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H. R. 2885

IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 1999

Received; read twice and referred to the Committee on Governmental Affairs

AN ACT

To provide uniform safeguards for the confidentiality of information acquired for exclusively statistical purposes, and to improve the efficiency and quality of Federal statistics and Federal statistical programs by permitting limited sharing of records among designated agencies for statistical purposes under strong safeguards.

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 “Statistical Efficiency
5 Act of 1999”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

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

13 (2) The term “agent” means a person who—

14 (A) is designated by a Statistical Data
15 Center (as designated in section 3) to perform
16 exclusively statistical activities authorized by
17 law under the supervision or control of an offi-
18 cer or employee of that Statistical Data Center;
19 and

20 (B) has agreed in writing to comply with
21 all provisions of law that affect information ac-
22 quired by that Statistical Data Center.

23 (3) The term “identifiable form” means any
24 representation of information that permits informa-

1 tion concerning individual subjects to be reasonably
2 inferred by either direct or indirect means.

3 (4) The term “nonstatistical purpose” means
4 any purpose that is not a statistical purpose, and in-
5 cludes any administrative, regulatory, law enforce-
6 ment, adjudicatory, or other purpose that affects the
7 rights, privileges, or benefits of a particular identifi-
8 able respondent.

9 (5) The term “respondent” means a person
10 who, or organization that, is requested or required
11 to supply information to an agency, is the subject of
12 information requested or required to be supplied to
13 an agency, or who provides that information to an
14 agency.

15 (6) The term “statistical activities”—

16 (A) means the collection, compilation,
17 processing, or analysis of data for the purpose
18 of describing or making estimates concerning
19 the whole, or relevant groups or components
20 within, the economy, society, or natural environ-
21 ment; and

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

1 (7) The term “statistical purpose”—

2 (A) means the description, estimation, or
3 analysis of the characteristics of groups without
4 regard to the identities of individuals or organi-
5 zations that comprise such groups; and

6 (B) includes the development, implementa-
7 tion, or maintenance of methods, technical or
8 administrative procedures, or information re-
9 sources that support such purposes.

10 **SEC. 3. DESIGNATION OF STATISTICAL DATA CENTERS.**

11 (a) IN GENERAL.—Each of the following is hereby
12 designated as a Statistical Data Center:

13 (1) The Bureau of Economic Analysis in the
14 Department of Commerce.

15 (2) The Bureau of the Census in the Depart-
16 ment of Commerce.

17 (3) The Bureau of Labor Statistics in the De-
18 partment of Labor.

19 (4) The National Agricultural Statistics Service
20 in the Department of Agriculture.

21 (5) The National Center for Education Statis-
22 tics in the Department of Education.

23 (6) The National Center for Health Statistics
24 in the Department of Health and Human Services.

1 (7) The Energy Consumption Division of the
2 Energy Information Administration in the Depart-
3 ment of Energy.

4 (8) The Division of Science Resources Studies
5 in the National Science Foundation.

6 (b) DESIGNATION.—In the case of a reorganization
7 that eliminates, or substantially alters the mission or func-
8 tions of, an agency or agency component listed in sub-
9 section (a), the Director of the Office of Management and
10 Budget, after consultation with the head of the agency
11 proposing the reorganization, may designate an agency or
12 agency component that shall serve as a successor Statis-
13 tical Data Center under the terms of this Act, if the Direc-
14 tor determines that—

15 (1) the primary activities of the proposed Sta-
16 tistical Data Center are statistical activities specifi-
17 cally authorized by law;

18 (2) the proposed Statistical Data Center would
19 participate in data sharing activities that signifi-
20 cantly improve Federal statistical programs or prod-
21 ucts;

22 (3) the proposed Statistical Data Center has
23 demonstrated its capability to protect the individual
24 confidentiality of any shared data; and

1 (4) the laws that apply to the proposed Statis-
2 tical Data Center are not inconsistent with this Act.

3 (c) NOTICE AND COMMENT.—The head of an agency
4 seeking designation as a successor Statistical Data Center
5 under this section shall, after consultation with the Direc-
6 tor of the Office of Management and Budget, provide pub-
7 lic notice and an opportunity to comment on the con-
8 sequences of such designation and on those determinations
9 upon which the designation is proposed to be based.

10 (d) PROHIBITION AGAINST INCREASE IN NUMBER OF
11 CENTERS.—No action taken under this section shall in-
12 crease the number of Statistical Data Centers authorized
13 by this Act.

