



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

THE DIRECTOR

February 14, 2014

M-14-06

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Sylvia M. Burwell   
Director

SUBJECT: Guidance for Providing and Using Administrative Data for Statistical Purposes

This Administration continues to focus on improving how agencies leverage existing data to facilitate agencies' programmatic work and enhance the value of those data to the American public. These efforts are necessary, as information is a valuable national resource and a strategic asset to the Federal Government, its partners, and the American public in promoting important goals and targeting resources toward priorities ranging from expanding economic growth and education to fostering scientific discovery and the very functioning of our democracy. As part of the President's Management Agenda and Open Data efforts, the Administration continues to seek ways to open up Federal data for private sector innovation and public use, while fully respecting privacy and protecting confidentiality.

In addition, the Administration continues to focus on improving how agencies leverage existing Federal data to facilitate their own programmatic work and better serve the American public. In particular, high-quality and reliable statistics provide the foundation for the research, evaluation, and analysis that help the Federal Government understand how public needs are changing, how well Federal policy and programs are addressing those needs, and where greater progress can be achieved.

In many cases, the Federal Government has the opportunity to create such statistical information more efficiently through greater use of information that the Federal Government has already collected for programmatic and regulatory purposes, often called "administrative data." The goal of this Memorandum is to help both program and statistical agencies and components (including evaluation and analysis units) use administrative data more fully in a manner that respects privacy and protects confidentiality. Specifically, this guidance will help program agencies manage their administrative data with statistical purposes in mind.

The increased use of administrative data for statistical purposes can generate a range of benefits. Most notably, individuals, businesses, and institutions will benefit through agencies' use of existing information that would otherwise need to be collected from them again through costly and duplicative surveys. Furthermore, agencies will benefit from relying on more consistent policies and tools to create a more routine, efficient, and integral role for administrative data in their statistical programs. Finally, the increased use of administrative data

will enhance agencies' ability to build evidence on which to evaluate the effectiveness of their programs and policies.

Some administrative data can be publicly released, whereas other administrative data cannot be released. While it is the case that both types of administrative data (public and non-public) can be useful for Federal statistical purposes, this Memorandum focuses primarily on those administrative data that cannot be made publicly available due to statutory, regulatory, or policy protections. In working with agencies over the past several years, the Office of Management and Budget (OMB) has noted that agencies sometimes do not make full, appropriate use of non-public administrative data for statistical purposes, because they perceive the requirements and protections that apply to non-public data as being complicated and burdensome to navigate.

To encourage the greater use of administrative data for statistical purposes, this Memorandum provides agencies with guidance for addressing the legal, policy, and operational issues that exist with respect to using administrative data for statistical purposes. This guidance builds on three previously issued OMB memoranda designed to increase the value of existing data: *Sharing Data While Protecting Privacy* (M-11-02 of November 3, 2010), *Open Data Policy—Managing Information as an Asset* (M-13-13 of May 9, 2013), and *Next Steps in the Evidence and Innovation Agenda* (M-13-17 of July 26, 2013). In particular, this Memorandum builds on the framework that OMB established in the *Open Data Policy* “to help institutionalize the principles of effective information management at each stage of the information’s life cycle to promote interoperability and openness.”

This Memorandum (and its more detailed guidance in the Attachment) has four elements.

First, the Memorandum calls for departmental and agency leadership to: (i) foster greater collaboration between program and statistical offices; (ii) develop strong data stewardship policies and practices around the statistical use of administrative data; (iii) require the documentation of quality control measures and key attributes of important administrative datasets; and (iv) require the designation of responsibilities and practices through the use of agreements amongst these offices.

Second, the Memorandum encourages Federal departments and agencies to promote the use of administrative data for statistical purposes and provides guidance in addressing legal and policy requirements for such uses, including the need to continue to fully protect the privacy and confidentiality afforded to the individuals, businesses, and institutions providing the data.

Third, the Memorandum also provides some “best practice” tools, including detailed guidance on the interaction of the Privacy Act requirements and the use of administrative data for statistical purposes, as well as a model interagency agreement for departments and agencies to follow when developing their policies and practices for sharing data for statistical purposes to another department or agency.

