

## Attachment 1 - Legislative Mandate (Excerpts)

### National Center for Health Statistics (42 USC 242K)

Sec. 306 [242k]

(a) There is established in the Department of Health and Services the National Center for Health Statistics (hereinafter in this section referred to as the "Center" which shall be under the direction of a Director who shall be appointed by the Secretary. The Secretary, acting through the Center, shall conduct and support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

(b) In carrying out subsection (a), the Secretary, acting through the Center---

(1) shall collect statistics on---

(A) the extent and nature of illness and disability of the population of the United States (or of any groupings of the people included in the population), including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality,

(B) the impact of illness and disability of the population on the economy on the economy of the United States and on other aspects of the well-being of its population (or of such groupings),

(C) environmental , social, and other health hazards,

(D) determinants of health

(E) health resources, including physicians, dentists, nurses, and other health professionals by specialty and type of practice and the supply of services by hospitals, extended care facilities, home health agencies, and other health institutions,

(F) utilization of health care, including utilization of

(i) ambulatory health services by specialties, and

(ii) services of hospitals, extended care facilities, home health agencies, and other institutions,

(G) health care costs and financing, including the trends in health care prices and cost, the sources of payments for health care services, and

(H) family formation, growth, and dissolution;

(2) shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining new or improved methods for obtaining current data on the matters referred to in paragraph (1);

(3) may undertake and support (by grant or contract) epidemiological research, demonstrations, and evaluations on the matters referred to in paragraph (1); and

(4) may collect, furnish, tabulate, and analyze statistics, and prepare studies, on matters referred to in paragraph (1) upon request of public and nonprofit private entities under arrangements under which the entities will pay the cost of the service provided.

Amounts appropriated to the Secretary from payments made under arrangements made under paragraph (4) shall be available to the Secretary for obligation until expended

#### Sec. 308 [242m]

##### (d) Information; publication restrictions

No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under section 242b, 242k, or 242l of this title may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose; and in the case of information obtained in the course of health statistical or epidemiological activities under section 242b or 242k of this title, such information may not be published or released in other form if the particular establishment or person supplying the information or described in it is identifiable unless such establishment or person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

### **Confidential Information Protection and Statistical Efficiency Act (PL 107-347)**

#### Subtitle A—Confidential Information Protection

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

(a) FINDINGS.—The Congress finds the following:

(1) Individuals, businesses, and other organizations have varying degrees of legal protection when providing information to the agencies for strictly statistical purposes.

(2) Pledges of confidentiality by agencies provide assurances to the public that information about individuals or organizations or provided by individuals or organizations for exclusively statistical purposes will be held in confidence and will not be used against such individuals or organizations in any agency action.

(3) Protecting the confidentiality interests of individuals or organizations who provide information under a pledge of confidentiality for Federal statistical programs serves both the interests of the public and the needs of society.

(4) Declining trust of the public in the protection of information provided under a pledge of confidentiality to the agencies adversely affects both the accuracy and completeness of statistical analyses.

(5) Ensuring that information provided under a pledge of confidentiality for statistical purposes receives protection is essential in continuing public cooperation in statistical programs.

(b) PURPOSES.—The purposes of this subtitle are the following:

(1) To ensure that information supplied by individuals or organizations to an agency for statistical purposes under a pledge of confidentiality is used exclusively for statistical purposes.

(2) To ensure that individuals or organizations who supply information under a pledge of confidentiality to agencies for statistical purposes will neither have that information disclosed in identifiable form to anyone not authorized by this title nor have that information used for any purpose other than a statistical purpose.

(3) To safeguard the confidentiality of individually identifiable information acquired under a pledge of confidentiality for statistical purposes by controlling access to, and uses made of, such information.

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

(a) USE OF STATISTICAL DATA OR INFORMATION.—Data or information acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes shall be used by officers, employees, or agents of the agency exclusively for statistical purposes.

(b) DISCLOSURE OF STATISTICAL DATA OR INFORMATION.—

(1) Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent.

