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CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY ACT OF 2002

NOVEMBER 13, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government Reform, submitted the following

R E P O R T

[To accompany H.R. 5215]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 5215) to protect the confidentiality of information acquired from the public for statistical purposes, and to permit the exchange of business data among designated statistical agencies for statistical purposes only, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. DEFINITIONS.

As used in this Act:

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

(2) The term "agent" means an individual—

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

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

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

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

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

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

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

(5) The term "nonstatistical purpose"—

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

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

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

(7) The term "statistical activities"—

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

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

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

(9) The term "statistical purpose"—

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

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

SEC. 3. COORDINATION AND OVERSIGHT OF POLICIES.

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

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

(c) REVIEW AND APPROVAL OF RULES.—The Director shall review any rules proposed by an agency pursuant to this Act for consistency with the provisions of this Act and chapter 35 of title 44, United States Code, and such rules shall be subject to the approval of the Director.

(d) REPORTS.—

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

(2) Each Designated Statistical Agency referred to in section 202 shall report annually to the Director of the Office of Management and Budget, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate on the actions it has taken to implement sections 203 and 204. The report shall include copies of each written agreement entered into pursuant to section 204(a) for the applicable year.

(3) The Director of the Office of Management and Budget shall include a summary of reports submitted to the Director under paragraph (2) and actions taken by the Director to advance the purposes of this Act in the annual report to the Congress on statistical programs prepared under section 3504(e)(2) of title 44, United States Code.

SEC. 4. EFFECT ON OTHER LAWS.

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

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

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

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

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

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

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

(e) PREEMPTION OF STATE LAW.—Nothing in this Act shall preempt applicable State law regarding the confidentiality of data collected by the States.

(f) STATUTES REGARDING FALSE STATEMENTS.—Notwithstanding section 102, information collected by an agency for exclusively statistical purposes under a pledge of confidentiality may be provided by the collecting agency to a law enforcement agency for the prosecution of submissions to the collecting agency of false statistical information under statutes that authorize criminal penalties (such as section 221 of title 13, United States Code) or civil penalties for the provision of false statistical information, unless such disclosure or use would otherwise be prohibited under Federal law.

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

(h) AUTHORITY OF CONGRESS.—Nothing in this Act shall be construed to affect the authority of the Congress, including its committees, members, or agents, to obtain data or information for a statistical purpose, including for oversight of an agency's statistical activities.

TITLE I—CONFIDENTIAL INFORMATION PROTECTION

SEC. 101. 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 title 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 Act 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. 102. 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 2(2) for treatment as an agent under that section, who may perform exclusively statistical activities, subject to the limitations and penalties described in this Act.

SEC. 103. 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 102, 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 Act, 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.

TITLE II—STATISTICAL EFFICIENCY

SEC. 201. FINDINGS AND PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 202. DESIGNATION OF STATISTICAL AGENCIES.

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

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

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

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

SEC. 203. RESPONSIBILITIES OF DESIGNATED STATISTICAL AGENCIES.

The head of each of the Designated Statistical Agencies shall—

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

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

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

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

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

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

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

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

SEC. 204. SHARING OF BUSINESS DATA AMONG DESIGNATED STATISTICAL AGENCIES.

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

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

(b) RESPONSIBILITIES OF AGENCIES UNDER OTHER LAWS.—The provision of business data by an agency to a Designated Statistical Agency under this title shall in no way alter the responsibility of the agency providing the data under other statutes (including section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), and section 552b of title 5, United States Code (popularly known as the Privacy Act of 1974)) with respect to the provision or withholding of such information by the agency providing the data.

(c) RESPONSIBILITIES OF OFFICERS, EMPLOYEES, AND AGENTS.—Examination of business data in identifiable form shall be limited to the officers, employees, and agents authorized to examine the individual reports in accordance with written agreements pursuant to this section. Officers, employees, and agents of a Designated Statistical Agency who receive data pursuant to this title shall be subject to all provisions of law, including penalties, that relate—
(1) to the unlawful provision of the business data that would apply to the officers, employees, and agents of the agency that originally obtained the information; and
(2) to the unlawful disclosure of the business data that would apply to officers, employees, and agents of the agency that originally obtained the information.