Lastly, to monitor progress and identify any barriers to moving forward, the Memorandum requires each department/agency to report to OMB, within 120 days of the date of

this Memorandum, on its progress in implementing this Memorandum. This reporting requirement applies to the 15 departments and to those other agencies that had a staffing level, as of the beginning of FY14, of more than 50 FTEs.

Agencies with questions about this Memorandum or about ways to improve performance through providing and using data for statistical purposes may contact OMB at [AdminDataforStats@omb.eop.gov](mailto:AdminDataforStats@omb.eop.gov).

Attachment

## Attachment

This attachment provides definitions and implementation guidance for M-14-06, *Guidance for Providing and Using Administrative Data for Statistical Purposes*.

### **I. Purpose**

This Memorandum builds on the goals of three previously issued Office of Management and Budget (OMB) memoranda designed to increase the value of existing data: *Sharing Data While Protecting Privacy* (M-11-02), *Open Data Policy—Managing Information as an Asset* (M-13-13), and *Next Steps in the Evidence and Innovation Agenda* (M-13-17). As stressed in M-13-13, information is a valuable national resource and a strategic asset to the Federal Government, its partners, and the American public in promoting important goals and targeting resources toward priorities ranging from economic growth and education to scientific discovery and the very functioning of our democracy. In particular, high-quality and reliable statistics provide the foundation for the research, evaluation, and analysis that help the Federal Government understand how public needs are changing, where greater progress is needed, and how well Federal policy and programs are addressing those needs. In many cases, the Federal Government has the opportunity to create such statistical information more efficiently through greater use of Federal information already collected for programmatic and regulatory purposes, often called administrative data.<sup>1</sup>

Notably, M-13-13 also “establishes a framework to help institutionalize the principles of effective information management at each stage of the information’s life cycle to promote interoperability and openness.” Furthermore, it creates “a presumption in favor of openness to the extent permitted by law and subject to privacy, confidentiality, security, or other valid restrictions.” Within this existing framework, this Memorandum establishes responsibilities of Federal departments and agencies for promoting the use of administrative data for statistical purposes<sup>2</sup> and provides guidance in addressing legal and policy requirements for such uses, including the need to continue to fully protect the privacy and confidentiality afforded to the individuals, businesses, and institutions providing the data. Managing administrative data with statistical purposes in mind will reduce burden on the public by making use of information about individuals, businesses, and institutions that would otherwise need to be collected through surveys or would simply be unobtainable from surveys within an acceptable level of burden or accuracy.

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<sup>1</sup> “Administrative data,” for purposes of this Memorandum, refers to administrative, regulatory, law enforcement, adjudicatory, financial, or other data held by agencies and offices of the government or their contractors or grantees (including States or other units of government) and collected for other than statistical purposes. Administrative data are typically collected to carry out the basic administration of a program, such as processing benefit applications or tracking services received. These data relate to individuals, businesses, and other institutions.

<sup>2</sup> “Statistical purpose,” for purposes of this Memorandum, refers to “the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups,” (PL-107-347, Title V—[Confidential Information Protection and Statistical Efficiency Act](#) (CIPSEA), Section 502 (9)(A)). Statistical purposes exclude “any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent” (PL-107-347, Title V—[CIPSEA](#), Section 502 (5)(A)).

## II. Summary of Requirements<sup>3</sup>

To help agencies find solutions that allow data sharing to move forward in a manner that complies with applicable privacy laws, regulations, and policies, OMB is calling on agencies to complete the following:

1. Heads of departments shall identify effective internal mechanisms to communicate the importance of identifying those administrative datasets with potential for statistical use. They shall establish an ongoing process for program and statistical agencies and components to collaboratively identify such datasets.
2. Program and statistical agencies and components shall adhere to the data stewardship principles outlined in this Memorandum to maintain public trust in their ability to appropriately and responsibly handle information in identifiable form. They shall also work closely with privacy officials and general counsel whenever data are shared to ensure that privacy and confidentiality are fully protected.
3. As part of M-13-13's requirement to manage information throughout its life cycle for interoperability and openness, program agencies shall consider statistical agencies and components as potential data stakeholders. In that subset of cases where datasets are identified as likely useful for statistical purposes, program agencies should provide the technical documentation or other assistance that statistical agencies or components require to adequately assess the quality of a particular dataset. Statistical agencies and components should use such information to make a preliminary assessment of the quality of administrative data prior to obtaining or using it. For datasets that appear useful and are obtained, statistical agencies and components will need to more thoroughly assess quality after receipt.
4. Program and statistical agencies shall use interagency agreements (IAAs) or other similar tools to document terms and conditions governing data access and use when program agencies provide data that are not publicly available to statistical agencies or components.
5. Program and statistical agencies must continue to meet their legal responsibilities for protecting privacy as described in this Memorandum.
6. Heads of departments shall report, as explained in the "Reporting Requirement" section below, on progress and any identified barriers to providing and using administrative data for statistical purposes to OMB within 120 days of the date of this Memorandum.

