study on the use of administrative subpoena power by executive branch agencies or entities and shall report the findings to the Committees on the Judiciary of the Senate and the House of Representatives. Such report shall include—

"(1) a description of the sources of administrative subpoena power and the scope of such subpoena power within executive branch agencies;

"(2) a description of applicable subpoena enforcement mechanisms;

"(3) a description of any notification provisions and any other provisions relating to safeguarding privacy interests;

"(4) a description of the standards governing the issuance of administrative subpoenas; and

"(5) recommendations from the Attorney General regarding necessary steps to ensure that administrative subpoena power is used and enforced consistently and fairly by executive branch agencies.

"(b) REPORT ON FREQUENCY OF USE OF ADMINISTRATIVE SUBPOENAS.—

"(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury shall report in January of each year to the Committees on the Judiciary of the Senate and the House of Representatives on the number of administrative subpoenas issued by them under this section and the identity of the agency or component of the Department of Justice or the Department of the Treasury issuing the subpoena and imposing the charges.

"(2) EXPIRATION.—The reporting requirement of this subsection shall terminate in 3 years after the date of the enactment of this section [Dec. 19, 2000]."

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the

extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically

providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed. Pub. L. 98–620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests—

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure—

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means—

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include—

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney Gen-

eral of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term—

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) "record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90–23, § 1, June 5, 1967, 81 Stat. 54; Pub. L. 93–502, §§ 1–3, Nov. 21, 1974, 88 Stat. 1561–1564; Pub. L. 94–409, § 5(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95–454, title IX, § 906(a)(10), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 98–620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99–570, title I, §§ 1802, 1803, Oct. 27, 1986, 100 Stat. 3207–48, 3207–49; Pub. L. 104–231, §§ 3–11, Oct. 2, 1996, 110 Stat. 3049–3054; Pub. L. 107–306, title III, § 312, Nov. 27, 2002, 116 Stat. 2390.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1002.	June 11, 1946, ch. 324, § 3, 60 Stat. 238.

In subsection (b)(3), the words "formulated and" are omitted as surplusage. In the last sentence of subsection (b), the words "in any manner" are omitted as surplusage since the prohibition is all inclusive.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section 1 [of Pub. L. 90–23] amends section 552 of title 5, United States Code, to reflect Public Law 89–487.

In subsection (a)(1)(A), the words "employees (and in the case of a uniformed service, the member)" are substituted for "officer" to retain the coverage of Public Law 89–487 and to conform to the definitions in 5 U.S.C. 2101, 2104, and 2105.

In the last sentence of subsection (a)(2), the words "A final order * * * may be relied on * * * only if" are substituted for "No final order * * * may be relied upon * * * unless"; and the words "a party other than an agency" and "the party" are substituted for "a private party" and "the private party", respectively, on authority of the definition of "private party" in 5 App. U.S.C. 1002(g).

In subsection (a)(3), the words "the responsible employee, and in the case of a uniformed service, the responsible member" are substituted for "the responsible officers" to retain the coverage of Public Law 89–487 and to conform to the definitions in 5 U.S.C. 2101, 2104, and 2105.

In subsection (a)(4), the words "shall maintain and make available for public inspection a record" are substituted for "shall keep a record * * * and that record shall be available for public inspection".

In subsection (b)(5) and (7), the words "a party other than an agency" are substituted for "a private party" on authority of the definition of "private party" in 5 App. U.S.C. 1002(g).

In subsection (c), the words "This section does not authorize" and "This section is not authority" are substituted for "Nothing in this section authorizes" and "nor shall this section be authority", respectively.

5 App. U.S.C. 1002(g), defining "private party" to mean a party other than an agency, is omitted since the words "party other than an agency" are substituted for the words "private party" wherever they appear in revised 5 U.S.C. 552.

5 App. U.S.C. 1002(h), prescribing the effective date, is omitted as unnecessary. That effective date is prescribed by section 4 of this bill.

CODIFICATION

Section 552 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2243 of Title 7, Agriculture.

AMENDMENTS

2002—Subsec. (a)(3)(A). Pub. L. 107–306, § 312(1), inserted "and except as provided in subparagraph (E)," after "of this subsection.".

Subsec. (a)(3)(E). Pub. L. 107–306, § 312(2), added subpar. (E).

1996—Subsec. (a)(2). Pub. L. 104–231, § 4(4), (5), in first sentence struck out "and" at end of subpar. (B) and inserted subpars. (D) and (E).

Pub. L. 104–231, § 4(7), inserted after first sentence "For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means."

Pub. L. 104–231, §4(1), in second sentence substituted "staff manual, instruction, or copies of records referred to in subparagraph (D)" for "or staff manual or instruction".

Pub. L. 104–231, §4(2), inserted before period at end of third sentence ", and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made".

Pub. L. 104–231, §4(3), inserted after third sentence "If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made."

Pub. L. 104–231, §4(6), which directed the insertion of the following new sentence after the fifth sentence "Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999.", was executed by making the insertion after the sixth sentence, to reflect the probable intent of Congress and the addition of a new sentence by section 4(3) of Pub. L. 104–231.

Subsec. (a)(3). Pub. L. 104–231, §5, inserted subpar. (A) designation after "(3)", redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) to (D).

Subsec. (a)(4)(B). Pub. L. 104–231, §6, inserted at end "In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B)."

Subsec. (a)(6)(A)(i). Pub. L. 104–231, §8(b), substituted "20 days" for "ten days".

Subsec. (a)(6)(B). Pub. L. 104–231, §7(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular request—

"(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

"(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

"(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein."

Subsec. (a)(6)(C). Pub. L. 104–231, §7(c), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (a)(6)(D). Pub. L. 104–231, §7(a), added subpar. (D).

Subsec. (a)(6)(E), (F). Pub. L. 104–231, §8(a), (c), added subpars. (E) and (F).

Subsec. (b). Pub. L. 104–231, §9, inserted at end of closing provisions "The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made."

Subsec. (e). Pub. L. 104–231, §10, amended subsec. (e) generally, revising and restating provisions relating to reports to Congress.

Subsec. (f). Pub. L. 104–231, §3, amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

Subsec. (g). Pub. L. 104–231, §11, added subsec. (g).

1986—Subsec. (a)(4)(A). Pub. L. 99–570, §1803, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

Subsec. (b)(7). Pub. L. 99–570, §1802(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;".

Subsecs. (c) to (f). Pub. L. 99–570, §1802(b), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1984—Subsec. (a)(4)(D). Pub. L. 98–620 repealed subpar. (D) which provided for precedence on the docket and expeditious disposition of district court proceedings authorized by subsec. (a).

1978—Subsec. (a)(4)(F). Pub. L. 95–454 substituted references to the Special Counsel for references to the Civil Service Commission wherever appearing and reference to his findings for reference to its findings.

1976—Subsec. (b)(3). Pub. L. 94–409 inserted provision excluding section 552b of this title from applicability of exemption from disclosure and provision setting forth conditions for statute specifically exempting disclosure.

1974—Subsec. (a)(2). Pub. L. 93–502, §1(a), substituted provisions relating to maintenance and availability of current indexes, for provisions relating to maintenance and availability of a current index, and inserted provisions relating to publication and distribution of copies of indexes or supplements thereto.

Subsec. (a)(3). Pub. L. 93–502, §1(b)(1), substituted provisions requiring requests to reasonably describe records for provisions requiring requests, for identifiable records, and struck out provisions setting forth procedures to enjoin agencies from withholding the requested records and ordering their production.

Subsec. (a)(4), (5). Pub. L. 93–502, §1(b)(2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(6). Pub. L. 93–502, §1(c), added par. (6).

Subsec. (b)(1). Pub. L. 93–502, §2(a), designated existing provisions as cl. (A), substituted "authorized under criteria established by an" for "required by", and added cl. (B).

Subsec. (b)(7). Pub. L. 93–502, §2(b), substituted provisions relating to exemption for investigatory records compiled for law enforcement purposes, for provisions

relating to exemption for investigatory files compiled for law enforcement purposes.

Subsec. (b), foll. par. (9). Pub. L. 93–502, § 2(c), inserted provision relating to availability of segregable portion of records.

Subsecs. (d), (e). Pub. L. 93–502, § 3, added subsecs. (d) and (e).

1967—Subsec. (a). Pub. L. 90–23 substituted introductory statement requiring every agency to make available to the public certain information for former introductory provision excepting from disclosure (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating to internal management of an agency, covered in subsec. (b)(1) and (2) of this section.

Subsec. (a)(1). Pub. L. 90–23 incorporated provisions of: former subsec. (b)(1) in (A), inserting requirement of publication of names of officers as sources of information and provision for public to obtain decisions, and striking out publication requirement for delegations by the agency of final authority; former subsec. (b)(2), introductory part, in (B); former subsec. (b)(2), concluding part, in (C), inserting publication requirement for rules of procedure and descriptions of forms available or the places at which forms may be obtained; former subsec. (b)(3), introductory part, in (D), inserting requirement of general applicability of substantive rules and interpretations, added clause (E), substituted exemption of any person from failure to resort to any matter or from being adversely affected by any matter required to be published in the Federal Register but not so published for former subsec. (b)(3), concluding part, excepting from publication rules addressed to and served upon named persons in accordance with laws and final sentence reading "A person may not be required to resort to organization or procedure not so published" and inserted provision deeming matter, which is reasonably available, as published in the Federal Register when such matter is incorporated by reference in the Federal Register with the approval of its Director.

Subsec. (a)(2). Pub. L. 90–23 incorporated provisions of former subsec. (c), provided for public copying of records, struck out requirement of agency publication of final opinions or orders and authority for secrecy and withholding of opinions and orders required for good cause to be held confidential and not cited as precedents, latter provision now superseded by subsec. (b) of this section, designated existing subsec. (c) as clause (A), including provision for availability of concurring and dissenting opinions, inserted provisions for availability of policy statements and interpretations in clause (B) and staff manuals and instructions in clause (C), deletion of personal identifications from records to protect personal privacy with written justification therefor, and provision for indexing and prohibition of use of records not indexed against any private party without actual and timely notice of the terms thereof.

Subsec. (a)(3). Pub. L. 90–23 incorporated provisions of former subsec. (d) and substituted provisions requiring identifiable agency records to be made available to any person upon request and compliance with rules as to time, place, and procedure for inspection, and payment of fees and provisions for Federal district court proceedings de novo for enforcement by contempt of noncompliance with court's orders with the burden on the agency and docket precedence for such proceedings for former provisions requiring matters of official record to be made available to persons properly and directly concerned except information held confidential for good cause shown, the latter provision superseded by subsec. (b) of this section.

Subsec. (a)(4). Pub. L. 90–23 added par. (4).

Subsec. (b). Pub. L. 90–23 added subsec. (b) which superseded provisions excepting from disclosure any function of the United States requiring secrecy in the public interest or any matter relating to internal management of an agency, formerly contained in former subsec. (a), final opinions or orders required for good cause to be held confidential and not cited as precedents, formerly contained in subsec. (c), and information held confidential for good cause found, contained in former subsec. (d) of this section.

Subsec. (c). Pub. L. 90–23 added subsec. (c).

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 12 of Pub. L. 104–231 provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this Act [amending this section and enacting provisions set out as notes below] shall take effect 180 days after the date of the enactment of this Act [Oct. 2, 1996].

"(b) PROVISIONS EFFECTIVE ON ENACTMENT [sic].—Sections 7 and 8 [amending this section] shall take effect one year after the date of the enactment of this Act [Oct. 2, 1996]."

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1804 of Pub. L. 99–570 provided that:

"(a) The amendments made by section 1802 [amending this section] shall be effective on the date of enactment of this Act [Oct. 27, 1986], and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

"(b)(1) The amendments made by section 1803 [amending this section] shall be effective 180 days after the date of enactment of this Act [Oct. 27, 1986], except that regulations to implement such amendments shall be promulgated by such 180th day.

"(2) The amendments made by section 1803 [amending this section] shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94–409, set out as an Effective Date note under section 552b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4 of Pub. L. 93–502 provided that: "The amendments made by this Act [amending this section] shall take effect on the ninetieth day beginning after the date of enactment of this Act [Nov. 21, 1974]."

EFFECTIVE DATE OF 1967 AMENDMENT

Section 4 of Pub. L. 90–23 provided that: "This Act [amending this section] shall be effective July 4, 1967, or on the date of enactment [June 5, 1967], whichever is later."

SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104–231 provided that: "This Act [amending this section and enacting provisions set out as notes under this section] may be cited as the 'Electronic Freedom of Information Act Amendments of 1996'."

SHORT TITLE OF 1986 AMENDMENT

Section 1801 of Pub. L. 99–570 provided that: "This subtitle [subtitle N (§§1801–1804) of title I of Pub. L. 99–570, amending this section and enacting provisions set out as a note under this section] may be cited as the 'Freedom of Information Reform Act of 1986'."

SHORT TITLE

This section is popularly known as the "Freedom of Information Act".

NONDISCLOSURE OF CERTAIN PRODUCTS OF COMMERCIAL SATELLITE OPERATIONS

Pub. L. 108–375, div. A, title IX, §914, Oct. 28, 2004, 118 Stat. 2029, provided that:

"(a) MANDATORY DISCLOSURE REQUIREMENTS INAPPLICABLE.—The requirements to make information available under section 552 of title 5, United States Code, shall not apply to land remote sensing information.

"(b) LAND REMOTE SENSING INFORMATION DEFINED.—In this section, the term 'land remote sensing information'—

"(1) means any data that—

"(A) are collected by land remote sensing; and

"(B) are prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license issued pursuant to the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 et seq.); and

"(2) includes any imagery and other product that is derived from such data and which is prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license described in paragraph (1)(B).

"(c) STATE OR LOCAL GOVERNMENT DISCLOSURES.—Land remote sensing information provided by the head of a department or agency of the United States to a State, local, or tribal government may not be made available to the general public under any State, local, or tribal law relating to the disclosure of information or records.

"(d) SAFEGUARDING INFORMATION.—The head of each department or agency of the United States having land remote sensing information within that department or agency or providing such information to a State, local, or tribal government shall take such actions, commensurate with the sensitivity of that information, as are necessary to protect that information from disclosure other than in accordance with this section and other applicable law.

"(e) ADDITIONAL DEFINITION.—In this section, the term 'land remote sensing' has the meaning given such term in section 3 of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5602).

"(f) DISCLOSURE TO CONGRESS.—Nothing in this section shall be construed to authorize the withholding of information from the appropriate committees of Congress."

DISCLOSURE OF ARSON, EXPLOSIVE, OR FIREARM RECORDS

Pub. L. 108–7, div. J, title VI, §644, Feb. 20, 2003, 117 Stat. 473, provided that: "No funds appropriated under this Act or any other Act with respect to any fiscal year shall be available to take any action based upon any provision of 5 U.S.C. 552 with respect to records collected or maintained pursuant to 18 U.S.C. 846(b), 923(g)(3) or 923(g)(7), or provided by Federal, State, local, or foreign law enforcement agencies in connection with arson or explosives incidents or the tracing of a firearm, except that such records may continue to be disclosed to the extent and in the manner that records so collected, maintained, or obtained have been disclosed under 5 U.S.C. 552 prior to the date of the enactment of this Act [Feb. 20, 2003]."

DISCLOSURE OF INFORMATION ON JAPANESE IMPERIAL GOVERNMENT

Pub. L. 106–567, title VIII, Dec. 27, 2000, 114 Stat. 2864, as amended by Pub. L. 108–199, div. H, §163, Jan. 23, 2004, 118 Stat. 452; Pub. L. 109–5, §1, Mar. 25, 2005, 119 Stat. 19, provided that:

"SEC. 801. SHORT TITLE.

"This title may be cited as the 'Japanese Imperial Government Disclosure Act of 2000'.

"SEC. 802. DESIGNATION.

"(a) DEFINITIONS.—In this section:

"(1) AGENCY.—The term 'agency' has the meaning given such term under section 551 of title 5, United States Code.

"(2) INTERAGENCY GROUP.—The term 'Interagency Group' means the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group established under subsection (b).

"(3) JAPANESE IMPERIAL GOVERNMENT RECORDS.—The term 'Japanese Imperial Government records' means classified records or portions of records that pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the experimentation on, and persecution of, any person because of race, religion, national origin, or political opinion, during the period beginning September 18, 1931, and ending on December 31, 1948, under the direction of, or in association with—

"(A) the Japanese Imperial Government;

"(B) any government in any area occupied by the military forces of the Japanese Imperial Government;

"(C) any government established with the assistance or cooperation of the Japanese Imperial Government; or

"(D) any government which was an ally of the Japanese Imperial Government.

"(4) RECORD.—The term 'record' means a Japanese Imperial Government record.

"(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

"(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Dec. 27, 2000], the President shall designate the Working Group established under the Nazi War Crimes Disclosure Act (Public Law 105–246; 5 U.S.C. 552 note) to also carry out the purposes of this title with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 6 years after the date on which this title takes effect. Such Working Group is redesignated as the 'Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group'.

"(2) MEMBERSHIP.—[Amended Pub. L. 105–246, set out as a note below.]

"(c) FUNCTIONS.—Not later than 1 year after the date of the enactment of this Act [Dec. 27, 2000], the Interagency Group shall, to the greatest extent possible consistent with section 803—

"(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Japanese Imperial Government records of the United States;

"(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

"(3) submit a report to Congress, including the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

"(d) FUNDING.—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

"SEC. 803. REQUIREMENT OF DISCLOSURE OF RECORDS.

"(a) RELEASE OF RECORDS.—Subject to subsections (b), (c), and (d), the Japanese Imperial Government Records Interagency Working Group shall release in their entirety Japanese Imperial Government records.

"(b) EXEMPTIONS.—An agency head may exempt from release under subsection (a) specific information, that would—

"(1) constitute an unwarranted invasion of personal privacy;

"(2) reveal the identity of a confidential human source, or reveal information about an intelligence source or method when the unauthorized disclosure of that source or method would damage the national security interests of the United States;

"(3) reveal information that would assist in the development or use of weapons of mass destruction;

"(4) reveal information that would impair United States cryptologic systems or activities;

"(5) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

"(6) reveal United States military war plans that remain in effect;

"(7) reveal information that would impair relations between the United States and a foreign government, or undermine ongoing diplomatic activities of the United States;

"(8) reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services are authorized in the interest of national security;

"(9) reveal information that would impair current national security emergency preparedness plans; or

"(10) violate a treaty or other international agreement.

"(c) APPLICATIONS OF EXEMPTIONS.—

"(1) IN GENERAL.—In applying the exemptions provided in paragraphs (2) through (10) of subsection (b), there shall be a presumption that the public interest will be served by disclosure and release of the records of the Japanese Imperial Government. The exemption may be asserted only when the head of the agency that maintains the records determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives.

"(2) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption provided in paragraphs (2) through (9) of subsection (b) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

"(d) RECORDS RELATED TO INVESTIGATIONS OR PROSECUTIONS.—This section shall not apply to records—

"(1) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

"(2) solely in the possession, custody, or control of the Office of Special Investigations.

"SEC. 804. EXPEDITED PROCESSING OF REQUESTS FOR JAPANESE IMPERIAL GOVERNMENT RECORDS.

"For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any person who was persecuted in the manner described in section 802(a)(3) and who requests a Japanese Imperial Government record shall be deemed to have a compelling need for such record.

"SEC. 805. EFFECTIVE DATE.

"The provisions of this title shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 27, 2000]."

NAZI WAR CRIMES DISCLOSURE

Pub. L. 105–246, Oct. 8, 1998, 112 Stat. 1859, as amended by Pub. L. 106–567, §802(b)(2), Dec. 27, 2000, 114 Stat. 2865, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Nazi War Crimes Disclosure Act'.

"SEC. 2. ESTABLISHMENT OF NAZI WAR CRIMINAL RECORDS INTERAGENCY WORKING GROUP.

"(a) DEFINITIONS.—In this section the term—

"(1) 'agency' has the meaning given such term under section 551 of title 5, United States Code;

"(2) 'Interagency Group' means the Nazi War Criminal Records Interagency Working Group [redesignated Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, see section 802(b)(1) of Pub. L. 106–567, set out above] established under subsection (b);

"(3) 'Nazi war criminal records' has the meaning given such term under section 3 of this Act; and

"(4) 'record' means a Nazi war criminal record.

"(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

"(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Oct. 8, 1998], the President shall establish the Nazi War Criminal Records Interagency Working Group, which shall remain in existence for 3 years after the date the Interagency Group is established.

"(2) MEMBERSHIP.—The President shall appoint to the Interagency Group individuals whom the President determines will most completely and effectively carry out the functions of the Interagency Group within the time limitations provided in this section, including the Director of the Holocaust Museum, the Historian of the Department of State, the Archivist of the United States, the head of any other agency the President considers appropriate, and no more than 4 other persons who shall be members of the public, of whom 3 shall be persons appointed under the provisions of this Act in effect on October 8, 1998..[sic] The head of an agency appointed by the President may designate an appropriate officer to serve on the Interagency Group in lieu of the head of such agency.

"(3) INITIAL MEETING.—Not later than 90 days after the date of enactment of this Act, the Interagency Group shall hold an initial meeting and begin the functions required under this section.

"(c) FUNCTIONS.—Not later than 1 year after the date of enactment of this Act [Oct. 8, 1998], the Interagency Group shall, to the greatest extent possible consistent with section 3 of this Act—

"(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Nazi war criminal records of the United States;

"(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

"(3) submit a report to Congress, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight

[now Committee on Government Reform] of the House of Representatives, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

"(d) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

"SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS REGARDING PERSONS WHO COMMITTED NAZI WAR CRIMES.

"(a) NAZI WAR CRIMINAL RECORDS.—For purposes of this Act, the term 'Nazi war criminal records' means classified records or portions of records that—

"(1) pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

"(A) the Nazi government of Germany;

"(B) any government in any area occupied by the military forces of the Nazi government of Germany;

"(C) any government established with the assistance or cooperation of the Nazi government of Germany; or

"(D) any government which was an ally of the Nazi government of Germany; or

"(2) pertain to any transaction as to which the United States Government, in its sole discretion, has grounds to believe—

"(A) involved assets taken from persecuted persons during the period beginning on March 23, 1933, and ending on May 8, 1945, by, under the direction of, on behalf of, or under authority granted by the Nazi government of Germany or any nation then allied with that government; and

"(B) such transaction was completed without the assent of the owners of those assets or their heirs or assigns or other legitimate representatives.

"(b) RELEASE OF RECORDS.—

"(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4), the Nazi War Criminal Records Interagency Working Group shall release in their entirety Nazi war criminal records that are described in subsection (a).

"(2) EXCEPTION FOR PRIVACY, ETC.—An agency head may exempt from release under paragraph (1) specific information, that would—

"(A) constitute a clearly unwarranted invasion of personal privacy;

"(B) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;

"(C) reveal information that would assist in the development or use of weapons of mass destruction;

"(D) reveal information that would impair United States cryptologic systems or activities;

"(E) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

"(F) reveal actual United States military war plans that remain in effect;

"(G) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

"(H) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;

"(I) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or

"(J) violate a treaty or international agreement.

"(3) APPLICATION OF EXEMPTIONS.—

"(A) IN GENERAL.—In applying the exemptions listed in subparagraphs (B) through (J) of paragraph (2), there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption may only be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight [now Committee on Government Reform] of the House of Representatives. The exemptions set forth in paragraph (2) shall constitute the only authority pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

"(B) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption listed in subparagraphs (B) through (I) of paragraph (2) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

"(4) LIMITATION ON APPLICATION.—This subsection shall not apply to records—

"(A) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

"(B) solely in the possession, custody, or control of that office.

"(c) INAPPLICABILITY OF NATIONAL SECURITY ACT OF 1947 EXEMPTION.—Section 701(a) of the National Security Act of 1947 (50 U.S.C. 431[(a)]) shall not apply to any operational file, or any portion of any operational file, that constitutes a Nazi war criminal record under section 3 of this Act.

"SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR NAZI WAR CRIMINAL RECORDS.

"(a) EXPEDITED PROCESSING.—For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any requester of a Nazi war criminal record shall be deemed to have a compelling need for such record.

"(b) REQUESTER.—For purposes of this section, the term 'requester' means any person who was persecuted in the manner described under section 3(a)(1) of this Act who requests a Nazi war criminal record.

"SEC. 5. EFFECTIVE DATE.

"This Act and the amendments made by this Act shall take effect on the date that is 90 days after the date of enactment of this Act [Oct. 8, 1998]."