(2) A disclosure pursuant to paragraph (1) is authorized only when the head of the agency approves such disclosure and the disclosure is not prohibited by any other law.

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

(c) RULE FOR USE OF DATA OR INFORMATION FOR NONSTATISTICAL

PURPOSES.—A statistical agency or unit shall clearly distinguish any data or information it collects for nonstatistical purposes (as authorized by law) and provide notice to the public, before the data or information is collected, that the data or information could be used for nonstatistical purposes.

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

SEC. 513. FINES AND PENALTIES.

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

114TH CONGRESS  
1ST SESSION

# S. 1869

To improve Federal network security and authorize and enhance an existing intrusion detection and prevention system for civilian Federal networks.

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IN THE SENATE OF THE UNITED STATES

JULY 27, 2015

Mr. CARPER (for himself and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To improve Federal network security and authorize and enhance an existing intrusion detection and prevention system for civilian Federal networks.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Cybersecurity  
5 Enhancement Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1           (1) the term “agency” has the meaning given  
2 the term in section 3502 of title 44, United States  
3 Code;

4           (2) the term “agency information system” has  
5 the meaning given the term in section 228 of the  
6 Homeland Security Act of 2002, as added by section  
7 3(a);

8           (3) the term “appropriate congressional com-  
9 mittees” means—

10                   (A) the Committee on Homeland Security  
11 and Governmental Affairs of the Senate; and

12                   (B) the Committee on Homeland Security  
13 of the House of Representatives;

14           (4) the terms “cybersecurity risk” and “infor-  
15 mation system” have the meanings given those  
16 terms in section 227 of the Homeland Security Act  
17 of 2002, as so redesignated by section 3(a);

18           (5) the term “Director” means the Director of  
19 the Office of Management and Budget;

20           (6) the term “intelligence community” has the  
21 meaning given the term in section 3(4) of the Na-  
22 tional Security Act of 1947 (50 U.S.C. 3003(4));  
23 and

24           (7) the term “Secretary” means the Secretary  
25 of Homeland Security.

1 **SEC. 3. IMPROVED FEDERAL NETWORK SECURITY.**

2 (a) IN GENERAL.—Subtitle C of title II of the Home-  
3 land Security Act of 2002 (6 U.S.C. 141 et seq.) is amend-  
4 ed—

5 (1) by redesignating section 228 as section 229;

6 (2) by redesignating section 227 as subsection  
7 (c) of section 228, as added by paragraph (4), and  
8 adjusting the margins accordingly;

9 (3) by redesignating the second section des-  
10 igned as section 226 (relating to the national cy-  
11 bersecurity and communications integration center)  
12 as section 227;

13 (4) by inserting after section 227, as so redesign-  
14 nated, the following:

15 **“SEC. 228. CYBERSECURITY PLANS.**

16 **“(a) DEFINITIONS.—**In this section—

17 **“(1)** the term ‘agency information system’  
18 means an information system used or operated by an  
19 agency, by a contractor of an agency, or by another  
20 entity on behalf of an agency;

21 **“(2)** the terms ‘cybersecurity risk’ and ‘infor-  
22 mation system’ have the meanings given those terms  
23 in section 227;

24 **“(3)** the term ‘information sharing and analysis  
25 organization’ has the meaning given the term in sec-  
26 tion 212(5); and

1           “(4) the term ‘intelligence community’ has the  
2 meaning given the term in section 3(4) of the Na-  
3 tional Security Act of 1947 (50 U.S.C. 3003(4)).

4           “(b) INTRUSION ASSESSMENT PLAN.—

5           “(1) REQUIREMENT.—The Secretary, in coordi-  
6 nation with the Director of the Office of Manage-  
7 ment and Budget, shall develop and implement an  
8 intrusion assessment plan to identify and remove in-  
9 truders in agency information systems.