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<sup>3</sup> For a more complete discussion of requirements 1 to 4, please refer to Section V., *Policy on Managing and Using Administrative Data for Statistical Purposes*. Item 5 is elaborated in Section VII., *Legal Responsibilities for Protecting Privacy*. Item 6 is elaborated in Section VIII., *Reporting Requirement*.

### III. Scope

The goal of this Memorandum is to help both program and statistical agencies and components leverage administrative data more fully for statistical purposes, to the mutual benefit of both, as well as the American public. While both public and non-public government information might be useful for Federal statistical purposes, this Memorandum focuses primarily on those administrative data that cannot be made publicly available due to statutory, regulatory, or policy protections.<sup>4</sup> The unique requirements and protections associated with non-public data mean that Federal departments and agencies may particularly benefit from guidance on effective and efficient administrative data management. Statistical activities, for purposes of this Memorandum, include activities typically characterized as research, evaluation, and analysis, as long as the focus of those activities is on reporting aggregate findings about a group.<sup>5</sup> Such activities are integral to evidence building in support of broad policy and specific program research, evaluation, and analysis.

For purposes of this Memorandum and the specific responsibilities therein, all organizational units of departments and agencies, such as bureaus, offices, and centers are classified as belonging to one of three distinct groups: (i) statistical agencies;<sup>6</sup> (ii) agency components performing statistical activities, typically as part of policy- or program-related research, analysis or evaluation (hereinafter referred to as “components”<sup>7</sup>); or (iii) program agencies.<sup>8</sup> This Memorandum applies to all three, with the goal of helping statistical agencies

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<sup>4</sup> Agencies should continue to follow standard Executive Branch procedures for handling requests from the public for government information, such as those made under the Freedom of Information Act (FOIA), including consultation with their General Counsel or Freedom of Information Act (FOIA) Offices.

<sup>5</sup> “Statistical activities,” for purposes of this Memorandum, “(A) means the collection, compilation, processing, or analysis of data for the purpose of describing or making estimates concerning the whole, or relevant groups or components within, the economy, society, or the natural environment; and (B) includes the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames” (PL-107-347, Title V—[CIPSEA](#), Section 502 (7)).

<sup>6</sup> “Statistical agency” refers to “an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes” (PL-107-347, Title V—[CIPSEA](#), Section 502 (8)). The statistical agencies within the executive branch of the Federal Government are: the Bureau of Economic Analysis; the Bureau of Justice Statistics; the Bureau of Labor Statistics; the Bureau of Transportation Statistics; the Census Bureau; the Economic Research Service; the Energy Information Administration; the National Agricultural Statistics Service; the National Center for Education Statistics; the National Center for Health Statistics; the National Center for Science and Engineering Statistics; the Office of Research, Evaluation, and Statistics at SSA; and Statistics of Income at IRS. In addition, “OMB shall determine whether an agency or unit can be considered a statistical agency . . . for purposes of CIPSEA. . . . Other agencies . . . that wish to be recognized as statistical agencies . . . for purposes of CIPSEA must send a request to the Chief Statistician at OMB.” (See [CIPSEA Implementation Guidance](#).)

<sup>7</sup> “Statistical component,” for purposes of this Memorandum, refers to units conducting statistical activities within a program agency and is designed to include a broader set of organizations than statistical agencies. For example, the Office of Planning, Research & Evaluation within the Administration for Children and Families (ACF) at the Department of Health and Human Services performs statistical activities as part of evaluating ACF programs.