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE; PUBLIC ACCESS TO INFORMATION IN ELECTRONIC FORMAT

Section 2 of Pub. L. 104-231 provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) the purpose of section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose;

"(2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;

"(3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;

"(4) the Freedom of Information Act has led to the identification of unsafe consumer products, harmful drugs, and serious health hazards;

"(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

"(6) Government agencies should use new technology to enhance public access to agency records and information.

"(b) PURPOSES.—The purposes of this Act [see Short Title of 1996 Amendment note above] are to—

"(1) foster democracy by ensuring public access to agency records and information;

"(2) improve public access to agency records and information;

"(3) ensure agency compliance with statutory time limits; and

"(4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government."

FREEDOM OF INFORMATION ACT EXEMPTION FOR CERTAIN OPEN SKIES TREATY DATA

Pub. L. 103–236, title V, §533, Apr. 30, 1994, 108 Stat. 480, provided that:

"(a) IN GENERAL.—Data with respect to a foreign country collected by sensors during observation flights conducted in connection with the Treaty on Open Skies, including flights conducted prior to entry into force of the treaty, shall be exempt from disclosure under the Freedom of Information Act—

"(1) if the country has not disclosed the data to the public; and

"(2) if the country has not, acting through the Open Skies Consultative Commission or any other diplomatic channel, authorized the United States to disclose the data to the public.

"(b) STATUTORY CONSTRUCTION.—This section constitutes a specific exemption within the meaning of section 552(b)(3) of title 5, United States Code.

"(c) DEFINITIONS.—For the purposes of this section—

"(1) the term 'Freedom of Information Act' means the provisions of section 552 of title 5, United States Code;

"(2) the term 'Open Skies Consultative Commission' means the commission established pursuant to Article X of the Treaty on Open Skies; and

"(3) the term 'Treaty on Open Skies' means the Treaty on Open Skies, signed at Helsinki on March 24, 1992."

CLASSIFIED NATIONAL SECURITY INFORMATION

For provisions relating to a response to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 12958, §3.7, Apr. 17, 1995, 60 F.R. 19835, set out as a note under section 435 of Title 50, War and National Defense.

EXECUTIVE ORDER NO. 12174

Ex. Ord. No. 12174, Nov. 30, 1979, 44 F.R. 69609, which related to minimizing Federal paperwork, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under section 601 of this title.

EX. ORD. NO. 12600. PREDISCLOSURE NOTIFICATION PROCEDURES FOR CONFIDENTIAL COMMERCIAL INFORMATION

Ex. Ord. No. 12600, June 23, 1987, 52 F.R. 23781, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide predisclosure notification procedures under the Freedom of Information Act [5 U.S.C. 552] concerning confidential commercial information, and to make existing agency notification provisions more uniform, it is hereby ordered as follows:

SECTION 1. The head of each Executive department and agency subject to the Freedom of Information Act [5 U.S.C. 552] shall, to the extent permitted by law, establish procedures to notify submitters of records containing confidential commercial information as described in section 3 of this Order, when those records are requested under the Freedom of Information Act [FOIA], 5 U.S.C. 552, as amended, if after reviewing the request, the responsive records, and any appeal by the requester, the department or agency determines that it may be required to disclose the records. Such notice requires that an agency use good-faith efforts to advise submitters of confidential commercial information of the procedures established under this Order. Further, where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

SEC. 2. For purposes of this Order, the following definitions apply:

(a) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(b) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

SEC. 3. (a) For confidential commercial information submitted prior to January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, provide a submitter with notice pursuant to section 1 whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) the department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) For confidential commercial information submitted on or after January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, establish procedures to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. Such agency procedures may provide for the expiration, after a specified period of time or changes in circumstances, of designations of competitive harm made by submitters. Additionally, such procedures may permit the agency to designate specific classes of information that will be treated by the agency as if the information had been so designated by the submitter. The head of each Executive department or agency shall, to the extent permitted by law, provide the submitter notice in accordance with section 1 of this Order whenever the department or agency determines that it may be required to disclose records:

(i) designated pursuant to this subsection; or

(ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm.

SEC. 4. When notification is made pursuant to section 1, each agency's procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

SEC. 5. Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the submitter a written statement

briefly explaining why the submitter's objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

SEC. 6. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, each agency's procedures shall require that the submitter be promptly notified.

SEC. 7. The designation and notification procedures required by this Order shall be established by regulations, after notice and public comment. If similar procedures or regulations already exist, they should be reviewed for conformity and revised where necessary. Existing procedures or regulations need not be modified if they are in compliance with this Order.

SEC. 8. The notice requirements of this Order need not be followed if:

(a) The agency determines that the information should not be disclosed;

(b) The information has been published or has been officially made available to the public;

(c) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(d) The disclosure is required by an agency rule that (1) was adopted pursuant to notice and public comment, (2) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act [5 U.S.C. 552], and (3) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(e) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to section 7, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(f) The designation made by the submitter in accordance with agency regulations promulgated pursuant to section 7 appears obviously frivolous; except that, in such case, the agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

SEC. 9. Whenever an agency notifies a submitter that it may be required to disclose information pursuant to section 1 of this Order, the agency shall also notify the requester that notice and an opportunity to comment are being provided the submitter. Whenever an agency notifies a submitter of a final decision pursuant to section 5 of this Order, the agency shall also notify the requester.

SEC. 10. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN.

EX. ORD. NO. 13110. NAZI WAR CRIMES AND JAPANESE IMPERIAL GOVERNMENT RECORDS INTERAGENCY WORKING GROUP

Ex. Ord. No. 13110, Jan. 11, 1999, 64 F.R. 2419, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Nazi War Crimes Disclosure Act (Public Law 105–246) (the "Act") [5 U.S.C. 552 note], it is hereby ordered as follows:

SECTION 1. *Establishment of Working Group.* There is hereby established the Nazi War Criminal Records Interagency Working Group [now Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group] (Working Group). The function of the Group shall be to locate, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration all classified Nazi war criminal records of the United States, subject to certain designated exceptions as provided in the Act. The Working Group shall coordinate with agencies and take such actions as necessary to expedite the release of such records to the public.

SEC. 2. *Schedule.* The Working Group should complete its work to the greatest extent possible and report to the Congress within 1 year.

SEC. 3. *Membership.* (a) The Working Group shall be composed of the following members:

(1) Archivist of the United States (who shall serve as Chair of the Working Group);

(2) Secretary of Defense;

(3) Attorney General;

(4) Director of Central Intelligence;

(5) Director of the Federal Bureau of Investigation;

(6) Director of the United States Holocaust Memorial Museum;

(7) Historian of the Department of State; and

(8) Three other persons appointed by the President.

(b) The Senior Director for Records and Access Management of the National Security Council will serve as the liaison to and attend the meetings of the Working Group. Members of the Working Group who are full-time Federal officials may serve on the Working Group through designees.

SEC. 4. *Administration.* (a) To the extent permitted by law and subject to the availability of appropriations, the National Archives and Records Administration shall provide the Working Group with funding, administrative services, facilities, staff, and other support services necessary for the performance of the functions of the Working Group.

(b) The Working Group shall terminate 3 years from the date of this Executive order.

WILLIAM J. CLINTON.

EX. ORD. NO. 13392. IMPROVING AGENCY DISCLOSURE OF INFORMATION

Ex. Ord. No. 13392, Dec. 14, 2005, 70 F.R. 75373, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure appropriate agency disclosure of information, and consistent with the goals of section 552 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy.*

(a) The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed. For nearly four decades, the Freedom of Information Act (FOIA) [5 U.S.C. 552] has provided an important means through which the public can obtain information regarding the activities of Federal agencies. Under the FOIA, the public can obtain records from any Federal agency, subject to the exemptions enacted by the Congress to protect information that must be held in confidence for the Government to function effectively or for other purposes.

(b) FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency's website), and about the status of a person's FOIA request and appropriate information about the agency's response.

(c) Agency FOIA operations shall be both results-oriented and produce results. Accordingly, agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. When an agency's FOIA program does not produce such results, it should be reformed, consistent with available resources appro-

priated by the Congress and applicable law, to increase efficiency and better reflect the policy goals and objectives of this order.

(d) A citizen-centered and results-oriented approach will improve service and performance, thereby strengthening compliance with the FOIA, and will help avoid disputes and related litigation.

SEC. 2. *Agency Chief FOIA Officers.*

(a) *Designation.* The head of each agency shall designate within 30 days of the date of this order a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of that agency. The head of the agency shall promptly notify the Director of the Office of Management and Budget (OMB Director) and the Attorney General of such designation and of any changes thereafter in such designation.

(b) *General Duties.* The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency:

(i) have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(ii) monitor FOIA implementation throughout the agency, including through the use of meetings with the public to the extent deemed appropriate by the agency's Chief FOIA Officer, and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing the FOIA, including the extent to which the agency meets the milestones in the agency's plan under section 3(b) of this order and training and reporting standards established consistent with applicable law and this order;

(iii) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to carry out the policy set forth in section 1 of this order;

(iv) review and report, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing the FOIA; and

(v) facilitate public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in both the agency's FOIA handbook issued under section 552(g) of title 5, United States Code, and the agency's annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

(c) *FOIA Requester Service Center and FOIA Public Liaisons.* In order to ensure appropriate communication with FOIA requesters:

(i) Each agency shall establish one or more FOIA Requester Service Centers (Center), as appropriate, which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response. The Center shall include appropriate staff to receive and respond to inquiries from FOIA requesters;

(ii) The agency Chief FOIA Officer shall designate one or more agency officials, as appropriate, as FOIA Public Liaisons, who may serve in the Center or who may serve in a separate office. FOIA Public Liaisons shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. For example, the FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaisons shall report to the agency Chief FOIA Officer on their activities and shall perform their duties consistent with applicable law and agency regulations;

(iii) In addition to the services to FOIA requesters provided by the Center and FOIA Public Liaisons, the agency Chief FOIA Officer shall also consider what other FOIA-related assistance to the public should appropriately be provided by the agency;

(iv) In establishing the Centers and designating FOIA Public Liaisons, the agency shall use, as appropriate, existing agency staff and resources. A Center shall have appropriate staff to receive and respond to inquiries from FOIA requesters;

(v) As determined by the agency Chief FOIA Officer, in consultation with the FOIA Public Liaisons, each agency shall post appropriate information about its Center or Centers on the agency's website, including contact information for its FOIA Public Liaisons. In the case of an agency without a website, the agency shall publish the information on the Firstgov.gov website or, in the case of any agency with neither a website nor the capability to post on the Firstgov.gov website, in the Federal Register; and

(vi) The agency Chief FOIA Officer shall ensure that the agency has in place a method (or methods), including through the use of the Center, to receive and respond promptly and appropriately to inquiries from FOIA requesters about the status of their requests. The Chief FOIA Officer shall also consider, in consultation with the FOIA Public Liaisons, as appropriate, whether the agency's implementation of other means (such as tracking numbers for requests, or an agency telephone or Internet hotline) would be appropriate for responding to status inquiries.

SEC. 3. *Review, Plan, and Report.*

(a) *Review.* Each agency's Chief FOIA Officer shall conduct a review of the agency's FOIA operations to determine whether agency practices are consistent with the policies set forth in section 1 of this order. In conducting this review, the Chief FOIA Officer shall:

(i) evaluate, with reference to numerical and statistical benchmarks where appropriate, the agency's administration of the FOIA, including the agency's expenditure of resources on FOIA compliance and the extent to which, if any, requests for records have not been responded to within the statutory time limit (backlog);

(ii) review the processes and practices by which the agency assists and informs the public regarding the FOIA process;

(iii) examine the agency's:

(A) use of information technology in responding to FOIA requests, including without limitation the tracking of FOIA requests and communication with requesters;

(B) practices with respect to requests for expedited processing; and

(C) implementation of multi-track processing if used by such agency;

(iv) review the agency's policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in section 552(a)(2) of title 5, United States Code; and

(v) identify ways to eliminate or reduce its FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the agency.

(b) *Plan.*

(i) Each agency's Chief FOIA Officer shall develop, in consultation as appropriate with the staff of the agency (including the FOIA Public Liaisons), the Attorney General, and the OMB Director, an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in section 1 of this order. The plan, which shall be submitted to the head of the agency for approval, shall address the agency's implementation of the FOIA during fiscal years 2006 and 2007.

(ii) The plan shall include specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective, as well as increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA.

(iii) The plan shall also include activities to increase public awareness of FOIA processing, including as appropriate, expanded use of the agency's Center and its FOIA Public Liaisons.