10           “(2) EXCEPTION.—The intrusion assessment  
11 plan required under paragraph (1) shall not apply to  
12 the Department of Defense or an element of the in-  
13 telligence community.”;

14           (5) in section 228(c), as so redesignated, by  
15 striking “section 226” and inserting “section 227”;  
16 and

17           (6) by inserting after section 229, as so redesign-  
18 ated, the following:

19 **“SEC. 230. FEDERAL INTRUSION DETECTION AND PREVEN-**  
20 **TION SYSTEM.**

21           “(a) DEFINITIONS.—In this section—

22           “(1) the term ‘agency’ has the meaning given  
23 that term in section 3502 of title 44, United States  
24 Code;



1           “(2) the term ‘agency information’ means infor-  
2           mation collected or maintained by or on behalf of an  
3           agency;

4           “(3) the term ‘agency information system’ has  
5           the meaning given the term in section 228; and

6           “(4) the terms ‘cybersecurity risk’ and ‘infor-  
7           mation system’ have the meanings given those terms  
8           in section 227.

9           “(b) REQUIREMENT.—

10           “(1) IN GENERAL.—Not later than 1 year after  
11           the date of enactment of this section, the Secretary  
12           shall deploy, operate, and maintain, to make avail-  
13           able for use by any agency, with or without reim-  
14           bursement—

15           “(A) a capability to detect cybersecurity  
16           risks in network traffic transiting or traveling  
17           to or from an agency information system; and

18           “(B) a capability to prevent network traffic  
19           associated with such cybersecurity risks from  
20           transiting or traveling to or from an agency in-  
21           formation system or modify such network traf-  
22           fic to remove the cybersecurity risk.

23           “(2) REGULAR IMPROVEMENT.—The Secretary  
24           shall regularly deploy new technologies and modify  
25           existing technologies to the intrusion detection and

1 prevention capabilities described in paragraph (1) as  
2 appropriate to improve the intrusion detection and  
3 prevention capabilities.

4 “(c) ACTIVITIES.—In carrying out subsection (b), the  
5 Secretary—

6 “(1) may access, and the head of an agency  
7 may disclose to the Secretary or a private entity pro-  
8 viding assistance to the Secretary under paragraph  
9 (2), information transiting or traveling to or from an  
10 agency information system, regardless of the location  
11 from which the Secretary or a private entity pro-  
12 viding assistance to the Secretary under paragraph  
13 (2) accesses such information, notwithstanding any  
14 other provision of law that would otherwise restrict  
15 or prevent the head of an agency from disclosing  
16 such information to the Secretary or a private entity  
17 providing assistance to the Secretary under para-  
18 graph (2);

19 “(2) may enter into contracts or other agree-  
20 ments with, or otherwise request and obtain the as-  
21 sistance of, private entities to deploy and operate  
22 technologies in accordance with subsection (b);

23 “(3) may retain, use, and disclose information  
24 obtained through the conduct of activities authorized

1 under this section only to protect information and  
2 information systems from cybersecurity risks;

3 “(4) shall regularly assess through operational  
4 test and evaluation in real world or simulated envi-  
5 ronments available advanced protective technologies  
6 to improve detection and prevention capabilities, in-  
7 cluding commercial and non-commercial technologies  
8 and detection technologies beyond signature-based  
9 detection, and utilize such technologies when appro-  
10 priate;

11 “(5) shall establish a pilot to acquire, test, and  
12 deploy, as rapidly as possible, technologies described  
13 in paragraph (4); and

14 “(6) shall periodically update the privacy im-  
15 pact assessment required under section 208(b) of  
16 the E-Government Act of 2002 (44 U.S.C. 3501  
17 note).