14 **SEC. 4. STATISTICAL DATA CENTER RESPONSIBILITIES.**

15 The Statistical Data Centers designated in section 3
16 shall—

17 (1) identify opportunities to eliminate duplica-
18 tion and otherwise reduce reporting burden and cost
19 imposed on the public by sharing information for ex-
20 clusively statistical purposes;

21 (2) enter into joint statistical projects to im-
22 prove the quality and reduce the cost of statistical
23 programs;

24 (3) safeguard the confidentiality of individually
25 identifiable information acquired for statistical pur-

1 poses by assuring its physical security and by con-
2 trolling access to, and uses made of, such informa-
3 tion; and

4 (4) respect the rights and privileges of the pub-
5 lic by observing and promoting fair information
6 practices.

7 **SEC. 5. LIMITATIONS ON USE AND DISCLOSURE OF DATA**
8 **AND INFORMATION BY STATISTICAL DATA**
9 **CENTERS.**

10 (a) **USE OF STATISTICAL DATA OR INFORMATION.**—
11 Data or information acquired by a Statistical Data Center
12 for exclusively statistical purposes shall be used by the
13 Center only for statistical purposes.

14 (b) **DISCLOSURE OF STATISTICAL DATA OR INFOR-**
15 **MATION.**—Data or information acquired for exclusively
16 statistical purposes shall not be disclosed in identifiable
17 form, for any purpose other than a statistical purpose,
18 without the informed consent of the respondent.

19 (c) **RULE FOR USE OF DATA OR INFORMATION FOR**
20 **NONSTATISTICAL PURPOSES.**—A Statistical Data Center
21 shall clearly distinguish any data or information collected
22 for nonstatistical purposes (as authorized by law) by the
23 Statistical Data Center by a rule that provides that the
24 respondent supplying the data or information is fully in-
25 formed, before the data or information is collected, that

1 the data or information will be used for nonstatistical pur-
2 poses.

3 **SEC. 6. DISCLOSURE OF DATA OR INFORMATION BY AGEN-**
4 **CIES TO STATISTICAL DATA CENTERS.**

5 (a) AGENCIES THAT MAY DISCLOSE DATA OR IN-
6 FORMATION TO A STATISTICAL DATA CENTER.—Subject
7 to subsection (b), any Federal agency may disclose data
8 or information to one or more Statistical Data Centers
9 for exclusively statistical purposes.

10 (b) LIMITATIONS ON DISCLOSURE.—Data or infor-
11 mation may be disclosed by an agency to one or more Sta-
12 tistical Data Centers under subsection (a) only if—

13 (1) the data or information are to be used ex-
14 clusively for statistical purposes by the Statistical
15 Data Center or Centers;

16 (2) the disclosure of, and proposed use of, the
17 data or information by the Statistical Data Center
18 is not inconsistent with any provisions of law or Ex-
19 ecutive order that explicitly limit the statistical pur-
20 poses for which such data or information may be
21 used;

22 (3) the disclosure is not prohibited by law or
23 Executive order in the interest of national security;

24 (4) the disclosure is made under the terms of
25 a written agreement between the Statistical Data

1 Center or Centers and the agency supplying the data
2 or information that specifies—

3 (A) the data or information to be disclosed;

4 (B) the purposes for which the data or in-
5 formation are to be used; and

6 (C) appropriate security procedures to
7 safeguard the confidentiality of the data or in-
8 formation; and

9 (5) the data or information is not disclosed by
10 that Center in identifiable form (except in a case in
11 which the data or information was collected directly
12 by a party to the agreement referred to in subsection
13 (b)(4), and the agreement specifies that the data or
14 information may be so disclosed to another party to
15 the agreement for exclusively statistical purposes).

16 (c) NOTICE.—Whenever a written agreement author-
17 ized under subsection (b)(4) concerns data that respond-
18 ents were required by law to report and the agreement
19 contains terms that could not reasonably have been antici-
20 pated by respondents who provided the data that will be
21 disclosed, or upon the initiative of any party to such an
22 agreement, or whenever ordered by the Director of the Of-
23 fice of Management and Budget, the terms of such agree-
24 ment shall be described in a public notice issued by the
25 agency that intends to disclose the data. Such notice shall

1 allow a minimum of 60 days for public comment before
2 such agreement shall take effect. The Director shall be
3 fully apprised of any issues raised by the public and may
4 suspend the effect of such an agreement to permit modi-
5 fications responsive to public comments.

