

2016 EDITION



# BASIC LAWS

*and* AUTHORITIES *of the* NATIONAL ARCHIVES  
*and* RECORDS ADMINISTRATION

Office of General Counsel  
National Archives and Records Administration

Additional materials can be found on the web at: [www.archives.gov](http://www.archives.gov)

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# ACTS *and* RESOLUTIONS; FORMALITIES *of* ENACTMENT; REPEALS; SEALING *of* INSTRUMENTS

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(1 U.S.C. Chapter 2)

## § 106A. PROMULGATION OF LAWS

Whenever a bill, order, resolution, or vote of the Senate and House of Representatives, having been approved by the President, or not having been returned by him with his objections, becomes a law or takes effect, it shall forthwith be received by the Archivist of the United States from the President; and whenever a bill, order, resolution, or vote is returned by the President with his objections, and, on being reconsidered, is agreed to be passed, and is approved by two-thirds of both Houses of Congress, and thereby becomes a law or takes effect, it shall be received by the Archivist of the United States from the President of the Senate, or Speaker of the House of Representatives in whichever House it shall last have been so approved, and he shall carefully preserve the originals.

## § 106B. AMENDMENTS TO CONSTITUTION

Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

## § 112. STATUTES AT LARGE; CONTENTS; ADMISSIBILITY IN EVIDENCE

The Archivist of the United States shall cause to be compiled, edited, indexed, and published, the United States Statutes at Large, which shall contain all the laws and concurrent resolutions enacted during each regular session of Congress; all proclamations by the President in the numbered series issued since the date of the adjournment of the regular session of Congress next

preceding; and also any amendments to the Constitution of the United States proposed or ratified pursuant to article V thereof since that date, together with the certificate of the Archivist of the United States issued in compliance with the provision contained in section 106b of this title. In the event of an extra session of Congress, the Archivist of the United States shall cause all the laws and concurrent resolutions enacted during said extra session to be consolidated with, and published as part of, the contents of the volume for the next regular session. The United States Statutes at Large shall be legal evidence of laws, concurrent resolutions, treaties, international agreements other than treaties, proclamations by the President, and proposed or ratified amendments to the Constitution of the United States therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

## § 113. “LITTLE AND BROWN’S” EDITION OF LAWS AND TREATIES; SLIP LAWS; TREATIES AND OTHER INTERNATIONAL ACTS SERIES; ADMISSIBILITY IN EVIDENCE

The edition of the laws and treaties of the United States, published by Little and Brown, and the publications in slip or pamphlet form of the laws of the United States issued under the authority of the Archivist of the United States, and the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence of the several public and private Acts of Congress, and of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.

§ 201. PUBLICATION AND DISTRIBUTION OF CODE OF LAWS OF UNITED STATES AND SUPPLEMENTS AND DISTRICT OF COLUMBIA CODE AND SUPPLEMENTS

In order to avoid duplication and waste—

- (a) Publishing in slip or pamphlet form or in Statutes at Large.—Publication in slip or pamphlet form or in the Statutes at Large of any of the volumes or publications enumerated in sections 202 and 203 of this title, shall, in event of enactment, be dispensed with whenever the Committee on the Judiciary of the House of Representatives so directs the Archivist of the United States;
- (b) Curtailing number of copies published.—Curtailment of the number provided by law to be printed and

distributed of the volumes or publications enumerated in sections 202 and 203 of this title may be directed by such committee, except that the Director of the Government Publishing Office shall print such numbers as are necessary for depository library distribution and for sale; and

- (c) Dispensing with publication of more than one Supplement for each Congress.—Such committee may direct that the printing and distribution of any supplement to the Code of Laws of the United States or to the Code of the District of Columbia be dispensed with entirely, except that there shall be printed and distributed for each Congress at least one supplement to each such code, containing the legislation of such Congress.

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## PRESIDENTIAL ELECTIONS *and* VACANCIES

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§ 6. CREDENTIALS OF ELECTORS; TRANSMISSION TO ARCHIVIST OF THE UNITED STATES AND TO CONGRESS; PUBLIC INSPECTION

It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertainment, to communicate by registered mail under the seal of the State to the Archivist of the United States a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by section 7 of this title to meet, six duplicate-originals of the same certificate under the seal of the State; and if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest

concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Archivist of the United States a certificate of such determination in form and manner as the same shall have been made; and the certificate or certificates so received by the Archivist of the United States shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection; and the Archivist of the United States at the first meeting of Congress thereafter shall transmit to the two Houses of Congress copies in full of each and every such certificate so received at the National Archives and Records Administration.

§ 11. DISPOSITION OF CERTIFICATES

The electors shall dispose of the certificates so made by them and the lists attached thereto in the following manner:

First. They shall forthwith forward by registered mail one of the same to the President of the Senate at the seat of government.

Second. Two of the same shall be delivered to the sec-

retary of state of the State, one of which shall be held subject to the order of the President of the Senate, the other to be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection.

Third. On the day thereafter they shall forward by registered mail two of such certificates and lists to the Archivist of the United States at the seat of government, one of which shall be held subject to the order of the President of the Senate. The other shall be preserved by the Archivist of the United States for one year and shall be a part of the public records of his office and shall be open to public inspection.

Fourth. They shall forthwith cause the other of the certificates and lists to be delivered to the judge of the district in which the electors shall have assembled.

#### § 12. FAILURE OF CERTIFICATES OF ELECTORS TO REACH PRESIDENT OF THE SENATE OR ARCHIVIST OF THE UNITED STATES; DEMAND ON STATE FOR CERTIFICATE

When no certificate of vote and list mentioned in sections 9 and 11 of this title from any State shall have

been received by the President of the Senate or by the Archivist of the United States by the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Archivist of the United States shall request, by the most expeditious method available, the secretary of state of the State to send up the certificate and list lodged with him by the electors of such State; and it shall be his duty upon receipt of such request immediately to transmit same by registered mail to the President of the Senate at the seat of government.

#### § 13. SAME; DEMAND ON DISTRICT JUDGE FOR CERTIFICATE

When no certificates of votes from any State shall have been received at the seat of government on the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Archivist of the United States shall send a special messenger to the district judge in whose custody one certificate of votes from that State has been lodged, and such judge shall forthwith transmit that list by the hand of such messenger to the seat of government.

## FORMER PRESIDENTS ACT

(3 U.S.C. § 102 note)

(a) Each former President shall be entitled for the remainder of his life to receive from the United States a monetary allowance at a rate per annum, payable monthly by the Secretary of the Treasury, which is equal to the annual rate of basic pay, as in effect from time to time, of the head of an executive department, as defined in section 101 of title 5, United States Code [section 101 of Title 5]. However, such allowance shall not be paid for any period during which such former President holds an appointive or elective office or position in or under the Federal Government or the government of the District of Columbia to which is attached a rate of pay other than a nominal rate.

(b) The Administrator of General Services shall, without regard to the civil-service and classification

laws, provide for each former President an office staff. Persons employed under this subsection shall be selected by the former President and shall be responsible only to him for the performance of their duties. Each former President shall fix basic rates of compensation for persons employed for him under this paragraph which in the aggregate shall not exceed \$96,000 per annum, except that for the first 30-month period during which a former President is entitled to staff assistance under this subsection, such rates of compensation in the aggregate shall not exceed \$150,000 per annum. The annual rate of compensation payable to any such person shall not exceed the highest annual rate of basic pay now or hereafter provided by law for positions at level II of the Executive Schedule under section 5313

of title 5, United States Code [section 5313 of Title 5, Government Organization and Employees]. Amounts provided for ‘Allowances and Office Staff for Former Presidents’ may be used to pay fees of an independent contractor who is not a member of the staff of the office of a former President for the review of Presidential records of a former President in connection with the transfer of such records to the National Archives and Records Administration or a Presidential Library without regard to the limitation on staff compensation set forth herein.

(c) The Administrator of General Services shall furnish for each former President suitable office space appropriately furnished and equipped, as determined by the Administrator, at such place within the United States as the former President shall specify.

(d) [Repealed. Pub.L. 86-682, § 12(c), Sept. 2, 1960, 74 Stat. 730. See sections 3214 and 3216 of Title 39.]

(e) The widow of each former President shall be entitled to receive from the United States a monetary allowance at a rate of \$20,000 per annum, payable monthly by the Secretary of the Treasury, if such widow shall waive the right to each other annuity or pension to which she is entitled under any other Act of Congress. The monetary allowance of such widow—

- (1) commences on the day after the former President dies;
- (2) terminates on the last day of the month before such widow  
(A) dies; or

(B) remarries before becoming 60 years of age; and  
(3) is not payable for any period during which such widow holds an appointive or elective office or position in or under the Federal Government or the government of the District of Columbia to which is attached a rate of pay other than a nominal rate.

(f) As used in this section, the term ‘former President’ means a person—

- (1) who shall have held the office of President of the United States of America;
- (2) whose service in such office shall have terminated other than by removal pursuant to section 4 of article II of the Constitution of the United States of America; and
- (3) who does not then currently hold such office.

(g) There are authorized to be appropriated to the Administrator of General Services up to \$1,000,000 for each former President and up to \$500,000 for the spouse of each former President each fiscal year for security and travel related expenses: *Provided*, That under the provisions set forth in section 3056, paragraph (a), subparagraph (3) of title 18, United States Code [section 3056(a)(3) of Title 18, Crimes and Criminal Procedure], the former President and/or spouse was not receiving protection for a lifetime provided by the United States Secret Service under section 3056 paragraph (a) subparagraph (3) of title 18, United States Code; the protection provided by the United States Secret Service expired at its designated time; or the protection provided by the United States Secret Service was declined prior to authorized expiration in lieu of these funds.

## OFFICIAL TERRITORIAL PAPERS

(4 U.S.C. Chapter 5)

Sec.

141. Collection, preparation, and publication.

142. Appointment of experts.

143. Employment and utilization of other personnel; cost of copy reading and indexing.

144. Cooperation of departments and agencies.

145. Printing and distribution.

146. Authorization of appropriations.

### § 141. COLLECTION, PREPARATION AND PUBLICATION

The Archivist of the United States, hereinafter referred

to in this chapter as the “Archivist”, shall continue to completion the work of collecting, editing, copying, and suitably arranging for issuance as a Government publication, the official papers relating to the Territories from which States of the United States were formed, in the national archives, as listed in Parker’s “Calendar of Papers in Washington Archives Relating to the Territories of the United States (to 1873)”, being publication numbered 148 of the Carnegie Institution of Washington, together with such additional papers of like character which may be found.

#### § 142. APPOINTMENT OF EXPERTS

For the purpose of carrying on the work prescribed by section 141 of this title, the Archivist, without regard to the Classification Act of 1949 and the civil service laws and regulations thereunder, may engage the services, either in or outside of the District of Columbia, of not to exceed five historical experts who are especially informed on the various phases of the territorial history of the United States and are especially qualified for the editorial work necessary in arranging such territorial papers for publication.

#### § 143. EMPLOYMENT AND UTILIZATION OF OTHER PERSONNEL; COST OF COPY READING AND INDEXING

(a) In carrying out his functions under this chapter, the Archivist may employ such clerical assistants as may be necessary.

(b) The work of copy reading and index making for the publication of the papers described in section 141 of this title shall be done by the regular editorial staff of the National Archives and Records Administration, and the cost of this particular phase of the work (prorated each month according to the number of hours spent and the annual salaries of the clerks employed) shall be charged against the annual appropriations made under section 146 of this title.

#### § 144. COOPERATION OF DEPARTMENTS AND AGENCIES

The heads of the several executive departments and independent agencies and establishments shall cooperate with the Archivist in the work prescribed by section 141

of this title by permitting access to any records deemed by him to be necessary to the completion of such work.

#### § 145. PRINTING AND DISTRIBUTION

(a) The Director of the Government Publishing Office shall print and bind each volume of the official papers relating to the Territories of the United States as provided for in this chapter, of which—

- (1) four hundred and twenty copies shall be delivered to the Superintendent of Documents, Government Printing Office, for distribution, on the basis of one copy each, and as directed by the Archivist, to those historical associations, commissions, museums, or libraries and other nondepository libraries, not to exceed eight in number within each State, Territory, or Possession, which have been or may be designated by the Governor thereof to receive such copies;
- (2) one hundred copies shall be delivered to the National Archives and Records Administration for the use of that Administration; and
- (3) one hundred copies shall be delivered to the Superintendent of Documents for distribution in such manner and number as may be authorized and directed by the Joint Committee on Printing.

(b) The historical associations, commissions, museums, or libraries and other nondepository libraries within each State, Territory, or Possession which have been or may be designated by the Governor thereof to receive the publications referred to in subsection (a) of this section, shall, during their existence, receive the succeeding volumes, the distribution of which shall be made by the Superintendent of Documents in accordance with lists of designations transmitted to him by the Archivist. A new designation may be made to the Archivist by the Governor only when a designated association, commission, museum, or library shall cease to exist, or when authorized by law.

#### § 146. AUTHORIZATION OF APPROPRIATIONS

For the purposes of this chapter, there are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, sums of not more than \$50,000 for any one fiscal year.

# INSPECTOR GENERAL ACT *of* 1978

(5 U.S.C. App. 3)

## § 8G. REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

(a) \*\*\*

(1) the term “Federal entity” means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

- (A) an establishment (as defined under section 12(2) of this Act) or part of an establishment;
- (B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;
- (C) the Executive Office of the President;
- (D) the Central Intelligence Agency;
- (E) the Government Accountability Office; or
- (F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term “designated Federal entity” means. . . the National Archives and Records Administration . . .

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(b) No later than 180 days after the date of the enactment of this section [Oct. 18, 1988], there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such office any program operating responsibilities

(c) Except as provided under subsection (f) of this section, the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity. Each Inspector General shall be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System.

(d)(1) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. Except as provided in paragraph (2), the head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(2)(A) The Secretary of Defense, in consultation with the Director of National Intelligence, may prohibit the inspector general of an element of the intelligence community specified in subparagraph (D) from initiating, carrying out, or completing any audit or investigation if the Secretary determines that the prohibition is necessary to protect vital national security interests of the United States.

(B) If the Secretary exercises the authority under subparagraph (A), the Secretary shall submit to

the committees of Congress specified in subparagraph (E) an appropriately classified statement of the reasons for the exercise of such authority not later than 7 days after the exercise of such authority.

(C) At the same time the Secretary submits under subparagraph (B) a statement on the exercise of the authority in subparagraph (A) to the committees of Congress specified in subparagraph (E), the Secretary shall notify the inspector general of such element of the submittal of such statement and, to the extent consistent with the protection of intelligence sources and methods, provide such inspector general with a copy of such statement. Such inspector general may submit to such committees of Congress any comments on a notice or statement received by the inspector general under this subparagraph that the inspector general considers appropriate.

(D) The elements of the intelligence community specified in this subparagraph are as follows:

- (i) The Defense Intelligence Agency.
- (ii) The National Geospatial-Intelligence Agency.
- (iii) The National Reconnaissance Office.

(iv) The National Security Agency.

(E) The committees of Congress specified in this subparagraph are—

- (i) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and
- (ii) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(e)(1) In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a  $\frac{2}{3}$  majority of the board or commission.

(2) If an Inspector General is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

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## CONCEALMENT, REMOVAL, *or* MUTILATION *of* RECORDS

(18 U.S.C. § 2071)

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record,

proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term “office” does not include the office held by any person as a retired officer of the Armed Forces of the United States.



## DISSEMINATION *of* INFORMATION WITHIN *the* UNITED STATES

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(22 U.S.C. § 1461-1a)

### § 1461-1A

#### (a) In general

No funds authorized to be appropriated to the Department of State or the Broadcasting Board of Governors shall be used to influence public opinion in the United States. This section shall apply only to programs carried out pursuant to the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1431 et seq.), the United States International Broadcasting Act of 1994 (22 U.S.C. 6201 et seq.), the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 et seq.), and the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa et seq.). This section shall not prohibit or delay the Department of State or the Broadcasting Board of Governors from providing information about its operations, policies, programs, or program material, or making such available, to the media, public, or Congress, in accordance with other applicable law.

#### (b) Rule of construction

Nothing in this section shall be construed to prohibit

the Department of State or the Broadcasting Board of Governors from engaging in any medium or form of communication, either directly or indirectly, because a United States domestic audience is or may be thereby exposed to program material, or based on a presumption of such exposure. Such material may be made available within the United States and disseminated, when appropriate, pursuant to sections 1462 and 1437 of this title except that nothing in this section may be construed to authorize the Department of State or the Broadcasting Board of Governors to disseminate within the United States any program material prepared for dissemination abroad on or before the effective date of section 1078 of the National Defense Authorization Act for Fiscal Year 2013.

#### (c) Application

The provisions of this section shall apply only to the Department of State and the Broadcasting Board of Governors and to no other department or agency of the Federal Government.

## FOREIGN RELATIONS *of the* UNITED STATES HISTORICAL SERIES

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(22 U.S.C. § 4352)

### § 4352. RESPONSIBILITY FOR PREPARATION OF FRUS SERIES

#### (a) In general

(1)(A) The Historian of the Department of State shall be responsible for the preparation of the FRUS series, including the selection of records, in accordance with the provisions of this chapter.

(B) The Advisory Committee on Historical Diplomatic Documentation shall review records, and shall advise and make recommendations to the Historian concerning all aspects of preparation and publication of the FRUS series, including, in accordance with the procedures contained in section 4353 of this title, the review and selection of records for inclusion in volumes of the series.

(2) Other departments, agencies, and other entities of the United States Government shall cooperate with the Office of the Historian by providing full and complete access to the records pertinent to United States foreign policy decisions and actions and by providing copies of selected records in accordance with the procedures developed under section 4353 of this title, except that no access to any record, and no provision of any copy of a record, shall be required in the case of any record that was prepared less than 26 years before the date of a request for such access or copy made by the Office of the Historian.

(b) National Archives and Records Administration

Notwithstanding any other provision of this chapter, the requirement for the National Archives and Records Administration to provide access to, and copies of, records to the Department of State for the FRUS series shall be governed by chapter 21 of Title 44, by any agreement concluded between the Department of State and the National Archives and Records Administration, and, in the case of Presidential records, by section 2204 of such title.

## CUSTODY *of* RECORDS; OKLAHOMA HISTORICAL SOCIETY

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(25 U.S.C. § 199a)

### § 199A. CUSTODY OF RECORDS; OKLAHOMA HISTORICAL SOCIETY

Title to records of Indian tribes heretofore placed with the Oklahoma Historical Society of the State of Oklahoma by the Secretary of the Interior shall remain vested in the United States and such records shall be held by the said society under rules and regulations prescribed by the Archivist of the United States: Provided, That copies of any such records, documents, books, or papers held by the said society when certified by the secretary or chief clerk thereof under its seal, or by the officer or person acting as secretary or chief clerk, shall be evidence equally

with the original, and in making such certified copies the said secretary or acting secretary and the said chief clerk or acting chief clerk shall be acting as a Federal agent, and such certified copies shall have the same force and effect as if made by the Archivist of the United States as provided in section 2112(b) of Title 44: Provided further, That whenever such certified copies are desired for official use by the Federal Government they shall be furnished without cost: Provided further, That any such records held by the said society shall be promptly returned to the government official designated by the Archivist of the United States upon his request therefor.

## INTERNAL REVENUE CODE

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(26 U.S.C. § 6103)

### § 6103 CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION

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(l)(17) Disclosure to National Archives and Records Administration

The Secretary shall, upon written request from the Archivist of the United States, disclose or authorize the disclosure of returns and return information to officers and employees of the National Archives and Records Administration for purposes of, and only to the extent necessary in, the appraisal of records for destruction or

retention. No such officer or employee shall, except to the extent authorized by subsection (f), (i)(8), or (p), disclose any return or return information disclosed under the preceding sentence to any person other than to the Secretary, or to another officer or employee of the

National Archives and Records Administration whose official duties require such disclosure for purposes of such appraisal.

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## INDEPENDENT COUNSEL

(28 U.S.C. § 594)

The Independent Counsel Act expired in 1999, however, this section remains in effect per 28 U.S.C. Δ 599.

### § 594. AUTHORITY AND DUTIES OF AN INDEPENDENT COUNSEL

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#### (k) Custody of records of an independent counsel.

##### (1) Transfer of records.

Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the Federal Rules of Criminal Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel's office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Reauthorization Act of 1987, shall also be transferred to the Archivist of the United States by the division of the court or the person in possession of such records.

##### (2) Maintenance, use, and disposal of records.

Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

##### (3) Access to records.

###### (A) In general.

Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by section 552 of title 5.

###### (B) Access by Department of Justice.

The Archivist shall, upon written application by the Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, such records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the Federal Rules of Criminal Procedure.

###### (C) Exception.

Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

###### (4) Records provided by Congress.

Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent counsel to assist in an investigation or prosecution conducted by that independent counsel—

(A) shall be maintained as a separate body of records within the records of the independent counsel; and

(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3)(B) and (C), in accor-

dance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.  
Subparagraph (B) shall not apply to those records

which have been surrendered pursuant to grand jury or court proceedings.  
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## CONGRESSIONAL PRINTING *and* BINDING

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(44 U.S.C. Chapter 7)

### § 710. COPIES OF ACTS FURNISHED TO PUBLIC PRINTER

The Archivist of the United States shall furnish to the Director of the Government Publishing Office a copy of every Act and joint resolution, as soon as possible after its approval by the President, or after it has become a law under the Constitution without his approval.

### § 711. PRINTING ACTS, JOINT RESOLUTIONS, AND TREATIES

The Director of the Government Publishing Office, on receiving from the Archivist of the United States a copy of an Act or joint resolution, or from the Secretary of State, a copy of a treaty, shall print an accurate copy and transmit it in duplicate to the Archivist of the United States or to the Secretary of State, as the case may be, for revision. On

the return of one of the revised duplicates, he shall make the marked corrections and print the number specified by section 709 of this title.

### § 729. UNITED STATES STATUTES AT LARGE: REFERENCES IN MARGINS

The Archivist of the United States shall include in the references in margins of the United States Statutes at Large the number of the bill or joint resolution (designating S. for Senate bill, H.R. for House bill, S.J. Res. for Senate joint resolution and H.J. Res. for House joint resolutions, as the case may be) under which each Act was approved and became a law, the reference in the margins to be placed within brackets immediately under the date of the approval of the Act at the beginning of each Act as printed beginning with Volume 32 of the United States Statutes at Large.

## FEDERAL REGISTER *and the* CODE *of* FEDERAL REGULATIONS

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(44 U.S.C. Chapter 15)

Sec.

- 1501. Definitions.
- 1502. Custody and printing of Federal documents; appointment of Director.
- 1503. Filing documents with Office; notation of time; public inspection; transmission for printing.
- 1504. "Federal Register"; printing; distribution; price.
- 1505. Documents to be published in Federal Register.

- 1506. Administrative Committee of the Federal Register; establishment and composition; powers and duties
- 1507. Filing document as constructive notice; publication in Federal Register as presumption of validity; judicial notice; citation.
- 1508. Publication in Federal Register as notice of hearing.
- 1509. Cost of publication; appropriations authorized; penalty mail privilege.

1510. Code of Federal Regulations.
1511. International agreements excluded from provisions of chapter.

### § 1501. DEFINITIONS

As used in this chapter, unless the context otherwise requires—

“document” means a Presidential proclamation or Executive order and an order, regulation, rule, certificate, code of fair competition, license, notice, or similar instrument, issued, prescribed, or promulgated by a Federal agency;

“Federal agency” or “agency” means the President of the United States, or an executive department, independent board, establishment, bureau, agency, institution, commission, or separate office of the administrative branch of the Government of the United States but not the legislative or judicial branches of the Government;

“person” means an individual, partnership, association, or corporation; and

“National Archives of the United States” has the same meaning as in section 2901(11) of this title.

### § 1502. CUSTODY AND PRINTING OF FEDERAL DOCUMENTS; APPOINTMENT OF DIRECTOR

The Archivist of the United States, acting through the Office of the Federal Register, is charged with the custody and, together with the Director of the Government Publishing Office, with the prompt and uniform printing and distribution of the documents required or authorized to be published by section 1505 of this title.

There shall be at the head of the Office a director, appointed by, and who shall act under the general direction of, the Archivist of the United States in carrying out this chapter and the regulations prescribed under it.

### § 1503. FILING DOCUMENTS WITH OFFICE; NOTATION OF TIME; PUBLIC INSPECTION; TRANSMISSION FOR PRINTING

The original and two duplicate originals or certified copies of a document required or authorized to be published by section 1505 of this title shall be filed with the Office of the Federal Register, which shall be open for that purpose during all hours of the working days when the National Archives Building is open for official business. The Archivist of the United States shall cause to be noted on the

original and duplicate originals or certified copies of each document the day and hour of filing. When the original is issued, prescribed, or promulgated outside the District of Columbia, and certified copies are filed before the filing of the original, the notation shall be of the day and hour of filing of the certified copies. Upon filing, at least one copy shall be immediately available for public inspection in the Office. The original shall be retained by the National Archives and Records Administration and shall be available for inspection under regulations prescribed by the Archivist, unless such original is disposed of in accordance with disposal schedules submitted by the Administrative Committee of the Federal Register and authorized by the Archivist pursuant to regulations issued under chapter 33 of this title; however, originals of proclamations of the President and Executive orders shall be permanently retained by the Administration as part of the National Archives of the United States. The Office shall transmit immediately to the Government Publishing Office for printing, as provided by this chapter, one duplicate original or certified copy of each document required or authorized to be published by section 1505 of this title. Every Federal agency shall cause to be transmitted for filing the original and the duplicate originals or certified copies of all such documents issued, prescribed, or promulgated by the agency.

### § 1504. «FEDERAL REGISTER»; PRINTING; CONTENTS; DISTRIBUTION; PRICE

Documents required or authorized to be published by section 1505 of this title shall be printed and distributed immediately by the Government Publishing Office in a serial publication designated the “Federal Register.” The Director of the Government Publishing Office shall make available the facilities of the Government Publishing Office for the prompt printing and distribution of the Federal Register in the manner and at the times required by this chapter and the regulations prescribed under it. The contents of the daily issues shall be indexed and shall comprise all documents, required or authorized to be published, filed with the Office of the Federal Register up to the time of the day immediately preceding the day of distribution fixed by regulations under this chapter. There shall be printed with each document a copy of the notation, required to be made by section 1503 of this title, of the day and hour when, upon filing with the Office, the document was made available for public inspection. Dis-

tribution shall be made by delivery or by deposit at a post office at a time in the morning of the day of distribution fixed by regulations prescribed under this chapter. The prices to be charged for the Federal Register may be fixed by the Administrative Committee of the Federal Register established by section 1506 of this title without reference to the restrictions placed upon and fixed for the sale of Government publications by sections 1705 and 1708 of this title.

#### § 1505. DOCUMENTS TO BE PUBLISHED IN FEDERAL REGISTER

(a) Proclamations and Executive Orders; documents having general applicability and legal effect; documents required to be published by Congress. There shall be published in the Federal Register—

(1) Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof;

(2) documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and

(3) documents or classes of documents that may be required so to be published by Act of Congress.

For the purposes of this chapter every document or order which prescribes a penalty has general applicability and legal effect.

(b) Documents authorized to be published by regulations; comments and news items excluded. In addition to the foregoing there shall also be published in the Federal Register other documents or classes of documents authorized to be published by regulations prescribed under this chapter with the approval of the President, but comments or news items of any character may not be published in the Federal Register. (c) Suspension of requirements for filing of documents; alternate systems for promulgating, filing, or publishing documents; preservation of originals. In the event of an attack or threatened attack upon the continental United States and a determination by the President that as a result of an attack or threatened attack—

(1) publication of the Federal Register or filing of documents with the Office of the Federal Register is impracticable, or

(2) under existing conditions publication in the Federal

Register would not serve to give appropriate notice to the public of the contents of documents, the President may, without regard to any other provision of law, suspend all or part of the requirements of law or regulation for filing with the Office or publication in the Federal Register of documents or classes of documents.

The suspensions shall remain in effect until revoked by the President, or by concurrent resolution of the Congress. The President shall establish alternate systems for promulgating, filing, or publishing documents or classes of documents affected by such suspensions, including requirements relating to their effectiveness or validity, that may be considered under the then existing circumstances practicable to provide public notice of the issuance and of the contents of the documents. The alternate systems may, without limitation, provide for the use of regional or specialized publications or depositories for documents, or of the press, the radio, or similar mediums of general communication. Compliance with alternate systems of filing or publication shall have the same effect as filing with the Office or publication in the Federal Register under this chapter or other law or regulation. With respect to documents promulgated under alternate systems, each agency shall preserve the original and two duplicate originals or two certified copies for filing with the Office when the President determines that it is practicable.

#### § 1506. ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER; ESTABLISHMENT AND COMPOSITION; POWERS AND DUTIES

The Administrative Committee of the Federal Register shall consist of the Archivist of the United States or Acting Archivist, who shall be chairman, an officer of the Department of Justice designated by the Attorney General, and the Director of the Government Publishing Office or Acting Director of the Government Publishing Office. The Director of the Federal Register shall act as secretary of the committee. The committee shall prescribe, with the approval of the President, regulations for carrying out this chapter. The regulations shall provide, among other things—

(1) the manner of certification of copies required to be certified under section 1503 of this title, which certification may be permitted to be based upon confirmed communications from outside the District of Columbia;

(2) the documents which shall be authorized under section 1505(b) of this title to be published in the Federal Register;

(3) the manner and form in which the Federal Register shall be printed, reprinted, and compiled, indexed, bound, and distributed;

(4) the number of copies of the Federal Register, which shall be printed, reprinted, and compiled, the number which shall be distributed without charge to Members of Congress, officers and employees of the United States, or Federal agency, for official use, and the number which shall be available for distribution to the public; and

(5) the prices to be charged for individual copies of, and subscriptions to, the Federal Register and reprints and bound volumes of it.

#### § 1507. FILING DOCUMENT AS CONSTRUCTIVE NOTICE; PUBLICATION IN FEDERAL REGISTER AS PRESUMPTION OF VALIDITY; JUDICIAL NOTICE; CITATION

A document required by section 1505(a) of this title to be published in the Federal Register is not valid as against a person who has not had actual knowledge of it until the duplicate originals or certified copies of the document have been filed with the Office of the Federal Register and a copy made available for public inspection as provided by section 1503 of this title. Unless otherwise specifically provided by statute, filing of a document, required or authorized to be published by section 1505 of this title, except in cases where notice by publication is insufficient in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it. The publication in the Federal Register of a document creates a rebuttable presumption—

(1) that it was duly issued, prescribed, or promulgated;

(2) that it was filed with the Office of the Federal Register and made available for public inspection at the day and hour stated in the printed notation;

(3) that the copy contained in the Federal Register is a true copy of the original; and

(4) that all requirements of this chapter and the regulations prescribed under it relative to the document have been complied with.

The contents of the Federal Register shall be judicially noticed and without prejudice to any other mode of citation, may be cited by volume and page number.

#### § 1508. PUBLICATION IN FEDERAL REGISTER AS NOTICE OF HEARING

A notice of hearing or of opportunity to be heard, required or authorized to be given by an Act of Congress, or which may otherwise properly be given, shall be deemed to have been given to all persons residing within the States of the Union and the District of Columbia, except in cases where notice by publication is insufficient in law, when the notice is published in the Federal Register at such a time that the period between the publication and the date fixed in the notice for the hearing or for the termination of the opportunity to be heard is—

(1) not less than the time specifically prescribed for the publication of the notice by the appropriate Act of Congress; or

(2) not less than fifteen days when time for publication is not specifically prescribed by the Act, without prejudice, however, to the effectiveness of a notice of less than fifteen days where the shorter period is reasonable.

#### § 1509. COSTS OF PUBLICATION, ETC.

(a) The cost of printing, reprinting, wrapping, binding, and distributing the Federal Register and the Code of Federal Regulations, and, except as provided in subsection (b), other expenses incurred by the Government Publishing Office in carrying out the duties placed upon it by this chapter shall be charged to the revolving fund provided in section 309. Reimbursements for such costs and expenses shall be made by the Federal agencies and credited, together with all receipts, as provided in section 309(b).

(b) The cost of printing, reprinting, wrapping, binding, and distributing all other publications of the Federal Register program, and other expenses incurred by the Government Publishing Office in connection with such publications, shall be borne by the appropriations to the Government Publishing Office and the appropriations are made available, and are authorized to be increased by additional sums necessary for the purposes, the increases to be based upon estimates submitted by the Director of the Government Publishing Office.

#### § 1510. CODE OF FEDERAL REGULATIONS

(a) The Administrative Committee of the Federal Register, with the approval of the President, may require, from time to time as it considers necessary, the preparation and

publication in special or supplemental editions of the Federal Register of complete codifications of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency by publication in the Federal Register or by filing with the Administrative Committee, and are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions, and are in effect as to facts arising on or after dates specified by the Administrative Committee.

(b) A codification published under subsection (a) of this section shall be printed and bound in permanent form and shall be designated as the “Code of Federal Regulations.” The Administrative Committee shall regulate the binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Administrative Committee may require. A general index to the entire Code of Federal Regulations shall be separately printed and bound.

(c) The Administrative Committee shall regulate the supplementation and the collation and republication of the printed codifications with a view to keeping the Code of Federal Regulations as current as practicable. Each

book shall be either supplemented or collated and republished at least once each calendar year.

(d) The Office of the Federal Register shall prepare and publish the codifications, supplements, collations, and indexes authorized by this section.

(e) The codified documents of the several agencies published in the supplemental edition of the

Federal Register under this section, as amended by documents subsequently filed with the Office and published in the daily issues of the Federal Register, shall be prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of publication.

(f) The Administrative Committee shall prescribe, with the approval of the President, regulations for carrying out this section.

(g) This section does not require codification of the text of Presidential documents published and periodically compiled in supplements to Title 3 of the Code of Federal Regulations.

#### § 1511. INTERNATIONAL AGREEMENTS EXCLUDED FROM PROVISIONS OF CHAPTER

This chapter does not apply to treaties, conventions, protocols, and other international agreements, or proclamations thereof by the President.

## DISTRIBUTION *and* SALE *of* PUBLIC DOCUMENTS

(44 U.S.C. § 1714)

#### § 1714. PUBLICATIONS FOR USE OF NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

The Director of the Government Publishing Office shall print and deliver to the National Archives and Records Administration for use by the Archivist of the United States, including use by the Presidential Library established for the President during whose term the documents were issued, which shall be chargeable to Congress three copies each of the following publications:

- House documents and public reports, bound;
- Senate documents and public reports, bound;
- Senate and House journals, bound;

- United States Code and Supplements, bound;
- United States Statutes at Large, bound;
- the United States Reports, bound;

all other documents bearing a congressional number, or printed upon order of a committee in either House of Congress, or of a department, independent agency or establishment, commission, or officer of the Government, except confidential matter, blank forms, and circular letters not of a public character; and public bills and resolutions in Congress in each parliamentary stage.

The Superintendent of Documents shall furnish, without cost, copies of publications available for free distribution.



# NATIONAL ARCHIVES *and* RECORDS ADMINISTRATION

(44 U.S.C. Chapter 21)

Sec.

- 2101. Definitions.
- 2102. Establishment.
- 2103. Officers.
- 2104. Administrative provisions.
- 2105. Personnel and services.
- 2106. Reports to Congress.
- 2107. Acceptance of Records for historical preservation.
- 2107 note. President John F. Kennedy Assassination Records Collection Act.
- 2107 note. Establishment of National Database for Records of Servitude, Emancipation, and Post-Civil War Reconstruction
- 2108. Responsibility for custody, use, and withdrawal of records.
- 2108 note. Procedures to Prevent Unauthorized Removal of Classified Records from National Archives.
- 2109. Preservation, arrangement, duplication, exhibition of records.
- 2110. Servicing records.
- 2111. Material accepted for deposit.
- 2111 note. Presidential Recordings and Materials Preservation Act.
- 2112. Presidential archival depository.
- 2113. Depository for agreements between states.
- 2114. Preservation of motion-picture films, still pictures, and sound recordings.
- 2115. Reports; correction of violations.
- 2116. Legal status of reproductions; official seal; fees for copies and reproductions.
- 2117. Limitation on liability.
- 2118. Records of Congress.
- 2119. Cooperative agreements.

## § 2101. DEFINITIONS

As used in this chapter—

(1) “Presidential archival depository” means an institution operated by the United States to house and preserve the papers and books of a President or former President of the United States, together with other historical materials belonging to a President or former President of the United

States, or related to his papers or to the events of his official or personal life, and may include research facilities and museum facilities in accordance with this chapter;

(2) “historical materials” including books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value;

(3) “Archivist” means the Archivist of the United States appointed under section 2103 of this title; and

(4) “Administration” means the National Archives and Records Administration established under section 2102 of this title.

## § 2102. ESTABLISHMENT

There shall be an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist.

Transfer of Functions, Personnel, Assets, Liabilities, Contracts, Property, Records, and Unexpended Balances, Etc.

## 44 U.S.C. § 2102 NOTES

*Transfer of Functions. Section 103 of Pub. L. 98-497 provides that:*

Sec. 103. (a) The National Archives and Records Service of the General Services Administration is transferred to the National Archives and Records Administration.

(b)(1) All functions which were assigned to the Administrator of General Services by section 6 of Executive Order No. 10530 of May 11, 1954 (19 Fed. Reg. 2709 [set out as a note under section 301 of Title 3, The President]), relating to documents and the Administrative Committee of the Federal Register), and by Executive Order Numbered 11440 of December 11, 1968 (33 Fed. Reg. 18475 [set out as a note under section 2109 of this title]); relating to supplemental use of Federal exhibits and displays), shall be exercised by the Archivist of the United States.

(2) All functions pertaining to the maintenance, operation, and protection of a Presidential archival depository

ry which were assigned to the Administrator of General Services by the Act of September 6, 1965 (Public Law 89-169, 79 Stat. 648) [set out as a note under section 2112 of this title], relating to the Lyndon Baines Johnson Presidential Archival Depository, and by the Act of August 27, 1966 (Public Law 89-547, 80 Stat. 370) [set out as a note under section 2112 of this title], and the Act of May 26, 1977 (Public Law 95-34, 91 Stat. 174), relating to the John Fitzgerald Kennedy Library, shall be exercised by the Archivist of the United States.

(c) In the exercise of the functions transferred by this Act [Pub. L. 98-497, Oct. 19, 1984, 98 Stat. 2280], and the amendments made by this Act [Pub. L. 98-497, Oct. 19, 1984, 98 Stat. 2280], the Archivist shall have the same authority as had the Administrator of General Services prior to the transfer of such functions, and the actions of the Archivist shall have the same force and effect as when exercised by such Administrator.

(d) Prior to the appointment and confirmation of an individual to serve as Archivist of the United States under section 2103 of title 44, United States Code, the individual holding the office of Archivist of the United States on the day before the effective date of this Act [Apr. 1, 1985] may serve as Archivist under such section, and while so serving shall be compensated at the rate provided under subsection (b) of such section.

*Transfer of Personnel. Section 104 of Pub. L. 98-497 provides that:*

Sec. 104. (a) Except as otherwise provided in this Act [Pub. L. 98-497], the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and agencies transferred by this Act and the amendments made by this Act [Pub. L. 98-497], subject to section 1531 of title 31, United States Code, are transferred to the Archivist for appropriate allocation. Pursuant to the preceding sentence, there shall be transferred to the Archivist for appropriate allocation (1) for the remainder of fiscal year 1985, an amount equal to not less than \$2,760,000 (adjusted to reflect actual salaries and benefits of transferred employees and other costs) from the unexpended balances of the fiscal year 1985 funds and appropriations available to the General Services

Administration, and (2) 115.5 full-time equivalent employee positions, of which not less than 30 percent shall be vacant. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) The transfer pursuant to this title [title I (sections 101-108) of Pub. L. 98-497] of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employees to be separated or reduced in grade or compensation for one year after such transfer or after the effective date of this Act [Apr. 1, 1985], whichever is later.

*Savings Provisions. Section 105 of Pub. L. 98-497 provides that:*  
Sec. 105.