18 “(d) PRIVATE ENTITIES.—

19 “(1) CONDITIONS.—A private entity described  
20 in subsection (c)(2) may not—

21 “(A) disclose any network traffic transiting  
22 or traveling to or from an agency information  
23 system to any entity other than the Department  
24 or the agency that disclosed the information  
25 under subsection (c)(1); or

1           “(B) use any network traffic transiting or  
2           traveling to or from an agency information sys-  
3           tem to which the private entity gains access in  
4           accordance with this section for any purpose  
5           other than to protect agency information and  
6           agency information systems against cybersecu-  
7           rity risks or to administer a contract or other  
8           agreement entered into pursuant to subsection  
9           (c)(2) or as part of another contract with the  
10          Secretary.

11          “(2) LIMITATION ON LIABILITY.—No cause of  
12          action shall lie in any court against a private entity  
13          for assistance provided to the Secretary in accord-  
14          ance with this section and any contract or agree-  
15          ment entered into pursuant to subsection (c)(2).”.

16          (b) PRIORITIZING ADVANCED SECURITY TOOLS.—  
17          The Director and the Secretary, in consultation with ap-  
18          propriate agencies, shall—

19                 (1) review and update Governmentwide policies  
20                 and programs to ensure appropriate prioritization  
21                 and use of network security monitoring tools within  
22                 agency networks; and

23                 (2) brief appropriate congressional committees  
24                 on such prioritization and use.

25          (c) AGENCY RESPONSIBILITIES.—

1           (1) IN GENERAL.—Except as provided in para-  
2 graph (2)—

3           (A) not later than 1 year after the date of  
4 enactment of this Act or 2 months after the  
5 date on which the Secretary makes available the  
6 intrusion detection and prevention capabilities  
7 under section 230(b)(1) of the Homeland Secu-  
8 rity Act of 2002, as added by subsection (a),  
9 whichever is later, the head of each agency shall  
10 apply and continue to utilize the capabilities to  
11 all information traveling between an agency in-  
12 formation system and any information system  
13 other than an agency information system; and

14           (B) not later than 6 months after the date  
15 on which the Secretary makes available im-  
16 provements to the intrusion detection and pre-  
17 vention capabilities pursuant to section  
18 230(b)(2) of the Homeland Security Act of  
19 2002, as added by subsection (a), the head of  
20 each agency shall apply and continue to utilize  
21 the improved intrusion detection and prevention  
22 capabilities.

23           (2) EXCEPTION.—The requirements under  
24 paragraph (1) shall not apply to the Department of  
25 Defense or an element of the intelligence community.

1 (d) TABLE OF CONTENTS AMENDMENT.—The table  
 2 of contents in section 1(b) of the Homeland Security Act  
 3 of 2002 (6 U.S.C. 101 note) is amended by striking the  
 4 items relating to the first section designated as section  
 5 226, the second section designated as section 226 (relating  
 6 to the national cybersecurity and communications integra-  
 7 tion center), section 227, and section 228 and inserting  
 8 the following:

“Sec. 226. Cybersecurity recruitment and retention.

“Sec. 227. National cybersecurity and communications integration center.

“Sec. 228. Cybersecurity plans.

“Sec. 229. Clearances.

“Sec. 230. Federal intrusion detection and prevention system.”.

9 **SEC. 4. ADVANCED INTERNAL DEFENSES.**

10 (a) ADVANCED NETWORK SECURITY TOOLS.—

11 (1) IN GENERAL.—The Secretary shall include  
 12 in the Continuous Diagnostics and Mitigation Pro-  
 13 gram advanced network security tools to improve  
 14 visibility of network activity, including through the  
 15 use of commercial and free or open source tools, to  
 16 detect and mitigate intrusions and anomalous activ-  
 17 ity.

18 (2) DEVELOPMENT OF PLAN.—The Director  
 19 shall develop and implement a plan to ensure that  
 20 each agency utilizes advanced network security tools,  
 21 including those described in paragraph (1), to detect  
 22 and mitigate intrusions and anomalous activity.

1 (b) IMPROVED METRICS.—The Secretary, in collabo-  
2 ration with the Director, shall review and update the  
3 metrics used to measure security under section 3554 of  
4 title 44, United States Code, to include measures of intru-  
5 sion and incident detection and response times.