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

SEC. 205. LIMITATIONS ON USE OF BUSINESS DATA PROVIDED BY DESIGNATED STATISTICAL AGENCIES.

(a) USE, GENERALLY.—Business data provided by a Designated Statistical Agency pursuant to this title shall be used exclusively for statistical purposes.

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

SEC. 206. CONFORMING AMENDMENTS.

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

(b) TITLE 13.—Chapter 10 of title 13, United States Code, is amended—
(1) by adding after section 401 the following:

"§ 402. Providing business data to Designated Statistical Agencies

"The Bureau of the Census may provide business data to the Bureau of Economic Analysis and the Bureau of Labor Statistics ('Designated Statistical Agencies') if such information is required for an authorized statistical purpose and the provision is the subject of a written agreement with that Designated Statistical Agency, or their successors, as defined in the Confidential Information Protection and Statistical Efficiency Act of 2002."; and
(2) in the table of sections for the chapter by adding after the item relating to section 401 the following:

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

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I. PURPOSE

H.R. 5215, the "Confidential Information Protection and Statistical Efficiency Act of 2002," introduced by Representative Stephen Horn (R–CA), would remove statutory barriers that now prevent the Census Bureau, the Bureau of Labor Statistics and the Bureau of Economic Analysis from sharing and comparing business-related statistical data. Allowing these agencies to share this business-related information would substantially enhance the accuracy of economic statistics. H.R. 5215 would also ensure that the confidential data that individuals and businesses provide to Federal agencies for statistical purposes are subject to uniform and rigorous protections against unauthorized use.

II. BACKGROUND AND NEED FOR LEGISLATION

Accurate statistical data are essential to making informed public and private decisions in a host of important areas, including the Nation's economy and its many facets. The Nation's core economic indicators—the Gross Domestic Product and other key statistical aggregates—form the cornerstone of Federal budgetary and monetary policy. Yet increasing data anomalies and inconsistencies raise questions about the accuracy of the Nation's economic statistics. For example, the Department of Commerce recently had to make a historically large $200 billion revision to its calculation of the Nation's Gross Domestic Product because the Department lacked access to the data it needed to produce timely and accurate estimates.

Such serious data inconsistencies call into question the accuracy with which Federal agencies track industry output, employment and productivity trends. During the last economic census in 1997, the Bureau of Labor Statistics reported payroll data in the information technology sector that was 13 percent higher than the data reported by the Census Bureau. In addition, there was a 14 percent disparity in the payroll data reported by the two agencies for the motor freight, transportation and warehousing industries.

The Census Bureau, the Bureau of Labor Statistics and the Bureau of Economic Analysis each have a critical need for the same statistical information, but they are prohibited by law from sharing it. This Act would remove the statutory barriers that now prevent these three agencies from sharing and comparing statistical data. This increased data sharing would largely eliminate the anomalies that now exist in Federal statistics data and thereby greatly enhance their quality. The Act would also eliminate much of the duplicative data collection that now occurs, which will ease the reporting burdens on businesses.

Some key features of the bill's data-sharing provisions are the following:

The provisions apply only to the three agencies previously mentioned—the Census Bureau, the Bureau of Labor Statistics and the Bureau of Economic Analysis.

The provisions apply only to the sharing of business data. They do not extend to household, demographic or other data provided by individuals to the Federal Government.

The enhanced data sharing can be used only for statistical purposes.

The data sharing will be closely controlled under written agreements that specify which data are to be shared, the statistical purposes for which the data can be used, and the individuals who are authorized to receive the data. The agreements must include appropriate security safeguards.

In addition, H.R. 5215 would enhance the protection of data that both businesses and individuals provide to the Federal Government on a confidential basis. In contrast to the Act's limited data-sharing authorities, its confidentiality protections are very broad. They apply to all Federal agencies that collect data for statistical purposes from businesses or individuals under a pledge of confidentiality.