(iv) The plan shall also include, taking appropriate account of the resources available to the agency and the mission of the agency, concrete milestones, with specific timetables and outcomes to be achieved, by which the head of the agency, after consultation with the OMB Director, shall measure and evaluate the agency's success in the implementation of the plan.

(c) *Agency Reports to the Attorney General and OMB Director.*

(i) The head of each agency shall submit a report, no later than 6 months from the date of this order, to the Attorney General and the OMB Director that summarizes the results of the review under section 3(a) of this order and encloses a copy of the agency's plan under section 3(b) of this order. The agency shall publish a copy of the agency's report on the agency's website or, in the case of an agency without a website, on the Firstgov.gov website, or, in the case of any agency with neither a website nor the capability to publish on the Firstgov.gov website, in the Federal Register.

(ii) The head of each agency shall include in the agency's annual FOIA reports for fiscal years 2006 and 2007 a report on the agency's development and implementation of its plan under section 3(b) of this order and on the agency's performance in meeting the milestones set forth in that plan, consistent with any related guidelines the Attorney General may issue under section 552(e) of title 5, United States Code.

(iii) If the agency does not meet a milestone in its plan, the head of the agency shall:

(A) identify this deficiency in the annual FOIA report to the Attorney General;

(B) explain in the annual report the reasons for the agency's failure to meet the milestone;

(C) outline in the annual report the steps that the agency has already taken, and will be taking, to address the deficiency; and

(D) report this deficiency to the President's Management Council.

SEC. 4. *Attorney General.*

(a) *Report.* The Attorney General, using the reports submitted by the agencies under subsection 3(c)(i) of this order and the information submitted by agencies in their annual FOIA reports for fiscal year 2005, shall submit to the President, no later than 10 months from the date of this order, a report on agency FOIA implementation. The Attorney General shall consult the OMB Director in the preparation of the report and shall include in the report appropriate recommendations on administrative or other agency actions for continued agency dissemination and release of public information. The Attorney General shall thereafter submit two further annual reports, by June 1, 2007, and June 1, 2008, that provide the President with an update on the agencies' implementation of the FOIA and of their plans under section 3(b) of this order.

(b) *Guidance.* The Attorney General shall issue such instructions and guidance to the heads of departments and agencies as may be appropriate to implement sections 3(b) and 3(c) of this order.

SEC. 5. *OMB Director.* The OMB Director may issue such instructions to the heads of agencies as are necessary to implement this order, other than sections 3(b) and 3(c) of this order.

SEC. 6. *Definitions.* As used in this order:

(a) the term "agency" has the same meaning as the term "agency" under section 552(f)(1) of title 5, United States Code; and

(b) the term "record" has the same meaning as the term "record" under section 552(f)(2) of title 5, United States Code.

SEC. 7. *General Provisions.*

(a) The agency reviews under section 3(a) of this order and agency plans under section 3(b) of this order shall be conducted and developed in accordance with applicable law and applicable guidance issued by the President, the Attorney General, and the OMB Director, including the laws and guidance regarding information technology and the dissemination of information.

(b) This order:

(i) shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations;

(ii) shall not be construed to impair or otherwise affect the functions of the OMB Director relating to budget, legislative, or administrative proposals; and

(iii) is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e)[1] of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

[1] See References in Text note below.

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986; or

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which

maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) CIVIL REMEDIES.—Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individ-

ual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for

the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however*, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(*l*)(1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(*o*) MATCHING AGREEMENTS.—(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) SANCTIONS.—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (*o*), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) BIENNIAL REPORT.—The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (*o*), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (*o*) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.[2]

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.—The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(Added Pub. L. 93–579, §3, Dec. 31, 1974, 88 Stat. 1897; amended Pub. L. 94–183, §2(2), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 97–365, §2, Oct. 25, 1982, 96 Stat. 1749; Pub. L. 97–375, title II, §201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 97–452, §2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–477, §2(c), Oct. 15, 1984, 98 Stat. 2211; Pub. L. 98–497, title I, §107(g), Oct. 19, 1984, 98 Stat. 2292; Pub. L. 100–503, §§2–6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507–2514; Pub. L. 101–508, title VII, §7201(b)(1), Nov. 5, 1990, 104 Stat. 1388–334; Pub. L. 103–66, title XIII, §13581(c), Aug. 10, 1993, 107 Stat. 611; Pub. L. 104–193, title I, §110(w), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 104–226, §1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub. L. 104–316, title I, §115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub. L. 105–34, title X, §1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub. L. 105–362, title XIII, §1301(d), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 106–170, title IV, §402(a)(2), Dec. 17, 1999, 113 Stat. 1908; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99–570.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8)(B)(iv), (vii), is classified to section 6103 of Title 26, Internal Revenue Code.

Sections 404, 464, and 1137 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), are classified to sections 604, 664, and 1320b–7, respectively, of Title 42, The Public Health and Welfare.

For effective date of this section, referred to in subsecs. (k)(2), (5), (7), (*l*)(2), (3), and (m), see Effective Date note below.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub. L. 93–579, which was set out below and was repealed by section 6(c) of Pub. L. 100–503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title note below.

CODIFICATION

Section 552a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2244 of Title 7, Agriculture.

AMENDMENTS

2004—Subsec. (b)(10). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1999—Subsec. (a)(8)(B)(viii). Pub. L. 106–170 added cl. (viii).

1998—Subsec. (u)(6), (7). Pub. L. 105–362 redesignated par. (7) as (6), substituted "paragraph (3)(D)" for "paragraphs (3)(D) and (6)", and struck out former par. (6) which read as follows: "The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver."

1997—Subsec. (a)(8)(B)(vii). Pub. L. 105–34 added cl. (vii).

1996—Subsec. (a)(8)(B)(iv)(III). Pub. L. 104–193 substituted "section 404(e), 464," for "section 464".

[2] So in original. Probably should be "cost-effective."

Subsec. (a)(8)(B)(v) to (vii). Pub. L. 104–226 inserted "or" at end of cl. (v), struck out "or" at end of cl. (vi), and struck out cl. (vii) which read as follows: "matches performed pursuant to section 6103(*l*)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;".

Subsecs. (b)(12), (m)(2). Pub. L. 104–316 substituted "3711(e)" for "3711(f)".

1993—Subsec. (a)(8)(B)(vii). Pub. L. 103–66 added cl. (vii).

1990—Subsec. (p). Pub. L. 101–508 amended subsec. (p) generally, restating former pars. (1) and (3) as par. (1), adding provisions relating to Data Integrity Boards, and restating former pars. (2) and (4) as (2) and (3), respectively.

1988—Subsec. (a)(8) to (13). Pub. L. 100–503, § 5, added pars. (8) to (13).

Subsec. (e)(12). Pub. L. 100–503, § 3(a), added par. (12).

Subsec. (f). Pub. L. 100–503, § 7, substituted "biennially" for "annually" in last sentence.

Subsecs. (*o*) to (q). Pub. L. 100–503, § 2(2), added subsecs. (*o*) to (q). Former subsecs. (*o*) to (q) redesignated (r) to (t), respectively.

Subsec. (r). Pub. L. 100–503, § 3(b), inserted "and matching programs" in heading and amended text generally. Prior to amendment, text read as follows: "Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers."

Pub. L. 100–503, § 2(1), redesignated former subsec. (*o*) as (r).

Subsec. (s). Pub. L. 100–503, § 8, substituted "Biennial" for "Annual" in heading, "biennially submit" for "annually submit" in introductory provisions, "preceding 2 years" for "preceding year" in par. (1), and "such years" for "such year" in par. (2).

Pub. L. 100–503, § 2(1), redesignated former subsec. (p) as (s).

Subsec. (t). Pub. L. 100–503, § 2(1), redesignated former subsec. (q) as (t).

Subsec. (u). Pub. L. 100–503, § 4, added subsec. (u).

Subsec. (v). Pub. L. 100–503, § 6(a), added subsec. (v).

1984—Subsec. (b)(6). Pub. L. 98–497, § 107(g)(1), substituted "National Archives and Records Administration" for "National Archives of the United States", and "Archivist of the United States or the designee of the Archivist" for "Administrator of General Services or his designee".

Subsec. (*l*)(1). Pub. L. 98–497, § 107(g)(2), substituted "Archivist of the United States" for "Administrator of General Services" in two places.

Subsec. (q). Pub. L. 98–477 designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (b)(12). Pub. L. 97–452 substituted "section 3711(f) of title 31" for "section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))".

Subsec. (m)(2). Pub. L. 97–452 substituted "section 3711(f) of title 31" for "section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))".

1982—Subsec. (b)(12). Pub. L. 97–365, § 2(a), added par. (12).

Subsec. (e)(4). Pub. L. 97–375, § 201(a), substituted "upon establishment or revision" for "at least annually" after "Federal Register".

Subsec. (m). Pub. L. 97–365, § 2(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub. L. 97–375, § 201(b), substituted provisions requiring annual submission of a report by the President to the Speaker of the House and President pro tempore of the Senate relating to the Director of the Office of Management and Budget, individual rights of access, changes or additions to systems of records, and other necessary or useful information, for provisions which had directed the President to submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicate efforts to administer fully this section.

1975—Subsec. (g)(5). Pub. L. 94–183 substituted "to September 27, 1975" for "to the effective date of this section".

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note under section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after December 1999, see section 402(a)(4) of Pub. L. 106–170, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to levies issued after Aug. 5, 1997, see section 1026(c) of Pub. L. 105–34, set out as a note under section 6103 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103–66, set out as a note under section 1395y of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 10 of Pub. L. 100–503, as amended by Pub. L. 101–56, § 2, July 19, 1989, 103 Stat. 149, provided that:

"(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall take effect 9 months after the date of enactment of this Act [Oct. 18, 1988].

"(b) EXCEPTIONS.—The amendment made by sections 3(b), 6, 7, and 8 of this Act [amending this section and repealing provisions set out as a note below] shall take effect upon enactment.

"(c) EFFECTIVE DATE DELAYED FOR EXISTING PROGRAMS.—In the case of any matching program (as defined in section 552a(a)(8) of title 5, United States Code,

as added by section 5 of this Act) in operation before June 1, 1989, the amendments made by this Act (other than the amendments described in subsection (b)) shall take effect January 1, 1990, if—

"(1) such matching program is identified by an agency as being in operation before June 1, 1989; and

"(2) such identification is—

"(A) submitted by the agency to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget before August 1, 1989, in a report which contains a schedule showing the dates on which the agency expects to have such matching program in compliance with the amendments made by this Act, and

"(B) published by the Office of Management and Budget in the Federal Register, before September 15, 1989."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–497 effective Apr. 1, 1985, see section 301 of Pub. L. 98–497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

EFFECTIVE DATE

Section 8 of Pub. L. 93–579 provided that: "The provisions of this Act [enacting this section and provisions set out as notes under this section] shall be effective on and after the date of enactment [Dec. 31, 1974], except that the amendments made by sections 3 and 4 [enacting this section and amending analysis preceding section 500 of this title] shall become effective 270 days following the day on which this Act is enacted."

SHORT TITLE OF 1990 AMENDMENT

Section 7201(a) of Pub. L. 101–508 provided that: "This section [amending this section and enacting provisions set out as notes below] may be cited as the 'Computer Matching and Privacy Protection Amendments of 1990'."

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–56, § 1, July 19, 1989, 103 Stat. 149, provided that: "This Act [amending section 10 of Pub. L. 100–503, set out as a note above] may be cited as the 'Computer Matching and Privacy Protection Act Amendments of 1989'."

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100–503 provided that: "This Act [amending this section, enacting provisions set out as notes above and below, and repealing provisions set out as a note below] may be cited as the 'Computer Matching and Privacy Protection Act of 1988'."

SHORT TITLE OF 1974 AMENDMENT

Section 1 of Pub. L. 93–579 provided: "That this Act [enacting this section and provisions set out as notes under this section] may be cited as the 'Privacy Act of 1974'."

SHORT TITLE

This section is popularly known as the "Privacy Act".

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (s) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 31 of House Document No. 103–7.

DELEGATION OF FUNCTIONS

Functions of Director of Office of Management and Budget under this section delegated to Administrator for Office of Information and Regulatory Affairs by section 3 of Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2825, set out as a note under section 3503 of Title 44, Public Printing and Documents.