(a) All orders, determinations, rules, regulations, grants, contracts, agreements, permits, licenses, privileges, and other actions which have been issued, granted, made, undertaken, or entered into in the performance of any function transferred by this Act [Pub. L. 98-497] or the amendments made by this Act [Pub. L. 98-497] shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by any authorized official, a court of competent jurisdiction, or by operation of law.

(b)(1) The transfer of functions by this Act [Pub. L. 98-497] and by the amendments made by this Act [Pub. L. 98-497] shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act [Apr. 1, 1985] before the General Services Administration; but such proceedings and applications, to the extent that they relate to the functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Archivist, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Archivist is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) from the General Services Administration to the Administration.

(c) Except as provided in subsection (e) [of this section]—

(1) the provisions of this Act [Pub. L. 98-497] and of the amendments made by this Act [Pub. L. 98-497] shall not affect actions commenced prior to the effective date of this Act [Apr. 1, 1985], and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act [Pub. L. 98-497] had not been enacted.

(d) No action or other proceeding lawfully commenced by or against any officer of the United States acting in the official capacity of such officer shall abate by reason of any transfer of functions by this Act [Pub. L. 98-497] or by an amendment made by this Act [Pub. L. 98-497]. No cause of action by or against the General Services Administration or by or against any officer thereof in the official capacity of such officer shall abate by reason of any such transfer of functions.

(e) If, before the date on which this Act takes effect [Apr. 1, 1985], the General Services Administration or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act [Pub. L. 98-497] or the amendments made by this Act [Pub. L. 98-497] any function in connection with such action is transferred to the Archivist or any other official of the Administration, then such action shall be continued with the Archivist or other appropriate official of the Administration substituted or added as a party.

(f) Orders and actions of the Archivist in the exercise of functions transferred by this Act [Pub. L. 98-497] or by amendments made by this Act [Pub. L. 98-497] shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the individual holding the office of Archivist of the United States on the day before the effective date of this Act [Apr. 1, 1985] or the Administrator of General Services in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act [Pub. L. 98-497] or by any amendment made by this Act

[Pub. L. 98-497] shall apply to the exercise of such function by the Archivist.

*Reference. Section 106 of Pub. L. 98-497 provides that:*

With respect to any functions transferred by this Act [Pub. L. 98-497] or by an amendment made by this Act [Pub. L. 98-497] and exercised after the effective date of this Act [Apr. 1, 1985], reference in any other Federal law to the office of the Archivist of the United States as in existence on the date before the effective date of this Act [Apr. 1, 1985], or the National Archives and Records Service of the General Services Administration, or any office or officer thereof, shall be deemed to refer to the Archivist or the Administration.

*Definitions. Section 108 of Pub. L. 98-497 provides that:*

For purposes of sections 103 through 106 [set out as notes under this section]—

(1) the term ‘Archivist’ means the Archivist of the United States appointed under section 2103 of title 44, United States Code, as added by section 102(a)(2) of this Act [sections 2103-2106 of this title];

(2) the term ‘Administration’ means the National Archives and Records Administration established under section 2102 of such title (as amended by section 101 of this Act [this section]); and

(3) the term ‘function’ includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

*Establishment of Positions of Director of the Center for Legislative Archives and Specialist in Congressional History; Compensation of Director; Administrative Expenses of Advisory Committee on the Records of Congress; Authorization of Appropriations. Pub. L. 101-509, Title IV, § 1(a)-(c), Nov. 5, 1990, 104 Stat. 1416, as amended Pub. L. 103-329, Title V, § 541, Sept. 30, 1994, 108 Stat. 2415, provides that:*

(a)(1) The Director of the Center for Legislative Archives within the National Archives and Records Administration shall be established without regard to chapter 51 of title 5 and shall be paid at a rate determined without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 governing General Schedule classification and pay rates: Provided, That such pay shall be no less than 120 percent of the rate of pay for GS-15, step 1 of the General Schedule nor more than the rate of pay in effect for level one of the Senior Executive Schedule.

(2) There is established within the Center for Legislative Archives within the National Archives and Records Administration the position of Specialist in Congressional History.

(b) There shall be made available from funds appropriated in each fiscal year to the National Archives and Records Administration, \$20,000 for the administrative expenses of the Advisory Committee on the Records of Congress established under section 2701 of title 44, United States Code.

(c) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of subsections (a) and (b) of this section.

*Spending Authority. Section 302 of Pub. L. 98-497 provides that:*

Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974 [section 651 of Title 2, The Congress]) which is provided under this Act [Pub. L. 98-497] shall be effective for any fiscal year only to the extent or in such amounts as provided in appropriations Acts.

*(End of Note)*

### § 2103. OFFICERS

(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist. The Archivist may be removed from office by the President. The President shall communicate the reasons for any such removal to each House of the Congress.

(b) The Archivist shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(c) There shall be in the Administration a Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(8) of title 5. The Deputy Archivist shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist,

the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

### § 2104. ADMINISTRATIVE PROVISIONS

(a) The Archivist shall prescribe such regulations as the Archivist deems necessary to effectuate the functions of the Archivist, and the head of each executive agency shall cause to be issued such orders and directives as such agency head deems necessary to carry out such regulations.

(b) Except as otherwise expressly provided by law, the Archivist may delegate any of the functions of the Archivist to such officers and employees of the Administration as the Archivist may designate, and may authorize such successive redelegations of such functions as the Archivist may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

(c) The Archivist may organize the Administration as the Archivist finds necessary or appropriate.

(d) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local, or other field offices as the Archivist finds necessary or appropriate to perform the functions of the Archivist or the Administration.

(e) The Archivist shall cause a seal of office to be made for the Administration of such design as the Archivist shall approve. Judicial notice shall be taken of such seal.

(f) The Archivist may establish advisory committees to provide advice with respect to any function of the Archivist or the Administration. Members of any such committee shall serve without compensation but shall be entitled to transportation expenses and per diem in lieu of subsistence in accordance with section 5703 of title 5.

(g) The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this chapter.

(h) If authorized by the Archivist, officers and employees of the Administration having investigatory functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.

### § 2105. PERSONNEL AND SERVICES

(a) (1) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary

to perform the functions of the Archivist and the Administration.

(2) Notwithstanding paragraph (1), the Archivist is authorized to appoint, subject to consultation requirements set forth in paragraph (f)(2) of section 2203 of this title, a director at each Presidential archival depository established under section 2112 of this title. The Archivist may appoint a director without regard to subchapter I and subchapter VIII of chapter 33 of Title 5, governing appointments in the competitive service and the Senior Executive Service. A director so appointed shall be responsible for the care and preservation of the Presidential records and historical materials deposited in a Presidential archival depository, shall serve at the pleasure of the Archivist and shall perform such other functions as the Archivist may specify.

(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

(c) Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officials, officers, and other personnel in other Federal agencies, including personnel of the armed services, with the consent of the head of the agency concerned.

(d) Notwithstanding section 1342 of title 31, United States Code, the Archivist is authorized to accept and utilize voluntary and uncompensated services.

#### § 2106. REPORTS TO CONGRESS

The Archivist shall submit to the Congress, in January of each year and at such other times as the Archivist finds appropriate, a report concerning the administration of functions of the Archivist, the Administration, the National Historical Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe—

(1) program administration and expenditures of funds, both appropriated and nonappropriated, by the Administration, the Commission, and the Trust Fund Board;

(2) research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and nonappropriated funds;

(3) by account, the moneys, securities, and other per-

sonal property received and held by the National Archives Trust Fund Board, and of its operations, including a listing of the purposes for which funds are transferred to the National Archives and Records Administration for expenditure to other Federal agencies; and

(4) the matters specified in section 2904(c)(8) of this title.

#### § 2107. ACCEPTANCE OF RECORDS FOR HISTORICAL PRESERVATION

(a) In general.—When it appears to the Archivist to be in the public interest, the Archivist may—

(1) accept for deposit with the National Archives of the United States the records of a Federal agency, the Congress, the Architect of the Capitol, or the Supreme Court determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government;

(2) direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than thirty years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certifies in writing to the Archivist that they must be retained in his custody for use in the conduct of the regular current business of the agency;

(3) direct and effect, with the approval of the head of the originating agency, or if the existence of the agency has been terminated, then with the approval of the head of that agency's successor in function, if any, the transfer of records deposited or approved for deposit with the National Archives of the United States to public or educational institutions or associations; title to the records to remain vested in the United States unless otherwise authorized by Congress; and

(4) transfer materials from private sources authorized to be received by the Archivist by section 2111 of this title.

(b) Early transfer of records.—The Archivist—

(1) in consultation with the head of the originating Federal agency, is authorized to accept a copy of the records described in subsection (a)(2) that have been in existence for less than thirty years; and

(2) may not disclose any such records until the expiration of—

- (A) the thirty-year period described in paragraph (1);
- (B) any longer period established by the Archivist by order; or
- (C) any shorter period agreed to by the originating Federal agency.

**44 U.S.C. § 2107 NOTE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT**

**Sec. 1. Short Title**

This Act may be cited as the ‘President John F. Kennedy Assassination Records Collection Act of 1992’.

**Sec. 2. Findings, declarations, and purposes**

(a) Findings and declarations.—The Congress finds and declares that—

(1) all Government records related to the assassination of President John F. Kennedy should be preserved for historical and governmental purposes;

(2) all Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure, and all records should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination;

(3) legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such records;

(4) legislation is necessary because congressional records related to the assassination of President John F. Kennedy would not otherwise be subject to public disclosure until at least the year 2029;

(5) legislation is necessary because the Freedom of Information Act, as implemented by the executive branch, has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy;

(6) legislation is necessary because Executive Order No. 12356, entitled ‘National Security Information’ has eliminated the declassification and downgrading schedules relating to classified information across government and has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy; and

(7) most of the records related to the assassination of President John F. Kennedy are almost 30 years old, and

only in the rarest cases is there any legitimate need for continued protection of such records.

(b) Purposes.—The purposes of this Act are—

(1) to provide for the creation of the President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration; and

(2) to require the expeditious public transmission to the Archivist and public disclosure of such records.

**Sec. 3. Definitions**

In this Act:

(1) ‘Archivist’ means the Archivist of the United States.

(2) ‘Assassination record’ means a record that is related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into the possession of—

(A) the Commission to Investigate the Assassination of President John F. Kennedy (the ‘Warren Commission’);

(B) the Commission on Central Intelligence Agency Activities Within the United States (the ‘Rockefeller Commission’);

(C) the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the ‘Church Committee’);

(D) the Select Committee on Intelligence (the ‘Pike Committee’) of the House of Representatives;

(E) the Select Committee on Assassinations (the ‘House Assassinations Committee’) of the House of Representatives;

(F) the Library of Congress;

(G) the National Archives and Records Administration;

(H) any Presidential library;

(I) any Executive agency;

(J) any independent agency;

(K) any other office of the Federal Government; and

(L) any State or local law enforcement office that provided support or assistance or performed work in connection with a Federal inquiry into the assassination of President John F. Kennedy, but does not include the autopsy records donated by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those records, or copies and reproductions made from such records.

(3) ‘Collection’ means the President John F. Kennedy Assassination Records Collection established under section 4.

(4) ‘Executive agency’ means an Executive agency as defined in subsection 552(f) of title 5, United States Code, and includes any Executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government, including the Executive Office of the President, or any independent regulatory agency.

(5) ‘Government office’ means any office of the Federal Government that has possession or control of assassination records, including—

(A) the House Committee on Administration with regard to the Select Committee on Assassinations of the records of the House of Representatives;

(B) the Select Committee on Intelligence of the Senate with regard to records of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities and other assassination records;

(C) the Library of Congress;

(D) the National Archives as custodian of assassination records that it has obtained or possesses, including the Commission to Investigate the Assassination of President John F. Kennedy and the Commission on Central Intelligence Agency Activities in the United States; and

(E) any other executive branch office or agency, and any independent agency.

(6) ‘Identification aid’ means the written description prepared for each record as required in section 4.

(7) ‘National Archives’ means the National Archives and Records Administration and all components thereof, including Presidential archival depositories established under section 2112 of title 44, United States Code.

(8) ‘Official investigation’ means the reviews of the assassination of President John F. Kennedy conducted by any Presidential commission, any authorized congressional committee, and any Government agency either independently, at the request of any Presidential commission or congressional committee, or at the request of any Government official.

(9) ‘Originating body’ means the Executive agency, government commission, congressional committee, or other governmental entity that created a record or particular information within a record.

(10) ‘Public interest’ means the compelling interest in the prompt public disclosure of assassination records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding the assassination of President John F. Kennedy.

(11) ‘Record’ includes a book, paper, map, photograph, sound or video recording, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material, regardless of its physical form or characteristics.

(12) ‘Review Board’ means the Assassination Records Review Board established by section 7.

(13) ‘Third agency’ means a Government agency that originated an assassination record that is in the possession of another agency.

#### Sec. 4. President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration

(a) In General.—(1) Not later than 60 days after the date of enactment of this Act [Oct. 26, 1992], the National Archives and Records Administration shall commence establishment of a collection of records to be known as the President John F. Kennedy Assassination Records Collection. In so doing, the Archivist shall ensure the physical integrity and original provenance of all records. The Collection shall consist of record copies of all Government records relating to the assassination of President John F. Kennedy, which shall be transmitted to the National Archives in accordance with section 2107 of title 44, United States Code [this section]. The Archivist shall prepare and publish a subject guidebook and index to the collection.

(2) The Collection shall include—

(A) all assassination records—

(i) that have been transmitted to the National Archives or disclosed to the public in an unredacted form prior to the date of enactment of this Act [Oct. 26 1992];

(ii) that are required to be transmitted to the National Archives; or

(iii) the disclosure of which is postponed under this Act;

(B) a central directory comprised of identification aids created for each record transmitted to the Archivist under section 5; and

(C) all Review Board records as required by this Act.

(b) Disclosure of records.—All assassination records transmitted to the National Archives for disclosure to the public shall be included in the Collection and shall be available to the public for inspection and copying at the

National Archives within 30 days after their transmission to the National Archives.

(c) Fees for copying.—The Archivist shall—

(1) charge fees for copying assassination records; and  
(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

(d) Additional requirements.—(1) The Collection shall be preserved, protected, archived, and made available to the public at the National Archives using appropriations authorized, specified, and restricted for use under the terms of this Act.

(2) The National Archives, in consultation with the Information Security Oversight Office, shall ensure the security of the postponed assassination records in the Collection.

(e) Oversight.—The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the Collection.

Sec. 5. Review, identification, transmission to the National Archives, and public disclosure of assassination records by government offices.

(a) In general.—(1) As soon as practicable after the date of enactment of this Act [Oct. 26, 1992], each Government office shall identify and organize its records relating to the assassination of President John F. Kennedy and prepare them for transmission to the Archivist for inclusion in the Collection.

(2) No assassination record shall be destroyed, altered, or mutilated in any way.

(3) No assassination record made available or disclosed to the public prior to the date of enactment of this Act [Oct. 26, 1992] may be withheld, redacted, postponed for public disclosure, or reclassified.

(4) No assassination record created by a person or entity outside government (excluding names or identities consistent with the requirements of section 6) shall be withheld, redacted, postponed for public disclosure, or reclassified.

(b) Custody of assassination records pending review.—During the review by Government offices and pending review activity by the Review Board, each Government office shall retain custody of its assassination records for purposes of preservation, security, and efficiency, unless—  
(1) the Review Board requires the physical transfer of

records for purposes of conducting an independent and impartial review;

(2) transfer is necessary for an administrative hearing or other Review Board function; or

(3) it is a third agency record described in subsection (c) (2)(C).

(c) Review.—(1) Not later than 300 days after the date of enactment of this Act [Oct. 26, 1992], each Government office shall review, identify and organize each assassination record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist.

(2) In carrying out paragraph (1), a Government office shall—

(A) determine which of its records are assassination records;

(B) determine which of its assassination records have been officially disclosed or publicly available in a complete and unredacted form;

(C)(i) determine which of its assassination records, or particular information contained in such a record, was created by a third agency or by another Government office; and

(ii) transmit to a third agency or other Government office those records, or particular information contained in those records, or complete and accurate copies thereof;

(D)(i) determine whether its assassination records or particular information in assassination records are covered by the standards for postponement of public disclosure under this Act; and

(ii) specify on the identification aid required by subsection (d) the applicable postponement provision contained in section 6;

(E) organize and make available to the Review Board all assassination records identified under subparagraph (D) the public disclosure of which in whole or in part may be postponed under this Act;

(F) organize and make available to the Review Board any record concerning which the office has any uncertainty as to whether the record is an assassination record governed by this Act;

(G) give priority to—

(i) the identification, review, and transmission of all assassination records publicly available or disclosed as of the date of enactment of this Act [Oct. 26, 1992] in a redacted or edited form; and



(ii) the identification, review, and transmission, under the standards for postponement set forth in this Act, of assassination records that on the date of enactment of this Act [Oct. 26, 1992] are the subject of litigation under section 552 of title 5, United States Code; and

(H) make available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this Act.

(3) The Director of each archival depository established under section 2112 of title 44, United States Code, shall have as a priority the expedited review for public disclosure of assassination records in the possession and custody of the depository, and shall make such records available to the Review Board as required by this Act.

(d) Identification aids.—(1)(A) Not later than 45 days after the date of enactment of this Act [Oct. 26, 1992], the Archivist, in consultation with the appropriate Government offices, shall prepare and make available to all Government offices a standard form of identification or finding aid for use with each assassination record subject to review under this Act.

(B) The Archivist shall ensure that the identification aid program is established in such a manner as to result in the creation of a uniform system of electronic records by Government offices that are compatible with each other.

(2) Upon completion of an identification aid, a Government office shall—

(A) attach a printed copy to the record it describes;

(B) transmit to the Review Board a printed copy; and

(C) attach a printed copy to each assassination record it describes when it is transmitted to the Archivist.

(3) Assassination records which are in the possession of the National Archives on the date of enactment of this Act [Oct. 26, 1992], and which have been publicly available in their entirety without redaction, shall be made available in the Collection without any additional review by the Review Board or another authorized office under this Act, and shall not be required to have such an identification aid unless required by the Archivist.

(e) Transmission to the National Archives.—Each Government office shall—

(1) transmit to the Archivist, and make immediately available to the public, all assassination records that can be publicly disclosed, including those that are publicly available on the date of enactment of this Act, without any redaction, adjustment, or withholding under the standards of this Act; and

(2) transmit to the Archivist upon approval for postponement by the Review Board or upon completion of other action authorized by this Act, all assassination records the public disclosure of which has been postponed, in whole or in part, under the standards of this Act, to become part of the protected Collection.

(f) Custody of postponed assassination records.—An assassination record the public disclosure of which has been postponed shall, pending transmission to the Archivist, be held for reasons of security and preservation by the originating body until such time as the information security program has been established at the National Archives as required in section 4(e)(2).

(g) Periodic review of postponed assassination records.—(1) All postponed or redacted records shall be reviewed periodically by the originating agency and the Archivist consistent with the recommendations of the Review Board under section 9(c)(3)(B).—

(2)(A) A periodic review shall address the public disclosure of additional assassination records in the Collection under the standards of this Act.

(B) All postponed assassination records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement. Such description shall be provided to the Archivist and published in the Federal Register upon determination.

(C) The periodic review of postponed assassination records shall serve to downgrade and declassify security-classified information.

(D) Each assassination record shall be publicly disclosed in full, and available in the Collection no later than the date that is 25 years after the date of enactment of this Act [Oct. 26, 1992], unless the President certifies, as required by this Act, that—

(i) continued postponement is made necessary by an identifiable harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations; and

(ii) the identifiable harm is of such gravity that it outweighs the public interest in disclosure.

(h) Fees for copying.—Executive branch agencies shall—

(1) charge fees for copying assassination records; and

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

Sec. 6. Grounds for postponement of public disclosure of records

Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that—

(1) the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination record is of such gravity that it outweighs the public interest, and such public disclosure would reveal—

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;

(2) the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;

(3) the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest;

(4) the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest; or

(5) the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

Sec. 7. Establishment and powers of the Assassination Records Review Board

(a) Establishment.—There is established as an independent agency a board to be known as the Assassinations [sic] Records Review Board.

(b) Appointment.—(1) The President, by and with the advice and consent of the Senate, shall appoint, without regard to political affiliation, 5 citizens to serve as members of the Review Board to ensure and facilitate the review, transmission to the Archivist, and public disclosure of Government records related to the assassination of President John F. Kennedy.

(2) The President shall make nominations to the Review Board not later than 90 calendar days after the date of enactment of this Act [Oct. 26, 1992].

(3) If the Senate votes not to confirm a nomination to the Review Board, the President shall make an additional nomination not later than 30 days thereafter.

(4)(A) The President shall make nominations to the Review Board after considering persons recommended by the American Historical Association, the Organization of American Historians, the Society of American Archivists, and the American Bar Association.

(B) If an organization described in subparagraph (A) does not recommend at least 2 nominees meeting the qualifications stated in paragraph (5) by the date that is 45 days after the date of enactment of this Act [Oct. 26, 1992], the President shall consider for nomination the persons recommended by the other organizations described in subparagraph (A).

(C) The President may request an organization described in subparagraph (A) to submit additional nominations.

(5) Persons nominated to the Review Board—

(A) shall be impartial private citizens, none of whom is presently employed by any branch of the Government, and none of whom shall have had any previous involvement with any official investigation or inquiry conducted by a Federal, State, or local government, relating to the assassination of President John F. Kennedy;

(B) shall be distinguished persons of high national professional reputation in their respective fields who are capable of exercising the independent and objective judgment necessary to the fulfillment of their role in ensuring and facilitating the review, transmission to the public, and public disclosure of records related to the assassination of President John F. Kennedy and who possess an appreciation of the value of such material to the public, scholars, and government; and

(C) shall include at least 1 professional historian and 1 attorney.

(c) Security clearances.—(1) All Review Board nominees shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(2) All nominees shall qualify for the necessary security clearance prior to being considered for confirmation by the Committee on Governmental Affairs of the Senate.

(d) Confirmation hearings.—(1) The Committee on Governmental Affairs of the Senate shall hold confirmation hearings within 30 days in which the Senate is in session after the nomination of 3 Review Board members.

(2) The Committee on Governmental Affairs shall vote on the nominations within 14 days in which the Senate is in session after the confirmation hearings, and shall report its results to the full Senate immediately.

(3) The Senate shall vote on each nominee to confirm or reject within 14 days in which the Senate is in session after reported by the Committee on Governmental Affairs.

(e) Vacancy.—A vacancy on the Review Board shall be filled in the same manner as specified for original appointment within 30 days of the occurrence of the vacancy.

(f) Chairperson.—The Members of the Review Board shall elect one of its members as chairperson at its initial meeting.

(g) Removal of Review Board member.—(1) No member of the Review Board shall be removed from office, other than—

(A) by impeachment and conviction; or

(B) by the action of the President for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties.

(2)(A) If a member of the Review Board is removed from office, and that removal is by the President, not later than 10 days after the removal the President shall submit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal.

(B) The President shall publish in the Federal Register a report submitted under paragraph (2)(A), except that the President may, if necessary to protect the rights of a person named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from

publishing any or all of the report until the completion of such pending cases or pursuant to privacy protection requirements in law.

(3)(A) A member of the Review Board removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia.

(B) The member may be reinstated or granted other appropriate relief by order of the court.

(h) Compensation of members.—(1) A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the

Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(i) Duties of the Review Board.—(1) The Review Board shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records.

(2) In carrying out paragraph (1), the Review Board shall consider and render decisions—

(A) whether a record constitutes an assassination record; and

(B) whether an assassination record or particular information in a record qualifies for postponement of disclosure under this Act.

(j) Powers.—(1) The Review Board shall have the authority to act in a manner prescribed under this Act including authority to—

(A) direct Government offices to complete identification aids and organize assassination records;

(B) direct Government offices to transmit to the Archivist assassination records as required under this Act, including segregable portions of assassination records, and substitutes and summaries of assassination records that can be publicly disclosed to the fullest extent;

(C)(i) obtain access to assassination records that have been identified and organized by a Government office;

(ii) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this Act; and

(iii) request the Attorney General to subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this Act;

(D) require any Government office to account in writing for the destruction of any records relating to the assassination of President John F. Kennedy;

(E) receive information from the public regarding the identification and public disclosure of assassination records;

(F) hold hearings, administer oaths, and subpoena witnesses and documents; and

(G) use the Federal Supply Service in the same manner and under the same conditions as other departments and agencies of the United States; and

(H) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(2) A subpoena issued under paragraph (1)(C)(iii) may be enforced by any appropriate Federal court acting pursuant to a lawful request of the Review Board.

(k) Witness immunity.—The Review Board shall be considered to be an agency of the United States for purposes of section 6001 of title 18, United States Code.

(l) Oversight.—(1) The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the official conduct of the Review Board and the disposition of postponed records after termination of the Review Board, and shall have access to any records held or created by the Review Board.

(2) The Review Board shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(m) Support Services.—The Administrator of the General Services Administration shall provide administrative services for the Review Board on a reimbursable basis.

(n) Interpretive regulations.—The Review Board may issue interpretive regulations.

(o) Termination and winding up.—(1) The Review Board

and the terms of its members shall terminate not later than September 30, 1998.

(2) Upon its termination, the Review Board shall submit reports to the President and the Congress including a complete and accurate accounting of expenditures during its existence, and shall complete all other reporting requirements under this Act.

(3) Upon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the Collection, and no record of the Review Board shall be destroyed.

#### Sec. 8. Assassination Records Review Board personnel

(a) Executive director.—(1) Not later than 45 days after the initial meeting of the Review Board, the Review Board shall appoint one citizen, without regard to political affiliation, to the position of Executive Director.

(2) The person appointed as Executive Director shall be a private citizen of integrity and impartiality who is a distinguished professional and who is not a present employee of any branch of the Government and has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(3)(A) A candidate for Executive Director shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate shall qualify for the necessary security clearance prior to being approved by the Review Board.

(4) The Executive Director shall—

(A) serve as principal liaison to Government offices;

(B) be responsible for the administration and coordination of the Review Board's review of records;

(C) be responsible for the administration of all official activities conducted by the Review Board; and

(D) have no authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure.

(5) The Executive Director shall not be removed for reasons other than by a majority vote of the Review Board for cause on the grounds of inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the responsibilities of the Executive Director or the staff of the Review Board.

(b) Staff.—(1) The Review Board, without regard to the civil service laws, may appoint and terminate additional personnel as are necessary to enable the Review Board and its Executive Director to perform the duties of the Review Board.

(2)(A) Except as provided in subparagraph (B), a person appointed to the staff of the Review Board shall be a private citizen of integrity and impartiality who is not a present employee of any branch of the Government and who has had no previous involvement with any official investigation or inquiry relating to the assassination of President John F. Kennedy.

(B) An individual who is an employee of the Government may be appointed to the staff of the Review Board if in that position the individual will perform only administrative functions.

(3)(A) A candidate for staff shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B)(i) The Review Board may offer conditional employment to a candidate for a staff position pending the completion of security clearance background investigations. During the pendency of such investigations, the Review Board shall ensure that any such employee does not have access to, or responsibility involving, classified or otherwise restricted assassination record materials.

(ii) If a person hired on a conditional basis under clause (i) is denied or otherwise does not qualify for all security clearances necessary to carry out the responsibilities of the position for which conditional employment has been offered, the Review Board shall immediately terminate the person's employment.

(c) Compensation.—Subject to such rules as may be adopted by the Review Board, the chairperson, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, may—

(1) appoint an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule; and

(2) appoint and fix compensation of such other personnel as may be necessary to carry out this Act.

(d) Advisory committees.—(1) The Review Board shall have the authority to create advisory committees to assist

in fulfilling the responsibilities of the Review Board under this Act.

(2) Any advisory committee created by the Review Board shall be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

(e) Security clearance required.—An individual employed in any position by the Review Board (including an individual appointed as Executive Director) shall be required to qualify for any necessary security clearance prior to taking office in that position, but may be employed conditionally in accordance with subsection (b)(3)(B) before qualifying for that clearance.

#### Sec. 9. Review of records by the Assassination Records Review Board

(a) Custody of records reviewed by Board.—Pending the outcome of the Review Board's review activity, a Government office shall retain custody of its assassination records for purposes of preservation, security, and efficiency, unless—

(1) the Review Board requires the physical transfer of records for reasons of conducting an independent and impartial review; or

(2) such transfer is necessary for an administrative hearing or other official Review Board function.

(b) Startup requirements.—The Review Board shall—

(1) not later than 90 days after the date of its appointment, publish a schedule for review of all assassination records in the Federal Register; and

(2) not later than 180 days after the date of enactment of this Act [Oct. 26, 1992], begin its review of assassination records under this Act.

(c) Determinations of the Review Board.—(1) The Review Board shall direct that all assassination records be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that—

(A) a Government record is not an assassination record; or

(B) a Government record or particular information within an assassination record qualifies for postponement of public disclosure under this Act.

(2) In approving postponement of public disclosure of an assassination record, the Review Board shall seek to—

(A) provide for the disclosure of segregable parts, substitutes, or summaries of such a record; and

(B) determine, in consultation with the originating body and consistent with the standards for postponement under this Act, which of the following alternative forms of disclosure shall be made by the originating body:

(i) Any reasonably segregable particular information in an assassination record.

(ii) A substitute record for that information which is postponed.

(iii) A summary of an assassination record.

(3) With respect to each assassination record or particular information in assassination records the public disclosure of which is postponed pursuant to section 6, or for which only substitutions or summaries have been disclosed to the public, the Review Board shall create and transmit to the Archivist a report containing—

(A) a description of actions by the Review Board, the originating body, the President, or any Government office (including a justification of any such action to postpone disclosure of any record or part of any record) and of any official proceedings conducted by the Review Board with regard to specific assassination records; and

(B) a statement, based on a review of the proceedings and in conformity with the decisions reflected therein, designating a recommended specified time at which or a specified occurrence following which the material may be appropriately disclosed to the public under this Act.

(4)(A) Following its review and a determination that an assassination record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Review Board shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made.

(B) Contemporaneous notice shall be made to the President for Review Board determinations regarding executive branch assassination records, and to the oversight committees designated in this Act in the case of legislative branch records. Such notice shall contain a written unclassified justification for public disclosure or postponement of disclosure, including an explanation of the application of any standards contained in section 6.

(d) Presidential authority over Review Board determination.—

(1) Public disclosure or postponement of disclosure.—After the Review Board has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch assassination record

or information within such a record, or of any information contained in an assassination record, obtained or developed solely within the executive branch, the President shall have the sole and nondelegable authority to require the disclosure or postponement of such record or information under the standards set forth in section 6, and the President shall provide the Review Board with an unclassified written certification specifying the President's decision within 30 days after the Review Board's determination and notice to the executive branch agency as required under this Act, stating the justification for the President's decision, including the applicable grounds for postponement under section 6, accompanied by a copy of the identification aid required under section 4.

(2) Periodic review.—Any executive branch assassination record postponed by the President shall be subject to the requirements of periodic review, downgrading and declassification of classified information, and public disclosure in the collection set forth in section 4.

(3) Record of presidential postponement.—The Review Board shall, upon its receipt, publish in the Federal Register a copy of any unclassified written certification, statement, and other materials transmitted by or on behalf of the President with regard to postponement of assassination records.

(e) Notice to public.—Every 30 calendar days, beginning on the date that is 60 calendar days after the date on which the Review Board first approves the postponement of disclosure of an assassination record, the Review Board shall publish in the Federal Register a notice that summarizes the postponements approved by the Review Board or initiated by the President, the House of Representatives, or the Senate, including a description of the subject, originating agency, length or other physical description, and each ground for postponement that is relied upon.

(f) Reports by the review board.—(1) The Review Board shall report its activities to the leadership of the Congress, the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, the President, the Archivist, and the head of any Government office whose records have been the subject of Review Board activity.

(2) The first report shall be issued on the date that is 1 year after the date of enactment of this Act

[Oct. 26, 1992], and subsequent reports every 12 months thereafter until termination of the Review Board.

(3) A report under paragraph (1) shall include the following information:

(A) A financial report of the expenses for all official activities and requirements of the Review Board and its personnel.

(B) The progress made on review, transmission to the Archivist, and public disclosure of assassination records.

(C) The estimated time and volume of assassination records involved in the completion of the Review Board's performance under this Act.

(D) Any special problems, including requests and the level of cooperation of Government offices, with regard to the ability of the Review Board to operate as required by this Act.

(E) A record of review activities, including a record of postponement decisions by the Review Board or other related actions authorized by this Act, and a record of the volume of records reviewed and postponed.

(F) Suggestions and requests to Congress for additional legislative authority needs.

(G) An appendix containing copies of reports of postponed records to the Archivist required under section 9(c) (3) made since the date of the preceding report under this subsection.

(4) At least 90 calendar days before completing its work, the Review Board shall provide written notice to the President and Congress of its intention to terminate its operations at a specified date.

#### Sec. 10. Disclosure of other materials and additional study

(a) Materials under seal of court.—

(1) The Review Board may request the Attorney General to petition any court in the United States or abroad to release any information relevant to the assassination of President John F. Kennedy that is held under seal of the court.

(2)(A) The Review Board may request the Attorney General to petition any court in the United States to release any information relevant to the assassination of President John F. Kennedy that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of assassination materials under this Act shall be deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure [18 U.S.C.A.].

(b) Sense of congress.—It is the sense of the Congress that—

(1) the Attorney General should assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;

(2) the Secretary of State should contact the Government of the Republic of Russia and seek the disclosure of all records of the government of the former Soviet Union, including the records of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Glavnoye Razvedyvatelnoye Upravleniye (GRU), relevant to the assassination of President Kennedy, and contact any other foreign government that may hold information relevant to the assassination of President Kennedy and seek disclosure of such information; and

(3) all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination of President John F. Kennedy consistent with the public interest.

#### Sec. 11. Rules of construction

(a) Precedence over other law.—When this Act requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure, with the exception of deeds governing access to or transfer or release of gifts and donations of records to the United States Government.

(b) Freedom of Information Act.—Nothing in this Act shall be construed to eliminate or limit any right to file requests with any executive agency or seek judicial review of the decisions pursuant to section 552 of title 5, United States Code.

(c) Judicial review.—Nothing in this Act shall be construed to preclude judicial review, under chapter 7 of title 5, United States Code, of final actions taken or required to be taken under this Act.

(d) Existing authority.—Nothing in this Act revokes or limits the existing authority of the President, any executive agency, the Senate, or the House of Representatives, or any other entity of the Government to publicly disclose records in its possession.

(e) Rules of the Senate and House of Representatives.—To the extent that any provision of this Act establishes a

procedure to be followed in the Senate or the House of Representatives, such provision is adopted—

- (1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House, and it supersedes other rules only to the extent that it is inconsistent with such rules; and
- (2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

#### Sec. 12. Termination of effect of Act

- (a) Provisions pertaining to the Review Board.—The provisions of this Act that pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated pursuant to section 7(o).
- (b) Other provisions.—The remaining provisions of this Act shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with this Act.

#### Sec. 13. Authorization of appropriations

- (a) In general.—There are authorized to be appropriated to carry out the provisions of this Act \$1,600,000 for fiscal year 1998.
- (b) Interim funding.—Until such time as funds are appropriated pursuant to subsection (a), the President may use such sums as are available for discretionary use to carry out this Act.

#### Sec. 14. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.”

[Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Government Operations

of the House of Representatives treated as referring to the Committee on Government Reform and Oversight of the House of Representatives, except that any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Government Operations of the House of Representatives treated as referring to the Committee on the Budget of the House of Representatives in the case of a provision of law relating to the establishment, extension, and enforcement of special controls over the Federal budget, see section 1(a)(6) and (c)(2) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.]

*(End of Note)*

#### 44 U.S.C. § 2107 NOTE. ESTABLISHMENT OF NATIONAL DATABASE FOR RECORDS OF SERVITUDE, EMANCIPATION, AND POST-CIVIL WAR RECONSTRUCTION.

National Database for Records of Servitude (Pub. L. 110-404, § 7)

(a) IN GENERAL.—The Archivist of the United States may preserve relevant records and establish, as part of the National Archives and Records Administration, an electronically searchable national database consisting of historic records of servitude, emancipation, and post-Civil War reconstruction, including the Refugees, Freedman, and Abandoned Land Records, Southern Claims Commission Records, Records of the Freedmen’s Bank, Slave Impressments Records, Slave Payroll Records, Slave Manifest, and others, contained within the agencies and departments of the Federal Government to assist African Americans and others in conducting genealogical and historical research.

(b) MAINTENANCE.—Any database established under this section shall be maintained by the National Archives and Records Administration or an entity within the National Archives and Records Administration designated by the Archivist of the United States.

#### § 2108. RESPONSIBILITY FOR CUSTODY, USE, AND WITHDRAWAL OF RECORDS

(a) The Archivist shall be responsible for the custody, use, and withdrawal of records transferred to him. When records, the use of which is subject to statutory limitations



and restrictions, are so transferred, permissive and restrictive statutory provisions with respect to the examination and use of records applicable to the head of the agency from which the records were transferred or to employees of that agency are applicable to the Archivist and to the employees of the National Archives and Records Administration, respectively. Except as provided in subsection (b) of this section, when the head of a Federal agency states, in writing, restrictions that appear to him to be necessary or desirable in the public interest with respect to the use or examination of records being considered for transfer from his custody to the Archivist, the Archivist shall, if he concurs, impose such restrictions on the records so transferred, and may not relax or remove such restrictions without the written concurrence of the head of the agency from which the material was transferred, or of his successor in function, if any. In the event that a Federal agency is terminated and there is no successor in function, the Archivist is authorized to relax, remove, or impose restrictions on such agency's records when he determines that such action is in the public interest. Statutory and other restrictions referred to in this subsection shall remain in force until the records have been in existence for thirty years unless the Archivist by order, having consulted with the head of the transferring Federal agency or his successor in function, determines, with respect to specific bodies of records, that for reasons consistent with standards established in relevant statutory law, such restrictions shall remain in force for a longer period. Restriction on the use or examination of records deposited with the National Archives of the United States imposed by section 3 of the National Archives Act, approved June 19, 1934, shall continue in force regardless of the expiration of the tenure of office of the official who imposed them but may be removed or relaxed by the Archivist with the concurrence in writing of the head of the agency from which material was transferred or of his successor in function, if any.

(b) With regard to the census and survey records of the Bureau of the Census containing data identifying individuals enumerated in population censuses, any release pursuant to this section of such identifying information contained in such records shall be made by the Archivist pursuant to the specifications and agreements set forth in the exchange of correspondence on or about the date of October 10, 1952, between the Director of the Bureau of the Census and the Archivist of the United States, together with all amendments thereto, now or hereafter entered into between the Director of the Bureau of the Census

and the Archivist of the United States. Such amendments, if any, shall be published in the Register.

#### 44 U.S.C. § 2108 NOTE. PROCEDURES TO PREVENT UNAUTHORIZED REMOVAL OF CLASSIFIED RECORDS FROM NATIONAL ARCHIVES.

(a) Classified Records.—Not later than 90 days after the date of the enactment of this Act, the Archivist shall prescribe internal procedures to prevent the unauthorized removal of classified records from the National Archives and Records Administration or the destruction or damage of such records, including when such records are accessed or searched electronically. Such procedures shall include, at a minimum, the following prohibitions:

- (1) An individual, other than covered personnel, may not view classified records in any room that is not secure, except in the presence of National Archives and Records Administration personnel or under video surveillance.
- (2) An individual, other than covered personnel, may not be left alone with classified records, unless that individual is under video surveillance.
- (3) An individual, other than covered personnel, may not review classified records while possessing any cellular phone, electronic personal communication device, or any other devices capable of photographing, recording, or transferring images or content.
- (4) An individual seeking access to review classified records, as a precondition to such access, must consent to a search of their belongings upon conclusion of their records review.
- (5) All notes and other writings prepared by an individual, other than covered personnel, during the course of a review of classified records shall be retained by the National Archives and Records Administration in a secure facility until such notes and other writings are determined to be unclassified, are declassified, or are securely transferred to another secure facility.