<sup>8</sup> “Program agency,” for purposes of this Memorandum, refers to an agency or unit, typically within the organizational structure of a Federal department, that administers, or helps to administer, a Federal program within which a determination about the rights, benefits, or privileges of individuals, businesses, or institutions is made,

and components leverage administrative data more fully for statistical purposes—to the mutual benefit of both statistical agencies and components and program agencies. Some support offices, such as offices of general counsel and privacy offices, may not fit into any of the three categories listed above and would likely *not* manage administrative data of potential utility for statistical purposes. As a result, this Memorandum may not apply directly to their data management activities but provides guidance in how they should support data provision by program agencies that collect administrative data to statistical agencies and components. Independent agencies are requested to adhere to this guidance.

Some agencies already have a strong history of managing administrative data in ways that support statistical uses—facilitating improved stewardship of taxpayer dollars by increasing the efficiency of statistical programs and reducing paperwork burdens on the American public. In some cases, agencies even have well established procedures and tools. All agencies, however, can do more to embrace or enhance these efficiencies. This Memorandum does not require replacing effective existing practices and tools with new ones; rather, it is designed to promote the adoption and spread of such effective practices and tools.

#### **IV. Background**

Identifying and providing statistical agencies or components with access to administrative data for statistical purposes can improve the effectiveness of program agency budget and management decisions. Such data are useful not only as an input to official statistics, but also in support of statistical activities that are part of program-specific research, evaluation, or analysis. The ability to combine administrative datasets with each other or with survey data offers significant potential to answer important questions that neither type of data can answer alone—questions whose answers may be particularly applicable to program agencies seeking to increase program efficiency and efficacy. Administrative data from program agencies can reduce survey respondent burden and support statistical activities such as building sampling frames, imputing missing information, and supplementing content of household or establishment questionnaires. They can also form the basis for comparing participant and non-participant outcomes or for comparing program implementation approaches. For example:

- Linking veteran health and disability status data to labor market data could be used to determine strategies for targeting and tailoring more effective interventions to improve veteran employment outcomes and enhance self-sufficiency.
- Combining crime reports with information about local crime prevention and policing policies could shed light on program effectiveness. These reports could then be used to improve crime prevention strategies.

Such uses typically involve matching or linking an administrative dataset, based on identifiable information, to a survey or another administrative dataset. This matching makes it

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including those agencies with regulatory or law enforcement responsibilities. These agencies may include, for example, finance offices within agencies.

possible to associate characteristics or outcomes in one file to specific individuals in the other file, allowing the calculation of statistics about groups and subgroups.

Such activity is consistent with one of the principal objectives of the Paperwork Reduction Act (PRA), to minimize the burden associated with collection of information by or for the Federal Government. The PRA authorizes the Director of OMB to “direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law”<sup>9</sup> in order to avoid duplicative reporting of information by the public.

These specific benefits of using administrative data for statistical purposes have been recognized for decades. Dating back to 1977, the *Report to the President from the Privacy Protection Study Commission* recognizes the enormous societal benefits of providing administrative data for statistical purposes. It sets forth an approach for doing so in accordance with the Privacy Act of 1974,<sup>10</sup> through “functional separation” of statistical and administrative uses.<sup>11</sup> The 1977 *Report of the Commission on Federal Paperwork* (also discussed in OMB’s [Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 \(CIPSEA\)](#)) likewise recognizes these benefits and endorses the concept of functional separation between statistical and administrative uses of administrative data when it states that data “collected for administrative or regulatory purposes must be made available for statistical use, with appropriate confidentiality and security safeguards, when assurances are given that the information will be used solely for statistical purposes.”<sup>12</sup>

Despite this history, many agencies continue to face challenges in navigating legal, policy, and operational requirements to provide access to administrative data for statistical purposes. Determining and ensuring an acceptable level of data quality for statistical uses presents additional barriers. Following the policies and practices described in this Memorandum will help both program agencies and statistical agencies and components enjoy the benefits of increased efficiency and effectiveness in their work.

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<sup>9</sup> [44 U.S.C. §3510](#).

<sup>10</sup> [5 U.S.C. §552a](#).