PRIVACY AND DATA PROTECTION POLICIES AND PROCEDURES

Pub. L. 108–447, div. H, title V, § 522, Dec. 8, 2004, 118 Stat. 3268, provided that:

"(a) PRIVACY OFFICER.—Each agency shall have a Chief Privacy Officer to assume primary responsibility for privacy and data protection policy, including—

"(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of information in an identifiable form;

"(2) assuring that technologies used to collect, use, store, and disclose information in identifiable form allow for continuous auditing of compliance with stated privacy policies and practices governing the collection, use and distribution of information in the operation of the program;

"(3) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as defined in the Privacy Act of 1974 [see Short Title of 1974 Amendment note, set out above];

"(4) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

"(5) conducting a privacy impact assessment of proposed rules of the Department on the privacy of information in an identifiable form, including the type of personally identifiable information collected and the number of people affected;

"(6) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of section 552a of title 5, 11 [sic] United States Code, internal controls, and other relevant matters;

"(7) ensuring that the Department protects information in an identifiable form and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction;

"(8) training and educating employees on privacy and data protection policies to promote awareness of and compliance with established privacy and data protection policies; and

"(9) ensuring compliance with the Departments established privacy and data protection policies.

"(b) ESTABLISHING PRIVACY AND DATA PROTECTION PROCEDURES AND POLICIES.—

"(1) [sic] IN GENERAL.—Within 12 months of enactment of this Act [Dec. 8, 2004], each agency shall establish and implement comprehensive privacy and data protection procedures governing the agency's collection, use, sharing, disclosure, transfer, storage and security of information in an identifiable form relating to the agency employees and the public. Such procedures shall be consistent with legal and regulatory guidance, including OMB regulations, the Privacy Act of 1974, and section 208 of the E-Government Act of 2002 [section 208 of Pub. L. 107–347, set out in a note under section 3501 of Title 44, Public Printing and Documents].

"(c) RECORDING.—Each agency shall prepare a written report of its use of information in an identifiable form, along with its privacy and data protection policies and procedures and record it with the Inspector General of the agency to serve as a benchmark for the agency. Each report shall be signed by the agency privacy officer to verify that the agency intends to comply with the procedures in the report. By signing the report the privacy officer also verifies that the agency is only using information in identifiable form as detailed in the report.

"(d) INDEPENDENT, THIRD-PARTY REVIEW.—

"(1) IN GENERAL.—At least every 2 years, each agency shall have performed an independent, third party review of the use of information in identifiable form as the privacy and data protection procedures of the agency to—

"(A) determine the accuracy of the description of the use of information in identifiable form;

"(B) determine the effectiveness of the privacy and data protection procedures;

"(C) ensure compliance with the stated privacy and data protection policies of the agency and applicable laws and regulations; and

"(D) ensure that all technologies used to collect, use, store, and disclose information in identifiable form allow for continuous auditing of compliance with stated privacy policies and practices governing the collection, use and distribution of information in the operation of the program.

"(2) PURPOSES.—The purposes of reviews under this subsection are to—

"(A) ensure the agency's description of the use of information in an identifiable form is accurate and accounts for the agency's current technology and its processing of information in an identifiable form;

"(B) measure actual privacy and data protection practices against the agency's recorded privacy and data protection procedures;

"(C) ensure compliance and consistency with both online and offline stated privacy and data protection policies; and

"(D) provide agencies with ongoing awareness and recommendations regarding privacy and data protection procedures.

"(3) REQUIREMENTS OF REVIEW.—The Inspector General of each agency shall contract with an independent, third party that is a recognized leader in privacy consulting, privacy technology, data collection and data use management, and global privacy issues, to—

"(A) evaluate the agency's use of information in identifiable form;

"(B) evaluate the privacy and data protection procedures of the agency; and

"(C) recommend strategies and specific steps to improve privacy and data protection management.

"(4) CONTENT.—Each review under this subsection shall include—

"(A) a review of the agency's technology, practices and procedures with regard to the collection, use, sharing, disclosure, transfer and storage of information in identifiable form;

"(B) a review of the agency's stated privacy and data protection procedures with regard to the collection, use, sharing, disclosure, transfer, and security of personal information in identifiable form relating to agency employees and the public;

"(C) a detailed analysis of agency intranet, network and Websites for privacy vulnerabilities, including—

"(i) noncompliance with stated practices, procedures and policies; and

"(ii) risks for inadvertent release of information in an identifiable form from the website of the agency; and

"(D) a review of agency compliance with this Act [div. H of Pub. L. 108–447, see Tables for classification].

"(e) REPORT.—

"(1) IN GENERAL.—Upon completion of a review, the Inspector General of an agency shall submit to the head of that agency a detailed report on the review, including recommendations for improvements or enhancements to management of information in identifiable form, and the privacy and data protection procedures of the agency.

"(2) INTERNET AVAILABILITY.—Each agency shall make each independent third party review, and each report of the Inspector General relating to that review available to the public.

"(f) DEFINITION.—In this section, the definition of 'identifiable form' is consistent with Public Law 107–347, the E-Government Act of 2002 [see Tables for classification], and means any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means."

PUBLICATION OF GUIDANCE UNDER SUBSECTION (p)(1)(A)(ii)

Section 7201(b)(2) of Pub. L. 101–508 provided that: "Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code, as amended by this Act."

LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT

Section 7201(c) of Pub. L. 101–508 provided that: "Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by section 2 [probably means section 7201(b)(1) of Pub. L. 101–508], shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b–7), until the earlier of—

"(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

"(2) 30 days after the date of publication of guidance under section 2(b) [probably means section 7201(b)(2) of Pub. L. 101–508, set out as a note above]."

EFFECTIVE DATE DELAYED FOR CERTAIN EDUCATION BENEFITS COMPUTER MATCHING PROGRAMS

Pub. L. 101–366, title II, § 206(d), Aug. 15, 1990, 104 Stat. 442, provided that:

"(1) In the case of computer matching programs between the Department of Veterans Affairs and the Department of Defense in the administration of education benefits programs under chapters 30 and 32 of title 38 and chapter 106 of title 10, United States Code, the amendments made to section 552a of title 5, United States Code, by the Computer Matching and Privacy Protection Act of 1988 [Pub. L. 100–503] (other than the amendments made by section 10(b) of that Act) [see Effective Date of 1988 Amendment note above] shall take effect on October 1, 1990.

"(2) For purposes of this subsection, the term 'matching program' has the same meaning provided in section 552a(a)(8) of title 5, United States Code."

IMPLEMENTATION GUIDANCE FOR 1988 AMENDMENTS

Section 6(b) of Pub. L. 100–503 provided that: "The Director shall, pursuant to section 552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act [amending this section and repealing provisions set out as a note below] not later than 8 months after the date of enactment of this Act [Oct. 18, 1988]."

CONSTRUCTION OF 1988 AMENDMENTS

Section 9 of Pub. L. 100–503 provided that: "Nothing in the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall be construed to authorize—

"(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;

"(2) the direct linking of computerized systems of records maintained by Federal agencies;

"(3) the computer matching of records not otherwise authorized by law; or

"(4) the disclosure of records for computer matching except to a Federal, State, or local agency."

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

Section 2 of Pub. L. 93–579 provided that:

"(a) The Congress finds that—

"(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

"(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

"(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

"(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

"(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

"(b) The purpose of this Act [enacting this section and provisions set out as notes under this section] is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

"(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

"(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

"(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

"(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

"(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

"(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act."

PRIVACY PROTECTION STUDY COMMISSION

Section 5 of Pub. L. 93-579, as amended by Pub. L. 95-38, June 1, 1977, 91 Stat. 179, which established the Privacy Protection Study Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1977, pursuant to section 5(g) of Pub. L. 93-579.

GUIDELINES AND REGULATIONS FOR MAINTENANCE OF PRIVACY AND PROTECTION OF RECORDS OF INDIVIDUALS

Section 6 of Pub. L. 93-579, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub. L. 100-503, § 6(c), Oct. 18, 1988, 102 Stat. 2513.

DISCLOSURE OF SOCIAL SECURITY NUMBER

Section 7 of Pub. L. 93-579 provided that:

"(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

"(2) the [The] provisions of paragraph (1) of this subsection shall not apply with respect to—

"(A) any disclosure which is required by Federal statute, or

"(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

"(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

AUTHORIZATION OF APPROPRIATIONS TO PRIVACY PROTECTION STUDY COMMISSION

Section 9 of Pub. L. 93-579, as amended by Pub. L. 94-394, Sept. 3, 1976, 90 Stat. 1198, authorized appropriations for the period beginning July 1, 1975, and ending on September 30, 1977.

CLASSIFIED NATIONAL SECURITY INFORMATION

For provisions relating to a response to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 12958, § 3.7, Apr. 17, 1995, 60 F.R. 19835, set out as a note under section 435 of Title 50, War and National Defense.

§ 552b. Open meetings

(a) For purposes of this section—

(1) the term "agency" means any agency, as defined in section 552(e)[1] of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "member" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency prop-

[1] See References in Text note below.

OMB Circular No. A-130

OFFICE OF
MANAGEMENT AND BUDGET

CIRCULAR NO. A-130
Revised

Transmittal Memorandum No. 4

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Management of Federal Information Resources

1. Purpose
2. Rescissions
3. Authorities
4. Applicability and Scope
5. Background
6. Definitions
7. Basic Considerations and Assumptions
8. Policy
9. Assignment of Responsibilities
10. Oversight
11. Effectiveness
12. Inquiries
13. Sunset Review Date

Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals
Appendix II, Implementation of the Government Paperwork Elimination Act
Appendix III, Security of Federal Automated Information Resources
Appendix IV, Analysis of Key Sections

1. Purpose: This Circular establishes policy for the management of Federal information resources. OMB includes procedural and analytic guidelines for implementing specific aspects of these policies as appendices.

2. Rescissions: This Circular rescinds OMB Memoranda M-96-20, "Implementation of the Information Technology Management Reform Act of 1996;" M-97-02, "Funding Information Systems Investments;" M-97-09, "Interagency Support for Information Technology;" M-97-15, "Local Telecommunications Services Policy;" M-97-16, "Information Technology Architectures".

3. Authorities: OMB issues this Circular pursuant to the Paperwork Reduction Act (PRA) of 1980, as amended by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35); the Clinger-Cohen Act (also known as "Information Technology Management Reform Act of 1996") (Pub. L. 104-106, Division E); the Privacy Act, as amended (5 U.S.C. 552a); the Chief Financial Officers Act (31 U.S.C. 3512 et seq.); the Federal Property and Administrative Services Act, as amended (40 U.S.C. 487); the Computer Security Act of 1987 (Pub. L. 100-235); the Budget and Accounting Act, as amended (31 U.S.C. Chapter 11); the Government Performance and Results Act of 1993(GPRA); the Office of Federal Procurement Policy Act (41 U.S.C. Chapter 7); the Government Paperwork Elimination Act of 1998 (Pub. L. 105-277, Title XVII), Executive Order No. 12046 of March 27, 1978; Executive Order No. 12472 of April 3, 1984; and Executive Order No. 13011 of July 17, 1996.

4. Applicability and Scope:

a. The policies in this Circular apply to the information activities of all agencies of the executive branch of the Federal government.

b. Information classified for national security purposes should also be handled in accordance with the appropriate national security directives. National security emergency preparedness activities should be conducted in accordance with Executive Order No. 12472.

5. Background: The Clinger-Cohen Act supplements the information resources management policies contained in the PRA by establishing a comprehensive approach for executive agencies to improve the acquisition and management of their information resources, by:

1. focusing information resource planning to support their strategic missions;
2. implementing a capital planning and investment control process that links to budget formulation and execution; and
3. rethinking and restructuring the way they do their work before investing in information systems.