The bill provides one uniform set of confidentiality protections to supplant the ad hoc statutory protections that now exist. The bill also establishes statutory protections in some areas where no such protections currently exist. The bill's enhanced confidentiality protections would improve the quality of Federal statistics by encouraging greater cooperation on the part of respondents. Even more important, these protections ensure that the Federal Government does not abuse the trust of those who provide data under a pledge of confidentiality.

The key features of the confidentiality provisions in H.R. 5215 are the following:

The bill provides a clear and consistent standard for the use of confidential statistical information.

The bill specifically prohibits the Federal Government from using such information for any non-statistical purpose. The bill defines a prohibited non-statistical purpose as the use of data in an identifiable form for any administrative, regulatory, law enforcement, adjudicative or other purpose that affects the rights, privileges or benefits of the person or organization supplying the information.

The bill prohibits data that are acquired for exclusively statistical purposes under a pledge of confidentiality from being disclosed under the Freedom of Information Act.

The bill imposes criminal penalties on Federal employees or agents who willfully disclose information in violation of the bill's requirements.

The Administration strongly supports H.R. 5215. This bill is similar to another bill that Representative Horn introduced during the 106th Congress, H.R. 2885, the "Statistical Efficiency Act of 1999." That bill received strong bipartisan support and passed the House under suspension of the rules. H.R. 5215 differs from its predecessor by narrowing the data-sharing provisions and broadening the confidentiality protections.

III. COMMITTEE ACTIONS

Representative Horn introduced H.R. 5215 on July 25, 2002, for himself and Representatives Tom Sawyer (D–OH) and Carolyn Maloney (D–NY). The bill was referred to the Committee on Government Reform and then was subsequently referred to the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations.

On September 17, 2002, the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations met in open session. The subcommittee reported the bill as amended by voice vote to the Committee on Government Reform. The full committee met on October 9, 2002, and favorably reported the bill, as amended, by voice vote to the House of Representatives.

At subcommittee, an amendment was adopted to clarify that the bill would not prevent certain non-government researchers from continuing to access statistical data they now receive on a limited basis in a form that does not identify individual respondents. Specifically, this amendment revised the definition of "identifiable form" in section 2(4) of the bill to mean "any representation of information that permits the identity of the respondent to whom the information applies to be reasonably inferred by either direct of indirect means." As well, the subcommittee amendment, adopted in the nature of a substitute, added provisions to section 3 of the bill that strengthened Office of Management and Budget and congressional oversight of implementation of the bill.

At the full committee, Committee Ranking Minority Member Henry Waxman (D–CA) offered two amendments, which were adopted. The first amendment provided that nothing in the bill prohibits Congress from obtaining data or information for a statistical purpose, including for oversight of an agency's statistical activities. The second amendment clarified the provisions of the bill dealing with notice to the public when information is being collected for a non-statistical purpose.

IV. COMMITTEE HEARINGS AND TESTIMONY

The Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations chaired by Representative Horn, held a hearing on H.R. 5215 on September 17, 2002. At that hearing, the subcommittee explored how the data-sharing provisions of the bill would improve the accuracy and consistency of Federal statistics, and how the confidentially provisions of the bill would enhance confidentiality protections for individuals and businesses who provide data to Federal agencies on a confidential basis.

The subcommittee heard testimony from the following witnesses: Representative Thomas C. Sawyer (D–OH); the Honorable Randall S. Kroszner, Member, Council of Economic Advisers; the Honorable Kathleen B. Cooper, Under Secretary for Economic Affairs, Department of Commerce; the Honorable Kathleen P. Utgoff, Commissioner, Bureau of Labor Statistics, Department of Labor; Dr. Maurine Haver, Chair, Statistics Committee of National Association for Business Economics; Dr. William D. Nordhaus, Sterling Professor of Economics, Yale University; and Dr. Ralph Rector, Re-

search Fellow and Project Manager, The Heritage Foundation. All of the witnesses strongly supported the bill.

V. SECTION-BY-SECTION ANALYSIS OF THE BILL

Section 1—Short title

This section provides that the Act may be cited as the "Confidential Information Protection and Statistical Efficiency Act of 2002."