6 (c) TRANSPARENCY AND ACCOUNTABILITY.—The Di-  
7 rector, in consultation with the Secretary, shall increase  
8 transparency to the public on agency cybersecurity pos-  
9 ture, including by increasing the number of metrics avail-  
10 able on Federal Government performance websites and, to  
11 the greatest extent practicable, displaying metrics for de-  
12 partment components, small agencies, and micro agencies.

13 (d) MAINTENANCE OF TECHNOLOGIES.—Section  
14 3553(b)(6)(B) of title 44, United States Code, is amended  
15 by inserting “, operating, and maintaining” after “deploy-  
16 ing”.

17 **SEC. 5. FEDERAL CYBERSECURITY BEST PRACTICES.**

18 (a) ASSESSMENT OF BEST PRACTICES FOR FEDERAL  
19 CYBERSECURITY.—The Secretary, in consultation with  
20 the Director, shall regularly assess and require implemen-  
21 tation of best practices for securing agency information  
22 systems against intrusion and preventing data exfiltration  
23 in the event of an intrusion.

24 (b) CYBERSECURITY REQUIREMENTS AT AGEN-  
25 CIES.—

1           (1) IN GENERAL.—Except as provided in para-  
2 graph (2), not later than 1 year after the date of en-  
3 actment of this Act, the head of each agency shall—

4           (A) identify sensitive and mission critical  
5 data stored by the agency consistent with the  
6 inventory required under the first subsection (c)  
7 (relating to the inventory of major information  
8 systems) and the second subsection (c) (relating  
9 to the inventory of information systems) of sec-  
10 tion 3505 of title 44, United States Code;

11           (B) assess access controls to the data de-  
12 scribed in subparagraph (A), the need for read-  
13 ily accessible storage of the data, and individ-  
14 uals' need to access the data;

15           (C) encrypt the data described in subpara-  
16 graph (A) that is stored on or transiting agency  
17 information systems consistent with standards  
18 and guidelines promulgated under section  
19 11331 of title 40, United States Code;

20           (D) implement a single sign-on trusted  
21 identity platform for individuals accessing each  
22 public website of the agency that requires user  
23 authentication, as developed by the Adminis-  
24 trator of General Services in collaboration with  
25 the Secretary; and



1 (E) implement multi-factor authentication  
2 consistent with standards and guidelines pro-  
3 mulgated under section 11331 of title 40,  
4 United States Code, for—

5 (i) remote access to an agency infor-  
6 mation system; and

7 (ii) each user account with elevated  
8 privileges on an agency information sys-  
9 tem.

10 (2) EXCEPTION.—The requirements under  
11 paragraph (1) shall not apply to the Department of  
12 Defense or an element of the intelligence community.

13 **SEC. 6. ASSESSMENT; REPORTS.**

14 (a) DEFINITIONS.—In this section—

15 (1) the term “intrusion assessments” means ac-  
16 tions taken under the intrusion assessment plan to  
17 identify and remove intruders in agency information  
18 systems;

19 (2) the term “intrusion assessment plan”  
20 means the plan required under section 228(b)(1) of  
21 the Homeland Security Act of 2002, as added by  
22 section 3(a) of this Act; and

23 (3) the term “intrusion detection and preven-  
24 tion capabilities” means the capabilities required

1 under section 230(b) of the Homeland Security Act  
2 of 2002, as added by section 3(a) of this Act.

3 (b) THIRD-PARTY ASSESSMENT.—Not later than 3  
4 years after the date of enactment of this Act, the Govern-  
5 ment Accountability Office shall conduct a study and pub-  
6 lish a report on the effectiveness of the approach and  
7 strategy of the Federal Government to securing agency in-  
8 formation systems, including the intrusion detection and  
9 prevention capabilities and the intrusion assessment plan.