The PRA establishes a broad mandate for agencies to perform their information resources management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the PRA requires that the Director of OMB develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information resources management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

6. Definitions:

a. The term "agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal government, or any independent regulatory agency. Within the Executive Office of the President, the term includes only OMB and the Office of Administration.

b. The term "audiovisual production" means a unified presentation, developed according to a plan or script, containing visual imagery, sound or both, and used to convey information.

c. The term "capital planning and investment control process " means a management process for ongoing identification, selection, control, and evaluation of investments in information resources. The process links budget formulation and execution, and is focused on agency missions and achieving specific program outcomes.

d. The term "Chief Information Officers Council" (CIO Council) means the Council established in Section 3 of Executive Order 13011.

e. The term "dissemination" means the government initiated distribution of information to the public. Not considered dissemination within the meaning of this Circular is distribution limited to government employees or agency contractors or grantees, intra- or inter-agency use or sharing of government information, and responses to requests for agency records under the Freedom of Information Act (5 U.S.C. 552) or Privacy Act.

f. The term "executive agency" has the meaning defined in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

g. The term "full costs," when applied to the expenses incurred in the operation of an information processing service organization (IPSO), is comprised of all direct, indirect, general, and administrative costs incurred in the operation of an IPSO. These costs include, but are not limited to, personnel, equipment, software, supplies, contracted services from private sector providers, space occupancy, intra-agency services from within the agency, inter-agency services from other Federal agencies, other services that are provided by State and local governments, and Judicial and Legislative branch organizations.

h. The term "government information" means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

i. The term "government publication" means information which is published as an individual document at government expense, or as required by law. (44 U.S.C. 1901)

j. The term "information" means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

k. The term "information dissemination product" means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, disseminated by an agency to the public.

l. The term "information life cycle" means the stages through which information passes, typically characterized as creation or collection, processing, dissemination, use, storage, and disposition.

m. The term "information management" means the planning, budgeting, manipulating, and controlling of information throughout its life cycle.

n. The term "information resources" includes both government information and information technology.

o. The term "information processing services organization" (IPSO) means a discrete set of personnel, information technology, and support equipment with the primary function of providing services to more than one agency on a reimbursable basis.

p. The term "information resources management" means the process of managing information resources to accomplish agency missions. The term encompasses both information itself and the related resources, such as personnel, equipment, funds, and information technology.

q. The term "information system" means a discrete set of information resources organized for the collection, processing, maintenance, transmission, and dissemination of information, in accordance with defined procedures, whether automated or manual.

r. The term "information system life cycle" means the phases through which an information system passes, typically characterized as initiation, development, operation, and termination.

s. The term "information technology" means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product. The term

"information technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources. The term "information technology" does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract. The term "information technology" does not include national security systems as defined in the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

t. The term "Information Technology Resources Board" (Resources Board) means the board established by Section 5 of Executive Order 13011.

u. The term "major information system" means an information system that requires special management attention because of its importance to an agency mission; its high development, operating, or maintenance costs; or its significant role in the administration of agency programs, finances, property, or other resources.

v. The term "national security system" means any telecommunications or information system operated by the United States Government, the function, operation, or use of which (1) involves intelligence activities; (2) involves cryptologic activities related to national security; (3) involves command and control of military forces; (4) involves equipment that is an integral part of a weapon or weapons system; or (5) is critical to the direct fulfillment of military or intelligence missions, but excluding any system that is to be administrative and business applications (including payroll, finance, logistics, and personnel management applications). The policies and procedures established in this Circular will apply to national security systems in a manner consistent with the applicability and related limitations regarding such systems set out in Section 5141 of the Clinger-Cohen Act (Pub. L. 104-106, 40 U.S.C. 1451). Applicability of Clinger-Cohen Act to national security systems shall include budget document preparation requirements set forth in OMB Circular A-11. The resultant budget document may be classified in accordance with the provisions of Executive Order 12958.

w. The term "records" means all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successoras evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the informational value of the data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included. (44 U.S.C. 3301)

x. The term "records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations. (44 U.S.C. 2901(2))

y. The term "service recipient" means an agency organizational unit, programmatic entity, or chargeable account that receives information processing services from an information processing service organization (IPSO). A service recipient may be either internal or external to the organization responsible for providing information resources services, but normally does not report either to the manager or director of the IPSO or to the same immediate supervisor.

7. Basic Considerations and Assumptions:

a. The Federal Government is the largest single producer, collector, consumer, and disseminator of information in the United States. Because of the extent of the government's information activities, and the dependence of those activities upon public cooperation, the management of Federal information resources is an issue of continuing importance to all Federal agencies, State and local governments, and the public.

b. Government information is a valuable national resource. It provides the public with knowledge of the government, society, and economy -- past, present, and future. It is a means to ensure the accountability of government, to manage the government's operations, to maintain the healthy performance of the economy, and is itself a commodity in the marketplace.

c. The free flow of information between the government and the public is essential to a democratic society. It is also essential that the government minimize the Federal paperwork burden on the public, minimize the cost of its information activities, and maximize the usefulness of government information.

d. In order to minimize the cost and maximize the usefulness of government information, the expected public and private benefits derived from government information should exceed the public and private costs of the information, recognizing that the benefits to be derived from government information may not always be quantifiable.

e. The nation can benefit from government information disseminated both by Federal agencies and by diverse nonfederal parties, including State and local government agencies, educational and other not-for-profit institutions, and for-profit organizations.

f. Because the public disclosure of government information is essential to the operation of a democracy, the management of Federal information resources should protect the public's right of access to government information.

g. The individual's right to privacy must be protected in Federal Government information activities involving personal information.

h. Systematic attention to the management of government records is an essential component of sound public resources management which ensures public accountability. Together with records preservation, it protects the government's historical record and guards the legal and financial rights of the government and the public.

i. Strategic planning improves the operation of government programs. The agency strategic plan will shape the redesign of work processes and guide the development and maintenance of an Enterprise Architecture and a capital planning and investment control process. This management approach promotes the appropriate application of Federal information resources.

j. Because State and local governments are important producers of government information for many areas such as health, social welfare, labor, transportation, and education, the Federal Government must cooperate with these governments in the management of information resources.

k. The open and efficient exchange of scientific and technical government information, subject to applicable national security controls and the proprietary rights of others, fosters excellence in scientific research and effective use of Federal research and development funds.

l. Information technology is not an end in itself. It is one set of resources that can improve the effectiveness and efficiency of Federal program delivery.

m. Federal Government information resources management policies and activities can affect, and be affected by, the information policies and activities of other nations.

n. Users of Federal information resources must have skills, knowledge, and training to manage information resources, enabling the Federal government to effectively serve the public through automated means.

o. The application of up-to-date information technology presents opportunities to promote fundamental changes in agency structures, work processes, and ways of interacting with the public that improve the effectiveness and efficiency of Federal agencies.

p. The availability of government information in diverse media, including electronic formats, permits agencies and the public greater flexibility in using the information.

q. Federal managers with program delivery responsibilities should recognize the importance of information resources management to mission performance.

r. The Chief Information Officers Council and the Information Technology Resources Board will help in the development and operation of interagency and interoperable shared information resources to support the performance of government missions.

8. Policy:

a. Information Management Policy

1. How will agencies conduct Information Management Planning?

Agencies must plan in an integrated manner for managing information throughout its life cycle. Agencies will:

(a) Consider, at each stage of the information life cycle, the effects of decisions and actions on other stages of the life cycle, particularly those concerning information dissemination;

(b) Consider the effects of their actions on members of the public and ensure consultation with the public as appropriate;

(c) Consider the effects of their actions on State and local governments and ensure consultation with those governments as appropriate;

(d) Seek to satisfy new information needs through interagency or intergovernmental sharing of information, or through commercial sources, where appropriate, before creating or collecting new information;

(e) Integrate planning for information systems with plans for resource allocation and use, including budgeting, acquisition, and use of information technology;

(f) Train personnel in skills appropriate to management of information;

(g) Protect government information commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information;

(h) Use voluntary standards and Federal Information Processing Standards where appropriate or required;

(i) Consider the effects of their actions on the privacy rights of individuals, and ensure that appropriate legal and technical safeguards are implemented;

(j) Record, preserve, and make accessible sufficient information to ensure the management and accountability of agency programs, and to protect the legal and financial rights of the Federal Government;

(k) Incorporate records management and archival functions into the design, development, and implementation of information systems;

1. Provide for public access to records where required or appropriate.

2. What are the guidelines for Information Collection?

Agencies must collect or create only that information necessary for the proper performance of agency functions and which has practical utility.

3. What are the guidelines for Electronic Information Collection?

Executive agencies under Sections 1703 and 1705 of the Government Paperwork Elimination Act (GPEA), P. L. 105-277, Title XVII, are required to provide, by October 21, 2003, the (1) option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) use and acceptance of electronic signatures, when practicable. Agencies will follow the provisions in OMB Memorandum M-00-10, "Procedures and Guidance on Implementing of the Government Paperwork Elimination Act."

4. How must agencies implement Records Management?
Agencies will:

(a) Ensure that records management programs provide adequate and proper documentation of agency activities;

(b) Ensure the ability to access records regardless of form or medium;

(c) In a timely fashion, establish, and obtain the approval of the Archivist of the United States for retention schedules for Federal records; and

(d) Provide training and guidance as appropriate to all agency officials and employees and contractors regarding their Federal records management responsibilities.

5. How must an agency provide information to the public?

Agencies have a responsibility to provide information to the public consistent with their missions. Agencies will discharge this responsibility by:

(a) Providing information, as required by law, describing agency organization, activities, programs, meetings, systems of records, and other information holdings, and how the public may gain access to agency information resources;

(b) Providing access to agency records under provisions of the Freedom of Information Act and the

Privacy Act, subject to the protections and limitations provided for in these Acts;

(c) Providing such other information as is necessary or appropriate for the proper performance of agency functions; and

(d) In determining whether and how to disseminate information to the public, agencies will:

(i) Disseminate information in a manner that achieves the best balance between the goals of maximizing the usefulness of the information and minimizing the cost to the government and the public;
(ii) Disseminate information dissemination products on equitable and timely terms;

(iii) Take advantage of all dissemination channels, Federal and nonfederal, including State and local governments, libraries and private sector entities, in discharging agency information dissemination responsibilities;

(iv) Help the public locate government information maintained by or for the agency.

6. What is an Information Dissemination Management System?

Agencies will maintain and implement a management system for all information dissemination products which must, at a minimum:

(a) Assure that information dissemination products are necessary for proper performance of agency functions (44 U.S.C. 1108);

(b) Consider whether an information dissemination product available from other Federal or nonfederal sources is equivalent to an agency information dissemination product and reasonably fulfills the dissemination responsibilities of the agency;

(c) Establish and maintain inventories of all agency information dissemination products;

(d) Develop such other aids to locating agency information dissemination products including catalogs and directories, as may reasonably achieve agency information dissemination objectives;

(e) Identify in information dissemination products the source of the information, if from another agency;

(f) Ensure that members of the public with disabilities whom the agency has a responsibility to inform have a reasonable ability to access the information dissemination products;

(g) Ensure that government publications are made available to depository libraries through the facilities of the Government Printing Office, as required by law (44 U.S.C. Part 19);

(h) Provide electronic information dissemination products to the Government Printing Office for distribution to depository libraries;

(i) Establish and maintain communications with members of the public and with State and local governments so that the agency creates information dissemination products that meet their respective needs;

(j) Provide adequate notice when initiating, substantially modifying, or terminating significant

information dissemination products; and

(k) Ensure that, to the extent existing information dissemination policies or practices are inconsistent with the requirements of this Circular, a prompt and orderly transition to compliance with the requirements of this Circular is made.

7. How must agencies avoid improperly restrictive practices?

Agencies will:

(a) Avoid establishing, or permitting others to establish on their behalf, exclusive, restricted, or other distribution arrangements that interfere with the availability of information dissemination products on a timely and equitable basis;

(b) Avoid establishing restrictions or regulations, including the charging of fees or royalties, on the reuse, resale, or redissemination of Federal information dissemination products by the public; and,

(c) Set user charges for information dissemination products at a level sufficient to recover the cost of dissemination but no higher. They must exclude from calculation of the charges costs associated with original collection and processing of the information. Exceptions to this policy are:

(i) Where statutory requirements are at variance with the policy;

(ii) Where the agency collects, processes, and disseminates the information for the benefit of a specific identifiable group beyond the benefit to the general public;

(iii) Where the agency plans to establish user charges at less than cost of dissemination because of a determination that higher charges would constitute a significant barrier to properly performing theagency's functions, including reaching members of the public whom the agency has a responsibility to inform; or

(iv) Where the Director of OMB determines an exception is warranted.

8. How will agencies carry out electronic information dissemination?

Agencies will use electronic media and formats, including public networks, as appropriate and within budgetary constraints, in order to make government information more easily accessible and useful to the public. The use of electronic media and formats for information dissemination is appropriate under the following conditions:

(a) The agency develops and maintains the information electronically;

(b) Electronic media or formats are practical and cost effective ways to provide public access to a large, highly detailed volume of information;

(c) The agency disseminates the product frequently;

(d) The agency knows a substantial portion of users have ready access to the necessary information technology and training to use electronic information dissemination products;

(e) A change to electronic dissemination, as the sole means of disseminating the product, will not

impose substantial acquisition or training costs on users, especially State and local governments and small business entities.