Section 2—Definitions

Paragraph (1) of section 2 defines "agency" to mean executive agencies as defined in section 102 of title 31, United States Code or in section 3502 of title 44, United States Code.

Paragraph (2) defines "agent" to mean any private researcher, individual, consultant or contractor who is operating under a contract with an executive agency to perform exclusively statistical activities under the control of an officer or employee of that agency. This definition also includes persons who contract with an agency to design or maintain the systems for handling or storing confidential data. Agents must agree in writing to comply with all provisions of law that affect information acquired by the agency with which they have a contract.

Paragraph (3) defines "business data" as operating and financial data and information about businesses, tax-exempt organizations and government entities.

Paragraph (4) defines "identifiable form" as any representation of information that permits the identity of the respondent to whom the information applies to be reasonably inferred by either direct or indirect means.

Paragraph (5) defines "nonstatistical purpose" as the use of data in any form that is not a statistical purpose including any administrative, regulatory, law enforcement, adjudicatory or other purpose that affects the rights, privileges or benefits of a particular identifiable respondent. This term also includes disclosures under the Freedom of Information Act (5 U.S.C. 552) of data that are acquired for exclusively statistical purposes under a pledge of confidentiality.

Paragraph (6) defines "respondent" as a person or organization that is requested or required to supply information to an agency, is the subject of information requested or required to be supplied to an agency, or provides that information to an agency.

Paragraph (7) defines "statistical activities" as the collection, compilation, processing or analysis of data for the purpose of describing or making estimates concerning the economy, society or the natural environment. The definition includes the development of methods or resources that support those activities.

Paragraph (8) defines "statistical agency or unit" as an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing or analysis of information for statistical purposes.

Paragraph (9) defines "statistical purpose" as the description, estimation or analysis of the characteristics of groups without identifying the individuals or organizations that comprise such groups. The definition includes the development, implementation or main-

tenance of methods, technical or administrative procedures, or information resources that support such purposes.

Section 3—Coordination and oversight of policies

Subsection (a) requires the Director of the Office of Management and Budget (OMB) to coordinate and oversee the disclosure and confidentiality policies under the Act. The Director is authorized to issue rules or other guidance to ensure consistent interpretation of the Act.

Subsection (b) authorizes agencies to promulgate rules to implement the Act. The agency that originally collected the information would promulgate rules governing authorized disclosures of that information.

Subsection (c) requires the Director of OMB to review and approve any agency rules under the Act for consistency with the Act and the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Subsection (d) requires the designated statistical agencies (the Census Bureau, the Bureau of Economic Analysis and the Bureau of Labor Statistics) to report annually to the Director of the Office of Management and Budget (OMB), the House Committee on Government Reform and the Senate Committee on Governmental Affairs on their actions to implement the business data-sharing provisions of the Act. The reports shall include copies of written agreements to share business data for the applicable year. The OMB shall include a summary of the agency reports and any actions taken by the OMB to advance the purposes of this title, in its annual report to Congress on statistical programs under 44 U.S.C. 3504(e)(2).

Section 4—Effect on other laws

Subsection (a) provides that the Act does not diminish the authority of the OMB or agencies under 44 U.S.C. 3510 to share information if the disclosure is consistent with any applicable law.

Subsection (b) provides that the Act does not diminish the authority of the Bureau of the Census to provide information in accordance with sections 8, 16, 301, and 401 of title 13 and section 2108 of title 44, of the United States Code.

Subsection (c) provides that the Act shall not be construed as authorizing the disclosure of demographic data or information collected by the Census Bureau pursuant to 13 U.S.C. 9 for non-statistical purposes.

Subsection (d) provides that the data or information acquired by the Energy Information Administration under a pledge of confidentiality and designated by the Energy Information Administration to be used for exclusively statistical purposes shall not be disclosed in identifiable form for non-statistical purposes under various provisions of law.

Subsection (e) provides that the Act does not preempt applicable State law regarding the confidentiality of data collected by the States.

Subsection (f) allows an agency to provide information, which the agency collected under a pledge of confidentiality for exclusively statistical purposes, to a law enforcement agency for the prosecution under applicable statutes of anyone who provides false statistical information. The subsection further provides that such disclo-

sures are permissible unless Federal law would otherwise prohibit the disclosure.