(b) DEFINITIONS.—In this section:

- (1) COVERED PERSONNEL.—The term “covered personnel” means any individual—
  - (A) who has an appropriate and necessary reason for accessing classified records, as determined by the Archivist; and
  - (B) who is either—
    - (i) an officer or employee of the United States Government with appropriate security clearances; or

(ii) any personnel with appropriate security clearances of a Federal contractor authorized in writing to act for purposes of this section by an officer or employee of the United States Government.

(2) RECORDS.—The term “records” has the meaning given that term under section 3301 of title 44, United States Code.

#### § 2109. PRESERVATION, ARRANGEMENT, DUPLICATION, EXHIBITION OF RECORDS

The Archivist shall provide for the preservation, arrangement, repair and rehabilitation, duplication and reproduction (including microcopy publications), description, and exhibition of records or other documentary material transferred to him as may be needful or appropriate, including the preparation and publication of inventories, indexes, catalogs, and other finding aids or guides to facilitate their use. He may also prepare guides and other finding aids to Federal records and, when approved by the National Historical Publications and Records Commission, publish such historical works and collections of sources as seem appropriate for printing or otherwise recording at the public expense.

#### § 2110. SERVICING RECORDS

The Archivist shall provide and maintain facilities he considers necessary or desirable for servicing records in his custody that are not exempt from examination by statutory or other restrictions.

#### § 2111. MATERIAL ACCEPTED FOR DEPOSIT

(a) In General.—When the Archivist considers it to be in the public interest the Archivist may accept for deposit—

(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Archivist as to their use; and

(2) recorded information (as such term is defined in section 3301(a)(2) of this title) from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

(b) Exception.—This section shall not apply in the case of any Presidential records which are subject to the provisions of chapter 22 of this title.

#### 44 U.S.C. § 2111 NOTE

##### PRESIDENTIAL RECORDINGS AND MATERIALS PRESERVATION ACT

###### *Delivery and Retention of Certain Presidential Materials*

Sec. 101. (a) Notwithstanding any other law or any agreement or understanding made pursuant to section 2111 of title 44, United States Code [this section] any Federal employee in possession shall deliver, and the Archivist of the United States (hereinafter in this title referred to as the ‘Archivist’) shall receive, obtain, or retain, complete possession and control of all original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which—

(1) involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government;

(2) were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Maryland; Key Biscayne, Florida; or San Clemente, California; and

(3) were recorded during the period beginning January 20, 1969, and ending August 9, 1974.

(b)(1) Notwithstanding any other law or any agreement or understanding made pursuant to section 2111 of title 44, United States Code [this section], the Archivist shall receive, retain, or make reasonable efforts to obtain, complete possession and control of all papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

(2) For purposes of this subsection, the term ‘historical materials’ has the meaning given it by section 2101 of title 44, United States Code [section 2101 of this title].

###### *Availability of Certain Presidential Materials*

Sec. 102. (a) None of the tape recordings or other materials referred to in section 101 shall be destroyed, except as hereafter may be provided by law.

(b) Notwithstanding any other provision of this title, any other law, or any agreement or understanding made pursuant to section 2111 of title 44, United States Code [this section], the tape recordings and other materials referred to in section 101 shall, immediately upon the date of enactment of this title, be made available, subject to

any rights, defenses, or privileges which the Federal Government or any person may invoke, for use in any judicial proceeding or otherwise subject to court subpoena or other legal process. Any request by the Office of Watergate Special Prosecution Force, whether by court subpoena or other lawful process, for access to such recordings or materials shall at all times have priority over any other request for such recordings or materials.

(c) Richard M. Nixon, or any person whom he may designate in writing, shall at all times have access to the tape recordings and other materials referred to in section 101 for any purpose which is consistent with the provisions of this title, subsequent and subject to the regulations which the Archivist shall issue pursuant to section 103.

(d) Any agency or department in the executive branch of the Federal Government shall at all times have access to the tape recordings and other materials referred to in section 101 for lawful Government use, subject to the regulations which the Archivist shall issue pursuant to section 103.

#### *Regulations to Protect Certain Tape Recordings and Other Materials*

Sec. 103. The Archivist shall issue at the earliest possible date such regulations as may be necessary to assure the protection of the tape recordings and other materials referred to in section 101 from loss or destruction, and to prevent access to such recordings and materials by unauthorized persons. The Archivist may transfer such recordings and materials to a Presidential archival depository in accordance with section 2112 of title 44, United States Code.

#### *Regulations Relating to Public Access*

Sec. 104. (a) The Archivist shall, within ninety days after the date of enactment of this title [Dec. 19, 1974] submit to each House of the Congress a report proposing and explaining regulations that would provide public access to the tape recordings and other materials referred to in section 101. Such regulations shall take into account the following factors:

(1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power popularly identified under the generic term 'Watergate';

(2) the need to make such recordings and materials available for use in judicial proceedings;

(3) the need to prevent general access, except in accordance with appropriate procedures established for use in judicial proceedings, to information relating to the Nation's security;

(4) the need to protect every individual's right to a fair and impartial trial;

(5) the need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;

(6) the need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1); and

(7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance.

(b) The regulations proposed by the Archivist in the report required by subsection (a) shall not take effect until the expiration of the first period of 60 calendar days of continuous session of the Congress after the date of the submission of such regulations to each House of the Congress. For the purposes of this subsection, continuity of session is broken only by an adjournment of Congress sine die, but the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded.

(c) The provisions of this title shall not apply, on and after the date upon which regulations proposed by the Administrator take effect under subsection (b), to any tape recordings or other materials given to Richard M. Nixon, or his heirs, pursuant to subsection (a)(7).

(d) The provisions of this title shall not in any way affect the rights, limitations or exemptions applicable under the Freedom of Information Act, 5 U.S.C. § 552 et seq.

#### *Judicial Review*

Sec. 105. (a) The United States District Court for the District of Columbia shall have exclusive jurisdiction to hear challenges to the legal or constitutional validity of this title or of any regulation issued under the authority granted by this title, and any action or proceeding involving the question of title, ownership, custody, possession, or control of any tape recording or material

referred to in section 101 or involving payment of any just compensation which may be due in connection therewith. Any such challenge shall be treated by the court as a matter requiring immediate consideration and resolution, and such challenge shall have priority on the docket of such court over other cases.

(b) If, under the procedures established by subsection (a), a judicial decision is rendered that a particular provision of this title, or a particular regulation issued under the authority granted by this title, is unconstitutional or otherwise invalid, such decision shall not affect in any way the validity or enforcement of any other provision of this title or any regulation issued under the authority granted by this title.

(c) If a final decision of such court holds that any provision of this title has deprived an individual of private property without just compensation, then there shall be paid out of the general fund of the Treasury of the United States such amount or amounts as may be adjudged just by that Court.

#### *Authorization of Appropriations*

Sec. 106. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

[ Pub. L. 108–199, div. F, title V, §543(b), Jan. 23, 2004, 118 Stat. 346 , provided that: “Nothing in section 103 of the Presidential Recordings and Materials Preservation Act (Public Law 93–526; 44 U.S.C. 2111 note), as amended by subsection (a), may be construed as affecting public access to the recordings and materials referred to in that section as provided in regulations promulgated pursuant to section 104 of such Act.]

*(End of Note)*

### § 2112. PRESIDENTIAL ARCHIVAL DEPOSITORY

(a)(1) When the Archivist considers it to be in the public interest, the Archivist may—

(A)(i) accept, for and in the name of the United States, land, a facility, and equipment offered as a gift to the United States for the purpose of creating a Presidential archival depository;

(ii) take title to the land, facility, and equipment on behalf of the United States; and

(iii) maintain, operate, and protect the land, facility, and equipment as a Presidential archival depository and as part of the national archives system;

(B)(i) make agreements, upon terms and conditions the Archivist considers proper, with a State, political subdivision, university, institution of higher learning, institute, or foundation to use as a Presidential archival depository land, a facility, and equipment of the State, subdivision, university, or other organization, to be made available by it without transfer of title to the United States; and

(ii) maintain, operate, and protect the depository as a part of the national archives system; and

(C) accept, for and in the name of the United States, gifts offered for the purpose of making any physical or material change or addition to a Presidential archival depository.

(2) The Archivist shall promulgate architectural and design standards applicable to Presidential archival depositories in order to ensure that such depositories (A) preserve Presidential records subject to chapter 22 of this title and papers and other historical materials accepted for deposit under section 2111 of this title and (B) contain adequate research facilities.

(3) Prior to accepting and taking title to any land, facility, or equipment under subparagraph (A) of paragraph (1), or prior to entering into any agreement under subparagraph (B) of such paragraph or any other agreement to accept or establish a Presidential archival depository, the Archivist shall submit a written report on the proposed Presidential archival depository to the President of the Senate and the Speaker of the House of Representatives. The report shall include—

(A) a description of the land, facility, and equipment offered as a gift or to be made available without transfer of title;

(B) a statement specifying the estimated total cost of the proposed depository and the amount of the endowment for the depository required pursuant to subsection (g) of this section;

(C) a statement of the terms of the proposed agreement, if any;

(D) a general description of the types of papers, documents, or other historical materials proposed to be deposited in the depository to be created, and of the terms of the proposed deposit;

(E) a statement of any additional improvements and equipment associated with the development and operation of the depository, an estimate of the costs of such improvements and equipment, and a statement as to the extent to which such costs will be incurred by any Federal or State government agency;

(F) an estimate of the total annual cost to the United States of maintaining, operating, and protecting the depository; and

(G) a certification that such facility and equipment (whether offered as a gift or made available without transfer of title) comply with standards promulgated by the Archivist pursuant to paragraph (2) of this subsection.

(4) Prior to accepting any gift under subparagraph (C) of paragraph (1) for the purpose of making any physical or material change or addition to a Presidential archival depository, or prior to implementing any provision of law requiring the making of such a change or addition, the Archivist shall submit a report in writing on the proposed change or addition to the President of the Senate and the Speaker of the House of Representatives. The report shall include—

(A) a description of such gift;

(B) a statement specifying the estimated total cost of the proposed physical or material change or addition and the amount of the deposit in an endowment for the depository required pursuant to subsection (g) of this section in order to meet the cost of such change or addition;

(C) a statement of the purpose of the proposed change or addition and a general description of any papers, documents, or historical materials proposed to be deposited in the depository as a result of such change or addition;

(D) a statement of any additional improvements or equipment for the depository associated with such change or addition;

(E) an estimate of the increase in the total annual cost to the United States of maintaining, operating, and protecting the depository that will result from such change or addition; and

(F) a certification that the depository, and the equipment therein will, after such change or addition, comply with the standards promulgated by the Archivist pursuant to paragraph (2) of this subsection.

(5) The Archivist may not—

(A) accept or take title to land, a facility, or equipment

under subparagraph (A) of paragraph (1) for the purpose of creating a Presidential archival depository;

(B) enter into any agreement under subparagraph (B) of such paragraph or any other agreement to accept or establish a Presidential archival depository; or

(C) accept any gift under subparagraph (C) of such paragraph for the purpose of making any physical or material change to a Presidential archival depository, until the expiration of a period of 60 days of continuous session of Congress beginning on the date on which the Archivist transmits the report required under paragraph (3) of this subsection with respect to such Presidential archival depository or the report required under paragraph (4) of this subsection with respect to such change or addition, as the case may be.

(b) When the Archivist considers it to be in the public interest, he may deposit in a Presidential archival depository papers, documents, or other historical materials accepted under section 2111 of this title, or Federal records appropriate for preservation.

(c) When the Archivist considers it to be in the public interest, he may exercise, with respect to papers, documents, or other historical materials deposited under this section, or otherwise, in a Presidential archival depository, all the functions and responsibilities otherwise vested in him pertaining to Federal records or other documentary materials in his custody or under his control. The Archivist, in negotiating for the deposit of Presidential historical materials, shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials. Papers, documents, or other historical materials accepted and deposited under section 2111 of this title and this section are subject to restrictions as to their availability and use stated in writing by the donors or depositors, including the restriction that they shall be kept in a Presidential archival depository. The restrictions shall be respected for the period stated, or until revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf. Subject to the restrictions, the Archivist may dispose by sale, exchange, or otherwise, of papers, documents, or other materials which the Archivist determines to have no permanent value or historical interest or to be surplus to the needs of a Presidential archival depository. Only the first two sentences of this subsection shall apply to Presidential records as defined in section 2201(2) of this title.

(d) When the Archivist considers it to be in the public interest, he may cooperate with and assist a university, institution of higher learning, institute, foundation, or other organization or qualified individual to further or to conduct study or research in historical materials deposited in a Presidential archival depository.

(e) When the Archivist considers it to be in the public interest, he may charge and collect reasonable fees for the privilege of visiting and viewing exhibit rooms or museum space, or for the occasional, non-official use of rooms and spaces (and services related to such use), in a Presidential archival depository.

(f) When the Archivist considers it to be in the public interest, he may provide reasonable office space in a Presidential archival depository for the personal use of a former President of the United States.

(g)(1) When the Archivist considers it to be in the public interest, the Archivist may solicit and accept gifts or bequests of money or other property for the purpose of maintaining, operating, protecting, or improving a Presidential archival depository. The proceeds of gifts or bequests, together with the proceeds from fees or from sales of historical materials, copies or reproductions, catalogs, or other items, having to do with a Presidential archival depository, shall be paid into an account in the National Archives Trust Fund and shall be held, administered, and expended for the benefit and in the interest of the Presidential archival depository in connection with which they were received, and for the same purposes and objects, including custodial and administrative services for which appropriations for the maintenance, operation, protection, or improvement of Presidential archival depositories might be expended.

(2) The Archivist shall provide for the establishment in such Trust Fund of separate endowments for the maintenance of the land, facility, and equipment of each Presidential archival depository, to which shall be credited any gifts or bequests received under paragraph (1) that are offered for that purpose. Income to each such endowment shall be available to cover the cost of facility operations, but shall not be available for the performance of archival functions under this title.

(3) The Archivist shall not accept or take title to any land, facility, or equipment under subparagraph (A) of subsection (a)(1), or enter into any agreement to use any land, facility, or equipment under subparagraph (B) of

such subsection for the purpose of creating a Presidential archival depository, unless the Archivist determines that there is available, by gift or bequest for deposit under paragraph (2) of this subsection in an endowment with respect to such depository, an amount for the purpose of maintaining such land, facility, and equipment equal to—

(A) the product of—

(i) the total cost of acquiring or constructing such facility and of acquiring and installing such equipment, multiplied by

(ii) 20 percent; plus

(B)(i) if title to the land is to be vested in the United States, the product of—

(I) the total cost of acquiring the land upon which such facility is located, or such other measure of the value of such land as is mutually agreed upon by the Archivist and the donor, multiplied by

(II) 20 percent; or

(ii) if title to the land is not to be vested in the United States, the product of—

(I) the total cost to the donor of any improvements to the land upon which such facility is located (other than such facility and equipment), multiplied by

(II) 20 percent; plus

(C) if the Presidential archival depository will exceed 70,000 square feet in area, an amount equal to the product of—

(i) the sum of—

(I) the total cost described in clause (i) of subparagraph (A); plus

(II) the total cost described in subclause (I) or (II) of subparagraph (B)(i), as the case may be, multiplied by

(ii) the percentage obtained by dividing the number of square feet by which such depository will exceed 70,000 square feet by 70,000.

(4) If a proposed physical or material change or addition to a Presidential archival depository would result in an increase in the costs of facility operations, the Archivist may not accept any gift under subparagraph (C) of paragraph (1) for the purpose of making such a change or addition, or may not implement any provision of law requiring the making of such a change or addition, unless the Archivist determines that there is available, by gift or bequest for deposit under paragraph (2) of this subsection in an endowment with respect to such depository, an amount for the purpose of maintaining the land, facility,

and equipment of such depository equal to the difference between—

(A) the amount which, pursuant to paragraph (3) of this subsection, would have been required to have been available for deposit in such endowment with respect to such depository if such change or addition had been included in such depository on—

(i) the date on which the Archivist took title to the land, facility, and equipment for such depository under subparagraph (A) of subsection (a)(1); or

(ii) the date on which the Archivist entered into an agreement for the creation of such depository under subparagraph (B) of such paragraph, as the case may be; minus

(B) the amount which, pursuant to paragraph (3) of this subsection, was required to be available for deposit in such endowment with respect to such depository on the date the Archivist took such title or entered into such agreement, as the case may be.

(5)(A) Notwithstanding paragraphs (3) and (4) (to the extent that such paragraphs are inconsistent with this paragraph), this subsection shall be administered in accordance with this paragraph with respect to any Presidential archival depository created as a depository for the papers, documents, and other historical materials and Presidential records pertaining to any President who takes the oath of office as President for the first time on or after July 1, 2002.

(B) For purposes of subparagraphs (A)(ii), (B)(i)(II), and (B)(ii)(II) of paragraph (3) the percentage of 60 percent shall apply instead of 20 percent. (C)(i) In this subparagraph, the term ‘base endowment amount’ means the amount of the endowment required under paragraph (3).

(ii)(I) The Archivist may give credits against the base endowment amount if the Archivist determines that the proposed Presidential archival depository will have construction features or equipment that are expected to result in quantifiable long-term savings to the Government with respect to the cost of facility operations.

(II) The features and equipment described under subclause (I) shall comply with the standards promulgated by the Archivist under subsection (a)(2).

(III) The Archivist shall promulgate standards to be used in calculating the dollar amount of any credit to be given, and shall consult with all donors of the endowment before giving any credits. The total dollar amount of credits

given under this paragraph may not exceed 20 percent of the base endowment amount.

(D)(i) In calculating the additional endowment amount required under paragraph (4), the Archivist shall take into account credits given under subparagraph (C), and may also give credits against the additional endowment amount required under paragraph (4), if the Archivist determines that construction features or equipment used in making or equipping the physical or material change or addition are expected to result in quantifiable long-term savings to the Government with respect to the cost of facility operations.

(ii) The features and equipment described under clause (i) shall comply with the standards promulgated by the Archivist under subsection (a)(2).

(iii) The Archivist shall promulgate standards to be used in calculating the dollar amount of any credit to be given, and shall consult with all donors of the endowment before giving any credits. The total dollar amount of credits given under this paragraph may not exceed 20 percent of the additional endowment amount required under paragraph (4).

#### § 2113. DEPOSITORY FOR AGREEMENTS BETWEEN STATES

The Archivist may receive duplicate originals or authenticated copies of agreements or compacts entered into under the Constitution and laws of the United States, between States of the Union, and take necessary actions for their preservation and servicing.

#### § 2114. PRESERVATION OF AUDIO AND VISUAL RECORDS

The Archivist may make and preserve audio and visual records, including motion-picture films, still photographs, and sound recordings, in analog, digital, or any other form, pertaining to and illustrative of the historical development of the United States Government and its activities, and provide for preparing, editing, titling, scoring, processing, duplicating, reproducing, exhibiting, and releasing for non-profit educational purposes, motion-picture films, still photographs, and sound recordings in the Archivist’s custody.

#### § 2115. REPORTS; CORRECTION OF VIOLATIONS

(a) In carrying out the duties and responsibilities under

chapters 21, 25, 29, 31, and 33 of this title, the Archivist may obtain reports from any Federal agency on such agency's activities under such chapters.

(b) When the Archivist finds that a provision of any such chapter has been or is being violated, the Archivist shall (1) inform in writing the head of the agency concerned of the violation and make recommendations for its correction; and (2) unless satisfactory corrective measures are demonstrably commenced within a reasonable time, submit a written report of the matter to the President and the Congress.

#### § 2116. LEGAL STATUS OF REPRODUCTIONS; OFFICIAL SEAL; FEES FOR COPIES AND REPRODUCTIONS

(a) When records that are required by statute to be retained indefinitely have been reproduced by photographic, microphotographic, digital, or other processes, in accordance with standards established by the Archivist the indefinite retention by the photographic, microphotographic, digital, or other reproductions constitutes compliance with the statutory requirement for the indefinite retention of the original records. The reproductions, as well as reproductions made under regulations to carry out chapter 21, 29, 31, and 33 of this title, shall have the same legal status as the originals.

(b) There shall be an official seal for the National Archives of the United States which shall be judicially noticed. When a copy or reproduction, furnished under this section, is authenticated by the official seal and certified by the Archivist, the copy or reproduction shall be admitted in evidence equally with the original from which it was made.

(c) The Archivist may charge a fee set to recover the costs for making or authenticating copies or reproductions of materials transferred to the Archivist's custody. Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment. Such fees shall be paid into, administered, and expended as a part of the National Archives Trust Fund. The Archivist may not charge for making or authenticating copies or reproductions of materials for official use by the United States Government unless appropriations available to the

Archivist for this purpose are insufficient to cover the cost of performing the work.

#### § 2117. LIMITATION ON LIABILITY

When letters and other intellectual productions (exclusive of patented material, published works under copyright protection, and unpublished works for which copyright registration has been made) come into the custody or possession of the Archivist, the United States or its agents are not liable for infringement of copyright or analogous rights arising out of use of the materials for display, inspection, research, reproduction, or other purposes.

#### § 2118. RECORDS OF CONGRESS

The Secretary of the Senate and the Clerk of the House of Representatives, acting jointly, shall obtain at the close of each Congress all the noncurrent records of the Congress and of each congressional committee and transfer them to the National Archives and Records Administration for preservation, subject to the orders of the Senate or the House of Representatives, respectively.

#### § 2119. COOPERATIVE AGREEMENTS

(a) Authority – The Archivist may enter into cooperative agreements pursuant to section 6305 of title 31 that involve the transfer of funds from the National Archives and Records Administration to State and local governments, other public entities, educational institutions, or private nonprofit organizations (including foundations or institutes organized to support the National Archives and Records Administration or the Presidential archival depositories operated by it) for the public purpose of carrying out programs of the National Archives and Records Administration.

(b) Limitations – Not more than \$25,000 may be transferred under a cooperative agreement entered into as authorized by subsection (a). Not more than a total of \$75,000 may be transferred under such agreements in any fiscal year.

(c) Report – Not later than December 31<sup>st</sup> of each year, the Archivist shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the provisions, amount, and duration of each cooperative agreement entered into as authorized by subsection (a) during the preceding fiscal year.



§ 2120. ONLINE ACCESS OF FOUNDING FATHERS DOCUMENTS

The Archivist may enter into a cooperative agreement to provide online access to the published volumes of the papers of—

- (1) George Washington;
- (2) Alexander Hamilton;

- (3) Thomas Jefferson;
- (4) Benjamin Franklin;
- (5) John Adams;
- (6) James Madison; and
- (7) other prominent historical figures, as determined appropriate by the Archivist of the United States.

## PRESIDENTIAL RECORDS

(44 U.S.C. Chapter 22)

Sec.

2201. Definitions.
2202. Ownership of Presidential records.
2203. Management and custody of Presidential records.
2204. Restrictions on access to Presidential records.
2205. Exceptions to restriction on access.<sup>1</sup>
2206. Regulations.
2207. Vice-Presidential records.
2208. Claims of constitutionally based privilege against disclosure
2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts

### § 2201. DEFINITIONS

As used in this chapter—

(1) The term “documentary material” means all books, correspondence, memoranda, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio and visual records, or other electronic or mechanical recordations, whether in analog, digital, or any other form.

(2) The term “Presidential records” means documentary materials, or any reasonably segregable portion thereof, created or received by the President, the President’s immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise or assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of the President’s staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e)<sup>1</sup> of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term “personal records” means all documentary materials, or any reasonably segregable portion thereof,<sup>2</sup> of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President’s own election to the office of the Presidency; and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

<sup>1</sup> So in original. Does not conform to section catchline.

(4) The term “Archivist” means the Archivist of the United States.

(5) The term “former President”, when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

#### § 2202. OWNERSHIP OF PRESIDENTIAL RECORDS

The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

#### § 2203. MANAGEMENT AND CUSTODY OF PRESIDENTIAL RECORDS

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of the President’s constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are preserved and maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, the President’s staff, or units or individuals in the Executive Office of the President the function of which is to advise or assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During the President’s term of office, the President may dispose of those Presidential records of such President that no longer have administrative, historical, informational, or evidentiary value if—

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that the Archivist does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that the Archivist does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Com-

mittees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Oversight and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever the Archivist considers that—

(1) these particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

(f) During a President’s term of office, the Archivist may maintain and preserve Presidential records on behalf of the President, including records in digital or electronic form. The President shall remain exclusively responsible for custody, control, and access to such Presidential records. The Archivist may not disclose any such records, except under direction of the President, until the conclusion of a President’s term of office, if a President serves consecutive terms upon the conclusion of the last term, or such other period provided for under section 2204 of this title.

(g)(1) Upon the conclusion of a President’s term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this chapter.

(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) The Archivist is authorized to dispose of such Presidential records which the Archivist has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

#### § 2204. RESTRICTIONS ON ACCESS TO PRESIDENTIAL RECORDS

(a) Prior to the conclusion of a President's term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

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

(2) relating to appointments to Federal office;

(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

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

(5) confidential communications requesting or submitting advice, between the President and the President's advisers, or between such advisers; or

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

(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

(A)(i) the date on which the former President waives the restriction on disclosure of such record, or

(ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or the President's agents.

(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1); or

(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in the Archivist's discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or the Archivist's designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(c)(1) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, except that paragraph (b)(5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Administration. Access to such records shall be granted on nondiscriminatory terms.

(2) Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President.

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter, except section 2208, shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

(f) The Archivist shall not make available any original Presidential records to any individual claiming access to any Presidential record as a designated representative under section 2205(3) of this title if that individual has been convicted of a crime relating to the review, retention, removal, or destruction of records of the Archives.

#### § 2205. EXCEPTIONS TO RESTRICTED ACCESS

Notwithstanding any restrictions on access imposed pursuant to sections 2204 and 2208 of this title—

(1) the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for the conduct of current business of the incumbent President's office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former President

shall be available to such former President or the former President's designated representative.

#### § 2206. REGULATIONS

The Archivist shall promulgate in accordance with section 553 of title 5, United States Code, regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(f)(3);

(2) provisions for providing notice to the former President when materials to which access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2);

(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; and

(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b)(7) of title 5, United States Code.

#### § 2207. VICE-PRESIDENTIAL RECORDS

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter, except section 2208, with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

#### § 2208. CLAIMS OF CONSTITUTIONALLY BASED PRIVILEGE AGAINST DISCLOSURE

(a)(1) When the Archivist determines under this chapter to make available to the public any Presidential record

that has not previously been made available to the public, the Archivist shall—

(A) promptly provide notice of such determination to—

(i) the former President during whose term of office the record was created; and

(ii) the incumbent President; and

(B) make the notice available to the public.

(2) The notice under paragraph (1)—

(A) shall be in writing; and

(B) shall include such information as may be prescribed in regulations issued by the Archivist.

(3)(A) Upon the expiration of the 60-day period (excepting Saturdays, Sundays, and legal public holidays) beginning on the date the Archivist provides notice under paragraph (1)(A), the Archivist shall make available to the public the Presidential record covered by the notice, except any record (or reasonably segregable part of a record) with respect to which the Archivist receives from a former President or the incumbent President notification of a claim of constitutionally based privilege against disclosure under subsection (b).

(B) A former President or the incumbent President may extend the period under subparagraph (A) once for not more than 30 additional days (excepting Saturdays, Sundays, and legal public holidays) by filing with the Archivist a statement that such an extension is necessary to allow an adequate review of the record.

(C) Notwithstanding subparagraphs (A) and (B), if the 60-day period under subparagraph (A), or any extension of that period under subparagraph (B), would otherwise expire during the 6-month period after the incumbent President first takes office, then that 60-day period or extension, respectively, shall expire at the end of that 6-month period.

(b)(1) For purposes of this section, the decision to assert any claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) must be made personally by a former President or the incumbent President, as applicable.

(2) A former President or the incumbent President shall notify the Archivist, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate of a privilege claim under paragraph (1) on the same day that the claim is asserted under such paragraph.

(c)(1) If a claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) is asserted under subsection (b) by a former President, the Archivist shall consult with the incumbent President, as soon as practicable during the period specified in paragraph (2)(A), to determine whether the incumbent President will uphold the claim asserted by the former President.

(2)(A) Not later than the end of the 30-day period beginning on the date on which the Archivist receives notification from a former President of the assertion of a claim of constitutionally based privilege against disclosure, the Archivist shall provide notice to the former President and the public of the decision of the incumbent President under paragraph (1) regarding the claim.

(B) If the incumbent President upholds the claim of privilege asserted by the former President, the Archivist shall not make the Presidential record (or reasonably segregable part of a record) subject to the claim publicly available unless—

(i) the incumbent President withdraws the decision upholding the claim of privilege asserted by the former President; or

(ii) the Archivist is otherwise directed by a final court order that is not subject to appeal.

(C) If the incumbent President determines not to uphold the claim of privilege asserted by the former President, or fails to make the determination under paragraph (1) before the end of the period specified in subparagraph (A), the Archivist shall release the Presidential record subject to the claim at the end of the 90-day period beginning on the date on which the Archivist received notification of the claim, unless otherwise directed by a court order in an action initiated by the former President under section 2204(e) of this title or by a court order in another action in any Federal court.

(d) The Archivist shall not make publicly available a Presidential record (or reasonably segregable part of a record) that is subject to a privilege claim asserted by the incumbent President unless—

(1) the incumbent President withdraws the privilege claim; or

(2) the Archivist is otherwise directed by a final court order that is not subject to appeal.

(e) The Archivist shall adjust any otherwise applicable time period under this section as necessary to comply

with the return date of any congressional subpoena, judicial subpoena, or judicial process.

#### § 2209. DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNTS

(a) In general.—The President, the Vice President, or a covered employee may not create or send a Presidential or Vice Presidential record using a non-official electronic message account unless the President, Vice President, or covered employee—

(1) copies an official electronic messaging account of the President, Vice President, or covered employee in the original creation or transmission of the Presidential record or Vice Presidential record; or

(2) forwards a complete copy of the Presidential or Vice Presidential record to an official electronic messaging account of the President, Vice President, or covered employee not later than 20 days after the original creation or transmission of the Presidential or Vice Presidential record.

(b) Adverse actions.—The intentional violation of

subsection (a) by a covered employee (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

(c) Definitions.—In this section:

(1) Covered employee.—The term “covered employee” means—

(A) the immediate staff of the President;

(B) the immediate staff of the Vice President;

(C) a unit or individual of the Executive Office of the President whose function is to advise and assist the President; and

(D) a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President.

(2) Electronic messages.—The term “electronic messages” means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

(3) Electronic messaging account.—The term “electronic messaging account” means any account that sends electronic messages.

## NATIONAL ARCHIVES TRUST FUND BOARD

(44 U.S.C. Chapter 23)

Sec.

2301. Establishment of Board; membership.

2302. Authority of the Board; seal; services; bylaws; rules; regulations; employees.

2303. Powers and obligations of Board; liability of members.

2304. Compensation of members; availability of trust funds for expenses of Board.

2305. Acceptance of gifts.

2306. Investment of funds.

2307. Trust Fund account; disbursements; sales of publications and releases.

2308. Tax exemption for gifts.

#### § 2301. ESTABLISHMENT OF BOARD; MEMBERSHIP

The National Archives Trust Fund Board shall consist of the Archivist of the United States, as Chairman, and the Secretary of the Treasury and the Chairman of the National Endowment for the Humanities. Membership on the Board is not an office within the meaning of the statutes of the United States.

#### § 2302. AUTHORITY OF THE BOARD; SEAL; SERVICES; BYLAWS; RULES; REGULATIONS; EMPLOYEES

In carrying out the purposes of this chapter, the Board—

(1) may adopt an official seal, which shall be judicially noticed;

(2) may utilize on a reimbursable basis the services and personnel of the National Archives and Records Administration necessary (as determined by the Archivist) to assist

the Board in the administration of the trust fund, and in the preparation and publication of special works and collections of sources and preparation, duplication, editing, and release of historical photographic materials and sound recordings, and may utilize on a reimbursable basis the services and personnel of other Federal agencies for such purposes;

(3) may adopt bylaws, rules, and regulations necessary for the administration of its functions under this chapter; and

(4) may, subject to the laws and regulations governing appointments in the civil service, appoint and fix the compensation of such personnel as may be necessary to carry out its functions.

#### § 2303. POWERS AND OBLIGATIONS OF THE BOARD; LIABILITY OF MEMBERS

Except as otherwise provided by this chapter, the Board shall have all the usual powers and obligations of a trustee with respect to property and funds administered by it, but the members of the Board are not personally liable, except for malfeasance.

#### § 2304. COMPENSATION OF MEMBERS; AVAILABILITY OF TRUST FUNDS FOR EXPENSES OF THE BOARD

Compensation may not be paid to the members of the Board for their services as members. Costs incurred by the Board in carrying out its duties under this chapter, including the obligations necessarily incurred by the members of the Board in the performance of their duties and the compensation of persons employed by the Board, shall be paid by the Archivist of the United States from trust funds available to the Board for this purpose. The Board, by resolution, may authorize the transfer of funds (including the principal or interest of a gift or bequest) to the National Archives and Records Administration to be expended on an archival or records activity approved by the Board or to accomplish the purpose of a gift or bequest.

#### § 2305. ACCEPTANCE OF GIFTS

The Board may solicit and accept gifts or bequests of money, securities, or other personal property, for the benefit of or in connection with the national archival and records activities administered by the National Archives

and Records Administration. Moneys that are for deposit into the trust fund shall be deposited within 10 working days of the receipt thereof.

#### § 2306. INVESTMENT OF FUNDS

The Secretary of the Treasury shall receipt for moneys or securities composing trust funds given or bequeathed to the Board and shall invest, reinvest, and retain the moneys or securities as the Board from time to time determines. The Board may not engage in business or exercise a voting privilege which may be incidental to securities in such trust funds, nor may the Secretary of the Treasury make investments for the account of the Board which could not lawfully be made by a trust company in the District of Columbia, unless directly authorized by the instrument of gift or bequest under which the funds to be invested are derived, and may retain investments accepted by the Board.

#### § 2307. TRUST FUND ACCOUNT; DISBURSEMENTS; SALES OF PUBLICATIONS AND RELEASES

The income from trust funds held by the Board and the proceeds from the sale of securities and other personal property, as and when collected, shall be covered into the Treasury of the United States in a trust fund account to be known as the National Archives Trust Fund, subject to disbursement on the basis of certified vouchers of the Archivist of the United States (or his designee) for activities approved by the Board and in the interest of the national archival and records activities administered by the National Archives and Records Administration, including but not restricted to the preparation and publication of special works, and collections of sources and the preparation, duplication, editing, and release of historical photographic materials and sound recordings. The Archivist may sell publications and releases authorized by this section and paid for out of the income derived from trust funds at a price which will cover their cost, plus 10 percent, and moneys received from these sales shall be paid into, administered, and expended as part of the National Archives Trust Fund.

#### § 2308. TAX EXEMPTION FOR GIFTS

Gifts and bequests received by the Board under this chapter, and the income from them are exempt from taxes.

# NATIONAL HISTORICAL PUBLICATIONS *and* RECORDS COMMISSION

(44 U.S.C. Chapter 25)

Sec.

2501. Creation; composition; appointment and tenure; meetings.

2502. Vacancies.

2503. Executive director; staff; transportation expenses.

2504. Duties; authorization of grants for collection, reproduction, and publication of documentary source material.

2505. Special advisory committees; membership; reimbursement.

2506. Records to be kept by grantees.

## § 2501. CREATION; COMPOSITION; APPOINTMENT AND TENURE; MEETINGS

(a) The National Historical Publications and Records Commission shall consist of 15 members as follows:

(1) the following ex officio members:

(A) the Archivist of the United States, who shall be chairman;

(B) the Librarian of Congress (or an alternate designated by the Librarian);

(C) one Senator, appointed by the President of the Senate;

(D) one Representative, appointed by the Speaker of the House of Representatives;

(E) one member of the judicial branch of the Government, appointed by the Chief Justice of the United States;

(F) one representative of the Department of State to be appointed by the Secretary of State; and

(G) one representative of the Department of Defense to be appointed by the Secretary of Defense;

(2) one member from each of the following organizations, appointed by the governing council or board of the respective organization:

(A) the American Historical Association;

(B) the Organization of American Historians;

(C) the Society of American Archivists;

(D) the American Association for State and Local History;

(E) the Association for Documentary Editing; and

(F) the National Association for Government Archives and Records Administrators; and

(3) two other members, outstanding in the fields of the social or physical sciences, the arts, or archival or library science, appointed by the President of the United States.

(b)(1) The members appointed under subsection (a) shall be appointed for not more than 2 terms of 4 years, except that—

(A) a member appointed under subsection (a)(1)(D) shall be appointed for not more than 4 terms of 2 years; and

(B) the Archivist and the Librarian of Congress are permanent ex officio members.

(2) A member may continue to serve after the expiration of a term until a successor has been appointed, but not to exceed one year.

(c) The Commission shall meet at least annually and at call of the Chairman.

(d) Recusal.—Members of the Commission shall recuse themselves from voting on any matter that poses, or could potentially pose, a conflict of interest, including a matter that could benefit them or an entity they represent.

## § 2502. VACANCIES

A person appointed to fill a vacancy in the membership of the Commission shall be appointed only for the unexpired term of the member whom he succeeds, and his appointment shall be made in the same manner as the appointment of his predecessor.

## § 2503. EXECUTIVE DIRECTOR, STAFF, TRANSPORTATION EXPENSES

(a) The Commission may appoint, without reference to chapter 51 of title 5, an executive director. The Chairman may appoint such other employees as may be necessary to carry out the purposes of this chapter.

(b) Members of the Commission shall be allowed travel expenses (including per diem allowance in lieu of subsistence) in the same amount and to the same extent as



persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

§ 2504. DUTIES; AUTHORIZATION OF GRANTS FOR HISTORICAL PUBLICATIONS AND RECORDS PROGRAMS; AUTHORIZATION FOR APPROPRIATIONS

(a) The Commission shall make plans, estimates, and recommendations for historical works and collections of sources it considers appropriate for preserving, publishing or otherwise recording at the public expense. The Chairman of the Commission shall transmit to the President and the Congress from time to time, and at least biennially, the plans, estimates, and recommendations developed and approved by the Commission.

(b) The Commission shall cooperate with, assist and encourage appropriate Federal, State, and local agencies and nongovernmental institutions, societies, and individuals in collecting and preserving and, when it considers it desirable, in editing and publishing papers of outstanding citizens of the United States, and other documents as may be important for an understanding and appreciation of the history of the United States.

(c) The Commission may conduct institutes, training and educational programs, and recommend candidates for fellowships related to the activities of the Commission and may disseminate information about documentary sources through guides, directories, and other technical publications.

(d) The Commission may recommend the expenditure of appropriated or donated funds for the collecting, describing, preserving, compiling and publishing (including microfilming and other forms of reproduction) of documentary sources significant to the history of the United States and for the activities described in subsection (c).

(e) The Archivist of the United States may, within the limits of available appropriated and donated funds, make grants to State and local agencies and to nonprofit organizations, institutions, and individuals, for those activities in subsection (d) after considering the advice and recommendations of the Commission.

(f) Grants for Presidential Centers of Historical Excellence.—

(1) In general.—The Archivist, with the recommendation of the Commission, may make grants, on a competitive basis and in accordance with this subsection, to eligible entities to promote the historical preservation of, and

public access to, historical records and documents relating to any former President who does not have a Presidential archival depository currently managed and maintained by the Federal Government pursuant to section 2112 (commonly known as the “Presidential Libraries Act of 1955”).

(2) Eligible entity.—For purposes of this subsection, an eligible entity is—

(A) an organization described under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code; or

(B) a State or local government of the United States.

(3) Use of funds.—Amounts received by an eligible entity under paragraph (1) shall be used to promote the historical preservation of, and public access to, historical records or historical documents relating to any former President covered under paragraph (1).

(4) Prohibition on use of funds.—Amounts received by an eligible entity under paragraph (1) may not be used for the maintenance, operating costs, or construction of any facility to house the historical records or historical documents relating to any former President covered under paragraph (1).

(5) Application.—

(A) In general.—An eligible entity seeking a grant under this subsection shall submit to the Commission an application at such time, in such manner, and containing or accompanied by such information as the Commission may require, including a description of the activities for which a grant under this subsection is sought.