6 (d) APPLICABILITY OF OTHER LAWS.—(1) The dis-
7 closure of data or information by an agency to a Statistical
8 Data Center under this section shall in no way alter the
9 responsibility of that agency under other statutes (includ-
10 ing the Freedom of Information Act and the Privacy Act)
11 with respect to the disclosure or withholding of such infor-
12 mation by that agency.

13 (2) If data or information obtained by an agency is
14 disclosed to another agency pursuant to this section, all
15 provisions of law (including penalties) that relate to the
16 unlawful disclosure of the data or information apply to
17 the officers, employees, or agents of the agency to which
18 the data or information is disclosed to the same extent
19 and in the same manner as the provisions apply to the
20 officers and employees of the agency which originally ob-
21 tained the information.

22 (3) The officers, employees, and agents of the agency
23 to which the data or information is disclosed, in addition,
24 shall be subject to the same provisions of law, including
25 penalties, relating to the unlawful disclosure of informa-

1 tion that would apply to officers and employees of that
2 agency, if the information had been collected directly by
3 that agency.

4 **SEC. 7. COORDINATION AND OVERSIGHT BY OFFICE OF**
5 **MANAGEMENT AND BUDGET.**

6 (a) IN GENERAL.—The Director of the Office of
7 Management and Budget shall coordinate and oversee the
8 confidentiality and disclosure policies established by this
9 Act.

10 (b) REPORT OF DISCLOSURE AGREEMENTS.—(1)
11 The head of a Statistical Data Center shall report to the
12 Office of Management and Budget—

13 (A) each disclosure agreement entered into pur-
14 suant to section 6(b)(4);

15 (B) the results of any review of information se-
16 curity undertaken at the request of the Office of
17 Management and Budget; and

18 (C) the results of any similar review undertaken
19 on the initiative of the Statistical Data Center or an
20 agency disclosing data or information to a Statistical
21 Data Center.

22 (2) The Director of the Office of Management and
23 Budget shall include a summary of all reports submitted
24 to the Director under this subsection and any actions
25 taken by the Director to advance the purposes of this Act

1 in the annual report to the Congress on statistical pro-
2 grams submitted in accordance with section 3504(e)(2) of
3 title 44, United States Code.

4 (c) REVIEW AND APPROVAL OF RULES.—The Direc-
5 tor of the Office of Management and Budget shall review
6 and approve any rules proposed pursuant to this Act for
7 consistency with this Act and chapter 35 of title 44,
8 United States Code.

9 **SEC. 8. IMPLEMENTING REGULATIONS.**

10 (a) IN GENERAL.—Subject to subsections (b) and (c),
11 the Director of the Office of Management and Budget, or
12 the head of a Statistical Data Center or of an agency pro-
13 viding information to a Center, may promulgate such rules
14 as may be necessary to implement this Act.

15 (b) CONSISTENCY.—The Director of the Office of
16 Management and Budget shall promulgate rules or pro-
17 vide such other guidance as may be needed to ensure con-
18 sistent interpretation of this Act by the affected agencies.

19 (c) AGENCY RULES.—Rules governing disclosures of
20 information authorized by this Act shall be promulgated
21 by the agency that originally collected the information,
22 subject to the review and approval required under this Act.

23 **SEC. 9. EFFECT ON OTHER LAWS.**

24 (a) TITLE 44 U.S.C.—This Act, including the
25 amendments made by this Act, does not diminish the au-

1 thority under section 3510 of title 44, United States Code,
2 of the Director of the Office of Management and Budget
3 to direct, and of an agency to make, disclosures that are
4 not inconsistent with any applicable law.

5 (b) EXEMPTION FROM FREEDOM OF INFORMATION
6 ACT.—Data or information acquired for exclusively statis-
7 tical purposes as provided in section 5 is exempt from
8 mandatory disclosure under section 552 of title 5, United
9 States Code, pursuant to section 552(b)(3) of such title.

10 (c) PREEMPTION OF STATE LAW.—Nothing in this
11 Act shall preempt applicable State law regarding the con-
12 fidentiality of data collected by the States.

13 **SEC. 10. CONFORMING AND PROPOSED CHANGES IN LAW.**

14 (a) DEPARTMENT OF COMMERCE.—(1) Section 1 of
15 the Act of January 27, 1938 (15 U.S.C 176a) is amended
16 by striking “The” and inserting “Except as provided in
17 the Statistical Efficiency Act of 1999, the”.

18 (2)(A) Chapter 10 of title 13, United States Code,
19 is amended by adding after section 401 the following:

20 **“§ 402. Exchange of census information with Statis-**
21 **tical Data Centers**

22 “The Bureau of the Census is authorized to provide
23 data collected under this title to Statistical Data Centers
24 named in the Statistical Efficiency Act of 1999, or their
25 successors designated under the terms of that Act.”.