Subsection (g) provides that nothing in the Act shall be construed to restrict or diminish any confidentiality protections or penalties for unauthorized disclosure that otherwise apply to data or information collected for statistical purposes or non-statistical purposes, including section 6103 of the Internal Revenue Code.

Subsection (h) provides that nothing in the Act shall be construed to affect the authority of Congress, including its committees, members or agents, to obtain data or information for a statistical purpose, including oversight of an agency's statistical activities.

Title I—Confidential Information Protection

Section 101—Findings and purposes

This section contains congressional findings and purposes with respect to the provisions of title I.

Section 102—Limitations on use and disclosure of data and information

Subsection (a) provides that 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.

Subsection (b) provides that 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, other than for an exclusively statistical purpose, except with the informed consent of the respondent. The subsection further provides that such a disclosure is authorized only when the head of the agency approves the disclosure and no other law prohibits the disclosure. Finally, the subsection provides that section 102 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.

Subsection (c) provides that a statistical agency or unit shall clearly distinguish any data or information it collects for non-statistical 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 non-statistical purposes.

Subsection (d) provides that a statistical agency or unit may designate agents to perform exclusively statistical activities, subject to the limitations and penalties described in the Act. Such designations must be made by contracts or agreements that contain the provisions required by section 2(2) of the Act.

Section 103 Fines and penalties

This section provides fines and penalties for any officer, employee or agent of an agency who acquires information for exclusively statistical purposes and willfully discloses the information to a person or agency not entitled to receive it.

Title II—Statistical Efficiency

Section 201—Findings and purposes

Section 201 contains congressional findings and purposes with respect to the provisions of title II.

Section 202—Designation of Statistical Agencies

This section provides that, for purposes of title II, the term "Designated Statistical Agency" means the Bureau of the Census, the Bureau of Economic Analysis and the Bureau of Labor Statistics.

Section 203—Responsibilities of Designated Statistical Agencies

This section imposes responsibilities on the heads of the three Designated Statistical Agencies. The agency heads shall identify opportunities to eliminate duplication and otherwise reduce reporting burdens and costs imposed on the public in providing information for statistical purposes. They shall enter into joint statistical projects to improve the quality and reduce the cost of statistical programs. Finally, they shall protect the confidentiality of individually identifiable information acquired for statistical purposes by adhering to safeguard principles, including those principles specified in section 203.

Section 204—Sharing of business data among Designated Statistical Agencies

Subsection (a) authorizes a Designated Statistical Agency to provide business data in an identifiable form to another Designated Statistical Agency under the terms of a written agreement among the agencies that are sharing the business data. The agreement must specify: the business data to be shared; the statistical purposes for which the business data are to be used; the officers, employees and agents authorized to examine the business data to be shared; and appropriate security procedures to safeguard the confidentiality of the business data.

Subsection (b) states that the provision of business data by an agency to a Designated Statistical Agency under this title shall not alter the status of the data or the responsibilities of that agency under other statutes, including the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552b).

Subsection (c) provides that examination of business data in identifiable form shall be limited to the officers, employees and agents authorized to examine the individual reports in accordance with written agreements pursuant to the Act. This subsection further provides that officers, employees, and agents of a Designated Statistical Agency who receive data pursuant to this title shall be subject to the same laws and penalties relating to the unlawful provision or disclosure of the business data that apply to the officers, employees, and agents of the agency that originally obtained the data.

Subsection (d) provides that when a written agreement concerns data that respondents were required by law to report and the respondents were not informed that the data could be shared among the Designated Statistical Agencies for exclusively statistical purposes, the terms of the agreement shall be described in a public no-

tice issued by the agency that intends to provide the data. The notice shall allow a minimum of 60 days for public comment.

Section 205—Limitations on use of business data provided by Designated Statistical Agencies

Subsection (a) states that business data provided by a Designated Statistical Agency pursuant to title II shall be used exclusively for statistical purposes.

Subsection (b) provides that business data acquired by a Designated Statistical Agency shall not be published in a manner that would allow the identification of a particular respondent.