(B) Approval of application.—The Commission shall not consider or recommend a grant application submitted under subparagraph (A) unless an eligible entity establishes that such entity—

(i) possesses, with respect to any former President covered under paragraph (1), historical works and collections of historical sources that the Commission considers appropriate for preserving, publishing, or otherwise recording at the public expense;

(ii) has appropriate facilities and space for preservation of, and public access to, the historical works and collections of historical sources;

(iii) shall ensure preservation of, and public access to, such historical works and collections of historical sources at no charge to the public;

(iv) has educational programs that make the use of such documents part of the mission of such entity;

(v) has raised funds from non-Federal sources in support of the efforts of the entity to promote the historical preservation of, and public access to, such historical works and collections of historical sources in an amount equal to the amount of the grant the entity seeks under this subsection;

(vi) shall coordinate with any relevant Federal program or activity, including programs and activities relating to Presidential archival depositories;

(vii) shall coordinate with any relevant non-Federal program or activity, including programs and activities conducted by State and local governments and private educational historical entities; and

(viii) has a workable plan for preserving and providing public access to such historical works and collections of historical sources.

(g)(1) For the purposes specified in this section, there is hereby authorized to be appropriated to the National Historical Publications and Records Commission—

- (A) \$6,000,000 for fiscal year 1989;
- (B) \$8,000,000 for fiscal year 1990;
- (C) \$10,000,000 for each of the fiscal years 1991, 1992, and 1993;
- (D) \$6,000,000 for fiscal year 1994;
- (E) \$7,000,000 for fiscal year 1995;
- (F) \$8,000,000 for fiscal year 1996;
- (G) \$10,000,000 for fiscal year 1997;
- (H) \$10,000,000 for fiscal year 1998;
- (I) \$10,000,000 for fiscal year 1999;
- (J) \$10,000,000 for fiscal year 2000;
- (K) \$10,000,000 for fiscal year 2001;
- (L) \$10,000,000 for fiscal year 2002;
- (M) \$10,000,000 for fiscal year 2003;
- (N) \$10,000,000 for fiscal year 2004;
- (O) \$10,000,000 for fiscal year 2005;

(P) \$10,000,000 for fiscal year 2006;

(Q) \$10,000,000 for fiscal year 2007;

(R) \$10,000,000 for fiscal year 2008; and

(S) \$10,000,000 for fiscal year 2009.

(2) Amounts appropriated under this subsection shall be available until expended when so provided in appropriation Acts.

#### § 2505. SPECIAL ADVISORY COMMITTEES; MEMBERSHIP; REIMBURSEMENT

The Commission may establish special advisory committees to consult with and make recommendations to it, from among the leading historians, political scientists, archivists, librarians, and other specialists of the Nation. Members of special advisory committees shall be reimbursed for transportation and other expenses on the same basis as members of the Commission.

#### § 2506. RECORDS TO BE KEPT BY GRANTEES

(a) Each recipient of grant assistance under section 2504 of this title shall keep such records as the Archivist of the United States prescribes, including records which fully disclose the amount and disposition by the recipient of the proceeds of the grants, the total cost of the project or undertaking in connection with which funds are given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and any other records as will facilitate an effective audit.

(b) The Archivist and the Comptroller General of the United States or their authorized representatives shall have access for the purposes of audit and examination to books, documents, papers, and records of the recipients that are pertinent to the grants received under section 2504 of this title.

## ADVISORY COMMITTEE ON THE RECORDS OF CONGRESS

(44 U.S.C. Chapter 27)

Sec.

2701. Advisory Committee on the Records of Congress.

2702. Membership; chairman; meetings.

2703. Functions of the Committee.

2704. Powers of the Committee.

2705. Compensation and travel expenses.

2706. Administrative provisions.

## § 2701. ADVISORY COMMITTEE ON THE RECORDS OF CONGRESS

(a) There is established the Advisory Committee on the Records of Congress (hereafter in this chapter referred to as the Committee).

(b) The Committee shall be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), except that the Committee shall be of permanent duration, notwithstanding any provision of section 14 of the Federal Advisory Committee Act.

## § 2702. MEMBERSHIP; CHAIRMAN; MEETINGS

(a)(1) The Committee shall consist of the eleven members including—

- (A) (i) the Secretary of the Senate;
- (ii) the Clerk of the House of Representatives;
- (iii) the Archivist of the United States;
- (iv) the Historian of the Senate; and
- (v) the Historian of the House of Representatives; and

(B) six members of whom one shall be appointed by each of the following:

- (i) the Speaker of the House of Representatives;
- (ii) the Minority Leader of the House of Representatives;
- (iii) the Majority Leader of the Senate;
- (iv) the Minority Leader of the Senate;
- (v) the Secretary of the Senate; and
- (vi) the Clerk of the House of Representatives.

(2) Each member appointed under paragraph (1)(B) shall have knowledge or expertise in United States history, archival management, publishing, library science, or use of legislative records.

(b) The Secretary of the Senate shall serve as Chairman during the two-year period beginning on January 1, 1991, and the Clerk of the House of Representatives shall serve as Chairman during the two-year period beginning on January 1, 1993. Thereafter, such members shall alternate serving as Chairman for a term of two years.

(c)(1) Members of the Committee referred to in subsection (a)(1)(A) shall serve only while holding such offices. Members appointed to the Committee under subsection (a)(1)(B) shall serve for a term of two years, and may be reappointed without limitation. The initial appointments for such terms shall begin on January 1, 1991.

(2) Any vacancy on the Committee shall not affect the powers of the Committee. Any vacancy in an appoint-

ed position on the Committee shall be filled in the same manner in which the original appointment was made.

(d)(1) No later than thirty days after the date on which the first session of the 102d Congress begins, the Committee shall hold its first meeting. Thereafter, the Committee shall meet semiannually or at the call of a majority of its members.

(2) Seven members of the Committee shall constitute a quorum, but a lesser number may hold hearings.

## § 2703. FUNCTIONS OF THE COMMITTEE

The Committee shall—

(1) review the management and preservation of the records of Congress;

(2) report to and advise the Congress and the Archivist of the United States on such management and preservation; and

(3)(A) no later than December 31, 1991, conduct a study and submit a report to the Congress on—

- (i) the effect any transfer of records of the National Archives and Records Administration from facilities located in Washington, D.C., to any location outside of Washington, D.C., shall have on the management and preservation of the records of Congress; and
- (ii) the five year plan for the management and preservation of the records of Congress; and

(B) no later than December 31, 1995, conduct a study to update the report submitted under subparagraph (A) (ii), and submit a report to the Congress.

## § 2704. POWERS OF THE COMMITTEE

(a) For purposes of carrying out the duties referred to under section 2703, the Committee or, on the authorization of the Committee, any subcommittee or member thereof, may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as is appropriate.

(b) The Committee may secure directly from any department or agency of the United States such information as the Committee may require to carry out the duties referred to under section 2703. Upon request of the Chairman of the Committee, the head of such department or agency shall furnish such information to the Committee.

## § 2705. COMPENSATION AND TRAVEL EXPENSES

A member of the Committee may not be paid compensation for service performed as a member of the Committee. However, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Committee.

#### § 2706. ADMINISTRATIVE PROVISIONS

(a) Upon request of the Committee, the head of any Federal agency is authorized to detail to the Committee,

on a nonreimbursable basis, any of the personnel of such agency to assist the Committee in carrying out the duties referred to under section 2703 and such detail shall be without interruption or loss of civil service status or privilege.

(b) For purposes of supporting the Committee, the Archivist may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the minimum annual rate of basic pay payable for GS-16 of the General Schedule under section 5332 of such title.

## RECORDS MANAGEMENT BY THE ARCHIVIST OF THE UNITED STATES

(44 U.S.C. Chapter 29)

Sec.

2901. Definitions.

2901 note. Records Center Revolving Fund.

2902. Objectives of records management.

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#### § 2901. DEFINITIONS

As used in this chapter, and chapters 21, 25, 31, and 33 of this title—

(1) the term “records” has the meaning given it by section 3301 of this title;

(2) the term “records management” means the planning, controlling, directing, organizing, training, pro-

moting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations;

(3) the term “records creation” means the production or reproduction of any record;

(4) the term “records maintenance and use” means any activity involving—

(A) location of records of a Federal agency;

(B) storage, retrieval, and handling of records kept at office file locations by or for a Federal agency;

(C) processing of mail by a Federal agency; or

(D) selection and utilization of equipment and supplies associated with records and copying;

(5) the term “records disposition” means any activity with respect to—

(A) disposal of temporary records no longer necessary for the conduct of business by destruction or donation;

(B) transfer of records to Federal agency storage facilities or records centers;

(C) transfer to the National Archives of the United States of records determined to have sufficient historical or other value to warrant continued preservation; or

(D) transfer of records from one Federal agency to any other Federal agency;

(6) the term “records center” means an establishment maintained and operated by the Archivist or by another Federal agency primarily for the storage, servicing, security, and processing of records which need to be preserved for varying periods of time and need not be retained in office equipment or space;

(7) the term “records management study” means an investigation and analysis of any Federal agency records, or records management practices or programs (whether manual or automated), with a view toward rendering findings and recommendations with respect thereto;

(8) the term “inspection” means reviewing any Federal agency’s records or records management practices or programs with respect to effectiveness and compliance with records management laws and making necessary recommendations for correction or improvement of records management;

(9) the term “servicing” means making available for use information in records and other materials in the custody of the Archivist, or in a records center—

(A) by furnishing the records or other materials, or information from them, or copies or reproductions thereof, to any Federal agency for official use, or to the public; or

(B) by making and furnishing authenticated or unauthenticated copies or reproductions of the records or other materials;

(10) the term “unauthenticated copies” means exact copies or reproductions of records or other materials that are not certified as such under seal and that need not be legally accepted as evidence;

(11) the term “National Archives of the United States” means those official records which have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government, and which have been accepted by the Archivist for deposit in the Archivist’s custody;

(12) the term “Archivist” means the Archivist of the United States;

(13) the term “executive agency” shall have the meaning given such term by section 102 of title 40;

(14) the term “Federal agency” means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court,

the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol); and

(15) the term “Administrator” means the Administrator of General Services.

#### 44 U.S.C. § 2901 NOTE. RECORDS CENTER REVOLVING FUND

(a) Establishment of fund.—There is hereby established in the Treasury a revolving fund to be available for expenses (including expenses for uniforms or allowances for uniforms as authorized by subchapter I of chapter 59 of title 5 [5 U.S.C.A. § 5901 et seq.]) and equipment necessary to provide for storage and related services for all temporary and pre-archival Federal records, which are to be stored or stored at Federal National and Regional Records Centers by agencies and other instrumentalities of the Federal Government. The Fund shall be available without fiscal year limitation for expenses necessary for operation of these activities.

(b) Start-up capital.—

(1) There is appropriated \$22,000,000 as initial capitalization of the Fund.

(2) In addition, the initial capital of the Fund shall include the fair and reasonable value at the Fund’s inception of the inventories, equipment, receivables, and other assets, less the liabilities, transferred to the Fund. The Archivist of the United States is authorized to accept inventories, equipment, receivables and other assets from other Federal entities that were used to provide for storage and related services for temporary and pre-archival Federal records.

(c) User charges.—The Fund shall be credited with user charges received from other Federal Government accounts as payment for providing personnel, storage, materials, supplies, equipment, and services as authorized by subsection (a). Such payments may be made in advance or by way of reimbursement. The rates charged will return in full the expenses of operation, including reserves for accrued annual leave, worker’s compensation, depreciation of capitalized equipment and shelving, and amortization of information technology software and systems.

(d) Funds returned to miscellaneous receipts of the Department of the Treasury.—

(1) In addition to funds appropriated to and assets transferred to the Fund in subsection (b), an amount

not to exceed 4 percent of the total annual income may be retained in the Fund as an operating reserve or for the replacement or acquisition of capital equipment, including shelving, and the improvement and implementation of the financial management, information technology, and other support systems of the National Archives and Records Administration.

(2) Funds in excess of the 4 percent at the close of each fiscal year shall be returned to the Treasury of the United States as miscellaneous receipts.

(e) Reporting requirement.—The National Archives and Records Administration shall provide quarterly reports to the Committees on Appropriations and Governmental Affairs of the Senate, and the Committees on Appropriations and Government Reform of the House of Representatives on the operation of the Records Center Revolving Fund.

Federal Records Management Provisions Without Effect on Authorities and Responsibilities of Administrator of General Services, Joint Committee, or Government Publishing Office

Section 5 of Pub.L. 94-575, as amended Pub.L. 113-235, Div. H, Title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537, provided that:

“(a) The provisions of this Act [see Short Title of 1976 Amendment note set out under section 101 of this title] relating to the authority of the Administrator of General Services do not limit or repeal additional authorities provided by statute or otherwise recognized by law.

“(b) The provisions of this Act [see Short Title of 1976 Amendment note set out under section 101 of this title] do not limit or repeal the authority or responsibilities of the Joint Committee on Printing or the Government Publishing Office under chapters 1 through 19 of title 44, United States Code [chapters 1 through 19 of this title].”

## § 2902. OBJECTIVES OF RECORDS MANAGEMENT

It is the purpose of this chapter, and chapters 21, 31, and 33 of this title, to require the establishment of standards and procedures to assure efficient and effective records management. Such records management standards and procedures shall seek to implement the following goals:

(1) Accurate and complete documentation of the policies and transactions of the Federal Government.

(2) Control of the quantity and quality of records produced by the Federal Government.

(3) Establishment and maintenance of mechanisms of control with respect to records creation in order to prevent the creation of unnecessary records and with respect to the effective and economical operations of an agency.

(4) Simplification of the activities, systems, and processes of records creation, maintenance, transfer, and use.

(5) Judicious preservation and disposal of records.

(6) Direction of continuing attention on records from their initial creation to their final disposition, with particular emphasis on the prevention of unnecessary Federal paperwork and the transfer of records from Federal agencies to the National Archives of the United States in digital or electronic form to the greatest extent possible.

(7) Establishment and maintenance of such other systems or techniques as the Archivist considers necessary to carry out the purposes of this chapter, and chapters 21, 31, and 33 of this title.

## § 2903. CUSTODY AND CONTROL OF PROPERTY

(a) The Archivist shall have immediate custody and control of the National Archives Building and its contents, and may design, construct, purchase, lease, maintain, operate, protect, and improve buildings used by him for the storage of records of Federal agencies in the District of Columbia and elsewhere.

(b) When the Archivist considers it to be in the public interest, the Archivist may charge and collect reasonable fees from the public for the occasional, non-official use of rooms and spaces, and services related to such use, in the buildings subject to this section. Fees collected under this subsection shall be paid into an account in the National Archives Trust Fund and shall be held, administered, and expended for the benefit and in the interest of the national archival and records activities administered by the National Archives and Records Administration, including educational and public program purposes.

## § 2904. GENERAL RESPONSIBILITIES FOR RECORDS MANAGEMENT

(a) The Archivist shall provide guidance and assistance to Federal agencies with respect to ensuring adequate and

proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition.

(b) The Archivist shall provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies.

(c) In carrying out the responsibilities under subsections (a) and (b), the Archivist shall have the responsibility—

(1) to promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies;

(2) to conduct research with respect to the improvement of records management practices and programs;

(3) to collect and disseminate information on training programs, technological developments, and other activities relating to records management;

(4) to establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies with respect to records management;

(5) to direct the continuing attention of Federal agencies and the Congress on the need for adequate policies governing records management;

(6) to conduct records management studies and, in the Archivist's discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management;

(7) to conduct inspections or surveys of the records and the records management programs and practices within and between Federal agencies;

(8) to report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget in January of each year and at such other times as the Archivist deems desirable—

(A) on the results of activities conducted pursuant to paragraphs (1) through (7) of this section,

(B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (6) and (7) of this section, and

(C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations.

(d) The Archivist shall promulgate regulations re-

quiring all Federal agencies to transfer all digital or electronic records to the National Archives of the United States in digital or electronic form to the greatest extent possible.

#### § 2905. ESTABLISHMENT OF STANDARDS FOR SELECTIVE RETENTION OF RECORDS; SECURITY MEASURES

(a) The Archivist shall establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying the standards to records in their custody. The Archivist shall notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that shall come to the Archivist's attention, and assist the head of the agency in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law. In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

(b) The Archivist shall assist the Administrator for the Office of Information and Regulatory Affairs in conducting studies and developing standards relating to record retention requirements imposed on the public and on State and local governments by Federal agencies.

#### § 2906. INSPECTION OF AGENCY RECORDS

(a)(1) In carrying out the duties and responsibilities under this chapter, the Archivist (or the the <sup>1</sup> Archivist's designee) may inspect the records or the records management practices and programs of any Federal agency for the purpose of rendering recommendations for the improvement of records management practices and programs and for determining whether the records of Federal agencies have sufficient value to warrant continued preservation or lack sufficient value to justify continued preservation. Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.

(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Archivist, subject to the approval of the head of the agency concerned or of the President.

(3) If the Archivist (or the Archivist's designee) inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be—

(A) maintained by the Archivist or such designee as a record contained in a system of records; or

(B) deemed to be a record contained in a system of records for purposes of subsections (b), (c), and (i) of section 552a of title 5.

(b) In conducting the inspection of agency records provided for in subsection (a) of this section, the Archivist (or the Archivist's designee) shall, in addition to complying with the provisions of law cited in subsection (a)(3), comply with all other Federal laws and be subject to the sanctions provided therein.

#### § 2907. RECORDS CENTERS AND CENTRALIZED MICROFILMING SERVICES

The Archivist may establish, maintain, and operate records centers and centralized microfilming or digitization services for Federal agencies.

#### § 2908. REGULATIONS

Subject to applicable law, the Archivist shall promulgate regulations governing the transfer of records from the custody of one executive agency to that of another.

#### § 2909. RETENTION OF RECORDS

The Archivist may empower a Federal agency, to retain records for a longer period than that specified in disposal schedules; and may withdraw disposal authorizations covering records listed in disposal schedules. The Archivist shall promulgate regulations in accordance with section 2104(a) of this title to implement this section.

#### § 2910. PRESERVATION OF FREEDMEN'S BUREAU RECORDS

The Archivist shall preserve the records of the Bureau of Refugees, Freedmen, and Abandoned Lands, commonly referred to as the "Freedmen's Bureau", by using—

(1) microfilm technology for preservation of the documents comprising these records so that they can be maintained for future generations; and

(2) the results of the pilot project with the University of Florida to create future partnerships with Howard University and other institutions for the purposes of indexing these records and making them more easily accessible to the public, including historians, genealogists, and students, and for any other purposes determined by the Archivist.

#### § 2911. DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNTS

(a) In general.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

(b) Adverse actions.—The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

(c) Definitions.—In this section:

(1) Electronic messages.—The term "electronic messages" means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

(2) Electronic messaging account.—The term "electronic messaging account" means any account that sends electronic messages.

(3) Executive agency.—The term "executive agency" has the meaning given that term in section 105 of title 5.



# RECORDS MANAGEMENT BY FEDERAL AGENCIES

(44 U.S.C. Chapter 31)

Sec.

3101. Records management by agency heads; general duties.

3102. Establishment of program of management.

3103. Transfer of records to records centers.

3104. Certifications and determinations on transferred records.

3105. Safeguards.

3106. Unlawful removal, destruction of records.

3107. Authority of Comptroller General.

## § 3101. RECORDS MANAGEMENT BY AGENCY HEADS; GENERAL DUTIES

The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

## § 3102. ESTABLISHMENT OF PROGRAM OF MANAGEMENT

The head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for

(1) effective controls over the creation and over the maintenance and use of records in the conduct of current business;

(2) cooperation with the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value; and

(3) compliance with sections 2101–2117, 2501–2507, 2901–2909, and 3101–3107, of this title and the regulations issued under them.

## § 3103. TRANSFER OF RECORDS TO RECORDS CENTERS

When the head of a Federal agency determines that such

action may affect substantial economies or increased operating efficiency, the head of such agency shall provide for the transfer of records to a records center maintained and operated by the Archivist, or, when approved by the Archivist, to a center maintained and operated by the head of the Federal agency.

## § 3104. CERTIFICATIONS AND DETERMINATIONS ON TRANSFERRED RECORDS

An official of the Government who is authorized to certify to facts on the basis of records in such official's custody, may certify to facts on the basis of records that have been transferred by such official or such official's predecessors to the Archivist, and may authorize the Archivist to certify to facts and to make administrative determinations on the basis of records transferred to the Archivist, notwithstanding any other law.

## § 3105. SAFEGUARDS

The head of each Federal agency shall establish safeguards against the removal or loss of records the head of such agency determines to be necessary and required by regulations of the Archivist. Safeguards shall include making it known to officials and employees of the agency—

(1) that records in the custody of the agency are not to be alienated or destroyed except in accordance with sections 3301–3314 of this title, and

(2) the penalties provided by law for the unlawful removal or destruction of records.

## § 3106. UNLAWFUL REMOVAL, DESTRUCTION OF RECORDS

(a) Federal Agency Notification.—The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have

been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

(b) Archivist Notification.—In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

## § 3107. AUTHORITY OF COMPTROLLER GENERAL

Chapters 21, 25, 27,<sup>1</sup> 29, and 31 of this title do not limit the authority of the Comptroller General of the United States with respect to prescribing accounting systems, forms, and procedures, or lessen the responsibility of collecting and disbursing officers for rendition of their accounts for settlement by the Government Accountability Office.

### REFERENCES IN TEXT

<sup>1</sup> Chapter 27 of this title, referred to in text, was repealed by Pub. L. 95–378, §2(a), Sept. 22, 1978, 92 Stat. 723 .

# DISPOSAL OF RECORDS

(44 U.S.C. Chapter 33)

Sec.

- 3301. Definition of records.
- 3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction.
- 3303. Lists and schedules of records to be submitted to Archivist by head of each Government agency.
- 3303a. Examination by Archivist of lists and schedules of records lacking preservation value; disposal of records.
- 3308. Disposal of similar records where prior disposal was authorized.
- 3309. Preservation of claims of Government until settled in General Accounting Office; disposal authorized upon written approval of Comptroller General.
- 3310. Disposal of records constituting menace to health, life, or property.
- 3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent; written report to Archivist.
- 3312. Photographs or microphotographs of records considered as originals; certified reproductions admissible in evidence.
- 3313. Moneys from sale of records payable into the Treasury.
- 3314. Procedures for disposal of records exclusive.

## § 3301. DEFINITION OF RECORDS

(a) Records Defined.—

(1) In general.—As used in this chapter, the term “records” —

(A) includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them; and

(B) does not include—

- (i) library and museum material made or acquired and preserved solely for reference or exhibition purposes; or
- (ii) duplicate copies of records preserved only for convenience.

(2) Recorded information defined.—For purposes of paragraph (1), the term “recorded information” includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

(b) Determination of Definition.—The Archivist’s determination whether recorded information, regardless of whether it exists in physical, digital, or electronic form, is

a record as defined in subsection (a) shall be binding on all Federal agencies.

### § 3302. REGULATIONS COVERING LISTS OF RECORDS FOR DISPOSAL, PROCEDURE FOR DISPOSAL, AND STANDARDS FOR REPRODUCTION

The Archivist shall promulgate regulations, not inconsistent with this chapter, establishing—

- (1) procedures for the compiling and submitting to the Archivist of lists and schedules of records proposed for disposal,
- (2) procedures for the disposal of records authorized for disposal, and
- (3) standards for the reproduction of records by photographic, microphotographic, or digital processes with a view to the disposal of the original records.

### § 3303. LISTS AND SCHEDULES OF RECORDS TO BE SUBMITTED TO THE ARCHIVIST BY HEAD OF EACH GOVERNMENT AGENCY

The head of each agency of the United States Government shall submit to the Archivist, under regulations promulgated as provided by section 3302 of this title—

- (1) lists of any records in the custody of the agency that have been photographed, microphotographed, or digitized under the regulations and that, as a consequence, do not appear to have sufficient value to warrant their further preservation by the Government;
- (2) lists of other records in the custody of the agency not needed by it in the transaction of its current business and that do not appear to have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government; and
- (3) schedules proposing the disposal after the lapse of specified periods of time of records of a specified form or character that either have accumulated in the custody of the agency or may accumulate after the submission of the schedules and apparently will not after the lapse of the period specified have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government.

### § 3303A. EXAMINATION BY ARCHIVIST OF LISTS AND SCHEDULES OF RECORDS

### LACKING PRESERVATION VALUE; DISPOSAL OF RECORDS

(a) The Archivist shall examine the lists and schedules submitted to the Archivist under section 3303 of this title. If the Archivist determines that any of the records listed in a list or schedule submitted to the Archivist do not, or will not after the lapse of the period specified, have sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government, the Archivist may, after publication of notice in the Federal Register and an opportunity for interested persons to submit comment thereon—

- (1) notify the agency to that effect; and
- (2) empower the agency to dispose of those records in accordance with regulations promulgated under section 3302 of this title.

(b) Authorizations granted under lists and schedules submitted to the Archivist under section 3303 of this title, and schedules promulgated by the Archivist under subsection (d) of this section, shall be mandatory, subject to section 2909 of this title. As between an authorization granted under lists and schedules submitted to the Archivist under section 3303 of this title and an authorization contained in a schedule promulgated under subsection (d) of this section, application of the authorization providing for the shorter retention period shall be required, subject to section 2909 of this title.

(c) The Archivist may request advice and counsel from the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate with respect to the disposal of any particular records under this chapter whenever the Archivist considers that—

- (1) those particular records may be of special interest to the Congress; or
- (2) consultation with the Congress regarding the disposal of those particular records is in the public interest.

However, this subsection does not require the Archivist to request such advice and counsel as a regular procedure in the general disposal of records under this chapter.

(d) The Archivist shall promulgate schedules authorizing the disposal, after the lapse of specified periods of time, of records of a specified form or character common to several or all agencies if such records will not, at

the end of the periods specified, have sufficient administrative, legal, research, or other value to warrant their further preservation by the United States Government.

(e) The Archivist may approve and effect the disposal of records that are in the Archivist's legal custody, provided that records that had been in the custody of another existing agency may not be disposed of without the written consent of the head of the agency.

(f) The Archivist shall make an annual report to the Congress concerning the disposal of records under this chapter, including general descriptions of the types of records disposed of and such other information as the Archivist considers appropriate to keep the Congress fully informed regarding the disposal of records under this chapter.

#### § 3308. DISPOSAL OF SIMILAR RECORDS

##### WHERE PRIOR DISPOSAL WAS AUTHORIZED

When it appears to the Archivist that an agency has in its custody, or is accumulating, records of the same form or character as those of the same agency previously authorized to be disposed of, he may empower the head of the agency to dispose of the records, after they have been in existence a specified period of time, in accordance with regulations promulgated under section 3302 of this title and without listing or scheduling them.

#### § 3309. PRESERVATION OF CLAIMS OF GOVERNMENT UNTIL SETTLED IN GOVERNMENT ACCOUNTABILITY OFFICE; DISPOSAL AUTHORIZED UPON WRITTEN APPROVAL OF COMPTROLLER GENERAL

Records pertaining to claims and demands by or against the Government of the United States or to accounts in which the Government of the United States is concerned, either as debtor or creditor, may not be disposed of by the head of an agency under authorization granted under this chapter, until the claims, demands, and accounts have been settled and adjusted in the Government Accountability Office, except upon the written approval of the Comptroller General of the United States.

#### § 3310. DISPOSAL OF RECORDS CONSTITUTING MENACE TO HEALTH, LIFE, OR PROPERTY

When the Archivist and the head of the agency that has custody of them jointly determine that records in the custody of an agency of the United States Government are a continuing menace to human health or life or to property, the Archivist shall eliminate the menace immediately by any method he considers necessary. When records in the custody of the Archivist are disposed of under this section, the Archivist shall report their disposal to the agency from which they were transferred.

#### § 3311. DESTRUCTION OF RECORDS OUTSIDE CONTINENTAL UNITED STATES IN TIME OF WAR OR WHEN HOSTILE ACTION SEEMS IMMINENT; WRITTEN REPORT TO ARCHIVIST

During a state of war between the United States and another nation, or when hostile action by a foreign power appears imminent, the head of an agency of the United States Government may authorize the destruction of records in his legal custody situated in a military or naval establishment, ship, or other depository outside the territorial limits of continental United States—

- (1) the retention of which would be prejudicial to the interests of the United States or
- (2) which occupy space urgently needed for military purposes and are, in his opinion, without sufficient administrative, legal, research, or other value to warrant their continued preservation.

Within six months after their disposal, the official who directed the disposal shall submit a written report to the Archivist in which he shall describe the character of the records and state when and where he disposed of them.

#### § 3312. PHOTOGRAPHS OR MICROPHOTOGRAPHS OF RECORDS CONSIDERED AS ORIGINALS; CERTIFIED REPRODUCTIONS ADMISSIBLE IN EVIDENCE

Photographs, microphotographs of records, or digitized records made in compliance with regulations under section 3302 of this title shall have the same effect as the originals and shall be treated as originals for the purpose of their admissibility in evidence. Certified or authenticated reproductions of the photographs, microphotographs, or digitized records shall be admitted in evidence equally with the original photographs, microphotographs, or digitized records.

§ 3313. MONEYS FROM SALE OF RECORDS  
PAYABLE INTO THE TREASURY

Money derived by agencies of the Government from the sale of records disposed of under this chapter shall be paid into the Treasury of the United States unless otherwise required by law.

§ 3314. PROCEDURES FOR DISPOSAL OF  
RECORDS EXCLUSIVE

The procedures prescribed by this chapter are exclusive, and records of the United States Government may not be alienated or destroyed except under this chapter.

## COORDINATION OF FEDERAL INFORMATION POLICY

(44 U.S.C. Chapter 35)

Sec.

3501 note E-Government Act of 2002

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3504. Authority and functions of Director.

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3515. Administrative Powers.

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§ 3501 NOTE E-GOVERNMENT ACT OF 2002  
SEC. 207. ACCESSIBILITY, USABILITY,  
AND PRESERVATION OF GOVERNMENT  
INFORMATION.

(a) Purpose.—The purpose of this section [of this note] is to improve the methods by which Government information, including information on the Internet, is organized, preserved, and made accessible to the public.

(b) Definitions.—In this section [of this note], the term—

(1) ‘Committee’ means the Interagency Committee on Government Information established under subsection (c); and

(2) “directory” means a taxonomy of subjects linked to websites that—

(A) organizes Government information on the Internet according to subject matter; and

(B) may be created with the participation of human editors.

(c) Interagency committee.—

(1) Establishment.—Not later than 180 days after the date of enactment of this title [Dec. 17, 2002], the

Director shall establish the Interagency Committee on Government Information.

(2) Membership.—The Committee shall be chaired by the Director or the designee of the Director and

(A) Shall include representatives from—

(i) the National Archives and Records Administration;

(ii) the offices of the Chief Information Officers from Federal agencies; and

(iii) other relevant officers from the executive branch; and

(B) may include representatives from the Federal legislative and judicial branches.

(3) Functions.—The Committee shall—

(A) engage in public consultation to the maximum extent feasible, including consultation with interested communities such as public advocacy organizations;

(B) conduct studies and submit recommendations, as provided under this section [of this note], to the Director and Congress; and

(C) share effective practices for access to, dissemination of, and retention of Federal information.

(4) Termination.—The Committee may be terminated on a date determined by the Director, except the Committee may not terminate before the Committee submits all recommendations required under this section [of this note].

(d) Categorizing of information.—

(1) Committee functions.—Not later than 2 years after the date of enactment of this Act [Dec. 17, 2002], the Committee shall submit recommendations to the Director on—

(A) The adoption of standards, which are open to the maximum extent feasible, to enable the organization and

categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers; and

(ii) in ways that are interoperable across agencies;

(B) the definition of categories of Government information which should be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(2) Functions of the director.—Not later than 1 year after the submission of recommendations under paragraph (1), the Director shall issue policies—

(A) Requiring that agencies use standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers;

(ii) in ways that are interoperable across agencies; and

(iii) that are, as appropriate, consistent with the provisions under section 3602(f)(8) of title 44, United States Code;

(B) defining categories of Government information which shall be required to be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(3) Modification of policies.—After the submission of agency reports under paragraph (4), the Director shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) Agency functions.—Each agency shall report annually to the Director, in the report established under section 202(g) [of this note], on compliance of that agency with the policies issued under paragraph (2)(A).

(e) Public access to electronic information.—

(1) Committee functions.—Not later than 2 years after the date of enactment of this Act [Dec. 17, 2002], the Committee shall submit recommendations to the Director and the Archivist of the United States on—

(A) the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code [44 U.S.C.A. §§ 2101 et seq., 2501 et seq., 2701 et seq., 2901 et seq., and 3101 et seq.], are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) the imposition of timetables for the implementation of the policies and procedures by agencies.

(2) Functions of the archivist.—Not later than 1 year after the submission of recommendations by the Committee under paragraph (1), the Archivist of the United States shall issue policies—

(A) requiring the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code [44 U.S.C.A. §§ 2101 et seq., 2501 et seq., 2701 et seq., 2901 et seq., and 3101 et seq.], are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) imposing timetables for the implementation of the policies, procedures, and technologies by agencies.

(3) Modification of policies.—After the submission of agency reports under paragraph (4), the Archivist of the United States shall modify the policies, as needed, in consultation with the Committee and interested parties.

(4) Agency functions.—Each agency shall report annually to the Director, in the report established under section 202(g) [of this note], on compliance of that agency with the policies issued under paragraph (2)(A).

(f) Agency websites.—

(1) Standards for agency websites.—Not later than 2 years after the effective date of this title [Pub.L. 107-347, Title II, §§ 201 to 216, Dec. 17, 2002, 116 Stat. 2910; see Tables for complete classification], the Director shall promulgate guidance for agency websites that includes—

(A) Requirements that websites include direct links to—

(i) descriptions of the mission and statutory authority of the agency;

(ii) information made available to the public under subsections (a)(1) and (b) of section 552 of title 5, United States Code (commonly referred to as the ‘Freedom of Information Act’);

(iii) information about the organizational structure of the agency; and

(iv) the strategic plan of the agency developed under section 306 of title 5, United States Code; and

(B) Minimum agency goals to assist public users to navigate agency websites, including—

(i) speed of retrieval of search results;

(ii) the relevance of the results;

(iii) tools to aggregate and disaggregate data; and

(iv) security protocols to protect information.

(2) Agency requirements.—

(A) Not later than 2 years after the date of enactment of this Act [Dec. 17, 2002], each agency shall—

- (i) consult with the Committee and solicit public comment;
- (ii) establish a process for determining which Government information the agency intends to make available and accessible to the public on the Internet and by other means;
- (iii) develop priorities and schedules for making Government information available and accessible;
- (iv) make such final determinations, priorities, and schedules available for public comment;
- (v) post such final determinations, priorities, and schedules on the Internet; and
- (vi) submit such final determinations, priorities, and schedules to the Director, in the report established under section 202(g) [of this note].

(B) Each agency shall update determinations, priorities, and schedules of the agency, as needed, after consulting with the Committee and soliciting public comment, if appropriate.

(3) Public domain directory of public Federal Government websites.—

(A) Establishment.—Not later than 2 years after the effective date of this title [Pub.L. 107-347, Title II, §§ 201 to 216, Dec. 17, 2002, 116 Stat. 2910; see Tables for complete classification], the Director and each agency shall—

- (i) develop and establish a public domain directory of public Federal Government websites; and
- (ii) post the directory on the Internet with a link to the integrated Internet-based system established under section 204 [of this note].

(B) Development.—With the assistance of each agency, the Director shall—

(i) Direct the development of the directory through a collaborative effort, including input from—

- (I) agency librarians;
- (II) information technology managers;
- (III) program managers;
- (IV) records managers;
- (V) Federal depository librarians; and
- (VI) other interested parties; and

(ii) develop a public domain taxonomy of subjects used to review and categorize public Federal Government websites.

(C) Update.—With the assistance of each agency, the Administrator of the Office of Electronic Government shall—

- (i) update the directory as necessary, but not less than every 6 months; and
- (ii) solicit interested persons for improvements to the directory.

(g) Access to Federally funded research and development.—

(1) Development and maintenance of Governmentwide repository and website.—

(A) Repository and website.—The Director of the Office of Management and Budget (or the Director's delegate), in consultation with the Director of the Office of Science and Technology Policy and other relevant agencies, shall ensure the development and maintenance of—

(i) A repository that fully integrates, to the maximum extent feasible, information about research and development funded by the Federal Government, and the repository shall—

(I) Include information about research and development funded by the Federal Government, consistent with any relevant protections for the information under section 552 of title 5, United States code, and performed by—

(aa) institutions not a part of the Federal Government, including State, local, and foreign governments; industrial firms; educational institutions; not-for-profit organizations; federally funded research and development centers; and private individuals; and

(bb) entities of the Federal Government, including research and development laboratories, centers, and offices; and

(II) Integrate information about each separate research and development task or award, including—

(aa) the dates upon which the task or award is expected to start and end;

(bb) a brief summary describing the objective and the scientific and technical focus of the task or award;

(cc) the entity or institution performing the task or award and its contact information;

(dd) the total amount of Federal funds expected to be provided to the task or award over its lifetime and the amount of funds expected to be provided in each fiscal year in which the work of the task or award is ongoing;

(ee) any restrictions attached to the task or award that

would prevent the sharing with the general public of any or all of the information required by this subsection, and the reasons for such restrictions; and

(ff) such other information as may be determined to be appropriate; and

(ii) 1 or more websites upon which all or part of the repository of Federal research and development shall be made available to and searchable by Federal agencies and non-Federal entities, including the general public, to facilitate—

(I) the coordination of Federal research and development activities;

(II) collaboration among those conducting Federal research and development;

(III) the transfer of technology among Federal agencies and between Federal agencies and non-Federal entities; and

(IV) access by policymakers and the public to information concerning Federal research and development activities.

(B) Oversight.—The Director of the Office of Management and Budget shall issue any guidance determined necessary to ensure that agencies provide all information requested under this subsection.

(2) Agency functions.—Any agency that funds Federal research and development under this subsection shall provide the information required to populate the repository in the manner prescribed by the Director of the Office of Management and Budget.

(3) Committee functions.—Not later than 18 months after the date of enactment of this Act [Dec. 17, 2002], working with the Director of the Office of Science and Technology Policy, and after consultation with interested parties, the Committee shall submit recommendations to the Director on—

(A) policies to improve agency reporting of information for the repository established under this subsection; and

(B) policies to improve dissemination of the results of research performed by Federal agencies and federally funded research and development centers.

(4) Functions of the director.—After submission of recommendations by the Committee under paragraph (3), the Director shall report on the recommendations of the Committee and Director to Congress, in the E-Government report under section 3606 of title 44 (as added by this Act) [44 U.S.C.A. § 3606].

(5) Authorization of appropriations.—There are

authorized to be appropriated for the development, maintenance, and operation of the Governmentwide repository and website under this subsection—

(A) \$2,000,000 in each of the fiscal years 2003 through 2005; and

(B) such sums as are necessary in each of the fiscal years 2006 and 2007.

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#### § 3504. AUTHORITY AND FUNCTIONS OF DIRECTOR

(a)(1) The Director [of OMB] shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including burden reduction and service delivery to the public. In performing such oversight, the Director shall—

(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

(B) provide direction and oversee—

(i) the review and approval of the collection of information and the reduction of the information collection burden;

(ii) agency dissemination of and public access to information;

(iii) statistical activities;

(iv) records management activities;

(v) privacy, confidentiality, security, disclosure, and sharing of information; and

(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.

(2) The authority of the Director under this chapter shall be exercised consistent with applicable law.