<sup>11</sup> “Functional separation” is defined as “separating the use of information about an individual for a research or statistical purpose from its use in arriving at an administrative or other decision about that individual.” See Chapter 15, [The Relationship Between Citizen and Government: The Citizen As Participant in Research and Statistical Studies](#), *Personal Privacy in an Information Society: The Report of the Privacy Protection Study Commission*, 1977.

<sup>12</sup> See [Statistics—A Report of the Commission on Federal Paperwork](#), p. 128, October 1977.



## V. Policy on Managing and Using Administrative Data for Statistical Purposes

The policy set forth in this Memorandum is designed to help agencies overcome barriers to statistical uses of administrative data. The policy includes: (1) fostering collaboration across program agencies and statistical agencies and components, (2) implementing data stewardship policies and practices that anticipate statistical uses of program data, (3) creating and making available for statistical agencies and components well-documented information on quality control measures and key attributes of the data, and (4) creating IAAs to designate responsibilities and practices between the program agencies and agencies serving statistical purposes. Following these four policy recommendations will facilitate agencies' responses as described in the "Reporting Requirement" section later in this Memorandum.

### 1. Collaboration across Program Agencies and Statistical Agencies and Components

*Heads of departments and agencies shall identify effective internal mechanisms to communicate the importance of identifying those administrative datasets with great potential for statistical use. They also should establish a process that encourages the discovery of opportunities for, and subsequent implementation of, collaboration and communication between program agencies and statistical agencies and components.*

For example, a departmental policy Memorandum could be used to emphasize the importance of identifying and using administrative datasets for statistical purposes and to announce the department's process. Departments are encouraged to rely on existing processes when feasible but may find opportunities to improve them. Statistical agencies can serve as strong partners to heads of departments and other agencies and components in these efforts, such as by helping to identify and communicate specific benefits to departmental leadership and program agencies.<sup>13</sup> Statistical agencies have a strong motivation to help define or support any new process. They will also be particularly well positioned to help identify and communicate not only their own needs but those of statistical agencies within other departments, such as the Census Bureau, given that the heads of those agencies are members of the Interagency Council on Statistical Policy (ICSP). The ICSP, a committee established by statute, advises and assists OMB in coordinating the Federal statistical system.<sup>14</sup> In cases where there is no statistical agency within a department or agency, the department head should identify an internal contact, such as a statistical component, through which other departments' statistical components and statistical agencies can engage program agency contacts efficiently and effectively.

Program and statistical agencies and components engaged in this process should use the enterprise dataset inventory building process required under M-13-13<sup>15</sup> as an opportunity to work together to identify existing and planned administrative datasets with potential statistical value. While not exhaustive, some agencies have found already available listings of information

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<sup>13</sup> The statistical agencies are listed in footnote 6.

<sup>14</sup> [44 U.S.C. §3504 \(e\)\(8\)](#).

<sup>15</sup> [M-13-13](#) requires agencies to create an enterprise inventory of all datasets, including data associated with administrative, research, and statistical activities.

collection requests under the PRA and lists of Privacy Act system of records notices (SORNs)<sup>16</sup> helpful in their enterprise data inventory building efforts. Both types of documents are important sources of information about the content of these administrative data assets.

This process also should include identifying and addressing legal and policy barriers to providing and using administrative data for statistical purposes, and should involve general counsel and senior privacy officials. As explained in the “Reporting Requirement” section below, department heads shall report to OMB on the status and results of these efforts to foster collaboration and increase access to administrative data for statistical purposes.

## 2. Data Stewardship Practices

*Program and statistical agencies and components should adhere to the data stewardship principles outlined in this Memorandum in order to maintain public trust in their ability to appropriately handle identifiable information. They also should work closely with privacy officials and offices of general counsel to ensure that privacy and confidentiality are fully protected whenever data are shared.*

Statistical uses of data differ fundamentally from administrative uses because, by definition, statistical records are not used to make determinations regarding the rights, benefits, and privileges of an individual.<sup>17</sup> Nonetheless, since programmatic data often have statutory or policy requirements for the protection of identifiable information, a critical aspect of managing such data as a resource for statistical purposes is to formulate and implement data stewardship policies and practices that anticipate statistical uses in addition to program uses. Such policies and practices can enhance privacy and confidentiality protections.