10 (c) REPORTS TO CONGRESS.—

11 (1) INTRUSION DETECTION AND PREVENTION  
12 CAPABILITIES.—

13 (A) SECRETARY OF HOMELAND SECURITY  
14 REPORT.—Not later than 6 months after the  
15 date of enactment of this Act, and annually  
16 thereafter, the Secretary shall submit to the ap-  
17 propriate congressional committees a report on  
18 the status of implementation of the intrusion  
19 detection and prevention capabilities, includ-  
20 ing—

21 (i) a description of privacy controls;

22 (ii) a description of the technologies  
23 and capabilities utilized to detect cyberse-  
24 curity risks in network traffic, including  
25 the extent to which those technologies and

1 capabilities include existing commercial  
2 and non-commercial technologies;

3 (iii) a description of the technologies  
4 and capabilities utilized to prevent network  
5 traffic associated with cybersecurity risks  
6 from transiting or traveling to or from  
7 agency information systems, including the  
8 extent to which those technologies and ca-  
9 pabilities include existing commercial and  
10 non-commercial technologies;

11 (iv) a list of the types of indicators or  
12 other identifiers or techniques used to de-  
13 tect cybersecurity risks in network traffic  
14 transiting or traveling to or from agency  
15 information systems on each iteration of  
16 the intrusion detection and prevention ca-  
17 pabilities and the number of each such  
18 type of indicator, identifier, and technique;

19 (v) the number of instances in which  
20 the intrusion detection and prevention ca-  
21 pabilities detected a cybersecurity risk in  
22 network traffic transiting or traveling to or  
23 from agency information systems and the  
24 number of times the intrusion detection  
25 and prevention capabilities blocked net-

1 work traffic associated with cybersecurity  
2 risk; and

3 (vi) a description of the pilot estab-  
4 lished under section 230(e)(5) of the  
5 Homeland Security Act of 2002, as added  
6 by section 3(a) of this Act, including the  
7 number of new technologies tested and the  
8 number of participating agencies.

9 (B) OMB REPORT.—Not later than 18  
10 months after the date of enactment of this Act,  
11 and annually thereafter, the Director shall sub-  
12 mit to Congress, as part of the report required  
13 under section 3553(c) of title 44, United States  
14 Code, an analysis of agency application of the  
15 intrusion detection and prevention capabilities,  
16 including—

17 (i) a list of each agency and the de-  
18 gree to which each agency has applied the  
19 intrusion detection and prevention capabili-  
20 ties to an agency information system; and

21 (ii) a list by agency of—

22 (I) the number of instances in  
23 which the intrusion detection and pre-  
24 vention capabilities detected a cyber-  
25 security risk in network traffic

1 transiting or traveling to or from an  
2 agency information system and the  
3 types of indicators, identifiers, and  
4 techniques used to detect such cyber-  
5 security risks; and

6 (II) the number of instances in  
7 which the intrusion detection and pre-  
8 vention capabilities prevented network  
9 traffic associated with a cybersecurity  
10 risk from transiting or traveling to or  
11 from an agency information system  
12 and the types of indicators, identi-  
13 fiers, and techniques used to detect  
14 such agency information systems.

15 (2) OMB REPORT ON DEVELOPMENT AND IM-  
16 PLEMENTATION OF INTRUSION ASSESSMENT PLAN,  
17 ADVANCED INTERNAL DEFENSES, AND FEDERAL CY-  
18 BERSECURITY BEST PRACTICES.—The Director  
19 shall—

20 (A) not later than 6 months after the date  
21 of enactment of this Act, and 30 days after any  
22 update thereto, submit the intrusion assessment  
23 plan to the appropriate congressional commit-  
24 tees;

1 (B) not later than 1 year after the date of  
2 enactment of this Act, and annually thereafter,  
3 submit to Congress, as part of the report re-  
4 quired under section 3553(c) of title 44, United  
5 States Code—

6 (i) a description of the implementation  
7 of the intrusion assessment plan;

8 (ii) the findings of the intrusion as-  
9 sessments conducted pursuant to the intru-  
10 sion assessment plan;