(b) With respect to general information resources management policy, the Director shall—

(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

(2) foster greater sharing, dissemination, and access to public information, including through—



- (A) the use of the Government Information Locator Service; and
- (B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;
- (3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;
- (4) oversee the development and implementation of best practices in information resources management, including training; and
- (5) oversee agency integration of program and management functions with information resources management functions.
- (c) With respect to the collection of information and the control of paperwork, the Director shall—
  - (1) review and approve proposed agency collections of information;
  - (2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition and payment, and to reduce information collection burdens on the public;
  - (3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;
  - (4) maximize the practical utility of and public benefit from information collected by or for the Federal Government; and
  - (5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information.
  - (6) publish in the Federal Register and make available on the Internet (in consultation with the Small Business Administration) on an annual basis a list of the compliance assistance resources available to small businesses, with the first such publication occurring not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002.
- (d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—

- (1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and
- (2) promote public access to public information and fulfill the purposes of this chapter, including through the effective use of information technology.
- (e) With respect to statistical policy and coordination, the Director shall—
  - (1) coordinate the activities of the Federal statistical system to ensure—
    - (A) the efficiency and effectiveness of the system; and
    - (B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;
  - (2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;
  - (3) develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning—
    - (A) statistical collection procedures and methods;
    - (B) statistical data classification;
    - (C) statistical information presentation and dissemination;
    - (D) timely release of statistical data; and
    - (E) such statistical data sources as may be required for the administration of Federal programs;
  - (4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;
  - (5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;
  - (6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;
  - (7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;
  - (8) carrying out the functions under this subsection that shall—
    - (A) be headed by the chief statistician; and
    - (B) consist of—
      - (i) the heads of the major statistical

- programs; and
- (ii) representatives of other statistical agencies under rotating membership; and
- (9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—
  - (A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and
  - (B) all costs of the training shall be paid by the agency requesting training.
  - (f) With respect to records management, the Director shall—
    - (1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this subchapter;
    - (2) review compliance by agencies with—
      - (A) the requirements of chapters 29, 31, and 33 of this title; and
      - (B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and
    - (3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.
  - (g) With respect to privacy and security, the Director shall—
    - (1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies; and
    - (2) oversee and coordinate compliance with sections 552 and 552a of title 5, sections 20 and 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3 and 278g-4), section 11331 of title 40 and subchapter II of this title, and related information management laws.
  - (h) With respect to Federal information technology, the Director shall—
    - (1) in consultation with the Director of the National

Institute of Standards and Technology and the Administrator of General Services—

- (A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and
- (B) oversee the development and implementation of standards under section 11331 of title 40;
- (2) monitor the effectiveness of, and compliance with, directives issued under subtitle III of title 40 and directives issued under section 322 of title 40;
- (3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;
- (4) ensure, through the review of agency budget proposals, information resources management plans and other means—
  - (A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and
  - (B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and
- (5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

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#### § 3511. ESTABLISHMENT AND OPERATION OF GOVERNMENT INFORMATION LOCATOR SERVICE

- (a) In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—
  - (1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the “Service”), which shall identify the major information systems, holdings, and dissemination products of each agency;

- (2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;
- (3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Director of the Government Publishing Office, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;
- (4) consider public access and other user needs in the establishment and operation of the Service;
- (5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and
- (6) periodically review the development and effectiveness

of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 U.S.C. 431 et seq.).

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### § 3515. ADMINISTRATIVE POWERS

Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this subchapter.

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## MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

(44 U.S.C. Chapter 36)

Sec.

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3603. Chief Information Officers Council

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### § 3603. CHIEF INFORMATION OFFICERS COUNCIL

(a) There is established in the executive branch a Chief Information Officers Council.

(b) The members of the Council shall be as follows:

(1) The Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council.

(2) The Administrator of the Office of Electronic Government.

(3) The Administrator of the Office of Information and Regulatory Affairs.

(4) The chief information officer of each agency described under section 901(b) of title 31.

(5) The chief information officer of the Central Intelligence Agency.

(6) The chief information officer of the Department of the Army, the Department of the Navy, and the Department of the Air Force, if chief information officers have been designated for such departments under section 3506(a)(2)(B).

(7) Any other officer or employee of the United States designated by the chairperson.

(c)(1) The Administrator of the Office of Electronic Government shall lead the activities of the Council on behalf of the Deputy Director for Management.

(2)(A) The Vice Chairman of the Council shall be selected by the Council from among its members.

(B) The Vice Chairman shall serve a 1-year term, and may serve multiple terms.

(3) The Administrator of General Services shall provide administrative and other support for the Council.

(d) The Council is designated the principal interagency forum for improving agency practices related to the design, acquisition, development, modernization, use, operation, sharing, and performance of Federal Government information resources.

(e) In performing its duties, the Council shall consult regularly with representatives of State, local, and tribal governments.

(f) The Council shall perform functions that include the following:

(1) Develop recommendations for the Director on Government information resources management policies and requirements.

(2) Share experiences, ideas, best practices, and innovative approaches related to information resources management.

(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Government performance through the use of information technology.

(4) Promote the development and use of common performance measures for agency information resources management under this chapter and title II of the E-Government Act of 2002.

(5) Work as appropriate with the National Institute of Standards and Technology and the Administrator to develop recommendations on information technology standards developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3) and promulgated under section 11331 of title 40, and maximize the use of commercial standards as appropriate, including the following:

(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

(B) Consistent with the process under section 207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

(C) Standards and guidelines for Federal Government computer system efficiency and security.

(6) Work with the Office of Personnel Management to assess and address the hiring, training, classification, and professional development needs of the Government related to information resources management.

(7) Work with the Archivist of the United States to assess how the Federal Records Act can be addressed effectively by Federal information resources management activities.

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## ATOMIC ENERGY DEFENSE PROVISIONS

(50 U.S.C. §§ 2672, 2673)

### § 2672. PROTECTION AGAINST INADVERTENT RELEASE OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA

(a) Plan for protection against release

The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a plan to prevent the inadvertent

release of records containing Restricted Data or Formerly Restricted Data during the automatic declassification of records under Executive Order No. 13526 (50 U.S.C. 3161 note).

(b) Plan elements

The plan under subsection (a) shall include the following:

(1) The actions to be taken in order to ensure that records subject to Executive Order No. 13526 are reviewed on a page-by-page basis for Restricted Data and Formerly

Restricted Data unless they have been determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(2) The criteria and process by which documents are determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(3) The actions to be taken in order to ensure proper training, supervision, and evaluation of personnel engaged in declassification under that Executive order so that such personnel recognize Restricted Data and Formerly Restricted Data.

(4) The extent to which automated declassification technologies will be used under that Executive order to protect Restricted Data and Formerly Restricted Data from inadvertent release.

(5) Procedures for periodic review and evaluation by the Secretary of Energy, in consultation with the Director of the Information Security Oversight Office of the National Archives and Records Administration, of compliance by Federal agencies with the plan.

(6) Procedures for resolving disagreements among Federal agencies regarding declassification procedures and decisions under the plan.

(7) The funding, personnel, and other resources required to carry out the plan.

(8) A timetable for implementation of the plan.

(c) Limitation on declassification of certain records

(1) Effective on October 17, 1998, and except as provided in paragraph (3), a record referred to in subsection (a) may not be declassified unless the agency having custody of the record reviews the record on a page-by-page basis to ensure that the record does not contain Restricted Data or Formerly Restricted Data.

(2) Any record determined as a result of a review under paragraph (1) to contain Restricted Data or Formerly Restricted Data may not be declassified until the Secretary of Energy, in conjunction with the head of the agency having custody of the record, determines that the document is suitable for declassification.

(3) After the date occurring 60 days after the submission of the plan required by subsection (a) to the committees referred to in paragraphs (1) and (2) of subsection (d), the requirement under paragraph (1) to review a record on a page-by-page basis shall not apply in the case of a record determined, under the actions specified in the plan pursuant to subsection (b)(1), to be a record that is

highly unlikely to contain Restricted Data or Formerly Restricted Data.

(d) Submission of plan

The Secretary of Energy shall submit the plan required under subsection (a) to the following:

(1) The Committee on Armed Services of the Senate.

(2) The Committee on Armed Services of the House of Representatives.

(3) The Assistant to the President for National Security Affairs.

(e) Submission of reviews

The Secretary of Energy shall, in each even-numbered year, submit a summary of the results of the periodic reviews and evaluations specified in the plan pursuant to subsection (b)(5) to the committees and Assistant to the President specified in subsection (d).

(f) Report and notification regarding inadvertent releases

(1) The Secretary of Energy shall submit to the committees and Assistant to the President specified in subsection (d) a report on inadvertent releases of Restricted Data or Formerly Restricted Data under Executive Order No. 12958 that occurred before October 17, 1998.

(2) The Secretary of Energy shall, in each even-numbered year beginning in 2010, submit to the committees and Assistant to the President specified in subsection (d) a report identifying any inadvertent releases of Restricted Data or Formerly Restricted Data under Executive Order No. 13526 discovered in the two-year period preceding the submittal of the report.

#### § 2673. SUPPLEMENT TO PLAN FOR DECLASSIFICATION OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA

(a) Supplement to plan

The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a supplement to the plan required under subsection (a) of section 2672 of this title.

(b) Contents of supplement

The supplement shall provide for the application of that plan (including in particular the element of the plan required by subsection (b)(1) of section 2672 of this title to all records subject to Executive Order No. 12958 that

were determined before October 17, 1998, to be suitable for declassification.

(c) Limitation on declassification of records

All records referred to in subsection (b) of this section shall be treated, for purposes of subsection (c) of section 2672 of this title, in the same manner as records referred to in subsection (a) of such section.

(d) Submission of supplement

The Secretary of Energy shall submit the supplement required under subsection (a) of this section to the recipients of the plan referred to in subsection (d) of section 2672 of this title.

References in Text

Executive Order No. 12958, referred to in subsec. (b), which was formerly set out as a note under section 435 (now section 3161) of this title, was revoked by Ex. Ord. No. 13526, §6.2(g), Dec. 29, 2009, 75 F.R. 731.

## DOCUMENTS RELATING TO JAPANESE INTERNMENT

(50 U.S.C. App 1989b-6)

### § 1989B-6. DOCUMENTS RELATING TO THE INTERNMENT

(a) Preservation of documents in National Archives

All documents, personal testimony, and other records created or received by the Commission during its inquiry shall be kept and maintained by the Archivist of the United States who shall preserve such documents, testimony, and records in the National Archives of the United States. The Archivist shall make such documents, testimony, and records available to the public for research purposes.

(b) Public availability of certain records of the House of Representatives

(1) The Clerk of the House of Representatives is authorized to permit the Archivist of the United States to make available for use records of the House not classified for

national security purposes, which have been in existence for not less than thirty years, relating to the evacuation, relocation, and internment of individuals during the evacuation, relocation, and internment period.

(2) This subsection is enacted as an exercise of the rulemaking power of the House of Representatives, but is applicable only with respect to the availability of records to which it applies, and supersedes other rules only to the extent that the time limitation established by this section with respect to such records is specifically inconsistent with such rules, and is enacted with full recognition of the constitutional right of the House to change its rules at any time, in the same manner and to the same extent as in the case of any other rule of the House.

## NAZI WAR CRIMES DISCLOSURE ACT

(5 U.S.C. 552 note)

### SECTION 1. SHORT TITLE. <<NOTE: 5 USC 552 NOTE.>>

This Act may be cited as the “Nazi War Crimes Disclosure Act.”

### SEC. 2. ESTABLISHMENT OF NAZI WAR CRIMINAL RECORDS INTERAGENCY

### WORKING GROUP.

(a) Definitions.—In this section the term—

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

(2) “Interagency Group” means the Nazi War Criminal Records Interagency Working Group established under

subsection (b);

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

(4) “record” means a Nazi war criminal record.

(b) Establishment of Interagency Group.—

(1) In general.—Not later than 60 days after the date of enactment of this Act, the President shall establish the Nazi War Criminal Records Interagency Working Group, which shall remain in existence for 3 years after the date the Interagency Group is established.

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

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

(c) Functions.—Not later than 1 year after the date of enactment of this Act, the Interagency Group shall, to the greatest extent possible consistent with section 3 of this Act—

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

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

(3) submit a report to Congress, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, describing all such records, the disposition of such records, and the activities of the Interagency

Group and agencies under this section.

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

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

(a) Nazi War Criminal Records.—For purposes of this Act, the term “Nazi war criminal records” means classified records or portions of records that—

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

(A) the Nazi government of Germany;

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

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

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

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

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

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

(b) Release of Records.—

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

(2) Exception for privacy, etc.—An agency head may exempt from release under paragraph (1) specific infor-

mation, that would—

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

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

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

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

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

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

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

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

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

(J) violate a treaty or international agreement.

(3) Application of exemptions.—

(A) In general.—In applying the exemptions listed in subparagraphs (B) through (J) of paragraph (2), there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption may only be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary of the Senate and the Committee on Gov-

ernment Reform and Oversight of the House of Representatives. The exemptions set forth in paragraph (2) shall constitute the only authority pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

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

(4) Limitation on application.—This subsection shall not apply to records—

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

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

(c) Inapplicability of National Security Act of 1947 Exemption.—Section 701(a) of the National Security Act of 1947 (50 U.S.C. 431) shall not apply to any operational file, or any portion of any operational file, that constitutes a Nazi war criminal record under section 3 of this Act.

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

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

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

#### SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date that is 90 days after the date of enactment of this Act.

Approved October 8, 1998.



# DISCLOSURE OF INFORMATION ON JAPANESE IMPERIAL GOVERNMENT

## 5 U.S.C. § 552 note

### SEC. 801. SHORT TITLE.

This title [this note] may be cited as the ‘Japanese Imperial Government Disclosure Act of 2000’.

### SEC. 802. DESIGNATION.

(a) Definitions.—In this section:

(1) Agency.—The term ‘agency’ has the meaning given such term under section 551 of title 5, United States Code.

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

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

- (A) the Japanese Imperial Government;
- (B) any government in any area occupied by the military forces of the Japanese Imperial Government;
- (C) any government established with the assistance or cooperation of the Japanese Imperial Government; or
- (D) any government which was an ally of the Japanese Imperial Government.

(4) Record.—The term ‘record’ means a Japanese Imperial Government record.

(b) Establishment of Interagency Group.—

(1) In general.—Not later than 60 days after the date of the enactment of this Act [Dec. 27, 2000], the President shall designate the Working Group established under

the Nazi War Crimes Disclosure Act (Public Law 105-246; 5 U.S.C. 552 note) to also carry out the purposes of this title [this note] with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 6 years after the date on which this title [this note] takes effect. Such Working Group is redesignated as the ‘Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group’.

(2) [Omitted. Amended section 2(b)(2) of Pub.L. 105-246, set out as a note under this section.]

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

- (1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Japanese Imperial Government records of the United States;
- (2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and
- (3) submit a report to Congress, including the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

(d) Funding.—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title [this note].

### SEC. 803. REQUIREMENT OF DISCLOSURE OF RECORDS.

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

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

- (1) constitute an unwarranted invasion of personal privacy;
- (2) reveal the identity of a confidential human source, or reveal information about an intelligence source or method when the unauthorized disclosure of that source or method would damage the national security interests of the United States;
- (3) reveal information that would assist in the development or use of weapons of mass destruction;
- (4) reveal information that would impair United States cryptologic systems or activities;
- (5) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;
- (6) reveal United States military war plans that remain in effect;
- (7) reveal information that would impair relations between the United States and a foreign government, or undermine ongoing diplomatic activities of the United States;
- (8) reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services are authorized in the interest of national security;
- (9) reveal information that would impair current national security emergency preparedness plans; or
- (10) violate a treaty or other international agreement.

(c) Applications of exemptions.—

- (1) In general.—In applying the exemptions provided in paragraphs (2) through (10) of subsection (b), there shall be a presumption that the public interest will be

served by disclosure and release of the records of the Japanese Imperial Government. The exemption may be asserted only when the head of the agency that maintains the records determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives.

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

(d) Records related to investigations or prosecutions.—This section shall not apply to records—

- (1) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or
- (2) solely in the possession, custody, or control of the Office of Special Investigations.

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

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

#### SEC. 805. EFFECTIVE DATE.

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

# PUBLIC INTEREST DECLASSIFICATION ACT OF 2000, AS AMENDED

(50 U.S.C. § 3161 note, Pub. L. 106-567)

## SEC. 701. SHORT TITLE.

This title may be cited as the ‘Public Interest Declassification Act of 2000’.

## SEC. 702. FINDINGS.

Congress makes the following findings:

(1) It is in the national interest to establish an effective, coordinated, and cost-effective means by which records on specific subjects of extraordinary public interest that do not undermine the national security interests of the United States may be collected, retained, reviewed, and disseminated to Congress, policymakers in the executive branch, and the public.

(2) Ensuring, through such measures, public access to information that does not require continued protection to maintain the national security interests of the United States is a key to striking the balance between secrecy essential to national security and the openness that is central to the proper functioning of the political institutions of the United States.

## SEC. 703. PUBLIC INTEREST DECLASSIFICATION BOARD.

(a) Establishment.—(1) There is established within the executive branch of the United States a board to be known as the ‘Public Interest Declassification Board’ (in this title referred to as the ‘Board’).

(2) The Board shall report directly to the President or, upon designation by the President, the Vice President, the Attorney General, or other designee of the President. The other designee of the President under this paragraph may not be an agency head or official authorized to classify information under Executive Order 12958 [formerly set out below], or any successor order.

(b) Purposes.—The purposes of the Board are as follows:

(1) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on the systematic, thorough, coordinated,

and comprehensive identification, collection, review for declassification, and release to Congress, interested agencies, and the public of declassified records and materials (including donated historical materials) that are of archival value, including records and materials of extraordinary public interest.

(2) To promote the fullest possible public access to a thorough, accurate, and reliable documentary record of significant United States national security decisions and significant United States national security activities in order to—

(A) support the oversight and legislative functions of Congress;

(B) support the policymaking role of the executive branch;

(C) respond to the interest of the public in national security matters; and

(D) promote reliable historical analysis and new avenues of historical study in national security matters.

(3) To provide recommendations to the President for the identification, collection, and review for declassification of information of extraordinary public interest that does not undermine the national security of the United States, to be undertaken in accordance with a declassification program that has been established or may be established by the President by Executive order.

(4) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on policies deriving from the issuance by the President of Executive orders regarding the classification and declassification of national security information.

(5) To review and make recommendations to the President in a timely manner with respect to any congressional request, made by the committee of jurisdiction or by a member of the committee of jurisdiction, to declassify certain records, to evaluate the proper classification of certain records, or to reconsider a declination to declassify specific records.

(c) Membership.—(1) The Board shall be composed of nine individuals appointed from among citizens of the United States who are preeminent in the fields of history, national security, foreign policy, intelligence policy, social science, law, or archives, including individuals who have served in Congress or otherwise in the Federal Government or have otherwise engaged in research, scholarship, or publication in such fields on matters relating to the national security of the United States, of whom—

(A) five shall be appointed by the President;

(B) one shall be appointed by the Speaker of the House of Representatives;

(C) one shall be appointed by the majority leader of the Senate;

(D) one shall be appointed by the minority leader of the Senate; and

(E) one shall be appointed by the minority leader of the House of Representatives.

(2)(A) Of the members initially appointed to the Board by the President—

(i) three shall be appointed for a term of 4 years;

(ii) one shall be appointed for a term of 3 years; and

(iii) one shall be appointed for a term of 2 years.

(B) The members initially appointed to the Board by the Speaker of the House of Representatives or by the majority leader of the Senate shall be appointed for a term of 3 years.

(C) The members initially appointed to the Board by the minority leader of the House of Representatives or the Senate shall be appointed for a term of 2 years.

(D) Any subsequent appointment to the Board shall be for a term of 3 years from the date of the appointment.

(3) A vacancy in the Board shall be filled in the same manner as the original appointment.

(4) A member of the Board may be appointed to a new term on the Board upon the expiration of the member's term on the Board, except that no member may serve more than three full terms on the Board.

(d) Chairperson; Executive Secretary.—(1)(A) The President shall designate one of the members of the Board as the Chairperson of the Board.

(B) The term of service as Chairperson of the Board shall be 2 years.

(C) A member serving as Chairperson of the Board may be redesignated as Chairperson of the Board upon the expiration of the member's term as Chairperson of the

Board, except that no member shall serve as Chairperson of the Board for more than 6 years.

(2) The Director of the Information Security Oversight Office shall serve as the Executive Secretary of the Board.

(e) Meetings.—The Board shall meet as needed to accomplish its mission, consistent with the availability of funds. A majority of the members of the Board shall constitute a quorum.

(f) Staff.—Any employee of the Federal Government may be detailed to the Board, with the agreement of and without reimbursement to the detailing agency, and such detail shall be without interruption or loss of civil, military, or foreign service status or privilege.

(g) Security.—(1) The members and staff of the Board shall, as a condition of appointment to or employment with the Board, hold appropriate security clearances for access to the classified records and materials to be reviewed by the Board or its staff, and shall follow the guidance and practices on security under applicable Executive orders and Presidential or agency directives.

(2) The head of an agency shall, as a condition of granting access to a member of the Board, the Executive Secretary of the Board, or a member of the staff of the Board to classified records or materials of the agency under this title, require the member, the Executive Secretary, or the member of the staff, as the case may be, to—

(A) execute an agreement regarding the security of such records or materials that is approved by the head of the agency; and

(B) hold an appropriate security clearance granted or recognized under the standard procedures and eligibility criteria of the agency, including any special access approval required for access to such records or materials.

(3) The members of the Board, the Executive Secretary of the Board, and the members of the staff of the Board may not use any information acquired in the course of their official activities on the Board for nonofficial purposes.

(4) For purposes of any law or regulation governing access to classified information that pertains to the national security of the United States, and subject to any limitations on access arising under section 706(b), and to facilitate the advisory functions of the Board under this title, a member of the Board seeking access to a record or material under this title shall be deemed for purposes of this subsection to have a need to know the contents of the record or material.

(h) Compensation.—(1) Each member of the Board shall receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay payable for positions at ES-1 of the Senior Executive Service under section 5382 of title 5, United States Code, for each day such member is engaged in the actual performance of duties of the Board.

(2) Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of the duties of the Board.

(i) Guidance; Annual Budget.—(1) On behalf of the President, the Assistant to the President for National Security Affairs shall provide guidance on policy to the Board.

(2) The Executive Secretary of the Board, under the direction of the Chairperson of the Board and the Board, and acting in consultation with the Archivist of the United States, the Assistant to the President for National Security Affairs, and the Director of the Office of Management and Budget, shall prepare the annual budget of the Board.

(j) Support.—The Information Security Oversight Office may support the activities of the Board under this title. Such support shall be provided on a reimbursable basis.

(k) Public Availability of Records and Reports.—(1) The Board shall make available for public inspection records of its proceedings and reports prepared in the course of its activities under this title to the extent such records and reports are not classified and would not be exempt from release under the provisions of section 552 of title 5, United States Code.

(2) In making records and reports available under paragraph (1), the Board shall coordinate the release of such records and reports with appropriate officials from agencies with expertise in classified information in order to ensure that such records and reports do not inadvertently contain classified information.

(l) Applicability of Certain Administrative Laws.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Board under this title. However, the records of the Board shall be governed by the provisions of the Federal Records Act of 1950 [see References in Text note undersection 450j of Title 25, Indians].

## SEC. 704. IDENTIFICATION, COLLECTION, AND REVIEW FOR DECLASSIFICATION OF INFORMATION OF ARCHIVAL VALUE OR EXTRAORDINARY PUBLIC INTEREST.

(a) Briefings on Agency Declassification Programs.—(1) As requested by the Board, or by the Select Committee on Intelligence of the Senate or the Permanent Select Committee on Intelligence of the House of Representatives, the head of any agency with the authority under an Executive order to classify information shall provide to the Board, the Select Committee on Intelligence of the Senate, or the Permanent Select Committee on Intelligence of the House of Representatives, on an annual basis, a summary briefing and report on such agency's progress and plans in the declassification of national security information. Such briefing shall cover the declassification goals set by statute, regulation, or policy, the agency's progress with respect to such goals, and the agency's planned goals and priorities for its declassification activities over the next 2 fiscal years. Agency briefings and reports shall give particular attention to progress on the declassification of records and materials that are of archival value or extraordinary public interest to the people of the United States.

(2)(A) The annual briefing and report under paragraph (1) for agencies within the Department of Defense, including the military departments and the elements of the intelligence community, shall be provided on a consolidated basis.

(B) In this paragraph, the term 'elements of the intelligence community' means the elements of the intelligence community specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) [now 50 U.S.C. 3003(4)].

(b) Recommendations on Agency Declassification Programs.—(1) Upon reviewing and discussing declassification plans and progress with an agency, the Board shall provide to the head of the agency the written recommendations of the Board as to how the agency's declassification program could be improved. A copy of each recommendation shall also be submitted to the Assistant to the President for National Security Affairs and the Director of the Office of Management and Budget.

(2) Consistent with the provisions of section 703(k), the Board's recommendations to the head of an agency under paragraph (1) shall become public 60 days after such recommendations are sent to the head of the agency under that paragraph.

(c) Recommendations on Special Searches for Records of Extraordinary Public Interest.—(1) The Board shall also make recommendations to the President regarding proposed initiatives to identify, collect, and review for declassification classified records and materials of extraordinary public interest.

(2) In making recommendations under paragraph (1), the Board shall consider the following:

(A) The opinions and requests of Members of Congress, including opinions and requests expressed or embodied in letters or legislative proposals, and also including specific requests for the declassification of certain records or for the reconsideration of declinations to declassify specific records.

(B) The opinions and requests of the National Security Council, the Director of National Intelligence, and the heads of other agencies.

(C) The opinions of United States citizens.

(D) The opinions of members of the Board.

(E) The impact of special searches on systematic and all other on-going declassification programs.

(F) The costs (including budgetary costs) and the impact that complying with the recommendations would have on agency budgets, programs, and operations.

(G) The benefits of the recommendations.

(H) The impact of compliance with the recommendations on the national security of the United States.

(d) President's Declassification Priorities.—(1) Concurrent with the submission to Congress of the budget of the President each fiscal year under section 1105 of title 31, United States Code, the Director of the Office of Management and Budget shall publish a description of the President's declassification program and priorities, together with a listing of the funds requested to implement that program.

(2) Nothing in this title shall be construed to substitute or supersede, or establish a funding process for, any declassification program that has been established or may be established by the President by Executive order.

(e) Declassification Reviews.—(1) In general.—If requested by the President, the Board shall review in a timely manner certain records or declinations to declassify specific records, the declassification of which has been the subject of specific congressional request described in section 703(b)(5).

(2) Authority of board.—Upon receiving a congressio-

nal request described in section 703(b)(5), the Board may conduct the review and make the recommendations described in that section, regardless of whether such a review is requested by the President.

(3) Reporting.—Any recommendations submitted to the President by the Board under section 703(b)(5),[sic] shall be submitted to the chairman and ranking minority member of the committee of Congress that made the request relating to such recommendations.

## SEC. 705. PROTECTION OF NATIONAL SECURITY INFORMATION AND OTHER INFORMATION.

(a) In General.—Nothing in this title shall be construed to limit the authority of the head of an agency to classify information or to continue the classification of information previously classified by that agency.

(b) Special Access Programs.—Nothing in this title shall be construed to limit the authority of the head of an agency to grant or deny access to a special access program.

(c) Authorities of Director of National Intelligence.—Nothing in this title shall be construed to limit the authorities of the Director of National Intelligence as the head of the intelligence community, including the Director's responsibility to protect intelligence sources and methods from unauthorized disclosure as required by section 103(c)(6) of the National Security Act of 1947 ([former] 50 U.S.C. 403-3(c)(6)) [see 50 U.S.C. 3024(i)].

(d) Exemptions to Release of Information.—Nothing in this title shall be construed to limit any exemption or exception to the release to the public under this title of information that is protected under subsection (b) of section 552 of title 5, United States Code (commonly referred to as the 'Freedom of Information Act'), or section 552a of title 5, United States Code (commonly referred to as the 'Privacy Act').

(e) Withholding Information From Congress.—Nothing in this title shall be construed to authorize the withholding of information from Congress.

## SEC. 706. STANDARDS AND PROCEDURES.

(a) Liaison.—(1) The head of each agency with the authority under an Executive order to classify information and the head of each Federal Presidential library shall designate an employee of such agency or library to act as liaison to the Board for purposes of this title.

(2) The Board may establish liaison and otherwise consult with such other historical and advisory committees as the Board considers appropriate for purposes of this title.

(b) Limitations on Access.—(1)(A) Except as provided in paragraph (2), if the head of an agency or the head of a Federal Presidential library determines it necessary to deny or restrict access of the Board, or of the agency or library liaison to the Board, to information contained in a record or material, in whole or in part, the head of the agency or the head of the library shall promptly notify the Board in writing of such determination.

(B) Each notice to the Board under subparagraph (A) shall include a description of the nature of the records or materials, and a justification for the determination, covered by such notice.

(2) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

(c) Discretion To Disclose.—At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the public's interest in the disclosure of records or materials of the agency covered by such review, and still properly classified, outweighs the Government's need to protect such records or materials, and may release such records or materials in accordance with the provisions of Executive Order No. 12958 [formerly set out below] or any successor order to such Executive order.

(d) Discretion To Protect.—At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the interest of the agency in the protection of records or materials of the agency covered by such review, and still properly classified, outweighs the public's need for access to such records or materials, and may deny release of such records or materials in accordance with the provisions of Executive Order No. 12958 or any successor order to such Executive order.

(e) Reports.—(1)(A) Except as provided in paragraph (2), the Board shall annually submit to the appropriate congressional committees a report on the activities of the

Board under this title, including summary information regarding any denials to the Board by the head of an agency or the head of a Federal Presidential library of access to records or materials under this title.

(B) In this paragraph, the term 'appropriate congressional committees' means the Select Committee on Intelligence and the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Permanent Select Committee on Intelligence and the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives.

(2) Notwithstanding paragraph (1), notice that the Board has been denied access to records and materials, and a justification for the determination in support of the denial, shall be submitted by the agency denying the access as follows:

(A) In the case of the denial of access to a special access program created by the Secretary of Defense, to the Committees on Armed Services and Appropriations of the Senate and to the Committees on Armed Services and Appropriations of the House of Representatives.

(B) In the case of the denial of access to a special access program created by the Director of National Intelligence, or by the head of any other agency (including the Department of Defense) if the special access program pertains to intelligence activities, or of access to any information and materials relating to intelligence sources and methods, to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(C) In the case of the denial of access to a special access program created by the Secretary of Energy or the Administrator for Nuclear Security, to the Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate and to the Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

(f) Notification of Review.—In response to a specific congressional request for declassification review described in section 703(b)(5), the Board shall advise the originators of the request in a timely manner whether the Board intends to conduct such review.

SEC. 707. JUDICIAL REVIEW.

Nothing in this title limits the protection afforded to any information under any other provision of law. This title is not intended and may not be construed to create any right or benefit, substantive or procedural, enforceable against the United States, its agencies, its officers, or its employees. This title does not modify in any way the substantive criteria or procedures for the classification of information, nor does this title create any right or benefit subject to judicial review.

#### SEC. 708. FUNDING.

(a) Authorization of Appropriations.—There is hereby authorized to be appropriated to carry out the provisions of this title amounts as follows:

(1) For fiscal year 2001, \$650,000.

(2) For each fiscal year after fiscal year 2001, such sums as may be necessary for such fiscal year.

(b) Funding Requests.—The President shall include in the budget submitted to Congress for each fiscal year under section 1105 of title 31, United States Code, a request for amounts for the activities of the Board under this title during such fiscal year.

#### SEC. 709. DEFINITIONS.

In this title:

(1) Agency.—(A) Except as provided in subparagraph (B), the term ‘agency’ means the following:

(i) An Executive agency, as that term is defined in section 105 of title 5, United States Code.

(ii) A military department, as that term is defined in section 102 of such title.

(iii) Any other entity in the executive branch that comes into the possession of classified information.

(B) The term does not include the Board.

(2) Classified material or record.—The terms ‘classified material’ and ‘classified record’ include any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable records, and other documentary material, regardless of physical form or characteristics, that has been determined pursuant to Executive order to require protection against unauthorized disclosure in the interests of the national security of the United States.

(3) Declassification.—The term ‘declassification’ means the process by which records or materials that have been

classified are determined no longer to require protection from unauthorized disclosure to protect the national security of the United States.

(4) Donated historical material.—The term ‘donated historical material’ means collections of personal papers donated or given to a Federal Presidential library or other archival repository under a deed of gift or otherwise.

(5) Federal presidential library.—The term ‘Federal Presidential library’ means a library operated and maintained by the United States Government through the National Archives and Records Administration under the applicable provisions of the Federal Records Act of 1950 [see References in Text note under section 450j of Title 25, Indians].

(6) National security.—The term ‘national security’ means the national defense or foreign relations of the United States.

(7) Records or materials of extraordinary public interest.—The term ‘records or materials of extraordinary public interest’ means records or materials that—

(A) demonstrate and record the national security policies, actions, and decisions of the United States, including—

(i) policies, events, actions, and decisions which led to significant national security outcomes; and

(ii) the development and evolution of significant United States national security policies, actions, and decisions;

(B) will provide a significantly different perspective in general from records and materials publicly available in other historical sources; and

(C) would need to be addressed through ad hoc record searches outside any systematic declassification program established under Executive order.

(8) Records of archival value.—The term ‘records of archival value’ means records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government.

#### SEC. 710. EFFECTIVE DATE; SUNSET.

(a) Effective Date.—This title shall take effect on the date that is 120 days after the date of the enactment of this Act [Dec. 27, 2000].

(b) Sunset.—The provisions of this title shall expire on December 31, 2018.



## SUMMARY OF NON-NARA STATUTES

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ACCESS TO CLASSIFIED INFORMATION: 50 U.S.C. § 3161.

Public Law Number: Pub. L. 103-359, Oct. 14, 1994

Synopsis: This Act delegates authority to the President to establish procedures to govern access to classified information.

\*\*\* see Appendix, Executive Order #13526, \*\*\*

ADMINISTRATIVE DISPUTE RESOLUTION ACT: 5 U.S.C. §§ 571 TO 583

Public Law Number: Pub. L. 101-522, Nov. 15, 1990

Synopsis: The purpose of this Act is to permit Federal agencies to resolve administrative problems within the agency through the use of administrative dispute resolution proceedings.

ADMINISTRATIVE PROCEDURE ACT: 5 U.S.C. §§ 551 TO 559, 701 TO 706, 1305, 3105, 3344, 4301, 5335, 5372, 7521

Public Law Number: (Act of June 11, 1946, ch. 324, 60 Stat. 237) Pub. L. 94-409 § 4(b) , Sept. 13, 1976; Pub. L. 103-272 § 5(a), July 5, 1994

Synopsis: The purpose of this Act is to create a comprehensive statute governing the procedures agencies must follow when performing their functions.

AMERICANS WITH DISABILITIES ACT OF 1990: 42 U.S.C § 12101 ET SEQ.

Public Law Number: Pub. L. 101-336, July 26, 1990

Synopsis: The purposes of this Act are to establish a national mandate for the elimination of discrimination against persons with disabilities and to provide clear standards that address discrimination against persons with disabilities. The Department of Justice encourages the government to comply with the ADA.

ANTI-DEFICIENCY ACT: 31 U.S.C. §§ 1341, 1342, 1349-1351, 1511-1519

Public Law Number: Pub. L. 97-258, Sept. 13, 1982; Pub. L. 101-508, Nov. 5, 1990

Synopsis: An officer or employee of the U.S. Government may not expend funds in excess of the amount available in the appropriations fund or before an appropriation is made available.

ANTI-NEPOTISM ACT: 5 U.S.C. § 3110

Public Law Number: Pub. L. 90-206, Dec. 16, 1967; Pub. L. 95-454, Title IX § 906(a)(2), Oct. 13, 1978

Synopsis: A public official is prohibited from employing, appointing, promoting, advancing or advocating for appointment, employment promotion or advancement any relative for a civilian position in the agency in which the public official is serving.

AUGMENTATION PROHIBITION: 31 U.S.C. §§ 1301 (A), 3302(B)

Public Law Number: Pub. L. 97-258, Sept. 13, 1982; Pub. L. 98-369, July 18, 1984; Pub. L. 103-272, July 5, 1994; Pub. L. 103-429, Oct. 31, 1994, 105-277, Oct. 21, 1998; 106-31, Title V § 5005(l), May 21, 1999

Synopsis: This Act limits the use of appropriations only to those objects for which the appropriation was made. In addition, an agent of the Government, who receives money for the Government, shall deposit that money in the Treasury without deduction for any charge or claim.

DEBT COLLECTION ACT OF 1982: 31 U.S.C. §§ 3302, 3701, 3711, 3716 TO 3719

Public Law Number: Pub. L. 97-365, October 25, 1982

Synopsis: The Debt Collection Act expands the authority of agencies to recover general debts owed to the United States.

DEBT COLLECTION IMPROVEMENT ACT OF 1996: 31 U.S.C. §§ 3720B TO 3720D

Public Law Number: Pub. L. 104-134, Title III, ch. 10, § 31001, April 26, 1996; 104-134, Title III, ch. 10 § 31001, April 26, 1996

Synopsis: This act amends the Debt Collection Act of 1982.

## DEPOSITORY LIBRARY PROGRAM: 44 U.S.C. §§ 1901 TO 1916

Public Law Number: Pub. L. 90-620, Oct. 22, 1968; Pub. L. 92-368, Aug. 10, 1972; Pub.L. 95-261, Apr. 17, 1978

Synopsis: Chapter 19 defines AGovernment Publication and describes how these documents will be made available to the public through depository libraries. The statute explains how depository libraries are selected and the requirements to which they must adhere.

## ECONOMY IN GOVERNMENT ACT: 31 U.S.C. § 1535

Public Law Number: Pub. L. 97-258, Sept. 13, 1982; Pub. L. 98-216, Feb. 14, 1984

Synopsis: This Act allows a government agency to place orders for goods or services with another Government agency provided the order cannot be filled as cheaply or conveniently by a commercial contractor.

## ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996: 5 U.S.C. § 552 NOTE

Public Law Number: Pub. L. 104-231, Oct. 2, 1996

Synopsis: EFOIA amends the Freedom of Information Act (5 U.S.C. §552), to provide for public access to information in an electronic format.

## EMERGENCY PREPAREDNESS: 42 U.S.C. § 5195

Public Law Number: Pub. L. 93-288; Pub. L. 103-337, Oct. 5, 1994

Synopsis: This Act creates a system of emergency preparedness for all hazards which present a threat to life and property, as a joint effort with the states.

## EQUAL ACCESS TO JUSTICE ACT: 5 U.S.C. § 504

Public Law Number: Pub. L. 96-481, Oct. 21, 1980; Pub. L. 99-80, Aug. 5, 1985; Pub. L. 99-509, Oct. 21 1986; Pub. L. 99-514, Oct. 22, 1986; Pub. L. 100-647, Nov. 10, 1988; Pub. L. 103-141, Nov. 16, 1993; Pub. L. 104-121, Title II § 231, March 29, 1996, Pub. L. 111-350, Jan. 4, 2011.

Synopsis: This Act permits a party, who prevails in an administrative proceeding against the United States, to request and receive fees and other expenses incurred by that party in connection with the proceedings. The request must be fully justified and documented, and the adjudicative officer of the agency may reduce or deny the amount to be awarded if the prevailing party acted unreasonably in incurring such costs.

ETHICS IN GOVERNMENT ACT OF 1978: 5 U.S.C. APP. 4 §§ 101 TO 111, 5 U.S.C. APP. 4 §§401 TO 408, 5 U.S.C. APP. 4 §§ 501 TO 505, 28 U.S.C. §§ 591 TO 598, 5 U.S.C. § 49, 28 U.S.C. § 528, 529, 2 U.S.C. § 288, 288(A) TO (L), 2 U.S.C. §118(A), 2 U.S.C. § 288(M), 28 U.S.C. § 1365

Public Law Number: Pub. L. 95-521, Oct. 26, 1978

Synopsis: This Act creates the Federal system for regulating conflicts of interest.

#### ETHICS IN GOVERNMENT ACT AMENDMENTS OF 1982:

Public Law Number: Pub. L. 97-409, Jan. 3, 1983

Synopsis: This Act amends the 1978 Act.

#### ETHICS IN GOVERNMENT ACT AMENDMENTS OF 1985:

Public Law Number: Pub. L. 99-190, Title I, §148, Dec. 19, 1985

Synopsis: This Act amends the 1982 Act.