The Fair Information Practice Principles (FIPPs)<sup>18</sup> provide a framework for such policies and practices. In brief, these principles are transparency, individual participation,<sup>19</sup> purpose

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<sup>16</sup> See [5 U.S.C. §552a\(e\)\(4\)](#); see also [Federal Register, Vol. 40, No. 132](#) (*Privacy Act Implementation Guidelines and Responsibilities*), page 28961.

<sup>17</sup> “[T]he term ‘statistical record,’” for example, “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” ([5 U.S.C. §552a\(a\)\(6\)](#)). “The term ‘identifiable individual’ is used to distinguish determinations about specific individuals from determinations about aggregates of individuals as, for example, census data are used to apportion funds on the basis of population.” (See OMB [Privacy Act Implementation: Guidelines and Responsibilities](#) (July 9, 1975).

<sup>18</sup> The White House [National Strategy for Trusted Identities in Cyberspace](#) (April 2011) describes the Fair Information Practice Principles. “Rooted in the United States Department of Health, Education and Welfare’s seminal 1973 report, ‘Records, Computers and the Rights of Citizens’ (1973), these principles are at the core of the Privacy Act of 1974 and are mirrored in the laws of many U.S. states, as well as in those of many foreign nations and international organizations. A number of private and not-for-profit organizations have also incorporated these principles into their privacy policies” (45).

<sup>19</sup> While the Privacy Act allows an individual to gain access to and amend his or her records, statistical records, as defined in the Privacy Act, may be exempted if the records are required by statute to be maintained and used solely as statistical records and the head of the agency promulgates a rule to exempt the system of records from the relevant provisions of the law. See [5 U.S.C. §552a\(k\)\(4\)](#).

specification, data minimization, use limitation, data quality and integrity, security, and accountability and auditing.

In the context of providing administrative data for statistical purposes, both program agencies and statistical components facilitate these principles by, among other things:

1. Respecting the public's time and effort by minimizing the number of times they are asked to provide the same or similar information.
2. Being transparent by providing adequate notice about the planned purpose and potential statistical uses of administrative data (such as in SORNs and Privacy Act statements).
3. Collaborating to define which data are needed for specified statistical purposes and providing access only to those data for those purposes, and only to those who have a need for the data in the performance of their duties. Identifiable information should be provided only if the need cannot be met by relying on non-identifiable information, and even then, only relevant subsets should be provided.
4. Protecting data provided to the statistical agency or component against unauthorized access and disclosure. And once the data are provided to the statistical agency or component, providing the level of confidentiality protection in policy and practice necessary to ensure that the data, particularly if linked to other data, are not provided from the statistical agency or component back to the program agency for non-statistical purposes.<sup>20</sup>
5. Implementing a set of policy and procedural safeguards, including the use of a written agreement, to certify the procedural safeguards that are employed to implement assurances of exclusively statistical uses and confidentiality. Such safeguards include applying sufficient expertise in statistical disclosure avoidance in final products in order to maintain confidentiality, taking into account risks posed by external influences such as the mosaic effect.<sup>21</sup>
6. Eliminating the identifiable information when the data are no longer needed or timely.<sup>22</sup>

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<sup>20</sup>Under CIPSEA, maintenance of functional separation for confidentiality protection is imperative. When data, whether collected through surveys, interviews, administrative records, or any other means, are provided to a statistical agency as defined by CIPSEA under a pledge of confidentiality, the data will be protected under this statute, just as individual data reported to the statistical agency are (see [CIPSEA Implementation Guidance I.F.](#)). Data provided to all agencies may be protected by the Privacy Act of 1974 and other relevant statutes.

<sup>21</sup> “The mosaic effect occurs when the information in an individual dataset, in isolation, may not pose a risk of identifying an individual (or threatening some other important interest such as security), but when combined with other available information, could pose such risk. Before disclosing potential PII or other potentially sensitive information, agencies must consider other publicly available data—in any medium and from any source—to determine whether some combination of existing data and the data intended to be publicly released could allow for the identification of an individual or pose another security concern.” See [M-13-13](#).

<sup>22</sup> Agencies should eliminate data consistent with records schedules managed by their internal records offices. Any Federal records elimination must be in accordance with procedures described in [44 U.S.C. Chapter 33](#).