11 (iii) advanced network security tools  
12 included in the Continuous Diagnostics  
13 and Mitigation Program pursuant to sec-  
14 tion 4(a)(1);

15 (iv) the results of the assessment of  
16 the Secretary of best practices for Federal  
17 cybersecurity pursuant to section 5(a); and

18 (v) a list by agency of compliance with  
19 the requirements of section 5(b); and

20 (C) not later than 1 year after the date of  
21 enactment of this Act, submit to the appro-  
22 priate congressional committees—

23 (i) a copy of the plan developed pursu-  
24 ant to section 4(a)(2); and

1 (ii) the improved metrics developed  
2 pursuant to section 4(b).

3 **SEC. 7. TERMINATION.**

4 (a) IN GENERAL.—The authority provided under sec-  
5 tion 230 of the Homeland Security Act of 2002, as added  
6 by section 3(a) of this Act, and the reporting requirements  
7 under section 6(c) shall terminate on the date that is 7  
8 years after the date of enactment of this Act.

9 (b) RULE OF CONSTRUCTION.—Nothing in sub-  
10 section (a) shall be construed to affect the limitation of  
11 liability of a private entity for assistance provided to the  
12 Secretary under section 230(d)(2) of the Homeland Secu-  
13 rity Act of 2002, as added by section 3(a) of this Act,  
14 if such assistance was rendered before the termination  
15 date under subsection (a) or otherwise during a period in  
16 which the assistance was authorized.

○

(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.

#### FREEDOM OF INFORMATION ACT

Memorandum of President of the United States, Jan. 21, 2009, 74 F.R. 4683, provided:

Memorandum for the Heads of Executive Departments and Agencies

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the Federal Register. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the Federal Register.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

#### § 552a. Records maintained on individuals

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

(1) the term "agency" means agency as defined in section 552(e)<sup>1</sup> of this title;

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

<sup>1</sup> See References in Text note below.



(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

(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;

(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)); or

(ix) matches performed by the Secretary of Health and Human Services or the Inspector General of the Department of Health and Human Services with respect to potential fraud, waste, and abuse, including matches of a system of records with non-Federal records;

(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 non-compliance;

(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 individual'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 com-

petent 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.<sup>2</sup>

(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 ini-

tial 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.

(W) APPLICABILITY TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.

(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,

<sup>2</sup> So in original. Probably should be "cost-effective."



§ 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; Pub. L. 111–148, title VI, § 6402(b)(2), Mar. 23, 2010, 124 Stat. 756; Pub. L. 111–203, title X, § 1082, July 21, 2010, 124 Stat. 2080.)

## 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 subssecs. (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.

The Consumer Financial Protection Act of 2010, referred to in subsec. (w), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§ 5481 et seq.) of chapter 53 of Title 12, Banks and Banking, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

## CODIFICATION

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

## AMENDMENTS

2010—Subsec. (a)(8)(B)(ix). Pub. L. 111–148 added cl. (ix).

Subsec. (w). Pub. L. 111–203 added subsec. (w).

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”.

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 subssecs. (o) to (q). Former subssecs. (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. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title X, § 1082, July 21, 2010, 124 Stat. 2080, provided that the amendment made by section 1082 is effective on July 21, 2010.

Pub. L. 111-203, title X, § 1100H, July 21, 2010, 124 Stat. 2113, provided that: “Except as otherwise provided in this subtitle [subtitle H (§§ 1081–1100H) of title X of Pub. L. 111-203, see Tables for classification] and the amendments made by this subtitle, this subtitle and the amendments made by this subtitle, other than sections 1081 [amending section 8G of Pub. L. 95-452, set out in the Appendix to this title, and enacting provisions set out as a note under section 8G of Pub. L. 95-452] and 1082 [amending this section and enacting provisions set out as a note under this section], shall become effective on the designated transfer date.”

[The term “designated transfer date” is defined in section 5481(9) of Title 12, Banks and Banking, as the date established under section 5582 of Title 12, which is July 21, 2011.]