9. What safeguards must agencies follow?

Agencies will:

(a) Ensure that information is protected commensurate with the risk and magnitude of the harm that would result from the loss, misuse, or unauthorized access to or modification of such information;

(b) Limit the collection of information which identifies individuals to that which is legally authorized and necessary for the proper performance of agency functions;

(c) Limit the sharing of information that identifies individuals or contains proprietary information to that which is legally authorized, and impose appropriate conditions on use where a continuing obligation to ensure the confidentiality of the information exists;

(d) Provide individuals, upon request, access to records about them maintained in Privacy Act systems of records, and permit them to amend such records as are in error consistent with the provisions of the Privacy Act.

b. How Will Agencies Manage Information Systems and Information Technology?

(1) How will agencies use capital planning and investment control process?

Agencies must establish and maintain a capital planning and investment control process that links mission needs, information, and information technology in an effective and efficient manner. The process will guide both strategic and operational IRM, IT planning, and the Enterprise Architecture by integrating the agency's IRM plans, strategic and performance plans prepared pursuant to the Government Performance and Results Act of 1993, financial management plans prepared pursuant to the Chief Financial Officer Act of 1990 (31 U.S.C. 902a5), acquisition under the Federal Acquisition Streamlining Act of 1994, and the agency's budget formulation and execution processes. The capitalplanning and investment control process includes all stages of capital programming, including planning, budgeting, procurement, management, and assessment.

As outlined below, the capital planning and investment control process has three components: selection, control, and evaluation. The process must be iterative, with inputs coming from all of the agency plans and the outputs feeding into the budget and investment control processes. The goal is to link resources to results (for further guidance on Capital Planning refer to OMB Circular A-11). The agency's capital planning and investment control process must build from the agency's current Enterprise Architecture (EA) and its transition from current architecture to target architecture. The Capital Planning and Investment Control processes must be documented, and provided to OMB consistent with the budget process. The Enterprise Architecture must be documented and provided to OMB as significant changes are incorporated.

(a) What plans are associated with the capital planning and investment control process?

In the capital planning and investment control process, there are two separate and distinct plans that address IRM and IT planning requirements for the agency. The IRM Strategic Plan is strategic in nature and addresses all information resources management of the agency. Agencies must develop and maintain the agency Information Resource Management Strategic Plan (IRM) as required by 44 U.S.C. 3506 (b) (2). IRM Strategic Plans should support the agency Strategic Plan required in OMB

Circular A-11, provide a description of how information resources management activities help accomplish agency missions, and ensure that IRM decisions are integrated with organizational planning, budget, procurement, financial management, human resources management, and program decisions.

The IT Capital Plan is operational in nature, supports the goals and missions identified in the IRM Strategic Plan, is a living document, and must be updated twice yearly. This IT Capital Plan is theimplementation plan for the budget year. The IT Capital Plan should also reflect the goals of the agency's Annual Performance Plan, the agency's Government Paperwork Elimination Act (GPEA) Plan, the agency's EA, and agency's business planning processes. The IT Capital Plan must be submitted annually to OMB with the agency budget submission. annually. The IT Capital Plan must include the following components:

(i) A component, derived from the agency's capital planning and investment control process under OMB Circular A-11, Section 300 and the OMB Capital Programming Guide, that specifically includes all IT Capital Asset Plans for major information systems or projects. This component must also demonstrate how the agency manages its other IT investments, as required by the Clinger-Cohen Act.

(ii) A component that addresses two other sections of OMB Circular A-11: a section for Information on Financial Management, including the Report on Financial Management Activities and the Agency's Financial Management Plan, and a section entitled Information Technology, including the Agency IT Investment Portfolio.

(iii) A component, derived from the agency's capital planning and investment control process, that demonstrates the criteria it will use to select the investments into the portfolio, how it will control and manage the investments, and how it will evaluate the investments based on planned performance versus actual accomplishments.

(iv) A component that includes a summary of the security plan from the agency's five-year plan as required by the PRA and Appendix III of this Circular. The plan must demonstrate that IT projects and the EA include security controls for components, applications, and systems that are consistent with the agency's Enterprise Architecture; include a plan to manage risk; protect privacy and confidentiality; and explain any planned or actual variance from National Institute of Standards and Technology(NIST) security guidance.

(b) What must an agency do as part of the selection component of the capital planning process?

It must:

(i) Evaluate each investment in information resources to determine whether the investment will support core mission functions that must be performed by the Federal government;

(ii) Ensure that decisions to improve existing information systems or develop new information systems are initiated only when no alternative private sector or governmental source can efficiently meet the need;

(iii) Support work processes that it has simplified or otherwise redesigned to reduce costs, improve effectiveness, and make maximum use of commercial, off-the-shelf technology;

(iv) Reduce risk by avoiding or isolating custom designed components, using components that

can be fully tested or prototyped prior to production, and ensuring involvement and support of users;

(v) Demonstrate a projected return on the investment that is clearly equal to or better than alternative uses of available public resources. The return may include improved mission performance in accordance with GPRA measures, reduced cost, increased quality, speed, or flexibility; as well as increased customer and employee satisfaction. The return should reflect such risk factors as the project's technical complexity, the agency's management capacity, the likelihood of cost overruns, and the consequences of under- or non-performance. Return on investment should, where appropriate, reflect actual returns observed through pilot projects and prototypes;

(vi) Prepare and update a benefit-cost analysis (BCA) for each information system throughout its life cycle. A BCA will provide a level of detail proportionate to the size of the investment, rely onsystematic measures of mission performance, and be consistent with the methodology described in OMB Circular No. A-94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs";

(vii) Prepare and maintain a portfolio of major information systems that monitors investments and prevents redundancy of existing or shared IT capabilities. The portfolio will provide information demonstrating the impact of alternative IT investment strategies and funding levels, identify opportunities for sharing resources, and consider the agency's inventory of information resources;

(viii) Ensure consistency with Federal, agency, and bureau Enterprise architectures, demonstrating such consistency through compliance with agency business requirements and standards, as well as identification of milestones, as defined in the EA;

(ix) Ensure that improvements to existing information systems and the development of planned information systems do not unnecessarily duplicate IT capabilities within the same agency, from other agencies, or from the private sector;

(x) Ensure that the selected system or process maximizes the usefulness of information, minimizes the burden on the public, and preserves the appropriate integrity, usability, availability, and confidentiality of information throughout the life cycle of the information, as determined in accordance with the PRA and the Federal Records Act. This portion must specifically address the planning and budgeting for the information collection burden imposed on the public as defined by 5 CFR 1320;

(xi) Establish oversight mechanisms, consistent with Appendix III of this Circular, to evaluate systematically and ensure the continuing security, interoperability, and availability of systems and their data;

(xii) Ensure that Federal information system requirements do not unnecessarily restrict theprerogatives of state, local and tribal governments;

(xiii) Ensure that the selected system or process facilitates accessibility under the Rehabilitation Act of 1973, as amended.

(c) What must an agency do as part of the control component of the capital planning process?

It must:

(i) Institute performance measures and management processes that monitor actual performance compared to expected results. Agencies must use a performance based management system that provides timely information regarding the progress of an information technology investment. The system must also measure progress towards milestones in an independently verifiable basis, in terms of cost, capability of the investment to meet specified requirements, timeliness, and quality;

(ii) Establish oversight mechanisms that require periodic review of information systems to determine how mission requirements might have changed, and whether the information system continues to fulfill ongoing and anticipated mission requirements. These mechanisms must also require information regarding the future levels of performance, interoperability, and maintenance necessary to ensure the information system meets mission requirements cost effectively;

(iii) Ensure that major information systems proceed in a timely fashion towards agreed-upon milestones in an information system life cycle. Information systems must also continue to deliver intended benefits to the agency and customers, meet user requirements, and identify and offer security protections;

(iv) Prepare and update a strategy that identifies and mitigates risks associated with each information system;

(iv) Ensure that financial management systems conform to the requirements of OMB Circular No. A-127, "Financial Management Systems;"

(v) Provide for the appropriate management and disposition of records in accordance with the Federal Records Act.

(vi) Ensure that agency EA procedures are being followed. This includes ensuring that EA milestones are reached and documentation is updated as needed.

(d) What must an agency do as part of the evaluation component of the capital planning process?

It must:

(i) Conduct post-implementation reviews of information systems and information resource management processes to validate estimated benefits and costs, and document effective management practices for broader use;
(ii) Evaluate systems to ensure positive return on investment and decide whether continuation, modification, or termination of the systems is necessary to meet agency mission requirements.

(iii) Document lessons learned from the post-implementation reviews. Redesign oversight mechanisms and performance levels to incorporate acquired knowledge.

(iv) Re-assess an investment's business case, technical compliance, and compliance against the EA.

(v) Update the EA and IT capital planning processes as needed.

(2) The Enterprise Architecture

Agencies must document and submit their initial EA to OMB. Agencies must submit updates when significant changes to the Enterprise Architecture occur.

(a) What is the Enterprise Architecture?
An EA is the explicit description and documentation of the current and desired relationships among business and management processes and information technology. It describes the "current architecture" and "target architecture" to include the rules and standards and systems life cycle information to optimize and maintain the environment which the agency wishes to create and maintain by managing its IT portfolio. The EA must also provide a strategy that will enable the agency to support its current state and also act as the roadmap for transition to its target environment. These transition processes will include an agency's capital planning and investment control processes, agency EA planning processes, and agency systems life cycle methodologies. The EA will define principles and goals and set direction on such issues as the promotion of interoperability, open systems, public access, compliance with GPEA, end user satisfaction, and IT security. The agency must support the EA with a complete inventory of agency information resources, including personnel, equipment, and funds devoted to information resources management and information technology, at an appropriate level of detail. Agencies must implement the EA consistent with following principles:

(i) Develop information systems that facilitate interoperability, application portability, and scalability of electronic applications across networks of heterogeneous hardware, software, and telecommunications platforms;
(ii) Meet information technology needs through cost effective intra-agency and interagency sharing, before acquiring new information technology resources; and

(iii) Establish a level of security for all information systems that is commensurate to the risk and magnitude of the harm resulting from the loss, misuse, unauthorized access to, or modification of the information stored or flowing through these systems.

(b) How do agencies create and maintain the EA?

As part of the EA effort, agencies must use or create an Enterprise Architecture Framework. The Framework must document linkages between mission needs, information content, and information technology capabilities. The Framework must also guide both strategic and operational IRM planning.

Once a framework is established, an agency must create the EA. In the creation of an EA, agencies must identify and document:

(i) Business Processes - Agencies must identify the work performed to support its mission, vision and performance goals. Agencies must also document change agents, such as legislation or new technologies that will drive changes in the EA.
(ii) Information Flow and Relationships - Agencies must analyze the information utilized by the agency in its business processes, identifying the information used and the movement of the information. These information flows indicate where the information is needed and how the information is shared to support mission functions.

(iii) Applications - Agencies must identify, define, and organize the activities that capture, manipulate, and manage the business information to support business processes. The EA also describes the logical dependencies and relationships among business activities.

(iv) Data Descriptions and Relationships - Agencies must identify how data is created, maintained, accessed, and used. At a high level, agencies must define the data and describe the relationships among data elements used in the agency's information systems.

(v) Technology Infrastructure - Agencies must describe and identify the functional characteristics, capabilities, and interconnections of the hardware, software, and telecommunications.

(c) What are the Technical Reference Model and Standards Profile?

The EA must also include a Technical Reference Model (TRM) and Standards Profile.

(i) The TRM identifies and describes the information services (such as database, communications, intranet, etc.) used throughout the agency.
(ii) The Standards Profile defines the set of IT standards that support the services articulated in the TRM. Agencies are expected to adopt standards necessary to support the entire EA, which must be enforced consistently throughout the agency.

(iii) As part of the Standards Profile, agencies must create a Security Standards Profile that is specific to the security services specified in the EA and covers such services as identification, authentication, and non-repudiation; audit trail creation and analysis; access controls; cryptography management; virus protection; fraud prevention; detection and mitigation; and intrusion prevention and detection.

(3) How Will Agencies Ensure Security in Information Systems?