Adhering to these principles is as important to statistical agencies and components as it is to program agencies because the public must be able to trust agencies' ability to handle and protect identifiable information.

Program agencies will be chiefly responsible for ensuring that statistical purposes and uses are described in initial or, as appropriate, revised SORNs or Privacy Act Statements (see Appendix A for more detail), for ensuring safe transmission of data to statistical agencies or components, and for helping statistical agencies or components to understand any unique statutory or other requirements pertaining to specific datasets. In so doing, they should consult with their general counsel and privacy officials.

Statistical agencies and components should have in place demonstrable policies and procedures to support functional separation; ensure that administrative data received from the program agency are used solely for statistical purposes; and ensure that data are accessed only by those who have a need for the data in the performance of their duties. Statistical components should also demonstrate that they have statutory, policy, regulatory, and/or policy protections at least as stringent as those that the program agency uses to protect the data. For statistical agencies as defined under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA), legal protections for administrative data acquired for exclusively statistical purposes under a pledge of confidentiality are inherent in statute and specified in the [CIPSEA Implementation Guidance](#).

### 3. Documentation on Data Quality

*As part of M-13-13's requirement to manage information throughout its life cycle for interoperability and openness, program agencies should consider statistical agencies and components as potential data stakeholders. Further, in those limited cases where datasets are identified as of potentially high value for statistical purposes, program agencies should provide the technical documentation or other assistance that statistical agencies or components require to adequately assess the quality of a particular dataset. Statistical agencies and components should initially assess the quality of an administrative dataset prior to obtaining or using it. For datasets that appear useful and are obtained, statistical agencies and components will need to more thoroughly assess quality after receipt.*

The information life cycle of administrative datasets should be managed to benefit both program and statistical activities, when feasible and appropriate. Consistent with the requirements and practices described in M-13-13, program agencies should manage those datasets identified as of high potential utility for statistical purposes to be accessible and of sufficient quality. They can do so most efficiently and effectively by integrating these considerations into data collection and management for programmatic purposes, rather than treating them as separate or after-the-fact considerations. This includes, for example, collecting and retaining data items that would facilitate evaluation and analysis of the data.

In addition, using program data for statistical purposes always requires an evaluation of the match between the quality of the dataset and the specific statistical use to which it will be

put. Once potentially valuable administrative datasets are identified, the statistical agency or component will need to assess data quality for the specific statistical use envisioned, and should do so through a standardized approach, such as by using the tool developed by the Federal Committee on Statistical Methodology or a similar tool that considers all aspects of quality from a statistical perspective.<sup>23</sup> For those identified datasets, program agencies will usually need to provide technical documentation to complete such an assessment; such information may already exist for agencies that are exceeding the minimum metadata requirements of OMB Memorandum M-13-13.

Consistent with OMB's Government-wide Information Quality Standards,<sup>24</sup> statistical agencies' and components' evaluations of quality should specifically consider the purpose of the planned use, frequently referred to as assessing "fitness for use." Considerations include understanding the purpose, collection methods, timeliness, periodicity, completeness, and other aspects of quality of the administrative data as well as the level of quality required for the intended statistical purpose.<sup>25</sup> Data of sufficient quality for program administration may or may not be sufficient for statistical purposes; this distinction does not imply that the administrative data are of poor quality, only that they may not be well-suited for the desired statistical purpose. Sometimes program agencies will be able to make the data more useful, particularly over time, by providing additional documentation or making minor changes to the program data they collect and maintain. Other times, the agencies may conclude that the data will not be useful even with such efforts.

#### 4. *Interagency Agreements*

*Program and statistical agencies should use interagency agreements (IAAs) or other similar tools to document terms and conditions when a program agency provides data that are not publicly available to statistical agencies or components.*

An IAA provides an effective vehicle to document both the legal authority for disclosing or providing data and the applicable data stewardship policies and practices that will protect data provided by the program agency for statistical purposes. It also provides an effective way to describe such important topics as planned methods for file transfers and documentation routines. To facilitate more timely development and execution of sound IAAs, Appendix B provides guidance on the format and content that agencies can use. Individual agencies will need to seek the advice of their counsel before signing IAAs to assure that they are legally sufficient from the agency's perspective.