#### ETHICS IN GOVERNMENT ACT AMENDMENTS OF 1990:

Public Law Number: Pub. L. 101-334, July 16, 1990

Synopsis: This Act amends the 1985 Act.

ETHICS REFORM ACT OF 1989: 5 U.S.C. APP. 4 §§ 110 TO 111, 31 U.S.C. § 1353, 5 U.S.C. § 7353, 18 U.S.C. § 216, 2 U.S.C. § 72A-1G, 26 U.S.C. § 1043, 5 U.S.C. § 3393A, 10 U.S.C. § 1601, 5 U.S.C. APP. 4 §§ 501 TO 505, 2 U.S.C. §§ 362 TO 364, 2 U.S.C. § 29D

Public Law Number: Pub. L. 101-194, Nov. 30, 1989

Synopsis: This Act addresses abuses uncovered during the Watergate period.

#### EXECUTIVE AND JUDICIARY PRINTING AND BINDING: 44 U.S.C. §§ 1101 TO 1123

Public Law Number: Pub. L. 90-620, Oct. 22, 1968; Pub. L. 97-164, Apr. 2, 1982; Pub. L. 94-273, Apr. 21, 1976; Pub. L. 98-216, Feb. 14, 1984; Pub. L. 106-113, Nov. 29, 1998

Synopsis: Chapter 11 describes the procedures and policies with which the Executive and Judiciary branches must comply when printing public documents. This chapter specifically addresses the printing of periodicals and annual reports.

FEDERAL ACTIVITIES INVENTORY REFORM ACT: 31 U.S.C. § 501 NOTE.

Public Law Number: Pub. L. 105-270, Oct. 19, 1998

Synopsis: The FAIR Act provides a process for identifying the functions of the Federal Government that are not inherently Governmental functions. The Act also provides for the publication of lists of these functions in the Federal Register.

FEDERAL ADVISORY COMMITTEE ACT: 5 U.S.C. APP. 2 (1999)

Public Law Number: Pub. L. 92-463, October 6, 1972, 86 Stat. 770, as amended by Pub. L. 94-409, §5(c), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 96-523, §2, Dec. 12, 1980, 94 Stat. 3040; Pub. L. 97-375, title II, §201(c), Dec. 21, 1982, 96 Stat. 1822; Pub. L. 105-153, §1, Dec. 17, 1997, 111 Stat. 2688.

Synopsis: The FACA regulates the formation and operation of advisory committees by Federal agencies in the Executive Branch.

FEDERAL TORT CLAIMS ACT: 28 U.S.C. §§ 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671 TO 2680

Public Law Number: (FTCA) (Aug. 2, 1946, ch. 753, Title IV, 60 Stat. 842)

Synopsis: This Act waives the sovereign immunity of the U.S. Government for specified torts, which allows claimants to bring suit for such torts.

GOVERNMENT IN THE SUNSHINE ACT: 5 U.S.C. § 552B

Public Law Number: Pub. L. 94-409, Sept. 13, 1976; Pub. L. 104-66, Dec. 21, 1995

Synopsis: This Act provides that every meeting held by an agency will be open to public observation. Certain meetings are exempt from this requirement, such as those which would disclose information that must remain secret as established by an Executive Order or statute, meetings involving information that relates solely to internal practices of the agency or meetings which would disclose information that would violate personal privacy.

GOVERNMENT PAPERWORK ELIMINATION ACT: 44 U.S.C. § 3504 NOTE.

Public Law Number: Pub. L. No. 105-277, Div. C, Title XVII, §§ 1701 to 1710, Oct. 21, 1998

Synopsis: The GPEA directs the Office of Management and Budget (OMB) to develop procedures for the use and acceptance of electronic signatures by Executive agencies. The Act also directs the OMB to develop procedures to permit private employers to store and file electronically with Executive agencies forms containing information pertaining to the employees of such employers.

GOVERNMENT PERFORMANCE AND RESULTS ACT: 31 U.S.C. § 1101 NOTE, 31 U.S.C. § 1115 NOTE

Public Law Number: Pub. L. No. 103-62, Aug. 3, 1993

Synopsis: The GPRA provides for the establishment of strategic planning and performance measurement in the Federal Government. The Act requires Executive agency heads to submit to the Director of the Office of Management and Budget (OMB) and the Congress a strategic plan for performance goals of their agency's program activities.

HOBBY PROTECTION ACT: 15 U.S.C. §§ 2101 - 2106

Public Law Number: Pub. L. 93-167, Nov. 29, 1973

Synopsis: This Act prohibits the introduction into commerce of any imitation political or numismatic items that are not marked with the date of manufacture. The purpose of this Act is to protect the value of original political and numismatic items. The Federal Trade Commission, the agency responsible for enforcing this Act, has promulgated regulations which detail the marking requirements for these items.

INFORMATION TECHNOLOGY MANAGEMENT REFORM ACT: 40 U.S.C. §§ 11101-11103, 11301-11303, 11311-11318, 11331-11332, 11501-11502, 11521-11522, 11701-11704

Public Law Number: Pub. L. 104-106, Div. E, Feb. 10, 1996

Synopsis: The ITMRA, now known as the Clinger-Cohen Act, requires the heads of Federal agencies to link information technology investments to agency accomplishments. The Clinger-Cohen Act also requires that agency heads establish a process to select, manage, and control their information technology investments.

PAPERWORK REDUCTION ACT: 44 U.S.C. §§ 3501 TO 3520

Public Law Number: Pub. L. 104-13, May 22, 1995

Synopsis: There are several purposes of this Act. They are to minimize paperwork for individuals, businesses, and the Government; minimize the cost to the Government of collecting, maintaining, and disseminating information; maximizing the usefulness of information collected by the Government; create Federal law on the collection and dissemination of information uniform; reduce fraud and waste, and to assure the privacy and confidentiality are preserved; including the requirements of the Privacy Act.

PAY RATES AND SYSTEMS: 5 U.S.C. § 5314

Public Law Number: Pub. L. 104-293, Oct. 11, 1996; Pub. L. 108-447, Dec. 8, 2004

Synopsis: This Act lists personnel, including the Archivist, to whom Level III of the Executive Schedule applies.

PUBLIC PRINTING AND DOCUMENTS: 44 U.S.C. CHAPTER 19

Public Law Number: Pub. L. 96-620, Oct. 20, 1968; Pub. L. 92-368, Aug. 10, 1972; Pub. L. 95-261, April 17, 1978

Synopsis: This Act governs Government documents and their availability through depository library programs.

REGULATORY NEGOTIATION ACT: 5 U.S.C. § 561 ET SEQ.

Public Law Number: Pub. L. 101-648, Nov. 29, 1990; Pub. L. 102-354, Aug. 26, 1992; Pub. L. 104-320, Oct. 19, 1996

Synopsis: This Act establishes a framework for negotiated rulemaking. Agencies may establish negotiated rulemaking committees to develop rules according to specific requirements set out in §§565-568 of this Act.

REHABILITATION ACT: 29 U.S.C. § 701 ET SEQ.

Public Law Number: Pub. L. 93-112, Sept. 26, 1973; Pub. L. 95-602, Nov. 6, 1978; Pub. L. 99-506, Oct. 21, 1986; Pub. L. 102-569, Oct. 29, 1992

Synopsis: The purpose of the Act is to promote the Federal Government's involvement in employing individuals with disabilities.

USE OF GOVERNMENT VEHICLES: 31 U.S.C. § 1344

Public Law Number: Pub. L. 97-258, Sept. 13, 1982; Pub. L. 99-550, Oct. 27, 1986; Pub. L. 100-180, Dec. 4, 1987; Pub. L. 100-202, Dec. 22, 1987; Pub. L. 101-510, Nov. 5, 1990; Pub. L. 103-272, July 5, 1994; Pub. L. 104-91, Jan. 6, 1996; Pub. L. 104-99, Jan. 26, 1996; Pub. L. 108-7, Feb. 20, 2003

Synopsis: This Act limits the use of Government vehicles to official purposes. Use of Government vehicles for transportation from a residence to place of employment is not considered an official purpose, subject to certain exceptions (e.g., field work, when it is essential for the safe and efficient performance of intelligence and other related duties or for the transportation of specific Government officials).

WHISTLEBLOWER PROTECTION ACT OF 1989: 5 U.S.C. §§ 1211 TO 1219, 1221, 1222, 3352

Public Law Number: Pub. L. 101-12, April 10, 1989; Pub. L. 103-424, Oct. 29, 1994

Synopsis: This Act protects employees who disclose evidence of gross mismanagement or a violation of any rule, law or regulation.

WHISTLEBLOWER PROTECTION LAWS: 18 U.S.C. § 1031, 10 U.S.C. § 2409, 29 U.S.C. § 1855, 49 U.S.C. § 31105, 42 U.S.C. §§ 9610, 5851, 6971, 7622, 300J-9, 46 U.S.C. APP. § 1506, 30 U.S.C. §§ 1293, 815, 15 U.S.C. §§ 2622, 2651, 33 U.S.C. § 1367

Public Law Number: Pub. L. 100-700, § 2(a), Nov. 19, 1988; Pub. L. 101-123, § 2(a), Oct. 23, 1989; Pub. L. 103-322, Title XXXIII, § 330002(a), (f), September 13, 1994

Synopsis: These laws pertain to the specific agencies and/or private industries as relevant to the Whistleblower Protection Act.



# 1952 EXCHANGE OF CORRESPONDENCE BETWEEN THE DIRECTOR OF THE BUREAU OF CENSUS AND THE ARCHIVIST OF THE UNITED STATES

[referenced in 44 U.S.C. 2108 (b)]

DEPARTMENT OF COMMERCE, BUREAU OF  
CENSUS,

*Washington, D.C. August 26, 1952.*

Dr. WAYNE C. GROVER,  
*Archivist of the United States,*  
*Washington, D.C.*

DEAR DR. GROVER: It is the policy of the Bureau of the Census to provide the maximum physical protection for the records which document its major programs, and make available to as many people as possible the information contained in such records consistent with national security and the rights of individuals concerned. With these ends in mind, we wish to make the following proposals concerning the custody, maintenance and use of the records of individuals enumerated in decennial population censuses:

The Bureau of the Census will transfer to the National Archives and Records Service (1) the original schedules of each decennial population census when they are no longer required by the Bureau of the Census for active statistical use and when the National Archives and Records Service can provide space and service for them; (2) the negative microfilm of such schedules when the Bureau of the Census has obtained a positive copy of the microfilm; and (3) the positive microfilm of these schedules when they are no longer required by the Bureau of the Census in its personal census service activities.

The Bureau of the Census desires that the National Archives and Records Service observe the following provisions pertaining to the use and maintenance of these records subsequent to their transfer:

A. All negative microfilm copies of decennial population census schedules transferred to the National Archives and Records Service shall be preserved as the permanent records of such censuses. These negative

copies will not be used as searching media or inserted in reading devices except when necessary for inspection incident to the proper maintenance of such records.

B. The National Archives and Records Service will, upon request by the Bureau of the Census, furnish positive prints of any negative microfilm which has been transferred to the former agency. The charge for this service will be the cost of the positive film and its development, plus a service charge of not more than ten percent.

C. At no time after the National Archives and Records Service has accepted custody of both the negative and positive microfilm copies of the schedules of a census will both negative and positive copies of that census be kept in the same city.

D. After the lapse of seventy-two years from the enumeration date of a decennial census, the National Archives and Records Service may disclose information contained in these records for use in legitimate historical, genealogical or other worth-while research, provided adequate precautions are taken to make sure that the information disclosed is not to be used to the detriment of any of the persons whose records are involved. Prior to the lapse of time specified above, the information will be disclosed only by the Bureau of the Census from microphotographic or other records in its possession.

Please let us know if these provisions are acceptable to you. If they are, we shall make the necessary arrangements to effect the movement of records now eligible for transfer.

Sincerely yours,

Roy V. Peel,  
Director.

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October 10, 1952

Dr. Roy V. Peel  
*Director, Bureau of the Census,  
Department of Commerce, Washington, D.C.*

DEAR DR. PEEL: This is in reply to our offer to transfer periodically to the National Archives and Records Service the original schedules of each decennial population census when these are no longer needed for active statistical use, the negative microfilm of those population census schedules for which the Bureau of the Census possesses adequate positive microfilm copies, and the positive microfilm copies of those population census schedules which the Bureau of the Census no longer desires to retain for reference use.

In view of the established policy of the National Archives and Records Service to relieve agencies of records accumulations no longer needed for current use, and to preserve those records deemed to be of permanent value, I am, in principle, in agreement with the transfer policy stated in your letter of August 26, 1952.

I am also in agreement with the conditions you state with respect to the use and maintenance of these records (1) that the master set of negative microfilm to be transferred shall be preserved as the permanent records of the decennial population census schedules, and that the master negatives and the positive microfilm copies shall not be kept in the same city; (2) that the National Archives and Records Service will furnish the Bureau of the Census with positive prints of the negative microfilm whenever requested, and that the charge for such service shall not

exceed the cost of the positive film and its development plus an overhead of not more than ten percent, provided, however, that the production of the initial set of positive microfilm copies of a decennial population census shall be the responsibility of the Bureau of the Census; and (3) that after "seventy-two years from the enumeration date of a decennial census, the National Archives and Records Service may disclose information contained in these records for use in legitimate historical, genealogical or other worth-while research."

With respect to the foregoing restrictions on disclosure of information it is understood that the applicable conditions of legitimacy will be those now in force, (1) a searcher's reputation as in fact a research worker or professional genealogist; (2) a searcher's connection with an established institution of learning or research; (3) a searcher's connection with the person or family whose records are desired, either by immediate relationship or by authorization; and (4) the lapse of time since the appearance of possibly detrimental information, considered in conjunction with the legitimacy of public or scholarly interest in the factual data relating to a historical personage.

In accordance with these mutually acceptable provisions, at your convenience we are prepared to make the necessary arrangements to effect the movement of records now eligible for transfer.

Sincerely yours,

Wayne C. Grover,  
Archivist of the United States.

EXECUTIVE ORDER 11440—  
PROVIDING FOR THE SUPPLEMENTAL  
USE OF EXHIBITS AND DISPLAYS CREATED  
IN FURTHERANCE OF AUTHORIZED PROGRAMS  
OF EXECUTIVE DEPARTMENTS AND AGENCIES

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Source: The provisions of Executive Order 11440 of Dec. 11, 1968,  
appear at 33 FR 18475, 3 CFR, 1966-1970 Comp., p. 756, unless otherwise noted.

WHEREAS the executive departments and agencies of the Government, in discharging their various responsibilities, create a large volume of materials (including books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects of historical or commemorative value) which from time to time are incorporated into or reproduced for use in exhibits or other types of visual displays needed for use in carrying out their programs; and

WHEREAS under Chapter 21 of Title 44, United States Code, the Archivist of the United States is authorized to accept for deposit in the National Archives of the United States the records of any Federal agency or of the Congress of the United States that are determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government, as well as the papers and other historical materials of any official or former official of the Government, and to make provisions for the exhibition of materials transferred to him; and

WHEREAS many of the exhibits and displays so prepared, produced, or otherwise created by the executive departments and agencies possess historical significance which warrants their preservation and exhibition as part of the archival and cultural heritage of the United States:

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

Section 1. The heads of all executive departments and agencies are directed—

(a) when initiating plans for the preparation, production, or other creation of exhibits and displays in furtherance of their program missions, to confer with the Archivist of the United States, or his designee, for the purpose of assuring that any such exhibits or displays which the Archivist finds appropriate for supplemental exhibition as part of the archival and cultural heritage of the United States are prepared, produced, or otherwise created in a manner which assures, to the maximum possible extent, their appropriateness, after they have served their primary program purpose, for such supplemental exhibition, and

(b) to transfer to the Archivist, without reimbursement, such exhibits or displays as he determines are appropriate for such supplemental exhibition after they have served their primary program purpose, subject to such conditions requiring return to the department or agency of all or any of the materials incorporated in the exhibits or displays as may be mutually agreeable.

[Preamble and sec. 1 amended by Executive Order 12608 of Sept. 9, 1987, 52 FR 34617, 3 CFR, 1987 Comp., p. 245]

Sec. 2. The Archivist of the United States is directed to—

(a) provide advice, counsel, and assistance to the heads of executive departments and agencies in the preparation, production, or other creation of exhibits and displays which he finds will have future value for exhibition as part of the archival and cultural heritage of the United States; and

(b) accept any such exhibit or display when it has served its primary program purpose and (1) arrange for its supplemental exhibition as appropriate, (2) preserve any such exhibit or display which possesses sufficient historical or other value to warrant continued preservation, or (3) dispose of any such exhibit or display when, in his judgment, the reasons for its continued preservation or

exhibition cease to exist, all subject to the conditions agreed upon incident to transfer to the Archivist of the United States of the exhibit or display.

[Sec. 2 amended by Executive Order 12608 of Sept. 9, 1987, 52 FR 34617, 3 CFR, 1987 Comp., p. 245]

# EXECUTIVE ORDER 12600—

## PREDISCLOSURE NOTIFICATION PROCEDURES FOR CONFIDENTIAL COMMERCIAL INFORMATION

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Source: The provisions of Executive Order 12600 of June 23, 1987, appear at 52 FR 23781, 3 CFR, 1987 Comp., p. 235, unless otherwise noted.

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

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

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

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

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

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

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

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

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

Order whenever the department or agency determines that it may be required to disclose records:

- (i) designated pursuant to this subsection; or
- (ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm,

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

**Sec. 5.** Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the submitter a written statement briefly explaining why the submitter's objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

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

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

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

- (a) The agency determines that the information should not be disclosed;
- (b) The information has been published or has been

officially made available to the public;

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

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

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

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

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

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

# EXECUTIVE ORDER 12829—

## NATIONAL INDUSTRIAL SECURITY PROGRAM

Ex. Ord. No. 12829, Jan. 6, 1993, 58 F.R. 3479, as amended by Ex. Ord. No. 12885, Dec. 14, 1993, 58 F.R. 65863, provided:

This order establishes a National Industrial Security Program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. To promote our national interests, the United States Government issues contracts, licenses, and grants to nongovernment organizations. When these arrangements require access to classified information, the national security requires that this information be safeguarded in a manner equivalent to its protection within the executive branch of Government. The national security also requires that our industrial security program promote the economic and technological interests of the United States. Redundant, overlapping, or unnecessary requirements impede those interests. Therefore, the National Industrial Security Program shall serve as a single, integrated, cohesive industrial security program to protect classified information and to preserve our Nation's economic and technological interests.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011–2286) [42 U.S.C. 2011 et seq.], the National Security Act of 1947, as amended (codified as amended in scattered sections of the United States Code) [50 U.S.C. 3001 et seq.], and the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2) [5 U.S.C. App.], it is hereby ordered as follows:

### PART 1. ESTABLISHMENT AND POLICY

Section 101. *Establishment.* (a) There is established a National Industrial Security Program. The purpose of this program is to safeguard classified information that may be released or has been released to current, prospective, or former contractors, licensees, or grantees of United States agencies. For the purposes of this order, the terms “contractor, licensee, or grantee” means current, prospective, or former contractors, licensees, or grantees of United States agencies. The National Industrial Security Program shall be applicable to all executive branch departments and agencies.

(b) The National Industrial Security Program shall provide for the protection of information classified pursuant to Executive Order No. 12356 of April 2, 1982 [formerly set out above], or its successor, and the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(c) For the purposes of this order, the term “contractor” does not include individuals engaged under personal services contracts.

Sec. 102. *Policy Direction.* (a) The National Security Council shall provide overall policy direction for the National Industrial Security Program.

(b) The Director of the Information Security Oversight Office, established under Executive Order No. 12356 of April 2, 1982 [formerly set out above], shall be responsible for implementing and monitoring the National Industrial Security Program and shall:

(1) develop, in consultation with the agencies, and promulgate subject to the approval of the National Security Council, directives for the implementation of this order, which shall be binding on the agencies;

(2) oversee agency, contractor, licensee, and grantee actions to ensure compliance with this order and implementing directives;

(3) review all agency implementing regulations, internal rules, or guidelines. The Director shall require any regulation, rule, or guideline to be changed if it is not consistent with this order or implementing directives. Any such decision by the Director may be appealed to the National Security Council. The agency regulation, rule, or guideline shall remain in effect pending a prompt decision on the appeal;

(4) have the authority, pursuant to terms of applicable contracts, licenses, grants, or regulations, to conduct on-site reviews of the implementation of the National Industrial Security Program by each agency, contractor,

licensee, and grantee that has access to or stores classified information and to require of each agency, contractor, licensee, and grantee those reports, information, and other cooperation that may be necessary to fulfill the Director's responsibilities. If these reports, inspections, or access to specific classified information, or other forms of cooperation, would pose an exceptional national security risk, the affected agency head or the senior official designated under section 203(a) of this order may request the National Security Council to deny access to the Director. The Director shall not have access pending a prompt decision by the National Security Council;

(5) report any violations of this order or its implementing directives to the head of the agency or to the senior official designated under section 203(a) of this order so that corrective action, if appropriate, may be taken. Any such report pertaining to the implementation of the National Industrial Security Program by a contractor, licensee, or grantee shall be directed to the agency that is exercising operational oversight over the contractor, licensee, or grantee under section 202 of this order;

(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the National Industrial Security Program;

(7) consider, in consultation with the advisory committee established by this order, affected agencies, contractors, licensees, and grantees, and recommend to the President through the National Security Council changes to this order; and

(8) report at least annually to the President through the National Security Council on the implementation of the National Industrial Security Program.

(c) Nothing in this order shall be construed to supersede the authority of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], or the authority of the Director of Central Intelligence under the National Security Act of 1947, as amended [50 U.S.C. 3001 et seq.], or Executive Order No. 12333 of December 8, 1981 [50 U.S.C. 3001 note].

Sec. 103. *National Industrial Security Program Policy Advisory Committee.* (a) *Establishment.* There is established

the National Industrial Security Program Policy Advisory Committee ("Committee"). The Director of the Information Security Oversight Office shall serve as Chairman of the Committee and appoint the members of the Committee. The members of the Committee shall be the representatives of those departments and agencies most affected by the National Industrial Security Program and nongovernment representatives of contractors, licensees, or grantees involved with classified contracts, licenses, or grants, as determined by the Chairman.

(b) *Functions.* (1) The Committee members shall advise the Chairman of the Committee on all matters concerning the policies of the National Industrial Security Program, including recommended changes to those policies as reflected in this order, its implementing directives, or the operating manual established under this order, and serve as a forum to discuss policy issues in dispute.

(2) The Committee shall meet at the request of the Chairman, but at least twice during the calendar year.

(c) *Administration.* (1) Members of the Committee shall serve without compensation for their work on the Committee. However, nongovernment members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(2) To the extent permitted by law and subject to the availability of funds, the Administrator of General Services shall provide the Committee with administrative services, facilities, staff, and other support services necessary for the performance of its functions.

(d) *General.* Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [5 U.S.C. App.], except that of reporting to the Congress, which are applicable to the Committee, shall be performed by the Administrator of General Services in accordance with the guidelines and procedures established by the General Services Administration.

## PART 2. OPERATIONS

Sec. 201. *National Industrial Security Program Operating Manual.* (a) The Secretary of Defense, in consultation with all affected agencies and with the concurrence



of the Secretary of Energy, the Nuclear Regulatory Commission, and the Director of Central Intelligence, shall issue and maintain a National Industrial Security Program Operating Manual (“Manual”). The Secretary of Energy and the Nuclear Regulatory Commission shall prescribe and issue that portion of the Manual that pertains to information classified under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.]. The Director of Central Intelligence shall prescribe and issue that portion of the Manual that pertains to intelligence sources and methods, including Sensitive Compartmented Information.

(b) The Manual shall prescribe specific requirements, restrictions, and other safeguards that are necessary to preclude unauthorized disclosure and control authorized disclosure of classified information to contractors, licensees, or grantees. The Manual shall apply to the release of classified information during all phases of the contracting process including bidding, negotiation, award, performance, and termination of contracts, the licensing process, or the grant process, with or under the control of departments or agencies.

(c) The Manual shall also prescribe requirements, restrictions, and other safeguards that are necessary to protect special classes of classified information, including Restricted Data, Formerly Restricted Data, intelligence sources and methods information, Sensitive Compartmented Information, and Special Access Program information.

(d) In establishing particular requirements, restrictions, and other safeguards within the Manual, the Secretary of Defense, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director of Central Intelligence shall take into account these factors: (i) the damage to the national security that reasonably could be expected to result from an unauthorized disclosure; (ii) the existing or anticipated threat to the disclosure of information; and (iii) the short- and long-term costs of the requirements, restrictions, and other safeguards.

(e) To the extent that is practicable and reasonable, the requirements, restrictions, and safeguards that the Manual establishes for the protection of classified information by contractors, licensees, and grantees shall be consistent with the requirements, restrictions, and safeguards that

directives implementing Executive Order No. 12356 of April 2, 1982 [formerly set out above], or the Atomic Energy Act of 1954, as amended, establish for the protection of classified information by agencies. Upon request by the Chairman of the Committee, the Secretary of Defense shall provide an explanation and justification for any requirement, restriction, or safeguard that results in a standard for the protection of classified information by contractors, licensees, and grantees that differs from the standard that applies to agencies.

(f) The Manual shall be issued to correspond as closely as possible to pertinent decisions of the Secretary of Defense and the Director of Central Intelligence made pursuant to the recommendations of the Joint Security Review Commission and to revisions to the security classification system that result from Presidential Review Directive 29, but in any event no later than June 30, 1994.

Sec. 202. *Operational Oversight.* (a) The Secretary of Defense shall serve as Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to, or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The heads of agencies shall enter into agreements with the Secretary of Defense that establish the terms of the Secretary’s responsibilities on behalf of these agency heads.

(b) The Director of Central Intelligence retains authority over access to intelligence sources and methods, including Sensitive Compartmented Information. The Director of Central Intelligence may inspect and monitor [sic] contractor, licensee, and grantee programs and facilities that involve access to such information or may enter into written agreements with the Secretary of Defense, as Executive Agent, to inspect and monitor these programs or facilities, in whole or in part, on the Director’s behalf.

(c) The Secretary of Energy and the Nuclear Regulatory Commission retain authority over access to information under their respective programs classified under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.]. The Secretary or the Commission may inspect and monitor contractor, licensee, and grantee programs and facilities that involve access to such information or

may enter into written agreements with the Secretary of Defense, as Executive Agent, to inspect and monitor these programs or facilities, in whole or in part, on behalf of the Secretary or the Commission, respectively.

(d) The Executive Agent shall have the authority to issue, after consultation with affected agencies, standard forms or other standardization that will promote the implementation of the National Industrial Security Program.

Sec. 203. *Implementation.* (a) The head of each agency that enters into classified contracts, licenses, or grants shall designate a senior agency official to direct and administer the agency's implementation and compliance with the National Industrial Security Program.

(b) Agency implementing regulations, internal rules, or guidelines shall be consistent with this order, its implementing directives, and the Manual. Agencies shall issue these regulations, rules, or guidelines no later than 180 days from the issuance of the Manual. They may incorporate all or portions of the Manual by reference.

(c) Each agency head or the senior official designated under paragraph (a) above shall take appropriate and prompt corrective action whenever a violation of this order, its implementing directives, or the Manual occurs.

(d) The senior agency official designated under paragraph (a) above shall account each year for the costs within the agency associated with the implementation of the National Industrial Security Program. These costs shall be reported to the Director of the Information Security Oversight Office, who shall include them in the reports to the President prescribed by this order.

(e) The Secretary of Defense, with the concurrence of the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, and such other agency heads or officials who may be responsible, shall amend the Federal Acquisition Regulation to be consistent with the implementation of the National Industrial Security Program.

(f) All contracts, licenses, or grants that involve access to classified information and that are advertised or proposed following the issuance of agency regulations, rules, or guidelines described in paragraph (b) above shall comply with the National Industrial Security Program. To the extent that is feasible, economical, and permitted by law, agencies shall amend, modify, or convert preexisting contracts, licenses, or grants, or previously advertised or proposed contracts, licenses, or grants, that involve access to classified information for operation under the National Industrial Security Program. Any direct inspection or monitoring of contractors, licensees, or grantees specified by this order shall be carried out pursuant to the terms of a contract, license, grant, or regulation.

(g) [Amended Ex. Ord. No. 10865, set out above.]

(h) All delegations, rules, regulations, orders, directives, agreements, contracts, licenses, and grants issued under preexisting authorities, including section 1(a) and (b) of Executive Order No. 10865 of February 20, 1960, as amended, by Executive Order No. 10909 of January 17, 1961, and Executive Order No. 11382 of November 27, 1967, shall remain in full force and effect until amended, modified, or terminated pursuant to authority of this order.

(i) This order shall be effective immediately.

# EXECUTIVE ORDER 12937—

## DECLASSIFICATION OF SELECTED RECORDS WITHIN THE NATIONAL ARCHIVES OF THE UNITED STATES

Source: The provisions of Executive Order 12937 of November 10, 1994, appear at 3 CFR, 1994 Comp., p. 949.

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

**Section 1.** The records in the National Archives of the United States referenced in the list accompanying this order are hereby declassified.

**Sec. 2.** The Archivist of the United States shall take such actions as are necessary to make such records available for public research no later than 30 days from the date of this Order, except to the extent that the head of an affected agency and the Archivist have determined that specific information within such records must be protected from disclosure pursuant to an authorized exemption to the Freedom of Information Act, 5 U.S.C. 552, other than the exemption that pertains to national security information.

**Sec. 3.** Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

I. All unreviewed World War II and earlier records, including:

- A. RG 18, Army Air Forces 1,722,400 pp.
- B. RG 65, Federal Bureau of Investigation 362,500 pp.
- C. RG 127, United States Marine Corps 195,000 pp.
- D. RG 216, Office of Censorship 112,500 pp.
- E. RG 226, Office of Strategic Services 415,000 pp.
- F. RG 60, United States Occupation Headquarters 4,422,500 pp.
- G. RG 331, Allied Operational and Occupation Headquarters, World War II (including 350 reels of Allied Force Headquarters) 3,097,500 pp.

H. RG 332, United States Theaters of War, World War II 1,182,500 pp.

I. RG 338, Mediterranean Theater of Operations and European Command 9,500,000 pp. Subtotal for World War II and earlier 21.0 million pp.

II. Post-1945 Collections (Military and Civil)

A. RG 19, Bureau of Ships, Pre-1950 General Correspondence (selected records) 1,732,500 pp.

B. RG 51, Bureau of the Budget, 52.12 Budget Preparation Branch, 1952–69 142,500 pp.

C. RG 72, Bureau of Aeronautics (Navy) (selected records) 5,655,000 pp.

D. RG 166, Foreign Agricultural Service, Narrative Reports, 1955–61 1,272,500 pp.

E. RG 313, Naval Operating Forces (selected records) 407,500 pp.

F. RG 319, Office of the Chief of Military History Manuscripts and Background Papers (selected records) 933,000 pp.

G. RG 337, Headquarters, Army Ground Forces (selected records) 1,269,700 pp.

H. RG 341, Headquarters, United States Air Force (selected records) 4,870,000 pp.

I. RG 389, Office of the Provost Marshal General (selected records) 448,000 pp.

J. RG 391, United States Army Regular Army Mobil Units 240,000 pp.

K. RG 428, General Records of the Department of the Navy (selected records) 31,250 pp.

L. RG 472, Army Vietnam Collection (selected records) 5,864,000 pp.

Subtotal for Other 22.9 million pp.

TOTAL 43.9 million pp.

# EXECUTIVE ORDER 12968—

## ACCESS TO CLASSIFIED INFORMATION

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Source: Ex. Ord. No. 12968, Aug. 2, 1995, 60 F.R. 40245, as amended by  
Ex. Ord. No. 13467, §3(b), June 30, 2008, 73 F.R. 38107, provided:

The national interest requires that certain information be maintained in confidence through a system of classification in order to protect our citizens, our democratic institutions, and our participation within the community of nations. The unauthorized disclosure of information classified in the national interest can cause irreparable damage to the national security and loss of human life.

Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon whom we rely to guard our national security.

This order establishes a uniform Federal personnel security program for employees who will be considered for initial or continued access to classified information.

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

### PART 1—DEFINITIONS, ACCESS TO CLASSIFIED INFORMATION, FINANCIAL DISCLOSURE, AND OTHER ITEMS

Section 1.1. *Definitions.* For the purposes of this order: (a) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105, the "military departments," as defined in 5 U.S.C. 102, and any other entity within the executive branch that comes into the possession of classified information, including the Defense Intelligence Agency, National Security Agency, and the National Reconnaissance Office.

(b) "Applicant" means a person other than an employee who has received an authorized conditional offer of employment for a position that requires access to classified information.

(c) "Authorized investigative agency" means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(d) "Classified information" means information that has been determined pursuant to Executive Order No. 12958 [formerly set out above], or any successor order, Executive Order No. 12951 [set out above], or any successor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011 [et seq.]), to require protection against unauthorized disclosure.

(e) "Employee" means a person, other than the President and Vice President, employed by, detailed or assigned to, an agency, including members of the Armed Forces; an expert or consultant to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of an agency, including all subcontractors; a personal services contractor; or any other category of person who acts for or on behalf of an agency as determined by the appropriate agency head.

(f) "Foreign power" and "agent of a foreign power" have the meaning provided in 50 U.S.C. 1801.

(g) "Need for access" means a determination that an employee requires access to a particular level of classified information in order to perform or assist in a lawful and authorized governmental function.

(h) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(i) “Overseas Security Executive Agent” means the Board established by the President to consider, develop, coordinate and promote policies, standards and agreements on overseas security operations, programs and projects that affect all United States Government agencies under the authority of a Chief of Mission.

(j) “Security Executive Agent” means the Security Executive Agent established by the President to consider, coordinate, and recommend policy directives for U.S. security policies, procedures, and practices.

(k) “Special access program” has the meaning provided in section 4.1 of Executive Order No. 12958 [formerly set out above], or any successor order.

Sec. 1.2. *Access to Classified Information.* (a) No employee shall be granted access to classified information unless that employee has been determined to be eligible in accordance with this order and to possess a need-to-know.

(b) Agency heads shall be responsible for establishing and maintaining an effective program to ensure that access to classified information by each employee is clearly consistent with the interests of the national security.

(c) Employees shall not be granted access to classified information unless they:

(1) have been determined to be eligible for access under section 3.1 of this order by agency heads or designated officials based upon a favorable adjudication of an appropriate investigation of the employee’s background;

(2) have a demonstrated need-to-know; and

(3) have signed an approved nondisclosure agreement.

(d) All employees shall be subject to investigation by an appropriate government authority prior to being granted access to classified information and at any time during the period of access to ascertain whether they continue to meet the requirements for access.

(e)(1) All employees granted access to classified information shall be required as a condition of such access to provide to the employing agency written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of 3 years thereafter, to:

(A) relevant financial records that are maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401[(6)]);

(B) consumer reports pertaining to the employee under the Fair Credit Reporting Act (15 U.S.C. 1681a [1681 et seq.]); and

(C) records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(2) Information may be requested pursuant to employee consent under this section where:

(A) there are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(B) information the employing agency deems credible indicates the employee or former employee has incurred excessive indebtedness or has acquired a level of affluence that cannot be explained by other information; or

(C) circumstances indicate the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

(3) Nothing in this section shall be construed to affect the authority of an investigating agency to obtain information pursuant to the Right to Financial Privacy Act [of 1978, 12 U.S.C. 3401 et seq.], the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.] or any other applicable law.

Sec. 1.3. *Financial Disclosure.* (a) Not later than 180 days after the effective date of this order, the head of each agency that originates, handles, transmits, or possesses classified information shall designate each employee, by position or category where possible, who has a regular need for access to classified information that, in the discretion of the agency head, would reveal:

(1) the identity of covert agents as defined in the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 [sic] [et seq.]) [now 50 U.S.C. 3121 et seq.];

(2) technical or specialized national intelligence collection and processing systems that, if disclosed in an unauthorized manner, would substantially negate or impair the effectiveness of the system;

(3) the details of:

(A) the nature, contents, algorithm, preparation, or use of any code, cipher, or cryptographic system or;

(B) the design, construction, functioning, maintenance, or repair of any cryptographic equipment; but not including information concerning the use of cryptographic equipment and services;

(4) particularly sensitive special access programs, the disclosure of which would substantially negate or impair the effectiveness of the information or activity involved; or

(5) especially sensitive nuclear weapons design information (but only for those positions that have been certified as being of a high degree of importance or sensitivity, as described in section 145(f) of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2165(f)]).

(b) An employee may not be granted access, or hold a position designated as requiring access, to information described in subsection (a) unless, as a condition of access to such information, the employee:

(1) files with the head of the agency a financial disclosure report, including information with respect to the spouse and dependent children of the employee, as part of all background investigations or reinvestigations;

(2) is subject to annual financial disclosure requirements, if selected by the agency head; and

(3) files relevant information concerning foreign travel, as determined by the Security Executive Agent.

(c) Not later than 180 days after the effective date of this order, the Security Executive Agent shall develop procedures for the implementation of this section, including a standard financial disclosure form for use by employees under subsection (b) of this section, and agency heads shall identify certain employees, by position or category, who are subject to annual financial disclosure.

Sec. 1.4. *Use of Automated Financial Record Data Bases.*

As part of all investigations and reinvestigations described in section 1.2(d) of this order, agencies may request the Department of the Treasury, under terms and conditions prescribed by the Secretary of the Treasury, to search automated data bases consisting of reports of currency transactions by financial institutions, international transportation of currency or monetary instruments, foreign bank and financial accounts, transactions under \$10,000 that are reported as possible money laundering violations, and records of foreign travel.

Sec. 1.5. *Employee Education and Assistance.* The head of each agency that grants access to classified information shall establish a program for employees with access to classified information to: (a) educate employees about individual responsibilities under this order; and

(b) inform employees about guidance and assistance available concerning issues that may affect their eligibility for access to classified information, including sources of assistance for employees who have questions or concerns about financial matters, mental health, or substance abuse.

## PART 2—ACCESS ELIGIBILITY POLICY AND PROCEDURE

Sec. 2.1. *Eligibility Determinations.* (a) Determinations of eligibility for access to classified information shall be based on criteria established under this order. Such determinations are separate from suitability determinations with respect to the hiring or retention of persons for employment by the government or any other personnel actions.

(b) The number of employees that each agency determines are eligible for access to classified information shall be kept to the minimum required for the conduct of agency functions.

(1) Eligibility for access to classified information shall not be requested or granted solely to permit entry to, or ease of movement within, controlled areas when the employee has no need for access and access to classified information may reasonably be prevented. Where circumstances indicate employees may be inadvertently exposed to classified information in the course of their duties, agencies are authorized to grant or deny, in their discretion, facility access approvals to such employees based on

an appropriate level of investigation as determined by each agency.

(2) Except in agencies where eligibility for access is a mandatory condition of employment, eligibility for access to classified information shall only be requested or granted based on a demonstrated, foreseeable need for access. Requesting or approving eligibility in excess of actual requirements is prohibited.

(3) Eligibility for access to classified information may be granted where there is a temporary need for access, such as one-time participation in a classified project, provided the investigative standards established under this order have been satisfied. In such cases, a fixed date or event for expiration shall be identified and access to classified information shall be limited to information related to the particular project or assignment.

(4) Access to classified information shall be terminated when an employee no longer has a need for access.

Sec. 2.2. *Level of Access Approval.* (a) The level at which an access approval is granted for an employee shall be limited, and relate directly, to the level of classified information for which there is a need for access. Eligibility for access to a higher level of classified information includes eligibility for access to information classified at a lower level.

(b) Access to classified information relating to a special access program shall be granted in accordance with procedures established by the head of the agency that created the program or, for programs pertaining to intelligence activities (including special activities but not including military operational, strategic, and tactical programs) or intelligence sources and methods, by the Director of Central Intelligence. To the extent possible and consistent with the national security interests of the United States, such procedures shall be consistent with the standards and procedures established by and under this order.