Section 206—Conforming amendments

Subsection (a) pertains to the Department of Commerce. It amends a provision prohibiting disclosure of confidential information by the Bureau of Foreign and Domestic Commerce to permit disclosure pursuant to the Act.

Subsection (b) adds a new provision to title 13 of the United States Code to permit the Bureau of the Census to provide business data to the Bureau of Economic Analysis and the Bureau of Labor Statistics pursuant to agreements entered into under the provisions of the Act.

VI. COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

VII. BUDGET ANALYSIS AND PROJECTIONS

Clause 3(c)(2) of rule XIII, of the Rules of the House of Representatives, is inapplicable because the bill does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 8, 2002.

Hon. DAN BURTON,
Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5215, the Confidential Information Protection and Statistical Efficiency Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson, and Christina Hawley Sadoti.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 5215—Confidential Information Protection and Statistical Efficiency Act of 2002

H.R. 5215 would allow the Census Bureau, the Bureau of Economic Analysis (BEA), and the Bureau of Labor Statistics (BLS) to undertake joint statistical projects and share business data, subject to certain confidentiality restrictions. The bill also would create new criminal fines for any employee from those agencies that purposefully discloses data in violation of the bill's confidentiality provisions.

Enacting H.R. 5215 could result in the collection of additional criminal fines. Such fines are deposited in the Crime Victims Fund and spent in subsequent years. However, CBO estimates that any increase in revenues and direct spending would be negligible.

CBO also expects that allowing the Census Bureau and BLS to share business data could generate cost savings for the two agencies. Under current law, statistical agencies cannot exchange such data, and therefore sometimes collect duplicative information. For example, the Census Bureau and BLS together typically spend about $150 million a year to collect and process data for their own independent lists of business establishments. Under H.R. 5215, these agencies could create one master list and potentially reduce total data collection and maintenance costs. Based on information from the two agencies, the Office of Management and Budget, and the General Accounting Office, CBO estimates that, after an implementation period of two or three years, the Census Bureau and BLS could achieve savings of up to $10 million annually, assuming that appropriations for the two agencies are reduced accordingly.

H.R. 5215 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Ken Johnson, and Christina Hawley Sadoti. The estimate was approved by Peter H. Fontaine, Deputy Assistant Direct for Budget Analysis.

IX. Performance Goals and Objectives

H.R. 5215 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

X. Statement of Constitutional Authority

Pursuant to rule XIII, clause 3(d)(1), the Committee finds that clauses 1 and 18 of Article I, Section 8 of the U.S. Constitution grant Congress the power to enact this law.

XI. Committee Recommendation

On October 9, 2002, a quorum being present, the Committee on Government Reform ordered the bill, as amended, favorably reported by voice vote to the House of Representatives for consideration.

XII. CONGRESSIONAL ACCOUNTABILITY ACT

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(B)(3) of the Congressional Accountability Act (Public Law 104–1).

XIII. UNFUNDED MANDATES REFORM ACT

The Committee finds that the legislation does not impose any Federal mandates within the meaning of section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

XIV. FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b).

XV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JANUARY 27, 1938

AN ACT To make confidential certain information furnished to the Bureau of Foreign and Domestic Commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any statistical information furnished in confidence to the Bureau of Foreign and Domestic Commerce by individuals, corporations, and firms shall be held to be confidential, and shall be used only for the statistical purposes for which it is supplied. [The] *Except as provided in the Confidential Information Protection and Statistical Efficiency Act of 2002, the* Director of the Bureau of Foreign and Domestic Commerce shall not permit anyone other than the sworn employees of the Bureau to examine such individual reports, nor shall he permit any statistics of domestic commerce to be published in such manner as to reveal the identity of the individual, corporation, or firm furnishing such data.

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TITLE 13, UNITED STATES CODE

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CHAPTER 10—EXCHANGE OF CENSUS INFORMATION

Sec.
401. Exchange of census information with Bureau of Economic Analysis.
402. Providing business data to Designated Statistical Agencies.

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§ 402. Providing business data to Designated Statistical Agencies

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

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