Agencies must incorporate security into the architecture of their information and systems to ensure that security supports agency business operations and that plans to fund and manage security are built into life-cycle budgets for information systems.

(a) To support more effective agency implementation of both agency computer security and critical infrastructure protection programs, agencies must implement the following:

(i) Prioritize key systems (including those that are most critical to agency operations);
(ii) Apply OMB policies and, for non-national security applications, NIST guidance to achieve adequate security commensurate with the level of risk and magnitude of harm;

(b) Agencies must make security's role explicit in information technology investments and capital programming. Investments in the development of new or the continued operation of existing informationsystems, both general support systems and major applications must:

(i) Demonstrate that the security controls for components, applications, and systems are consistent with, and an integral part of, the EA of the agency;
(ii) Demonstrate that the costs of security controls are understood and are explicitly incorporated into the life-cycle planning of the overall system in a manner consistent with OMB guidance for capital programming;

(iii) Incorporate a security plan that complies with Appendix III of this Circular and in a manner that is consistent with NIST guidance on security planning;

(iv) Demonstrate specific methods used to ensure that risks and the potential for loss are understood and continually assessed, that steps are taken to maintain risk at an acceptable level, and that procedures are in place to ensure that controls are implemented effectively and remain effective over time;

(v) Demonstrate specific methods used to ensure that the security controls are commensurate with the risk and magnitude of harm that may result from the loss, misuse, or unauthorized access to or modification of the system itself or the information it manages;

(vi) Identify additional security controls that are necessary to minimize risk to and potential loss from those systems that promote or permit public access, other externally accessible systems, and those systems that are interconnected with systems over which program officials have little or no control;

(vii) Deploy effective security controls and authentication tools consistent with the protection of privacy, such as public-key based digital signatures, for those systems that promote or permit public access;

(viii) Ensure that the handling of personal information is consistent with relevant government-wide and agency policies;

(ix) Describe each occasion the agency decides to employ standards and guidance that are more stringent than those promulgated by NIST to ensure the use of risk-based cost-effective security controls for non-national security applications;

(c) OMB will consider for new or continued funding only those system investments that satisfy these criteria. New information technology investments must demonstrate that existing agency systems also meet these criteria in order to qualify for funding.

(4) How Will Agencies Acquire Information Technology?

Agencies must:

(a) Make use of adequate competition, allocate risk between government and contractor, and maximize return on investment when acquiring information technology;
(b) Structure major information systems into useful segments with a narrow scope and brief duration. This should reduce risk, promote flexibility and interoperability, increase accountability, and better match mission need with current technology and market conditions;

(c) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented through pilot projects or prototypes; and

(d) Ensure accessibility of acquired information technology pursuant to the Rehabilitation Act of 1973, as amended (Pub. Law 105-220, 29 U.S.C.794d).

9. Assignment of Responsibilities:

a. All Federal Agencies. The head of each agency must:

1. Have primary responsibility for managing agency information resources;

2. Ensure that the agency implements appropriately all of the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB;

3. Appoint a Chief Information Officer, as required by 44 U.S.C. 3506(a), who must report directly to the agency head to carry out the responsibilities of the agencies listed in the Paperwork Reduction Act (44 U.S.C. 3506), the Clinger Cohen Act (40 U.S.C. 1425(b) & (c)), as well as Executive Order 13011. The head of the agency must consult with the Director of OMB prior to appointing a Chief Information Officer, and will advise the Director on matters regarding the authority, responsibilities, and organizational resources of the Chief Information Officer. For purposes of this paragraph, military departments and the Office of the Secretary of Defense may each appoint one official. The Chief Information Officer must, among other things:

(a) Be an active participant during all agency strategic management activities, including the development, implementation, and maintenance of agency strategic and operational plans;

(b) Advise the agency head on information resource implications of strategic planning decisions;

(c) Advise the agency head on the design, development, and implementation of information resources.

(i) Monitor and evaluate the performance of information resource investments through a capital planning and investment control process, and advise the agency head on whether to continue, modify, or terminate a program or project;
(ii) Advise the agency head on budgetary implications of information resource decisions; and

(d) Be an active participant throughout the annual agency budget process in establishing investment priorities for agency information resources;

4. Direct the Chief Information Officer to monitor agency compliance with the policies, procedures, and guidance in this Circular. Acting as an ombudsman, the Chief Information Officer must consider alleged instances of agency failure to comply with this Circular, and recommend or take appropriate corrective action. The Chief Information Officer will report instances of alleged failure and their resolution annually to the Director of OMB, by February 1st of each year.

5. Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in this Circular;

6. Develop agency policies and procedures that provide for timely acquisition of required information technology;

7. Maintain the following, as required by the Paperwork Reduction Act (44 U.S.C. 3506(b)(4) and 3511) and the Freedom of Information Act (5 U.S.C. 552(g)): an inventory of the agency's major information systems, holdings, and dissemination products; an agency information locator service; a description of the agency's major information and record locator systems; an inventory of the agency's other information resources, such as personnel and funding (at the level of detail that the agency determines is most appropriate for its use in managing the agency's information resources); and a handbook for persons to obtain public information from the agency pursuant to these Acts.

8. Implement and enforce applicable records management policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

9. Identify to the Director of OMB any statutory, regulatory, and other impediments to efficient management of Federal information resources, and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

10. Assist OMB in the performance of its functions under the PRA, including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

11. Ensure that the agency:

(a) cooperates with other agencies in the use of information technology to improve the productivity, effectiveness, and efficiency of Federal programs;

(b) promotes a coordinated, interoperable, secure, and shared government wide infrastructure that is provided and supported by a diversity of private sector suppliers; and

(c) develops a well-trained corps of information resource professionals.

12. Use the guidance provided in OMB Circular A-11, "Planning, Budgeting, and Acquisition of Fixed Assets," to promote effective and efficient capital planning within the organization;

13. Ensure that the agency provides budget data pertaining to information resources to OMB, consistent with the requirements of OMB Circular A-11,

14. Ensure, to the extent reasonable, that in the design of information systems with the purpose of disseminating information to the public, an index of information disseminated by the system will be included in the directory created by the Superintendent of Documents pursuant to 41 U.S.C. 4101. (Nothing in this paragraph authorizes the dissemination of information to the public unless otherwise authorized.)

15. Permit, to the extent practicable, the use of one agency's contract by another agency or the award of multi-agency contracts, provided the action is within the scope of the contract and consistent with OMB guidance; and

16. As designated by the Director of OMB, act as executive agent for the government-wide acquisition of information technology.

b. Department of State. The Secretary of State must:

1. Advise the Director of OMB on the development of United States positions and policies on international information policy and technology issues affecting Federal government activities and the development of international information technology standards; and

2. Be responsible for liaison, consultation, and negotiation with foreign governments and intergovernmental organizations on all matters related to information resources management, including federal information technology. The Secretary must also ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international standards and recommendations affecting information technology. These responsibilities may also require the Secretary to consult, as appropriate, with affected domestic agencies, organizations, and other members of the public.

c. Department of Commerce. The Secretary of Commerce must:

1. Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology, whiletaking into consideration the recommendations of the agencies and the CIO Council;

2. Advise the Director of OMB on the development of policies relating to the procurement and management of Federal telecommunications resources;

3. Provide OMB and the agencies with scientific and technical advisory services relating to the development and use of information technology;

4. Conduct studies and evaluations concerning telecommunications technology, and concerning the improvement, expansion, testing, operation, and use of Federal telecommunications systems, and advise the Director of OMB and appropriate agencies of the recommendations that result from such studies;

5. Develop, in consultation with the Secretary of State and the Director of OMB, plans, policies, and programs relating to international telecommunications issues affecting government information activities;

6. Identify needs for standardization of telecommunications and information processing technology, and develop standards, in consultation with the Secretary of Defense and the Administrator of General Services, to ensure efficient application of such technology;

7. Ensure that the Federal Government is represented in the development of national and, in consultation with the Secretary of State, international information technology standards, and advise the Director of OMB on such activities.

d. Department of Defense. The Secretary of Defense will develop, in consultation with the Administrator of General Services, uniform Federal telecommunications standards and guidelines to ensure national security, emergency preparedness, and continuity of government.

e. General Services Administration. The Administrator of General Services must:

1. Continue to manage the FTS2001 program and coordinate the follow-up to that program, on behalf of and with the advice of agencies;

2. Develop, maintain, and disseminate for the use of the Federal community (as requested by OMB or the agencies) recommended methods and strategies for the development and acquisition of information technology;

3. Conduct and manage outreach programs in cooperation with agency managers;

4. Be a liaison on information resources management (including Federal information technology) with State and local governments. GSA must also be a liaison with non-governmental international organizations, subject to prior consultation with the Secretary of State to ensure consistency with the overall United States foreign policy objectives;

5. Support the activities of the Secretary of State for liaison, consultation, and negotiation with intergovernmental organizations on information resource management matters;

6. Provide support and assistance to the CIO Council and the Information Technology Resources Board.

7. Manage the Information Technology Fund in accordance with the Federal Property and Administrative Services Act, as amended;

f. Office of Personnel Management. The Director, Office of Personnel Management, will:

1. Develop and conduct training programs for Federal personnel on information resources management, including end-user computing;

2. Evaluate periodically future personnel management and staffing requirements for Federal information resources management;

3. Establish personnel security policies and develop training programs for Federal personnel associated with the design, operation, or maintenance of information systems.

g. National Archives and Records Administration. The Archivist of the United States will:

1. Administer the Federal records management program in accordance with the National Archives and Records Act;

2. Assist the Director of OMB in developing standards and guidelines relating to the records management program.

h. Office of Management and Budget. The Director of the Office of Management and Budget will:

1. Provide overall leadership and coordination of Federal information resources management within the executive branch;

2. Serve as the President's principal adviser on procurement and management of Federal telecommunications systems, and develop and establish policies for procurement and management of such systems;

3. Issue policies, procedures, and guidelines to assist agencies in achieving integrated, effective, and efficient information resources management;

4. Initiate and review proposals for changes in legislation, regulations, and agency rocedures to improve Federal information resources management;

5. Review and approve or disapprove agency proposals for collection of information from the public, as defined by 5 CFR 1320.3;

6. Develop and maintain a Governmentwide strategic plan for information resources management.

7. Evaluate agencies' information resources management and identify cross-cutting information policy issues through the review of agency information programs, information collection budgets, information technology acquisition plans, fiscal budgets, and by other means;

8. Provide policy oversight for the Federal records management function conducted by the National Archives and Records Administration, coordinate records management policies and programs with other information activities, and review compliance by agencies with records management requirements;

9. Review agencies' policies, practices, and programs pertaining to the security, protection, sharing, and disclosure of information, in order to ensure compliance, with respect to privacy and security, with the Privacy Act, the Freedom of Information Act, the Computer Security Act, the GPEA, and related statutes;

10. Review proposed U.S. Government Position and Policy statements on international issues affecting Federal Government information activities, and advise the Secretary of State as to their consistency with Federal information resources management policy.

11. Coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy, and policies regarding management of financial management systems with the Office of Federal Financial Management.

12. Evaluate agency information resources management practices and programs and, as part of the budget process, oversee agency capital planning and investment control processes to analyze, track, and evaluate the risks and results of major capital investments in information systems;

13. Notify an agency if OMB believes that a major information system project requires outside assistance;

14. Provide guidance on the implementation of the Clinger-Cohen Act and on the management of information resources to the executive agencies, to the CIO Council, and to the Information Technology Resources Board; and

15. Designate one or more heads of executive agencies as executive agent for government-wide acquisitions of information technology.

10. Oversight:

a. The Director of OMB will use information technology planning reviews, fiscal budget reviews, information collection budget reviews, management reviews, and such other measures as the Director deems necessary to evaluate the adequacy and efficiency of each agency's information resources management and compliance with this Circular.

b. The Director of OMB may, consistent with statute and upon written request of an agency, grant a waiver from particular requirements of this Circular. Requests for waivers must detail the reasons why a particular waiver is sought, identify the duration of the waiver sought, and include a plan for the prompt and orderly transition to full compliance with the requirements of this Circular. Notice of each waiver request must be published promptly by the agency in the Federal Register, with a copy of the waiver request made available to the public on request.

11. Effectiveness: This Circular is effective upon issuance. Nothing in this Circular will be construed to confer a private right of action on any person.

12. Inquiries: All questions or inquiries should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395-3785.

13. Sunset Review Date: OMB will review this Circular three years from the date of issuance to ascertain its effectiveness.

Return to Top