Sec. 2.3. *Temporary Access to Higher Levels.* (a) An employee who has been determined to be eligible for access to classified information based on favorable adjudication of a completed investigation may be granted temporary access to a higher level where security personnel authorized by the agency head to make access eligibility determinations find that such access:

(1) is necessary to meet operational or contractual exigencies not expected to be of a recurring nature;

(2) will not exceed 180 days; and

(3) is limited to specific, identifiable information that is made the subject of a written access record.

(b) Where the access granted under subsection (a) of this section involves another agency's classified information, that agency must concur before access to its information is granted.

Sec. 2.4. *Reciprocal Acceptance of Access Eligibility Determinations.* (a) Except when an agency has substantial information indicating that an employee may not satisfy the standards in section 3.1 of this order, background investigations and eligibility determinations conducted under this order shall be mutually and reciprocally accepted by all agencies.

(b) Except where there is substantial information indicating that the employee may not satisfy the standards in section 3.1 of this order, an employee with existing access to a special access program shall not be denied eligibility for access to another special access program at the same sensitivity level as determined personally by the agency head or deputy agency head, or have an existing access eligibility readjudicated, so long as the employee has a need for access to the information involved.

(c) This section shall not preclude agency heads from establishing additional, but not duplicative, investigative or adjudicative procedures for a special access program or for candidates for detail or assignment to their agencies, where such procedures are required in exceptional circumstances to protect the national security.

(d) Where temporary eligibility for access is granted under sections 2.3 or 3.3 of this order or where the determination of eligibility for access is conditional, the fact of such temporary or conditional access shall be conveyed to any other agency that considers affording the employee access to its information.

Sec. 2.5. *Specific Access Requirement.* (a) Employees who have been determined to be eligible for access to classified information shall be given access to classified information only where there is a need-to-know that information.

(b) It is the responsibility of employees who are authorized holders of classified information to verify that a prospective recipient's eligibility for access has been granted by an authorized agency official and to ensure that a need-to-know exists prior to allowing such access, and to challenge requests for access that do not appear well-founded.

Sec. 2.6. *Access by Non-United States Citizens.* (a) Where there are compelling reasons in furtherance of an agency mission, immigrant alien and foreign national employees who possess a special expertise may, in the discretion of the agency, be granted limited access to classified information only for specific programs, projects, contracts, licenses, certificates, or grants for which there is a need for access. Such individuals shall not be eligible for access to any greater level of classified information than the United States Government has determined may be releasable to the country of which the subject is currently a citizen, and such limited access may be approved only if the prior 10 years of the subject's life can be appropriately investigated. If there are any doubts concerning granting access, additional lawful investigative procedures shall be fully pursued.

(b) Exceptions to these requirements may be permitted only by the agency head or the senior agency official designated under section 6.1 of this order to further substantial national security interests.

### PART 3—ACCESS ELIGIBILITY STANDARDS

Sec. 3.1. *Standards.* (a) No employee shall be deemed to be eligible for access to classified information merely by reason of Federal service or contracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

(b) Except as provided in sections 2.6 and 3.3 of this order, eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability

to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel or appropriate automated procedures. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

(c) The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information.

(d) In determining eligibility for access under this order, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No inference concerning the standards in this section may be raised solely on the basis of the sexual orientation of the employee.

(e) No negative inference concerning the standards in this section may be raised solely on the basis of mental health counseling. Such counseling can be a positive factor in eligibility determinations. However, mental health counseling, where relevant to the adjudication of access to classified information, may justify further inquiry to determine whether the standards of subsection (b) of this section are satisfied, and mental health may be considered where it directly relates to those standards.

(f) Not later than 180 days after the effective date of this order, the Security Executive Agent shall develop a common set of adjudicative guidelines for determining eligibility for access to classified information, including access to special access programs.

Sec. 3.2. *Basis for Eligibility Approval.* (a) Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this order or otherwise available to security officials and shall be made part of the applicant's or employee's security record. Applicants or employees shall be required to provide relevant information



pertaining to their background and character for use in investigating and adjudicating their eligibility for access.

(b) Not later than 180 days after the effective date of this order, the Security Executive Agent shall develop a common set of investigative standards for background investigations for access to classified information. These standards may vary for the various levels of access.

(c) Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order and its implementing regulations to resolve issues that may arise during the course of a background investigation or reinvestigation.

Sec. 3.3. *Special Circumstances.* (a) In exceptional circumstances where official functions must be performed prior to the completion of the investigative and adjudication process, temporary eligibility for access to classified information may be granted to an employee while the initial investigation is underway. When such eligibility is granted, the initial investigation shall be expedited.

(1) Temporary eligibility for access under this section shall include a justification, and the employee must be notified in writing that further access is expressly conditioned on the favorable completion of the investigation and issuance of an access eligibility approval. Access will be immediately terminated, along with any assignment requiring an access eligibility approval, if such approval is not granted.

(2) Temporary eligibility for access may be granted only by security personnel authorized by the agency head to make access eligibility determinations and shall be based on minimum investigative standards developed by the Security Executive Agent not later than 180 days after the effective date of this order.

(3) Temporary eligibility for access may be granted only to particular, identified categories of classified information necessary to perform the lawful and authorized functions that are the basis for the granting of temporary access.

(b) Nothing in subsection (a) shall be construed as altering the authority of an agency head to waive requirements for granting access to classified information pursuant to statutory authority.

(c) Where access has been terminated under section 2.1(b)(4) of this order and a new need for access arises, access eligibility up to the same level shall be reapproved without further investigation as to employees who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years, provided they have remained employed by the same employer during the period in question, the employee certifies in writing that there has been no change in the relevant information provided by the employee for the last background investigation, and there is no information that would tend to indicate the employee may no longer satisfy the standards established by this order for access to classified information.

(d) Access eligibility shall be reapproved for individuals who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years and who have been retired or otherwise separated from United States Government employment for not more than 2 years; provided there is no indication the individual may no longer satisfy the standards of this order, the individual certifies in writing that there has been no change in the relevant information provided by the individual for the last background investigation, and an appropriate record check reveals no unfavorable information.

Sec. 3.4. *Reinvestigation Requirements.* (a) Because circumstances and characteristics may change dramatically over time and thereby alter the eligibility of employees for continued access to classified information, reinvestigations shall be conducted with the same priority and care as initial investigations.

(b) Employees who are eligible for access to classified information shall be the subject of periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access established in this order.

(c) Not later than 180 days after the effective date of this order, the Security Executive Agent shall develop a common set of reinvestigative standards, including the frequency of reinvestigations.

Sec. 3.5. *Continuous Evaluation.* An individual who has been determined to be eligible for or who currently has access to classified information shall be subject to

continuous evaluation under standards (including, but not limited to, the frequency of such evaluation) as determined by the Director of National Intelligence.

#### PART 4—INVESTIGATIONS FOR FOREIGN GOVERNMENTS

Sec. 4. *Authority.* Agencies that conduct background investigations, including the Federal Bureau of Investigation and the Department of State, are authorized to conduct personnel security investigations in the United States when requested by a foreign government as part of its own personnel security program and with the consent of the individual.

#### PART 5—REVIEW OF ACCESS DETERMINATIONS

Sec. 5.1. *Determinations of Need for Access.* A determination under section 2.1(b)(4) of this order that an employee does not have, or no longer has, a need for access is a discretionary determination and shall be conclusive.

Sec. 5.2. *Review Proceedings for Denials or Revocations of Eligibility for Access.* (a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of this order shall be:

(1) provided as comprehensive and detailed a written explanation of the basis for that conclusion as the national security interests of the United States and other applicable law permit;

(2) provided within 30 days, upon request and to the extent the documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a), as applicable, any documents, records, and reports upon which a denial or revocation is based;

(3) informed of their right to be represented by counsel or other representative at their own expense; to request any documents, records, and reports as described in section 5.2(a)(2) upon which a denial or revocation is based; and to request the entire investigative file, as permitted by the national security and other applicable law, which, if requested, shall be promptly provided prior to the time set for a written reply;

(4) provided a reasonable opportunity to reply in writing to, and to request a review of, the determination;

(5) provided written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal;

(6) provided an opportunity to appeal in writing to a high level panel, appointed by the agency head, which shall be comprised of at least three members, two of whom shall be selected from outside the security field. Decisions of the panel shall be in writing, and final except as provided in subsection (b) of this section; and

(7) provided an opportunity to appear personally and to present relevant documents, materials, and information at some point in the process before an adjudicative or other authority, other than the investigating entity, as determined by the agency head. A written summary or recording of such appearance shall be made part of the applicant's or employee's security record, unless such appearance occurs in the presence of the appeals panel described in subsection (a)(6) of this section.

(b) Nothing in this section shall prohibit an agency head from personally exercising the appeal authority in subsection (a)(6) of this section based upon recommendations from an appeals panel. In such case, the decision of the agency head shall be final.

(c) Agency heads shall promulgate regulations to implement this section and, at their sole discretion and as resources and national security considerations permit, may provide additional review proceedings beyond those required by subsection (a) of this section. This section does not require additional proceedings, however, and creates no procedural or substantive rights.

(d) When the head of an agency or principal deputy personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security interests of the United States by revealing classified information, the particular procedure shall not be made available. This certification shall be conclusive.

(e) This section shall not be deemed to limit or affect the responsibility and power of an agency head pursuant to any law or other Executive order to deny or terminate

access to classified information in the interests of national security. The power and responsibility to deny or terminate access to classified information pursuant to any law or other Executive order may be exercised only where the agency head determines that the procedures prescribed in subsection (a) of this section cannot be invoked in a manner that is consistent with national security. This determination shall be conclusive.

(f)(1) This section shall not be deemed to limit or affect the responsibility and power of an agency head to make determinations of suitability for employment.

(2) Nothing in this section shall require that an agency provide the procedures prescribed in subsection (a) of this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any other reason other than denial of eligibility for access to classified information.

(3) A suitability determination shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

## PART 6—IMPLEMENTATION

Sec. 6.1. *Agency Implementing Responsibilities.* Heads of agencies that grant employees access to classified information shall: (a) designate a senior agency official to direct and administer the agency's personnel security program established by this order. All such programs shall include active oversight and continuing security education and awareness programs to ensure effective implementation of this order;

(b) cooperate, under the guidance of the Security Executive Agent, with other agencies to achieve practical, consistent, and effective adjudicative training and guidelines; and

(c) conduct periodic evaluations of the agency's implementation and administration of this order, including the implementation of section 1.3(a) of this order. Copies of each report shall be provided to the Security Executive Agent.

Sec. 6.2. *Employee Responsibilities.* (a) Employees who are granted eligibility for access to classified information shall:

(1) protect classified information in their custody from unauthorized disclosure;

(2) report all contacts with persons, including foreign nationals, who seek in any way to obtain unauthorized access to classified information;

(3) report all violations of security regulations to the appropriate security officials; and

(4) comply with all other security requirements set forth in this order and its implementing regulations.

(b) Employees are encouraged and expected to report any information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with the national security.

Sec. 6.3. *Security Executive Agent Responsibilities and Implementation.* (a) With respect to actions taken by the Security Executive Agent pursuant to sections 1.3(c), 3.1(f), 3.2(b), 3.3(a)(2), and 3.4(c) of this order, the Director of National Intelligence shall serve as the final authority for implementation.

(b) Any guidelines, standards, or procedures developed by the Security Executive Agent pursuant to this order shall be consistent with those guidelines issued by the Federal Bureau of Investigation in March 1994 on Background Investigations Policy/Guidelines Regarding Sexual Orientation.

(c) In carrying out its responsibilities under this order, the Security Executive Agent shall consult where appropriate with the Overseas Security Executive Agent. In carrying out its responsibilities under section 1.3(c) of this order, the Security Executive Agent shall obtain the concurrence of the Director of the Office of Management and Budget.

Sec. 6.4. *Sanctions.* Employees shall be subject to appropriate sanctions if they knowingly and willfully grant eligibility for, or allow access to, classified information in violation of this order or its implementing regulations. Sanctions may include reprimand, suspension without pay, removal, and other actions in accordance with applicable law and agency regulations.

## PART 7—GENERAL PROVISIONS

Sec. 7.1. *Classified Information Procedures Act.* Nothing in this order is intended to alter the procedures established under the Classified Information Procedures Act (18 U.S.C. App.).

Sec. 7.2. *General.* (a) Information obtained by an agency under sections 1.2(e) or 1.3 of this order may not be disseminated outside the agency, except to:

(1) the agency employing the employee who is the subject of the records or information;

(2) the Department of Justice for law enforcement or counterintelligence purposes; or

(3) any agency if such information is clearly relevant to the authorized responsibilities of such agency.

(b) The Attorney General, at the request of the head of an agency, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control, except that this order shall not diminish or otherwise affect the requirements of

Executive Order No. 10450 [5 U.S.C. 7311 note], the denial and revocation procedures provided to individuals covered by Executive Order No. 10865, as amended [set out above], or access by historical researchers and former presidential appointees under Executive Order No. 12958 [formerly set out above] or any successor order.

(d) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

(e) This Executive order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(f) This order is effective immediately.

EXECUTIVE ORDER 13467—  
REFORMING PROCESSES RELATED TO SUITABILITY  
FOR GOVERNMENT EMPLOYMENT, FITNESS FOR  
CONTRACTOR EMPLOYEES, AND ELIGIBILITY FOR ACCESS  
TO CLASSIFIED NATIONAL SECURITY INFORMATION

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Ex. Ord. No. 13467, June 30, 2008, 73 F.R. 38103, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure an efficient, practical, reciprocal, and aligned system for investigating and determining suitability for Government employment, contractor employee fitness, and eligibility for access to classified information, while taking appropriate account of title III of Public Law 108–458, it is hereby ordered as follows:

PART 1—POLICY, APPLICABILITY, AND DEFINITIONS

Section 1.1. *Policy.* Executive branch policies and procedures relating to suitability, contractor employee fitness, eligibility to hold a sensitive position, access to federally controlled facilities and information systems, and eligibility for access to classified information shall be aligned using consistent standards to the extent possible, provide for reciprocal recognition, and shall ensure cost-effective, timely, and efficient protection of the national interest, while providing fair treatment to those upon whom the Federal Government relies to conduct our Nation’s business and protect national security.

Sec. 1.2. *Applicability.* (a) This order applies to all covered individuals as defined in section 1.3(g), except that:

(i) the provisions regarding eligibility for physical access to federally controlled facilities and logical access to federally controlled information systems do not apply to individuals exempted in accordance with guidance pursuant to the Federal Information Security Management Act (title III of Public Law 107–347) and Homeland Security Presidential Directive 12; and

(ii) the qualification standards for enlistment, appoint-

ment, and induction into the Armed Forces pursuant to title 10, United States Code, are unaffected by this order.

(b) This order also applies to investigations and determinations of eligibility for access to classified information for employees of agencies working in or for the legislative or judicial branches when those investigations or determinations are conducted by the executive branch.

Sec. 1.3. *Definitions.* For the purpose of this order: (a) “Adjudication” means the evaluation of pertinent data in a background investigation, as well as any other available information that is relevant and reliable, to determine whether a covered individual is:

- (i) suitable for Government employment;
- (ii) eligible for logical and physical access;
- (iii) eligible for access to classified information;
- (iv) eligible to hold a sensitive position; or

(v) fit to perform work for or on behalf of the Government as a contractor employee.

(b) “Agency” means any “Executive agency” as defined in section 105 of title 5, United States Code, including the “military departments,” as defined in section 102 of title 5, United States Code, and any other entity within the executive branch that comes into possession of classified information or has designated positions as sensitive, except such an entity headed by an officer who is not a covered individual.

(c) “Classified information” means information that has

been determined pursuant to Executive Order 12958 of April 17, 1995, as amended [formerly set out above], or a successor or predecessor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) to require protection against unauthorized disclosure.

(d) “Continuous evaluation” means reviewing the background of an individual who has been determined to be eligible for access to classified information (including additional or new checks of commercial databases, Government databases, and other information lawfully available to security officials) at any time during the period of eligibility to determine whether that individual continues to meet the requirements for eligibility for access to classified information.

(e) “Contractor” means an expert or consultant (not appointed under section 3109 of title 5, United States Code) to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of any agency, including all subcontractors; a personal services contractor; or any other category of person who performs work for or on behalf of an agency (but not a Federal employee).

(f) “Contractor employee fitness” means fitness based on character and conduct for work for or on behalf of the Government as a contractor employee.

(g) “Covered individual” means a person who performs work for or on behalf of the executive branch, or who seeks to perform work for or on behalf of the executive branch, but does not include:

(i) the President or (except to the extent otherwise directed by the President) employees of the President under section 105 or 107 of title 3, United States Code; or

(ii) the Vice President or (except to the extent otherwise directed by the Vice President) employees of the Vice President under section 106 of title 3 or annual legislative branch appropriations acts.

(h) “End-to-end automation” means an executive branch-wide federated system that uses automation to manage and monitor cases and maintain relevant documentation of the application (but not an employment application), investigation, adjudication, and continuous evaluation processes.

(i) “Federally controlled facilities” and “federally controlled information systems” have the meanings prescribed in guidance pursuant to the Federal Information Security Management Act (title III of Public Law 107–347) and Homeland Security Presidential Directive 12.

(j) “Logical and physical access” means access other than occasional or intermittent access to federally controlled facilities or information systems.

(k) “Sensitive position” means any position so designated under Executive Order 10450 of April 27, 1953, as amended.

(l) “Suitability” has the meaning and coverage provided in 5 CFR Part 731.

## PART 2—ALIGNMENT, RECIPROcity, AND GOVERNANCE

Sec. 2.1. *Aligned System.* (a) Investigations and adjudications of covered individuals who require a determination of suitability, eligibility for logical and physical access, eligibility to hold a sensitive position, eligibility for access to classified information, and, as appropriate, contractor employee fitness, shall be aligned using consistent standards to the extent possible. Each successively higher level of investigation and adjudication shall build upon, but not duplicate, the ones below it.

(b) The aligned system shall employ updated and consistent standards and methods, enable innovations with enterprise information technology capabilities and end-to-end automation to the extent practicable, and ensure that relevant information maintained by agencies can be accessed and shared rapidly across the executive branch, while protecting national security, protecting privacy-related information, ensuring resulting decisions are in the national interest, and providing the Federal Government with an effective workforce.

(c) Except as otherwise authorized by law, background investigations and adjudications shall be mutually and reciprocally accepted by all agencies. An agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination consistent with law, directive, or regulation) that exceed the requirements for suitability, contractor employee fitness, eligibility for logical or

physical access, eligibility to hold a sensitive position, or eligibility for access to classified information without the approval of the Suitability Executive Agent or Security Executive Agent, as appropriate, and provided that approval to establish additional requirements shall be limited to circumstances where additional requirements are necessary to address significant needs unique to the agency involved or to protect national security.

*Sec. 2.2. Establishment and Functions of Performance Accountability Council.* (a) There is hereby established a Suitability and Security Clearance Performance Accountability Council (Council).

(b) The Deputy Director for Management, Office of Management and Budget, shall serve as Chair of the Council and shall have authority, direction, and control over the Council's functions. Membership on the Council shall include the Suitability Executive Agent and the Security Executive Agent. The Chair shall select a Vice Chair to act in the Chair's absence. The Chair shall have authority to designate officials from additional agencies who shall serve as members of the Council. Council membership shall be limited to Federal Government employees and shall include suitability and security professionals.

(c) The Council shall be accountable to the President to achieve, consistent with this order, the goals of reform, and is responsible for driving implementation of the reform effort, ensuring accountability by agencies, ensuring the Suitability Executive Agent and the Security Executive Agent align their respective processes, and sustaining reform momentum.

(d) The Council shall:

(i) ensure alignment of suitability, security, and, as appropriate, contractor employee fitness investigative and adjudicative processes;

(ii) hold agencies accountable for the implementation of suitability, security, and, as appropriate, contractor employee fitness processes and procedures;

(iii) establish requirements for enterprise information technology;

(iv) establish annual goals and progress metrics and prepare annual reports on results;

(v) ensure and oversee the development of tools and techniques for enhancing background investigations and the making of eligibility determinations;

(vi) arbitrate disparities in procedures between the Suitability Executive Agent and the Security Executive Agent;

(vii) ensure sharing of best practices; and

(viii) advise the Suitability Executive Agent and the Security Executive Agent on policies affecting the alignment of investigations and adjudications.

(e) The Chair may, to ensure the effective implementation of the policy set forth in section 1.1 of this order and to the extent consistent with law, assign, in whole or in part, to the head of any agency (solely or jointly) any function within the Council's responsibility relating to alignment and improvement of investigations and determinations of suitability, contractor employee fitness, eligibility for logical and physical access, eligibility for access to classified information, or eligibility to hold a sensitive position.

*Sec. 2.3. Establishment, Designation, and Functions of Executive Agents.* (a) There is hereby established a Suitability Executive Agent and a Security Executive Agent.

(b) The Director of the Office of Personnel Management shall serve as the Suitability Executive Agent. As the Suitability Executive Agent, the Director of the Office of Personnel Management will continue to be responsible for developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of suitability and eligibility for logical and physical access.

(c) The Director of National Intelligence shall serve as the Security Executive Agent. The Security Executive Agent:

(i) shall direct the oversight of investigations and determinations of eligibility for access to classified information or eligibility to hold a sensitive position made by any agency;

(ii) shall be responsible for developing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of eligibility for

access to classified information or eligibility to hold a sensitive position;

(iii) may issue guidelines and instructions to the heads of agencies to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in processes relating to determinations by agencies of eligibility for access to classified information or eligibility to hold a sensitive position;

(iv) shall serve as the final authority to designate an agency or agencies to conduct investigations of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to classified information or eligibility to hold a sensitive position;

(v) shall serve as the final authority to designate an agency or agencies to determine eligibility for access to classified information in accordance with Executive Order 12968 of August 2, 1995 [set out above];

(vi) shall ensure reciprocal recognition of eligibility for access to classified information among the agencies, including acting as the final authority to arbitrate and resolve disputes among the agencies involving the reciprocity of investigations and determinations of eligibility for access to classified information or eligibility to hold a sensitive position; and

(vii) may assign, in whole or in part, to the head of any agency (solely or jointly) any of the functions detailed in (i) through (vi), above, with the agency's exercise of such assigned functions to be subject to the Security Executive Agent's oversight and with such terms and conditions (including approval by the Security Executive Agent) as the Security Executive Agent determines appropriate.

(d) Nothing in this order shall be construed in a manner that would limit the authorities of the Director of the Office of Personnel Management or the Director of National Intelligence under law.

*Sec. 2.4. Additional Functions.* (a) The duties assigned to the Security Policy Board by Executive Order 12968 of August 2, 1995, to consider, coordinate, and recommend policy directives for executive branch security policies, procedures, and practices are reassigned to the Security Executive Agent.

(b) Heads of agencies shall:

(i) carry out any function assigned to the agency head by the Chair, and shall assist the Chair, the Council, the Suitability Executive Agent, and the Security Executive Agent in carrying out any function under sections 2.2 and 2.3 of this order;

(ii) implement any policy or procedure developed pursuant to this order;

(iii) to the extent permitted by law, make available to the Performance Accountability Council, the Suitability Executive Agent, or the Security Executive Agent such information as may be requested to implement this order;

(iv) ensure that all actions taken under this order take account of the counterintelligence interests of the United States, as appropriate; and

(v) ensure that actions taken under this order are consistent with the President's constitutional authority to:

(A) conduct the foreign affairs of the United States;

(B) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties;

(C) recommend for congressional consideration such measures as the President may judge necessary or expedient; and

(D) supervise the unitary executive branch.

## PART 3—MISCELLANEOUS

*Sec. 3. General Provisions.* (a) Executive Order 13381 of June 27, 2005, as amended, is revoked. Nothing in this order shall:

(i) supersede, impede, or otherwise affect:

(A) Executive Order 10450 of April 27, 1953, as amended;

(B) Executive Order 10577 of November 23, 1954, as amended;

(C) Executive Order 12333 of December 4, 1981, as amended;



- (D) Executive Order 12829 of January 6, 1993, as amended; or
- (E) Executive Order 12958 of April 17, 1995, as amended [formerly set out above]; nor
  - (ii) diminish or otherwise affect the denial and revocation procedures provided to individuals covered by Executive Order 10865 of February 20, 1960, as amended.
- (b) [Amended Ex. Ord. No. 12968, set out above.]
- (c) Nothing in this order shall supersede, impede, or otherwise affect the remainder of Executive Order 12968 of August 2, 1995, as amended.
- (d) [Amended Ex. Ord. No. 12171, set out as a note under section 7103 of Title 5, Government Organization and Employees.]
- (e) Nothing in this order shall be construed to impair or otherwise affect the:
  - (i) authority granted by law to a department or agency, or the head thereof; or
  - (ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
- (f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (g) Existing delegations of authority made pursuant to Executive Order 13381 of June 27, 2005, as amended, to any agency relating to granting eligibility for access to classified information and conducting investigations shall 13 [sic] remain in effect, subject to the exercise of authorities pursuant to this order to revise or revoke such delegation.
- (h) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.
- (i) This order 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 any party against the United States, its agencies, instrumentalities, or entities, its officers or employees, or any other person.

# EXECUTIVE ORDER 13489—

## PRESIDENTIAL RECORDS

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By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish policies and procedures governing the assertion of executive privilege by incumbent and former Presidents in connection with the release of Presidential records by the National Archives and Records Administration (NARA) pursuant to the Presidential Records Act of 1978, it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

- (a) “Archivist” refers to the Archivist of the United States or his designee.
- (b) “NARA” refers to the National Archives and Records Administration.
- (c) “Presidential Records Act” refers to the Presidential Records Act, 44 U.S.C. 2201-2207.
- (d) “NARA regulations” refers to the NARA regulations implementing the Presidential Records Act, 36 C.F.R. Part 1270.
- (e) “Presidential records” refers to those documentary materials maintained by NARA pursuant to the Presidential Records Act, including Vice Presidential records.
- (f) “Former President” refers to the former President during whose term or terms of office particular Presidential records were created.
- (g) A “substantial question of executive privilege” exists if NARA’s disclosure of Presidential records might impair national security (including the conduct of foreign relations), law enforcement, or the deliberative processes of the executive branch.
- (h) A “final court order” is a court order from which no appeal may be taken.

Sec. 2. Notice of Intent to Disclose Presidential Records.

(a) When the Archivist provides notice to the incumbent and former Presidents of his intent to disclose Presidential records pursuant to section 1270.46 of the NARA regulations, the Archivist, using any guidelines provided by the incumbent and former Presidents, shall identify any specific materials, the disclosure of which he believes may raise a substantial question of executive privilege. However, nothing in this order is intended to affect the right of the incumbent or former Presidents to invoke executive privilege with respect to materials not identified by the Archivist. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

(b) Upon the passage of 30 days after receipt by the incumbent and former Presidents of a notice of intent to disclose Presidential records, the Archivist may disclose the records covered by the notice, unless during that time period the Archivist has received a claim of executive privilege by the incumbent or former President or the Archivist has been instructed by the incumbent President or his designee to extend the time period for a time certain and with reason for the extension of time provided in the notice. If a shorter period of time is required under the circumstances set forth in section 1270.44 of the NARA regulations, the Archivist shall so indicate in the notice.

Sec. 3. Claim of Executive Privilege by Incumbent President.

(a) Upon receipt of a notice of intent to disclose Presidential records, the Attorney General (directly or through the Assistant Attorney General for the Office of Legal Counsel) and the Counsel to the President shall review as they deem appropriate the records covered by the notice and consult with each other, the Archivist, and such other executive

agencies as they deem appropriate concerning whether invocation of executive privilege is justified.

(b) The Attorney General and the Counsel to the President, in the exercise of their discretion and after appropriate review and consultation under subsection (a) of this section, may jointly determine that invocation of executive privilege is not justified. The Archivist shall be notified promptly of any such determination.

(c) If either the Attorney General or the Counsel to the President believes that the circumstances justify invocation of executive privilege, the issue shall be presented to the President by the Counsel to the President and the Attorney General.

(d) If the President decides to invoke executive privilege, the Counsel to the President shall notify the former President, the Archivist, and the Attorney General in writing of the claim of privilege and the specific Presidential records to which it relates. After receiving such notice, the Archivist shall not disclose the privileged records unless directed to do so by an incumbent President or by a final court order.

#### Sec. 4. Claim of Executive Privilege by Former President.

(a) Upon receipt of a claim of executive privilege by a living former President, the Archivist shall consult with the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel), the Counsel to the President, and such other executive agencies as the Archivist deems appropriate concerning the Archivist's determination as to whether to honor the former President's claim of privilege or instead to disclose the Presidential records notwithstanding the claim of privilege. Any determination under section 3 of this order that executive privilege shall not be invoked by the incumbent President shall not prejudice the Archivist's determination with respect to the former President's claim of privilege.

(b) In making the determination referred to in subsection (a) of this section, the Archivist shall abide by any instructions given him by the incumbent President or his designee unless otherwise directed by a final court order. The Archivist shall notify the incumbent and former Presidents of his determination at least 30 days prior to disclosure of the Presidential records, unless a shorter time period is required in the circumstances set forth in section 1270.44 of the NARA regulations. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

#### Sec. 5. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) 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, or entities, its officers, employees, or agents, or any other person.

Sec. 6. Revocation. Executive Order 13233 of November 1, 2001, is revoked.

# EXECUTIVE ORDER 13526—

## CLASSIFIED NATIONAL SECURITY INFORMATION

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This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism. Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nation's progress depends on the free flow of information both within the Government and to the American people. Nevertheless, throughout our history, the national defense has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, our homeland security, and our interactions with foreign nations. Protecting information critical to our Nation's security and demonstrating our commitment to open Government through accurate and accountable application of classification standards and routine, secure, and effective declassification are equally important priorities.

NOW, THEREFORE, I, BARACK OBAMA, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

### PART 1 — ORIGINAL CLASSIFICATION

Section 1.1. Classification Standards. (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably

could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

(b) If there is significant doubt about the need to classify information, it shall not be classified. This provision does not:

- (1) amplify or modify the substantive criteria or procedures for classification; or
- (2) create any substantive or procedural rights subject to judicial review.

(c) Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

(d) The unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

Sec. 1.2. Classification Levels. (a) Information may be classified at one of the following three levels:

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information.

(c) If there is significant doubt about the appropriate level of classification, it shall be classified at the lower level.

Sec. 1.3. Classification Authority. (a) The authority to classify information originally may be exercised only by:

(1) the President and the Vice President;

(2) agency heads and officials designated by the President; and

(3) United States Government officials delegated this authority pursuant to paragraph (c) of this section.

(b) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level.

(c) Delegation of original classification authority.

(1) Delegations of original classification authority shall be limited to the minimum required to administer this order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.

(2) “Top Secret” original classification authority may be delegated only by the President, the Vice President, or an agency head or official designated pursuant to paragraph (a)(2) of this section.

(3) “Secret” or “Confidential” original classification authority may be delegated only by the President, the Vice President, an agency head or official designated pursuant to paragraph (a)(2) of this section, or the senior agency official designated under section 5.4(d) of this order, provided that official has been delegated “Top Secret” original classification authority by the agency head.

(4) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this order. Each delegation shall identify the official by name or position.

(5) Delegations of original classification authority shall be reported or made available by name or position to the Director of the Information Security Oversight Office.

(d) All original classification authorities must receive training in proper classification (including the avoidance of overclassification) and declassification as provided in this order and its implementing directives at least once a calendar year. Such training must include instruction on the proper safeguarding of classified information and on the sanctions in section 5.5 of this order that may be brought against an individual who fails to classify information properly or protect classified information from unauthorized disclosure. Original classification authorities who do not receive such mandatory training at least once within a calendar year shall have their classification authority suspended by the agency head or the senior agency official designated under section 5.4(d) of this order until such training has taken place. A waiver may be granted by the agency head, the deputy agency head, or the senior agency official if an individual is unable to receive such training due to unavoidable circumstances. Whenever a waiver is granted, the individual shall receive such training as soon as practicable.

(e) Exceptional cases. When an employee, government contractor, licensee, certificate holder, or grantee of an agency who does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this order and its implementing directives. The information shall be transmitted promptly as provided under this order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within 30 days whether to classify this information.

Sec. 1.4. Classification Categories. Information shall not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security in accordance with section 1.2 of this order, and it pertains to one or more of the following:

(a) military plans, weapons systems, or operations;

(b) foreign government information;

(c) intelligence activities (including covert action), intelligence sources or methods, or cryptology;

(d) foreign relations or foreign activities of the United States, including confidential sources;

(e) scientific, technological, or economic matters relating to the national security;

(f) United States Government programs for safeguarding nuclear materials or facilities;

(g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or

(h) the development, production, or use of weapons of mass destruction.

Sec. 1.5. Duration of Classification. (a) At the time of original classification, the original classification authority shall establish a specific date or event for declassification based on the duration of the national security sensitivity of the information. Upon reaching the date or event, the information shall be automatically declassified. Except for information that should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source or key design concepts of weapons of mass destruction, the date or event shall not exceed the time frame established in paragraph (b) of this section.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires that it be marked for declassification for up to 25 years from the date of the original decision.

(c) An original classification authority may extend the duration of classification up to 25 years from the date of origin of the document, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under this order are followed.

(d) No information may remain classified indefinitely. Information marked for an indefinite duration of classification under predecessor orders, for example, marked as “Originating Agency’s Determination Required,” or classified information that contains incomplete declassification instructions or lacks declassification instructions shall be declassified in

accordance with part 3 of this order.

Sec. 1.6. Identification and Markings. (a) At the time of original classification, the following shall be indicated in a manner that is immediately apparent:

(1) one of the three classification levels defined in section 1.2 of this order;

(2) the identity, by name and position, or by personal identifier, of the original classification authority;

(3) the agency and office of origin, if not otherwise evident;

(4) declassification instructions, which shall indicate one of the following:

(A) the date or event for declassification, as prescribed in section 1.5(a);

(B) the date that is 10 years from the date of original classification, as prescribed in section 1.5(b);

(C) the date that is up to 25 years from the date of original classification, as prescribed in section 1.5(b); or

(D) in the case of information that should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source or key design concepts of weapons of mass destruction, the marking prescribed in implementing directives issued pursuant to this order; and

(5) a concise reason for classification that, at a minimum, cites the applicable classification categories in section 1.4 of this order.

(b) Specific information required in paragraph (a) of this section may be excluded if it would reveal additional classified information.

(c) With respect to each classified document, the agency originating the document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are unclassified. In accordance with standards prescribed in directives issued under this order, the Director of the Information Security Oversight Office may grant and revoke temporary waivers of this requirement. The Director shall revoke any waiver upon a finding of abuse.

(d) Markings or other indicia implementing the provisions of this order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing directives issued pursuant to this order.

(e) Foreign government information shall retain its original classification markings or shall be assigned a U.S. classification that provides a degree of protection at least equivalent to that required by the entity that furnished the information. Foreign government information retaining its original classification markings need not be assigned a U.S. classification marking provided that the responsible agency determines that the foreign government markings are adequate to meet the purposes served by U.S. classification markings.

(f) Information assigned a level of classification under this or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Whenever such information is used in the derivative classification process or is reviewed for possible declassification, holders of such information shall coordinate with an appropriate classification authority for the application of omitted markings.

(g) The classification authority shall, whenever practicable, use a classified addendum whenever classified information constitutes a small portion of an otherwise unclassified document or prepare a product to allow for dissemination at the lowest level of classification possible or in unclassified form.

(h) Prior to public release, all declassified records shall be appropriately marked to reflect their declassification.

#### Sec. 1.7. Classification Prohibitions and Limitations.

(a) In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to:

(1) conceal violations of law, inefficiency, or administrative error;

(2) prevent embarrassment to a person, organization, or agency;

(3) restrain competition; or

(4) prevent or delay the release of information that does not require protection in the interest of the national security.

(b) Basic scientific research information not clearly related to the national security shall not be classified.

(c) Information may not be reclassified after declassification and release to the public under proper authority unless:

(1) the reclassification is personally approved in writing by the agency head based on a document-by-document determination by the agency that reclassification is required to prevent significant and demonstrable damage to the national security;

(2) the information may be reasonably recovered without bringing undue attention to the information;

(3) the reclassification action is reported promptly to the Assistant to the President for National Security Affairs (National Security Advisor) and the Director of the Information Security Oversight Office; and

(4) for documents in the physical and legal custody of the National Archives and Records Administration (National Archives) that have been available for public use, the agency head has, after making the determinations required by this paragraph, notified the Archivist of the United States (Archivist), who shall suspend public access pending approval of the reclassification action by the Director of the Information Security Oversight Office. Any such decision by the Director may be appealed by the agency head to the President through the National Security Advisor. Public access shall remain suspended pending a prompt decision on the appeal.

(d) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552), the Presidential Records Act, 44 U.S.C. 2204(c)(1), the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of section 3.5 of this order only if such classification meets the requirements of this order and is accomplished on a document-by-document basis with the personal participation or under the direction of the agency head, the deputy agency head, or the senior agency official designated under section 5.4 of this order. The requirements in this paragraph also apply to those situations in which information has been declassified in accordance with a specific date or event determined by an original classification authority in accordance with section 1.5 of this order.

(e) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that: (1) meets the standards for classification under this order; and (2) is not otherwise revealed in the individual items of information.

Sec. 1.8. Classification Challenges. (a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information in accordance with agency procedures established under paragraph (b) of this section.

(b) In accordance with implementing directives issued pursuant to this order, an agency head or senior agency official shall establish procedures under which authorized holders of information, including authorized holders outside the classifying agency, are encouraged and expected to challenge the classification of information that they believe is improperly classified or unclassified. These procedures shall ensure that:

(1) individuals are not subject to retribution for bringing such actions;

(2) an opportunity is provided for review by an impartial official or panel; and

(3) individuals are advised of their right to appeal agency decisions to the Interagency Security Classification Appeals Panel (Panel) established by section 5.3 of this order.

(c) Documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement are not covered by this section.

Sec. 1.9. Fundamental Classification Guidance Review.

(a) Agency heads shall complete on a periodic basis a comprehensive review of the agency's classification guidance, particularly classification guides, to ensure the guidance reflects current circumstances and to identify classified information that no longer requires protection and can be declassified. The initial fundamental classification guidance review shall be completed within 2 years of the effective date of this order.

(b) The classification guidance review shall include an evaluation of classified information to determine if it

meets the standards for classification under section 1.4 of this order, taking into account an up-to-date assessment of likely damage as described under section 1.2 of this order.

(c) The classification guidance review shall include original classification authorities and agency subject matter experts to ensure a broad range of perspectives.

(d) Agency heads shall provide a report summarizing the results of the classification guidance review to the Director of the Information Security Oversight Office and shall release an unclassified version of this report to the public.

## PART 2—DERIVATIVE CLASSIFICATION

Sec. 2.1. Use of Derivative Classification. (a) Persons who reproduce, extract, or summarize classified information, or who apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

(1) be identified by name and position, or by personal identifier, in a manner that is immediately apparent for each derivative classification action;

(2) observe and respect original classification decisions; and

(3) carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple sources, the derivative classifier shall carry forward:

(A) the date or event for declassification that corresponds to the longest period of classification among the sources, or the marking established pursuant to section 1.6(a)(4)(D) of this order; and

(B) a listing of the source materials.

(c) Derivative classifiers shall, whenever practicable, use a classified addendum whenever classified information constitutes a small portion of an otherwise unclassified document or prepare a product to allow for dissemination at the lowest level of classification possible or in unclassified form.



(d) Persons who apply derivative classification markings shall receive training in the proper application of the derivative classification principles of the order, with an emphasis on avoiding over-classification, at least once every 2 years. Derivative classifiers who do not receive such training at least once every 2 years shall have their authority to apply derivative classification markings suspended until they have received such training. A waiver may be granted by the agency head, the deputy agency head, or the senior agency official if an individual is unable to receive such training due to unavoidable circumstances. Whenever a waiver is granted, the individual shall receive such training as soon as practicable.

Sec. 2.2. Classification Guides. (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. These guides shall conform to standards contained in directives issued under this order.

(b) Each guide shall be approved personally and in writing by an official who:

(1) has program or supervisory responsibility over the information or is the senior agency official; and

(2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agencies shall establish procedures to ensure that classification guides are reviewed and updated as provided in directives issued under this order.

(d) Agencies shall incorporate original classification decisions into classification guides on a timely basis and in accordance with directives issued under this order.