#### 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

Pub. L. 100-503, § 10, Oct. 18, 1988, 102 Stat. 2514, 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

Pub. L. 93-579, § 8, Dec. 31, 1974, 88 Stat. 1910, 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

Pub. L. 101-508, title VII, § 7201(a), Nov. 5, 1990, 104 Stat. 1388-334, 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

Pub. L. 100-503, § 1, Oct. 18, 1988, 102 Stat. 2507, 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

Pub. L. 93-579, § 1, Dec. 31, 1974, 88 Stat. 1896, 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.

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

Pub. L. 101-508, title VII, § 7201(b)(2), Nov. 5, 1990, 104 Stat. 1388-334, 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

Pub. L. 101-508, title VII, § 7201(c), Nov. 5, 1990, 104 Stat. 1388-335, 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

Pub. L. 100-503, § 6(b), Oct. 18, 1988, 102 Stat. 2513, 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

Pub. L. 100-503, § 9, Oct. 18, 1988, 102 Stat. 2514, 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

Pub. L. 93-579, § 2, Dec. 31, 1974, 88 Stat. 1896, 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

Pub. L. 93-579, §5, Dec. 31, 1974, 88 Stat. 1905, 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

Pub. L. 93-579, §6, Dec. 31, 1974, 88 Stat. 1909, 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

Pub. L. 93-579, §7, Dec. 31, 1974, 88 Stat. 1909, 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

Pub. L. 93-579, §9, Dec. 31, 1974, 88 Stat. 1910, 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.

## EX. ORD. No. 9397. NUMBERING SYSTEM FOR FEDERAL ACCOUNTS RELATING TO INDIVIDUAL PERSONS

Ex. Ord. No. 9397, Nov. 22, 1943, 8 F.R. 16095, as amended by Ex. Ord. No. 13478, §2, Nov. 18, 2008, 73 F.R. 70239, provided:

WHEREAS certain Federal agencies from time to time require in the administration of their activities a system of numerical identification of accounts of individual persons; and

WHEREAS some seventy million persons have heretofore been assigned account numbers pursuant to the Social Security Act; and

WHEREAS a large percentage of Federal employees have already been assigned account numbers pursuant to the Social Security Act; and

WHEREAS it is desirable in the interest of economy and orderly administration that the Federal Govern-

ment move towards the use of a single, unduplicated numerical identification system of accounts and avoid the unnecessary establishment of additional systems:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

1. Hereafter any Federal department, establishment, or agency may, whenever the head thereof finds it advisable to establish a new system of permanent account numbers pertaining to individual persons, utilize the Social Security Act account numbers assigned pursuant to title 20, section 422.103 of the Code of Federal Regulations and pursuant to paragraph 2 of this order.

2. The Social Security Administration shall provide for the assignment of an account number to each person who is required by any Federal agency to have such a number but who has not previously been assigned such number by the Administration. The Administration may accomplish this purpose by (a) assigning such numbers to individual persons, (b) assigning blocks of numbers to Federal agencies for reassignment to individual persons, or (c) making such other arrangements for the assignment of numbers as it may deem appropriate.

3. The Social Security Administration shall furnish, upon request of any Federal agency utilizing the numerical identification system of accounts provided for in this order, the account number pertaining to any person with whom such agency has an account or the name and other identifying data pertaining to any account number of any such person.

4. The Social Security Administration and each Federal agency shall maintain the confidential character of information relating to individual persons obtained pursuant to the provisions of this order.

5. There shall be transferred to the Social Security Administration, from time to time, such amounts as the Director of the Office of Management and Budget shall determine to be required for reimbursement by any Federal agency for the services rendered by the Administration pursuant to the provisions of this order.

6. This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

7. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

8. This order shall be published in the Federal Register.

## 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. 13526, §3.6, Dec. 29, 2009, 75 F.R. 718, 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)<sup>1</sup> 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

<sup>1</sup> See References in Text note below.