1 (B) The table of sections for chapter 10 of title 13,
2 United States Code, is amended by adding after the item
3 relating to section 401 the following:

“402. Exchange of census information with Statistical Data Centers.”.

4 (b) DEPARTMENT OF ENERGY.—(1) Section 205 of
5 the Department of Energy Organization Act (Public Law
6 95–91; 42 U.S.C. 7135) is amended by adding after sub-
7 section (l) the following new subsection:

8 “(m)(1)(A) The Administrator shall designate an or-
9 ganizational unit to conduct statistical activities per-
10 taining to energy end use consumption information. Using
11 procedures authorized by the Statistical Efficiency Act of
12 1999, the Administrator shall ensure the security, integ-
13 rity, and confidentiality of the information that has been
14 submitted in identifiable form and supplied exclusively for
15 statistical purposes either directly to the Energy Informa-
16 tion Administration or by other Government agencies.

17 “(B) To carry out this section, the Administrator
18 shall establish procedures for the disclosure of these data
19 to Statistical Data Centers for statistical purposes only
20 consistent with chapter 35 of title 44, United States Code
21 (commonly referred to as the ‘Paperwork Reduction Act’),
22 and the Statistical Efficiency Act of 1999.

23 “(2)(A) A person may not publish, cause to be pub-
24 lished, or otherwise communicate, statistical information

1 designated in paragraph (1) in a manner that identifies
2 any respondent.

3 “(B) A person may not use statistical information
4 designated in paragraph (1) for a nonstatistical purpose.

5 “(C) The identity of a respondent who supplies, or
6 is the subject of, information collected for statistical
7 purposes—

8 “(i) may not be disclosed through any process,
9 including disclosure through legal process, unless the
10 respondent consents in writing;

11 “(ii) may not be disclosed to the public, unless
12 information has been transformed into a statistical
13 or aggregate form that does not allow the identifica-
14 tion of the respondent who supplied the information
15 or who is the subject of that information; and

16 “(iii) may not, without the written consent of
17 the respondent, be admitted as evidence or used for
18 any purpose in an action, suit, or other judicial or
19 administrative proceeding.

20 “(D) Any person who violates subparagraphs (A),
21 (B), or (C), upon conviction, shall be fined under title 18,
22 United States Code, imprisoned not more than 1 year, or
23 both.

24 “(E) For purposes of this subsection:

1 “(i) The term ‘person’ has the meaning given
2 the term in section 1 of title 1, United States Code,
3 but also includes a local, State, or Federal entity or
4 officer or employee of a local, State, or Federal enti-
5 ty.

6 “(ii) The terms ‘statistical activities’, ‘identifi-
7 able form’, ‘statistical purpose’, ‘nonstatistical pur-
8 pose’, and ‘respondent’ have the meaning given those
9 terms in section 2 of the Statistical Efficiency Act
10 of 1999.

11 “(3) Statistical information designated in paragraph
12 (1) is exempt from disclosure under sections 205(f) and
13 407 of this Act and sections 12, 20, and 59 of the Federal
14 Energy Administration Act of 1974, or any other law
15 which requires disclosure of that information.”.

16 (2) Section 205(f) of the Department of Energy Or-
17 ganization Act (42 U.S.C. 7135) is amended by inserting
18 “, excluding information designated solely for statistical
19 purposes under subsection (m)(1),” after “analysis”.

20 (3) Section 407(a) of the Department of Energy Or-
21 ganization Act (42 U.S.C. 7177(a)) is amended by insert-
22 ing “, excluding information designated solely for statis-
23 tical purposes under section 205(m)(1),” after “informa-
24 tion”.

1 (4) The Federal Energy Administration Act of 1974
2 (Public Law 93–275) is amended—

3 (A) in section 12 (15 U.S.C. 771), by adding
4 after subsection (f) the following new subsection:

5 “(g) This section does not apply to information des-
6 igned solely for statistical purposes under section
7 205(m)(1) of the Department of Energy Organization Act
8 (Public Law 95–91).”;

9 (B) in section 20(a)(3) (15 U.S.C. 779(a)(3)),
10 by inserting “, excluding information designated
11 solely for statistical purposes under section
12 205(m)(1) of the Department of Energy Organiza-
13 tion Act (42 U.S.C. 7135)” after “information”; and

14 (C) in the first sentence of section 59 (15
15 U.S.C. 790h), by inserting “, excluding information
16 designated solely for statistical purposes under sec-
17 tion 205(m)(1) of the Department of Energy Orga-
18 nization Act (42 U.S.C. 7135)” after “information”.