(e) Agencies may incorporate exemptions from automatic declassification approved pursuant to section 3.3(j) of this order into classification guides, provided that the Panel is notified of the intent to take such action for specific information in advance of approval and the information remains in active use.

(f) The duration of classification of a document classified by a derivative classifier using a classification guide shall not exceed 25 years from the date of the origin of the document, except for:

(1) information that should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source or key design concepts of weapons of mass destruction; and

(2) specific information incorporated into classification guides in accordance with section 2.2(e) of this order.

## PART 3—DECLASSIFICATION AND DOWNGRADING

Sec. 3.1. Authority for Declassification. (a) Information shall be declassified as soon as it no longer meets the standards for classification under this order.

(b) Information shall be declassified or downgraded by:

(1) the official who authorized the original classification, if that official is still serving in the same position and has original classification authority;

(2) the originator's current successor in function, if that individual has original classification authority;

(3) a supervisory official of either the originator or his or her successor in function, if the supervisory official has original classification authority; or

(4) officials delegated declassification authority in writing by the agency head or the senior agency official of the originating agency.

(c) The Director of National Intelligence (or, if delegated by the Director of National Intelligence, the Principal Deputy Director of National Intelligence) may, with respect to the Intelligence Community, after consultation with the head of the originating Intelligence Community element or department, declassify, downgrade, or direct the declassification or downgrading of information or intelligence relating to intelligence sources, methods, or activities.

(d) It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion,

whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure. This provision does not:

(1) amplify or modify the substantive criteria or procedures for classification; or

(2) create any substantive or procedural rights subject to judicial review.

(e) If the Director of the Information Security Oversight Office determines that information is classified in violation of this order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the President through the National Security Advisor. The information shall remain classified pending a prompt decision on the appeal.

(f) The provisions of this section shall also apply to agencies that, under the terms of this order, do not have original classification authority, but had such authority under predecessor orders.

(g) No information may be excluded from declassification under section 3.3 of this order based solely on the type of document or record in which it is found. Rather, the classified information must be considered on the basis of its content.

(h) Classified nonrecord materials, including artifacts, shall be declassified as soon as they no longer meet the standards for classification under this order.

(i) When making decisions under sections 3.3, 3.4, and 3.5 of this order, agencies shall consider the final decisions of the Panel.

Sec. 3.2. Transferred Records. (a) In the case of classified records transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this order.

(b) In the case of classified records that are not officially transferred as described in paragraph (a) of this section, but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such records shall be deemed to be the originating agency for purposes of this order. Such

records may be declassified or downgraded by the agency in possession of the records after consultation with any other agency that has an interest in the subject matter of the records.

(c) Classified records accessioned into the National Archives shall be declassified or downgraded by the Archivist in accordance with this order, the directives issued pursuant to this order, agency declassification guides, and any existing procedural agreement between the Archivist and the relevant agency head.

(d) The originating agency shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value before they are accessioned into the National Archives. However, the Archivist may require that classified records be accessioned into the National Archives when necessary to comply with the provisions of the Federal Records Act. This provision does not apply to records transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or records for which the National Archives serves as the custodian of the records of an agency or organization that has gone out of existence.

(e) To the extent practicable, agencies shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified pursuant to the provisions for automatic declassification in section 3.3 of this order.

Sec. 3.3. Automatic Declassification. (a) Subject to paragraphs (b)–(d) and (g)–(j) of this section, all classified records that (1) are more than 25 years old and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. All classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of origin, except as provided in paragraphs (b)–(d) and (g)–(i) of this section. If the date of origin of an individual record cannot be readily determined, the date of original classification shall be used instead.

(b) An agency head may exempt from automatic declassification under paragraph (a) of this section specific information, the release of which should clearly and demonstrably be expected to:

(1) reveal the identity of a confidential human source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a nonhuman intelligence source; or impair the effectiveness of an intelligence method currently in use, available for use, or under development;

(2) reveal information that would assist in the development, production, or use of weapons of mass destruction;

(3) reveal information that would impair U.S. cryptologic systems or activities;

(4) reveal information that would impair the application of state-of-the-art technology within a U.S. weapon system;

(5) reveal formally named or numbered U.S. military war plans that remain in effect, or reveal operational or tactical elements of prior plans that are contained in such active plans;

(6) reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States;

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

(8) reveal information that would seriously impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, or infrastructures relating to the national security; or

(9) violate a statute, treaty, or international agreement that does not permit the automatic or unilateral declassification of information at 25 years.

(c)(1) An agency head shall notify the Panel of any specific file series of records for which a review or assessment has determined that the information within that file series almost invariably falls within one or more of the exemption categories listed in paragraph (b) of this section and that the agency proposes to exempt from automatic declassification at 25 years.

(2) The notification shall include:

(A) a description of the file series;

(B) an explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and

(C) except when the information within the file series almost invariably identifies a confidential human source or a human intelligence source or key design concepts of weapons of mass destruction, a specific date or event for declassification of the information, not to exceed December 31 of the year that is 50 years from the date of origin of the records.

(3) The Panel may direct the agency not to exempt a designated file series or to declassify the information within that series at an earlier date than recommended. The agency head may appeal such a decision to the President through the National Security Advisor.

(4) File series exemptions approved by the President prior to December 31, 2008, shall remain valid without any additional agency action pending Panel review by the later of December 31, 2010, or December 31 of the year that is 10 years from the date of previous approval.

(d) The following provisions shall apply to the onset of automatic declassification:

(1) Classified records within an integral file block, as defined in this order, that are otherwise subject to automatic declassification under this section shall not be automatically declassified until December 31 of the year that is 25 years from the date of the most recent record within the file block.

(2) After consultation with the Director of the National Declassification Center (the Center) established by section 3.7 of this order and before the records are subject to automatic declassification, an agency head or senior agency official may delay automatic declassification for up to five additional years for classified information contained in media that make a review for possible declassification exemptions more difficult or costly.

(3) Other than for records that are properly exempted from automatic declassification, records containing clas-

sified information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies with respect to the classified information and could reasonably be expected to fall under one or more of the exemptions in paragraph (b) of this section shall be identified prior to the onset of automatic declassification for later referral to those agencies.

(A) The information of concern shall be referred by the Center established by section 3.7 of this order, or by the centralized facilities referred to in section 3.7(e) of this order, in a prioritized and scheduled manner determined by the Center.

(B) If an agency fails to provide a final determination on a referral made by the Center within 1 year of referral, or by the centralized facilities referred to in section 3.7(e) of this order within 3 years of referral, its equities in the referred records shall be automatically declassified.

(C) If any disagreement arises between affected agencies and the Center regarding the referral review period, the Director of the Information Security Oversight Office shall determine the appropriate period of review of referred records.

(D) Referrals identified prior to the establishment of the Center by section 3.7 of this order shall be subject to automatic declassification only in accordance with subparagraphs (d)(3)(A)–(C) of this section.

(4) After consultation with the Director of the Information Security Oversight Office, an agency head may delay automatic declassification for up to 3 years from the date of discovery of classified records that were inadvertently not reviewed prior to the effective date of automatic declassification.

(e) Information exempted from automatic declassification under this section shall remain subject to the mandatory and systematic declassification review provisions of this order.

(f) The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the

classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this section.

(g) The Secretary of Energy shall determine when information concerning foreign nuclear programs that was removed from the Restricted Data category in order to carry out provisions of the National Security Act of 1947, as amended, may be declassified. Unless otherwise determined, such information shall be declassified when comparable information concerning the United States nuclear program is declassified.

(h) Not later than 3 years from the effective date of this order, all records exempted from automatic declassification under paragraphs (b) and (c) of this section shall be automatically declassified on December 31 of a year that is no more than 50 years from the date of origin, subject to the following:

(1) Records that contain information the release of which should clearly and demonstrably be expected to reveal the following are exempt from automatic declassification at 50 years:

(A) the identity of a confidential human source or a human intelligence source; or

(B) key design concepts of weapons of mass destruction.

(2) In extraordinary cases, agency heads may, within 5 years of the onset of automatic declassification, propose to exempt additional specific information from declassification at 50 years.

(3) Records exempted from automatic declassification under this paragraph shall be automatically declassified on December 31 of a year that is no more than 75 years from the date of origin unless an agency head, within 5 years of that date, proposes to exempt specific information from declassification at 75 years and the proposal is formally approved by the Panel.

(i) Specific records exempted from automatic declassification prior to the establishment of the Center described in section 3.7 of this order shall be subject to the

provisions of paragraph (h) of this section in a scheduled and prioritized manner determined by the Center.

(j) At least 1 year before information is subject to automatic declassification under this section, an agency head or senior agency official shall notify the Director of the Information Security Oversight Office, serving as Executive Secretary of the Panel, of any specific information that the agency proposes to exempt from automatic declassification under paragraphs (b) and (h) of this section.

(1) The notification shall include:

(A) a detailed description of the information, either by reference to information in specific records or in the form of a declassification guide;

(B) an explanation of why the information should be exempt from automatic declassification and must remain classified for a longer period of time; and

(C) a specific date or a specific and independently verifiable event for automatic declassification of specific records that contain the information proposed for exemption.

(2) The Panel may direct the agency not to exempt the information or to declassify it at an earlier date than recommended. An agency head may appeal such a decision to the President through the National Security Advisor. The information will remain classified while such an appeal is pending.

(k) For information in a file series of records determined not to have permanent historical value, the duration of classification beyond 25 years shall be the same as the disposition (destruction) date of those records in each Agency Records Control Schedule or General Records Schedule, although the duration of classification shall be extended if the record has been retained for business reasons beyond the scheduled disposition date.

Sec. 3.4. Systematic Declassification Review. (a) Each agency that has originated classified information under this order or its predecessors shall establish and conduct a program for systematic declassification review for records of permanent historical value exempted from automatic declassification under section 3.3 of this order. Agencies

shall prioritize their review of such records in accordance with priorities established by the Center.

(b) The Archivist shall conduct a systematic declassification review program for classified records: (1) accessioned into the National Archives; (2) transferred to the Archivist pursuant to 44 U.S.C. 2203; and (3) for which the National Archives serves as the custodian for an agency or organization that has gone out of existence.

Sec. 3.5. Mandatory Declassification Review. (a) Except as provided in paragraph (b) of this section, all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:

(1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;

(2) the document or material containing the information responsive to the request is not contained within an operational file exempted from search and review, publication, and disclosure under 5 U.S.C. 552 in accordance with law; and

(3) the information is not the subject of pending litigation.

(b) Information originated by the incumbent President or the incumbent Vice President; the incumbent President's White House Staff or the incumbent Vice President's Staff; committees, commissions, or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President is exempted from the provisions of paragraph (a) of this section. However, the Archivist shall have the authority to review, downgrade, and declassify papers or records of former Presidents and Vice Presidents under the control of the Archivist pursuant to 44 U.S.C. 2107, 2111, 2111 note, or 2203. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final

decision by the Archivist may be appealed by the requester or an agency to the Panel. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification under this order. They shall release this information unless withholding is otherwise authorized and warranted under applicable law.

(d) If an agency has reviewed the requested information for declassification within the past 2 years, the agency need not conduct another review and may instead inform the requester of this fact and the prior review decision and advise the requester of appeal rights provided under subsection (e) of this section.

(e) In accordance with directives issued pursuant to this order, agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They also shall provide a means for administratively appealing a denial of a mandatory review request, and for notifying the requester of the right to appeal a final agency decision to the Panel.

(f) After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information; the Director of National Intelligence shall develop special procedures for the review of information pertaining to intelligence sources, methods, and activities; and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.

(g) Documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement are not covered by this section.

(h) This section shall not apply to any request for a review made to an element of the Intelligence Community that is made by a person other than an individual as that term is defined by 5 U.S.C. 552a(a)(2), or by a foreign government entity or any representative thereof.

Sec. 3.6. Processing Requests and Reviews. Notwithstanding section 4.1(i) of this order, in response to a request for information under the Freedom of Information Act, the

Presidential Records Act, the Privacy Act of 1974, or the mandatory review provisions of this order:

(a) An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.

(b) When an agency receives any request for documents in its custody that contain classified information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies with respect to the classified information, or identifies such documents in the process of implementing sections 3.3 or 3.4 of this order, it shall refer copies of any request and the pertinent documents to the originating agency for processing and may, after consultation with the originating agency, inform any requester of the referral unless such association is itself classified under this order or its predecessors. In cases in which the originating agency determines in writing that a response under paragraph (a) of this section is required, the referring agency shall respond to the requester in accordance with that paragraph.

(c) Agencies may extend the classification of information in records determined not to have permanent historical value or nonrecord materials, including artifacts, beyond the time frames established in sections 1.5(b) and 2.2(f) of this order, provided:

(1) the specific information has been approved pursuant to section 3.3(j) of this order for exemption from automatic declassification; and

(2) the extension does not exceed the date established in section 3.3(j) of this order.

Sec. 3.7. National Declassification Center (a) There is established within the National Archives a National Declassification Center to streamline declassification processes, facilitate quality-assurance measures, and implement standardized training regarding the declassification of records determined to have permanent historical value. There shall be a Director of the Center who shall be appointed or removed by the Archivist in consultation with the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, and the Director of National Intelligence.

(b) Under the administration of the Director, the Center shall coordinate:

(1) timely and appropriate processing of referrals in accordance with section 3.3(d)(3) of this order for accessioned Federal records and transferred presidential records.

(2) general interagency declassification activities necessary to fulfill the requirements of sections 3.3 and 3.4 of this order;

(3) the exchange among agencies of detailed declassification guidance to enable the referral of records in accordance with section 3.3(d)(3) of this order;

(4) the development of effective, transparent, and standard declassification work processes, training, and quality assurance measures;

(5) the development of solutions to declassification challenges posed by electronic records, special media, and emerging technologies;

(6) the linkage and effective utilization of existing agency databases and the use of new technologies to document and make public declassification review decisions and support declassification activities under the purview of the Center; and

(7) storage and related services, on a reimbursable basis, for Federal records containing classified national security information.

(c) Agency heads shall fully cooperate with the Archivist in the activities of the Center and shall:

(1) provide the Director with adequate and current declassification guidance to enable the referral of records in accordance with section 3.3(d)(3) of this order; and

(2) upon request of the Archivist, assign agency personnel to the Center who shall be delegated authority by the agency head to review and exempt or declassify information originated by their agency contained in records accessioned into the National Archives, after consultation with subject-matter experts as necessary.

(d) The Archivist, in consultation with representatives of the participants in the Center and after input from the

general public, shall develop priorities for declassification activities under the purview of the Center that take into account the degree of researcher interest and the likelihood of declassification.

(e) Agency heads may establish such centralized facilities and internal operations to conduct internal declassification reviews as appropriate to achieve optimized records management and declassification business processes. Once established, all referral processing of accessioned records shall take place at the Center, and such agency facilities and operations shall be coordinated with the Center to ensure the maximum degree of consistency in policies and procedures that relate to records determined to have permanent historical value.

(f) Agency heads may exempt from automatic declassification or continue the classification of their own originally classified information under section 3.3(a) of this order except that in the case of the Director of National Intelligence, the Director shall also retain such authority with respect to the Intelligence Community.

(g) The Archivist shall, in consultation with the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, the Director of National Intelligence, the Director of the Central Intelligence Agency, and the Director of the Information Security Oversight Office, provide the National Security Advisor with a detailed concept of operations for the Center and a proposed implementing directive under section 5.1 of this order that reflects the coordinated views of the aforementioned agencies.

#### PART 4—SAFEGUARDING

Sec. 4.1. General Restrictions on Access. (a) A person may have access to classified information provided that:

(1) a favorable determination of eligibility for access has been made by an agency head or the agency head's designee;

(2) the person has signed an approved nondisclosure agreement; and

(3) the person has a need-to-know the information.

(b) Every person who has met the standards for access to classified information in paragraph (a) of this section shall receive contemporaneous training on the proper

safeguarding of classified information and on the criminal, civil, and administrative sanctions that may be imposed on an individual who fails to protect classified information from unauthorized disclosure.

(c) An official or employee leaving agency service may not remove classified information from the agency's control or direct that information be declassified in order to remove it from agency control.

(d) Classified information may not be removed from official premises without proper authorization.

(e) Persons authorized to disseminate classified information outside the executive branch shall ensure the protection of the information in a manner equivalent to that provided within the executive branch.

(f) Consistent with law, executive orders, directives, and regulations, an agency head or senior agency official or, with respect to the Intelligence Community, the Director of National Intelligence, shall establish uniform procedures to ensure that automated information systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information:

- (1) prevent access by unauthorized persons;
- (2) ensure the integrity of the information; and
- (3) to the maximum extent practicable, use:

(A) common information technology standards, protocols, and interfaces that maximize the availability of, and access to, the information in a form and manner that facilitates its authorized use; and

(B) standardized electronic formats to maximize the accessibility of information to persons who meet the criteria set forth in section 4.1(a) of this order.

(g) Consistent with law, executive orders, directives, and regulations, each agency head or senior agency official, or with respect to the Intelligence Community, the Director of National Intelligence, shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.

(h) Consistent with directives issued pursuant to this order, an agency shall safeguard foreign government information under standards that provide a degree of protection at least equivalent to that required by the government or international organization of governments that furnished the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to U.S. "Confidential" information, including modified handling and transmission and allowing access to individuals with a need-to-know who have not otherwise been cleared for access to classified information or executed an approved nondisclosure agreement.

(i)(1) Classified information originating in one agency may be disseminated to another agency or U.S. entity by any agency to which it has been made available without the consent of the originating agency, as long as the criteria for access under section 4.1(a) of this order are met, unless the originating agency has determined that prior authorization is required for such dissemination and has marked or indicated such requirement on the medium containing the classified information in accordance with implementing directives issued pursuant to this order.

(2) Classified information originating in one agency may be disseminated by any other agency to which it has been made available to a foreign government in accordance with statute, this order, directives implementing this order, direction of the President, or with the consent of the originating agency. For the purposes of this section, "foreign government" includes any element of a foreign government, or an international organization of governments, or any element thereof.

(3) Documents created prior to the effective date of this order shall not be disseminated outside any other agency to which they have been made available without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information that originated within that agency.

(4) For purposes of this section, the Department of Defense shall be considered one agency, except that any dissemination of information regarding intelligence sources, methods, or activities shall be consistent with directives issued pursuant to section 6.2(b) of this order.



(5) Prior consent of the originating agency is not required when referring records for declassification review that contain information originating in more than one agency.

Sec. 4.2. Distribution Controls. (a) The head of each agency shall establish procedures in accordance with applicable law and consistent with directives issued pursuant to this order to ensure that classified information is accessible to the maximum extent possible by individuals who meet the criteria set forth in section 4.1(a) of this order.

(b) In an emergency, when necessary to respond to an imminent threat to life or in defense of the homeland, the agency head or any designee may authorize the disclosure of classified information (including information marked pursuant to section 4.1(i)(1) of this order) to an individual or individuals who are otherwise not eligible for access. Such actions shall be taken only in accordance with directives implementing this order and any procedure issued by agencies governing the classified information, which shall be designed to minimize the classified information that is disclosed under these circumstances and the number of individuals who receive it. Information disclosed under this provision or implementing directives and procedures shall not be deemed declassified as a result of such disclosure or subsequent use by a recipient. Such disclosures shall be reported promptly to the originator of the classified information. For purposes of this section, the Director of National Intelligence may issue an implementing directive governing the emergency disclosure of classified intelligence information.

(c) Each agency shall update, at least annually, the automatic, routine, or recurring distribution mechanism for classified information that it distributes. Recipients shall cooperate fully with distributors who are updating distribution lists and shall notify distributors whenever a relevant change in status occurs.

Sec. 4.3. Special Access Programs. (a) Establishment of special access programs. Unless otherwise authorized by the President, only the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, and the Director of National Intelligence, or the principal deputy of each, may create a special access program. For special access programs pertaining to intelligence sources,

methods, and activities (but not including military operational, strategic, and tactical programs), this function shall be exercised by the Director of National Intelligence. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only when the program is required by statute or upon a specific finding that:

(1) the vulnerability of, or threat to, specific information is exceptional; and

(2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure.

(b) Requirements and limitations. (1) Special access programs shall be limited to programs in which the number of persons who ordinarily will have access will be reasonably small and commensurate with the objective of providing enhanced protection for the information involved.

(2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives issued pursuant to this order.

(3) Special access programs shall be subject to the oversight program established under section 5.4(d) of this order. In addition, the Director of the Information Security Oversight Office shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this order. An agency head may limit access to a special access program to the Director of the Information Security Oversight Office and no more than one other employee of the Information Security Oversight Office or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.

(4) The agency head or principal deputy shall review annually each special access program to determine whether it continues to meet the requirements of this order.

(5) Upon request, an agency head shall brief the National Security Advisor, or a designee, on any or all of the agency's special access programs.

(6) For the purposes of this section, the term “agency head” refers only to the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, and the Director of National Intelligence, or the principal deputy of each.

(c) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

Sec. 4.4. Access by Historical Researchers and Certain Former Government Personnel. (a) The requirement in section 4.1(a)(3) of this order that access to classified information may be granted only to individuals who have a need to-know the information may be waived for persons who:

- (1) are engaged in historical research projects;
- (2) previously have occupied senior policy-making positions to which they were appointed or designated by the President or the Vice President; or
- (3) served as President or Vice President.

(b) Waivers under this section may be granted only if the agency head or senior agency official of the originating agency:

- (1) determines in writing that access is consistent with the interest of the national security;
- (2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and
- (3) limits the access granted to former Presidential appointees or designees and Vice Presidential appointees or designees to items that the person originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or designee.

## PART 5—IMPLEMENTATION AND REVIEW

Sec. 5.1. Program Direction. (a) The Director of the Information Security Oversight Office, under the direction of the Archivist and in consultation with the National Security Advisor, shall issue such directives as are necessary to implement this order. These directives shall be binding on the agencies. Directives issued by the

Director of the Information Security Oversight Office shall establish standards for:

- (1) classification, declassification, and marking principles;
- (2) safeguarding classified information, which shall pertain to the handling, storage, distribution, transmittal, and destruction of and accounting for classified information;
- (3) agency security education and training programs;
- (4) agency self-inspection programs; and
- (5) classification and declassification guides.

(b) The Archivist shall delegate the implementation and monitoring functions of this program to the Director of the Information Security Oversight Office.

(c) The Director of National Intelligence, after consultation with the heads of affected agencies and the Director of the Information Security Oversight Office, may issue directives to implement this order with respect to the protection of intelligence sources, methods, and activities. Such directives shall be consistent with this order and directives issued under paragraph (a) of this section.

Sec. 5.2. Information Security Oversight Office. (a) There is established within the National Archives an Information Security Oversight Office. The Archivist shall appoint the Director of the Information Security Oversight Office, subject to the approval of the President.

(b) Under the direction of the Archivist, acting in consultation with the National Security Advisor, the Director of the Information Security Oversight Office shall:

- (1) develop directives for the implementation of this order;
- (2) oversee agency actions to ensure compliance with this order and its implementing directives;
- (3) review and approve agency implementing regulations prior to their issuance to ensure their consistency with this order and directives issued under section 5.1(a) of this order;

(4) have the authority to conduct on-site reviews of each agency's program established under this order, and to require of each agency those reports and information and other cooperation that may be necessary to fulfill its responsibilities. If granting access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the President through the National Security Advisor within 60 days of the request for access. Access shall be denied pending the response;

(5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the National Security Advisor;

(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this order;

(7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this order;

(8) report at least annually to the President on the implementation of this order; and

(9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

Sec. 5.3. Interagency Security Classification Appeals Panel.

(a) Establishment and administration.

(1) There is established an Interagency Security Classification Appeals Panel. The Departments of State, Defense, and Justice, the National Archives, the Office of the Director of National Intelligence, and the National Security Advisor shall each be represented by a senior-level representative who is a full-time or permanent part-time Federal officer or employee designated to serve as a member of the Panel by the respective agency head. The President shall designate a Chair from among the members of the Panel.

(2) Additionally, the Director of the Central Intelligence Agency may appoint a temporary representative who meets the criteria in paragraph (a)(1) of this section to participate as a voting member in all Panel deliberations and associated support activities concerning classified information originated by the Central Intelligence Agency.

(3) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (a)(1) of this section.

(4) The Director of the Information Security Oversight Office shall serve as the Executive Secretary of the Panel. The staff of the Information Security Oversight Office shall provide program and administrative support for the Panel.

(5) The members and staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panel's functions.

(6) The Panel shall meet at the call of the Chair. The Chair shall schedule meetings as may be necessary for the Panel to fulfill its functions in a timely manner.

(7) The Information Security Oversight Office shall include in its reports to the President a summary of the Panel's activities.

(b) Functions. The Panel shall:

(1) decide on appeals by persons who have filed classification challenges under section 1.8 of this order;

(2) approve, deny, or amend agency exemptions from automatic declassification as provided in section 3.3 of this order;

(3) decide on appeals by persons or entities who have filed requests for mandatory declassification review under section 3.5 of this order; and

(4) appropriately inform senior agency officials and the public of final Panel decisions on appeals under sections 1.8 and 3.5 of this order.

(c) Rules and procedures. The Panel shall issue bylaws, which shall be published in the Federal Register. The bylaws shall establish the rules and procedures that the Panel will follow in accepting, considering, and issuing

decisions on appeals. The rules and procedures of the Panel shall provide that the Panel will consider appeals only on actions in which:

(1) the appellant has exhausted his or her administrative remedies within the responsible agency;

(2) there is no current action pending on the issue within the Federal courts; and

(3) the information has not been the subject of review by the Federal courts or the Panel within the past 2 years.

(d) Agency heads shall cooperate fully with the Panel so that it can fulfill its functions in a timely and fully informed manner. The Panel shall report to the President through the National Security Advisor any instance in which it believes that an agency head is not cooperating fully with the Panel.

(e) The Panel is established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States. Panel decisions are committed to the discretion of the Panel, unless changed by the President.

(f) An agency head may appeal a decision of the Panel to the President through the National Security Advisor. The information shall remain classified pending a decision on the appeal.

Sec. 5.4. General Responsibilities. Heads of agencies that originate or handle classified information shall:

(a) demonstrate personal commitment and commit senior management to the successful implementation of the program established under this order;

(b) commit necessary resources to the effective implementation of the program established under this order;

(c) ensure that agency records systems are designed and maintained to optimize the appropriate sharing and safeguarding of classified information, and to facilitate its declassification under the terms of this order when it no longer meets the standards for continued classification; and

(d) designate a senior agency official to direct and administer the program, whose responsibilities shall include:

(1) overseeing the agency's program established under this order, provided an agency head may designate a separate official to oversee special access programs authorized under this order. This official shall provide a full accounting of the agency's special access programs at least annually;

(2) promulgating implementing regulations, which shall be published in the Federal Register to the extent that they affect members of the public;

(3) establishing and maintaining security education and training programs;

(4) establishing and maintaining an ongoing self-inspection program, which shall include the regular reviews of representative samples of the agency's original and derivative classification actions, and shall authorize appropriate agency officials to correct misclassification actions not covered by sections 1.7(c) and 1.7(d) of this order; and reporting annually to the Director of the Information Security Oversight Office on the agency's self-inspection program;

(5) establishing procedures consistent with directives issued pursuant to this order to prevent unnecessary access to classified information, including procedures that:

(A) require that a need for access to classified information be established before initiating administrative clearance procedures; and

(B) ensure that the number of persons granted access to classified information meets the mission needs of the agency while also satisfying operational and security requirements and needs;

(6) developing special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;

(7) ensuring that the performance contract or other system used to rate civilian or military personnel performance includes the designation and management of classified information as a critical element or item to be evaluated in the rating of:

(A) original classification authorities;

(B) security managers or security specialists; and

(C) all other personnel whose duties significantly involve the creation or handling of classified information, including personnel who regularly apply derivative classification markings;

(8) accounting for the costs associated with the implementation of this order, which shall be reported to the Director of the Information Security Oversight Office for publication;

(9) assigning in a prompt manner agency personnel to respond to any request, appeal, challenge, complaint, or suggestion arising out of this order that pertains to classified information that originated in a component of the agency that no longer exists and for which there is no clear successor in function; and

(10) establishing a secure capability to receive information, allegations, or complaints regarding over-classification or incorrect classification within the agency and to provide guidance to personnel on proper classification as needed.

Sec. 5.5. Sanctions. (a) If the Director of the Information Security Oversight Office finds that a violation of this order or its implementing directives has occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.

(b) Officers and employees of the United States Government, and its contractors, licensees, certificate holders, and grantees shall be subject to appropriate sanctions if they knowingly, willfully, or negligently:

(1) disclose to unauthorized persons information properly classified under this order or predecessor orders;

(2) classify or continue the classification of information in violation of this order or any implementing directive;

(3) create or continue a special access program contrary to the requirements of this order; or

(4) contravene any other provision of this order or its implementing directives.

(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.

(d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this order.

(e) The agency head or senior agency official shall:

(1) take appropriate and prompt corrective action when a violation or infraction under paragraph (b) of this section occurs; and

(2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b) (1), (2), or (3) of this section occurs.

## PART 6—GENERAL PROVISIONS

Sec. 6.1. Definitions. For purposes of this order:

(a) “Access” means the ability or opportunity to gain knowledge of classified information.

(b) “Agency” means any “Executive agency,” as defined in 5 U.S.C. 105; any “Military department” as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into the possession of classified information.

(c) “Authorized holder” of classified information means anyone who satisfies the conditions for access stated in section 4.1(a) of this order.

(d) “Automated information system” means an assembly of computer hardware, software, or firmware configured to collect, create, communicate, compute, disseminate, process, store, or control data or information.

(e) “Automatic declassification” means the declassification of information based solely upon:

(1) the occurrence of a specific date or event as determined by the original classification authority; or

(2) the expiration of a maximum time frame for dura-

tion of classification established under this order.

(f) “Classification” means the act or process by which information is determined to be classified information.

(g) “Classification guidance” means any instruction or source that prescribes the classification of specific information.

(h) “Classification guide” means a documentary form of classification guidance issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(i) “Classified national security information” or “classified information” means information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(j) “Compilation” means an aggregation of preexisting unclassified items of information.

(k) “Confidential source” means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(l) “Damage to the national security” means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

(m) “Declassification” means the authorized change in the status of information from classified information to unclassified information.

(n) “Declassification guide” means written instructions issued by a declassification authority that describes the elements of information regarding a specific subject that may be declassified and the elements that must remain classified.

(o) “Derivative classification” means the incorporating,

paraphrasing, restating, or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(p) “Document” means any recorded information, regardless of the nature of the medium or the method or circumstances of recording.

(q) “Downgrading” means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.

(r) “File series” means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access or use.

(s) “Foreign government information” means:  
(1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) information received and treated as “foreign government information” under the terms of a predecessor order.

(t) “Information” means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, is produced by or for, or is under the control of the United States Government.

(u) “Infraction” means any knowing, willful, or negligent action contrary to the requirements of this order or its implementing directives that does not constitute a “violation,” as defined below.

(v) “Integral file block” means a distinct component of a file series, as defined in this section, that should be maintained as a separate unit in order to ensure the integrity of the records. An integral file block may consist of a set of records covering either a specific topic or a range of time, such as a Presidential administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group. For purposes of automatic declassification, integral file blocks shall contain only records dated within 10 years of the oldest record in the file block.

(w) “Integrity” means the state that exists when information is unchanged from its source and has not been accidentally or intentionally modified, altered, or destroyed.

(x) “Intelligence” includes foreign intelligence and counterintelligence as defined by Executive Order 12333 of December 4, 1981, as amended, or by a successor order.

(y) “Intelligence activities” means all activities that elements of the Intelligence Community are authorized to conduct pursuant to law or Executive Order 12333, as amended, or a successor order.

(z) “Intelligence Community” means an element or agency of the U.S. Government identified in or designated pursuant to section 3(4) of the National Security Act of 1947, as amended, or section 3.5(h) of Executive Order 12333, as amended.

(aa) “Mandatory declassification review” means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of this order.

(bb) “Multiple sources” means two or more source documents, classification guides, or a combination of both.

(cc) “National security” means the national defense or foreign relations of the United States.

(dd) “Need-to-know” means a determination within the executive branch in accordance with directives issued pursuant to this order that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(ee) “Network” means a system of two or more computers that can exchange data or information.

(ff) “Original classification” means an initial determination that information requires, in the interest of the national security, protection against unauthorized disclosure.

(gg) “Original classification authority” means an individual authorized in writing, either by the President, the Vice President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(hh) “Records” means the records of an agency and Presidential papers or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency’s control under the terms of the contract, license, certificate, or grant.

(ii) “Records having permanent historical value” means Presidential papers or Presidential records and the records of an agency that the Archivist has determined should be maintained permanently in accordance with title 44, United States Code.

(jj) “Records management” means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations.

(kk) “Safeguarding” means measures and controls that are prescribed to protect classified information.

(ll) “Self-inspection” means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the

program established under this order and its implementing directives.

(mm) “Senior agency official” means the official designated by the agency head under section 5.4(d) of this order to direct and administer the agency’s program under which information is classified, safeguarded, and declassified.

(nn) “Source document” means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(oo) “Special access program” means a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

(pp) “Systematic declassification review” means the review for declassification of classified information contained in records that have been determined by the Archivist to have permanent historical value in accordance with title 44, United States Code.

(qq) “Telecommunications” means the preparation, transmission, or communication of information by electronic means.

(rr) “Unauthorized disclosure” means a communication or physical transfer of classified information to an unauthorized recipient.

(ss) “U.S. entity” includes:

- (1) State, local, or tribal governments;
- (2) State, local, and tribal law enforcement and fire-fighting entities;
- (3) public health and medical entities;
- (4) regional, state, local, and tribal emergency management entities, including State Adjutants General and other appropriate public safety entities; or
- (5) private sector entities serving as part of the nation’s Critical Infrastructure/Key Resources.

(tt) “Violation” means:

- (1) any knowing, willful, or negligent action that could

reasonably be expected to result in an unauthorized disclosure of classified information;

(2) any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of this order or its implementing directives; or

(3) any knowing, willful, or negligent action to create or continue a special access program contrary to the requirements of this order.

(uu) “Weapons of mass destruction” means any weapon of mass destruction as defined in 50 U.S.C. 1801(p).

Sec. 6.2. General Provisions. (a) Nothing in this order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. “Restricted Data” and “Formerly Restricted Data” shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Director of National Intelligence may, with respect to the Intelligence Community and after consultation with the heads of affected departments and agencies, issue such policy directives and guidelines as the Director of National Intelligence deems necessary to implement this order with respect to the classification and declassification of all intelligence and intelligence-related information, and for access to and dissemination of all intelligence and intelligence-related information, both in its final form and in the form when initially gathered. Procedures or other guidance issued by Intelligence Community element heads shall be in accordance with such policy directives or guidelines issued by the Director of National Intelligence. Any such policy directives or guidelines issued by the Director of National Intelligence shall be in accordance with directives issued by the Director of the Information Security Oversight Office under section 5.1(a) of this order.

(c) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration.



(d) Nothing in this order limits the protection afforded any information by other provisions of law, including the Constitution, Freedom of Information Act exemptions, the Privacy Act of 1974, and the National Security Act of 1947, as amended. This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. The foregoing is in addition to the specific provisos set forth in sections 1.1(b), 3.1(c) and 5.3(e) of this order.

(e) Nothing in this order shall be construed to obligate action or otherwise affect functions by the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order shall be implemented subject to the availability of appropriations.

(g) Executive Order 12958 of April 17, 1995, and amendments thereto, including Executive Order 13292 of March 25, 2003, are hereby revoked as of the effective date of this order.

Sec. 6.3. Effective Date. This order is effective 180 days from the date of this order, except for sections 1.7, 3.3, and 3.7, which are effective immediately.

Sec. 6.4. Publication. The Archivist of the United States shall publish this Executive Order in the Federal Register.

BARACK OBAMA

# THE FREEDOM OF INFORMATION ACT

5 U.S.C. § 552, As Amended

## §552. PUBLIC INFORMATION; AGENCY RULES, OPINIONS, ORDERS, RECORDS, AND PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was

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

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

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

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

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

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

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

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)))<sup>1</sup> shall not make any record available under this paragraph to—

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

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

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

(ii) Such agency regulations shall provide that—

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

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

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

In this clause, the term "a representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its

editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

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

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

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

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

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

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

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

(viii) An agency shall not assess search fees (or in the case of a requester described under clause (ii)(II), duplication fees) under this subparagraph if the agency fails to comply with any time limit under paragraph (6), if no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request.

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

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days

after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

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

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

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either—

(I) a judicial order, or an enforceable written agreement or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

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

(ii) The Attorney General shall—

(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

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

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

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

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

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

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except—

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

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

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

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

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

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

(III) the need for consultation, which shall be conducted with all practicable speed, with another agen-

cy having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

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

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

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

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

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

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

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

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

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

(II) in other cases determined by the agency.

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

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

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

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

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited

processing of a request for records after the agency has provided a complete response to the request.

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

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

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

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

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

(7) Each agency shall—

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.

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

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

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

(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute—

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

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

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

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

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

close techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

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

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

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

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

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

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

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



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

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

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

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

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

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

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

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

(E) the median number of days taken by the agency to process different types of requests, based on the date on which the requests were received by the agency;

(F) the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

(G) based on the number of business days that have elapsed since each request was originally received by the agency—

(i) the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;

(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(H) the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(I) the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(J) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;

(K) data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of

September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(L) the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

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

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

(2) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.

(3) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means. In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.

(4) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(5) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and perfor-

mance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

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

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

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

(2) “record” and any other term used in this section in reference to information includes—

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

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

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

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

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

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.

(2) The Office of Government Information Services shall—

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) recommend policy changes to Congress and the President to improve the administration of this section.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—

(1) have agency-wide responsibility for efficient and appropriate compliance with this section;

(2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

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

(5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

(6) designate one or more FOIA Public Liaisons.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

# THE PRIVACY ACT OF 1974

5 U.S.C. § 552a, As Amended

## § 552A. RECORDS MAINTAINED ON INDIVIDUALS

### (a) Definitions

For purposes of this section—

(1) the term “agency” means agency as defined in section 552(f) of this title;

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

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

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

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

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

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

(8) the term “matching program”—

(A) means any computerized comparison of—

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

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

(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; or

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

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

(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 hereof, 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 General Accounting Office;

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

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

(c) Accounting of Certain Disclosures. Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections

(b)(1) or (b)(2) of this section, keep an accurate accounting of—

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

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

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

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

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

(d) Access to records. Each agency that maintains a system of records shall—

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

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

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

(B) promptly, either—

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

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

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

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

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

(e) Agency requirements. Each agency that maintains a system of records shall—

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

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

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

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

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

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

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

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

(A) the name and location of the system;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

#### (g)(1) Civil remedies

Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an 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 competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal penalties

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

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

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

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

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

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

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

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

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

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

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

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

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

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Gov-

ernment 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.

#### (1) Archival records

(1) 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) Government contractors

(1) 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, 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 two 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) Effect of other laws

(1) 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.

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

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

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

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

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

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

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

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

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

(6) 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.

(7) In the reports required by paragraphs (3)(D) and (6), 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.

The following section was originally part of the Privacy Act but was not codified; it may be found at § 552a (note).

Sec. 7 (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 provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) any 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.

The following sections were originally part of P.L. 100-503, the Computer Matching and Privacy Protection Act of 1988; they may be found at § 552a (note).

Sec. 6 Functions of the Director of the Office of Management and Budget.

(b) Implementation Guidance for Amendments— 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 not later than 8 months after the date of enactment of this Act.



Sec. 9 Rules of Construction.

Nothing in the amendments made by this Act 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.

Sec. 10 Effective Dates.

(a) In General— Except as provided in subsection (b), the amendments made by this Act shall take effect 9 months after the date of enactment of this Act.

(b) Exceptions— The amendment made by sections 3(b) [Notice of Matching Programs - Report to Congress and the Office of Management and Budget], 6 [Functions of the Director of the Office of Management and Budget], 7 [Compilation of Rules and Notices] and 8 [Annual Report] of this Act shall take effect upon enactment.