19 (c) DEPARTMENT OF HEALTH AND HUMAN SERV-
20 ICES.—Section 306 of the Public Health Service Act (42
21 U.S.C. 242k) is amended by adding at the end the fol-
22 lowing new subsection:

23 “(o) SHARING OF IDENTIFYING INFORMATION FOR
24 STATISTICAL PURPOSES.—

1 “(1) IN GENERAL.—The Director may, subject
2 to the provisions of paragraph (2), designate as an
3 agent of the Center (within the meaning of section
4 2 of the Statistical Efficiency Act of 1999) an
5 individual—

6 “(A) who is not otherwise an employee, of-
7 ficial, or agent of the Center; and

8 “(B) who enters into a written agreement
9 with the Director specifying terms and condi-
10 tions for sharing of statistical information.

11 “(2) EFFECT OF DESIGNATION.—An individual
12 designated as an agent of the Center pursuant to
13 paragraph (1) shall be subject to all restrictions on
14 the use and disclosure of statistical information ob-
15 tained by the individual under the agreement speci-
16 fied in paragraph (1)(B), and to all civil and crimi-
17 nal penalties applicable to violations of such restric-
18 tions, including penalties under section 1905 of title
19 18, United States Code, that would apply to the in-
20 dividual if an employee of the Center.”.

21 (d) DEPARTMENT OF LABOR.—The Commissioner of
22 Labor Statistics is authorized to designate agents, as de-
23 fined in section 2.

1 (e) NATIONAL SCIENCE FOUNDATION.—Section 14
2 of the National Science Foundation Act of 1950 (42
3 U.S.C. 1873) is amended—

4 (1) by amending subsection (i) to read as fol-
5 lows:

6 “(i) Information supplied to the Foundation or its
7 contractor in survey forms, questionnaires, or similar in-
8 struments for purposes of section 3(a)(5) or (6) by an in-
9 dividual, by an industrial or commercial organization, or
10 by an educational or academic institution that has received
11 a pledge of confidentiality from the Foundation, may not
12 be disclosed to the public unless the information has been
13 transformed into statistical or abstract formats that do
14 not allow the identification of the supplier. Such informa-
15 tion shall be used in identifiable form only for statistical
16 purposes as defined in the Statistical Efficiency Act of
17 1999. The names of individuals and organizations sup-
18 plying such information may not be disclosed to the pub-
19 lic.”;

20 (2) by adding the following new subsection after
21 subsection (i):

22 “(j) In support of functions authorized by section
23 3(a)(5) or (6), the Foundation may designate, at its dis-
24 cretion, authorized persons, including employees of Fed-
25 eral, State, or local agencies (including local educational

1 agencies) and employees of private organizations who may
2 have access, for exclusively statistical purposes as defined
3 in the Statistical Efficiency Act of 1999, to identifiable
4 information collected pursuant to section 3(a)(5) or (6).

5 No such person may—

6 “(1) publish information collected under section
7 3(a)(5) or (6) in such a manner that either an indi-
8 vidual, an industrial or commercial organization, or
9 an educational or academic institution that has re-
10 ceived a pledge of confidentiality from the Founda-
11 tion, can be specifically identified;

12 “(2) permit anyone other than individuals au-
13 thorized by the Foundation to examine in identifi-
14 able form data relating to an individual, to an indus-
15 trial or commercial organization, or to an edu-
16 cational or academic institution that has received a
17 pledge of confidentiality from the Foundation; or

18 “(3) knowingly and willfully request or obtain
19 any confidential information described in subsection
20 (i) from the Foundation under false pretenses.

21 Any person who violates these restrictions shall be fined
22 not more than \$10,000, or imprisoned not more than five
23 years, or both.”.

24 (f) DISCLOSURE PENALTIES.—Section 1905 of title
25 18, United States Code, is amended by inserting “, or

1 agent of a Statistical Data Center as defined in the Statis-
2 tical Efficiency Act of 1999” after “thereof” in the first
3 two places such term appears.

4 (g) PROPOSED CHANGES IN LAW.—Not later than
5 the date that is 90 days after the date of the enactment
6 of this Act, the President shall submit to Congress a de-
7 scription of any additional conforming changes in law nec-
8 essary to carry out the provisions of this Act.

Passed the House of Representatives October 26,
1999.

Attest:

JEFF TRANDAHL,

Clerk.