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<sup>23</sup> See [Data Quality Assessment Tool for Administrative Data](#), by a working group of the Federal Committee on Statistical Methodology.

<sup>24</sup> See [Agency Information Quality Guidelines](#) for further information.

<sup>25</sup> Ibid.

## **VI. Legal Authorization**

The authority to provide data for statistical purposes can be explicit or implicit in the authorizing statute. Provision of administrative data for statistical purposes can be authorized through different types of legal authorities, including agency-specific authorities (such as U.S. Code Title 13, the Census Code or U.S. Code Title 26, the Internal Revenue Code), which provide authority to obtain, disclose, and protect data. For example, the Internal Revenue Service is explicitly authorized to furnish certain information to specified agencies for statistical purposes in its authorizing statute.<sup>26</sup>

Furthermore, statistical uses of data typically inform the context, policies, and operations of the same programs authorized by a given statute. As such, the absence of specific express authority to provide administrative data for statistical purposes does not necessarily prohibit the agency from providing data to another agency or component. In those cases, the agencies' general statutory authority can grant sufficient authorization to provide administrative data to other Federal agencies for statistical purposes. For example, the Social Security Administration provides data for statistical purposes consistent with its authorizing statute and implementing regulations.<sup>27</sup> To make this determination, agencies should consult with their general counsel and senior privacy officials.

Furthermore, agencies should keep in mind that in these cases where agencies' general statutory authority provides such authorization, the procedural requirements of the Privacy Act and other relevant statutes continue to apply.

## **VII. Legal Responsibilities for Protecting Privacy**

While most administrative datasets contain identifiable information, when those data are about an individual, the Privacy Act is an essential consideration. The Privacy Act is designed to protect individual privacy by, for example, ensuring appropriate limits on the collection, use, maintenance, and dissemination of information about individuals maintained by an agency. The Privacy Act prohibits agencies from disclosing information in a "system of records,"<sup>28</sup> as defined in the statute, without the prior written consent of the individual to whom the information pertains. However, the statute provides a limited number of exceptions to this general rule. Four of the exceptions may be relevant to efforts to provide data for statistical purposes, one permitting intra-departmental<sup>29</sup> disclosure and use, and three permitting certain inter-departmental disclosures of data:

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<sup>26</sup> See [26 U.S.C. §6103\(j\)](#). "Statistical use."

<sup>27</sup> See [42 U.S.C. §1306\(a\)](#); and [20 C.F.R. §401.165](#)

<sup>28</sup> A "record," according to the Privacy Act, refers to "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." See [5 U.S.C. §552a\(4\)](#).

<sup>29</sup> "Agency" as defined in the Privacy Act and at [5 U.S.C. §552\(f\)](#), "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."

1. “[T]o those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties.”<sup>30</sup>

In some cases, agencies may be able to engage in an intra-agency disclosure of data for statistical purposes if there is a valid “need to know.”<sup>31</sup>

2. For a “routine use,”<sup>32</sup> as defined in the Privacy Act.

This exception may apply when the information will be used for a purpose which is compatible with and related to the purpose for which the information was collected.<sup>33</sup>

3. “[T]o 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.”<sup>34</sup>

4. “[T]o 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.”<sup>35</sup>

This is limited to use for statistical research, and applies only to non-identifiable information. That exception, while valuable, may not permit the disclosure of information that could be linked with other data for statistical uses.

Moreover, the Privacy Act also provides an exception from the matching requirements specified in the Act for “matches performed to produce aggregate statistical data without any personal identifiers” and those “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.”<sup>36</sup> OMB’s 1975 *Privacy Act Implementation Guidelines and Responsibilities* further distinguishes statistical records, “which by definition are ‘not used in whole or in part, in making a determination about an individual,’” from “virtually any other record.” The guidance states that only non-statistical records need to be “obtained directly from

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“Department,” for the purposes of this Memorandum, is used to more clearly differentiate between the parent agency (typically a department) and those program and statistical agencies within it.

<sup>30</sup> See [5 U.S.C. §552a\(b\)\(1\)](#).

<sup>31</sup> According to the 1975 *Privacy Act Implementation Guidelines and Responsibilities*, “Minimally, the recipient officer or employee must have an official ‘need to know’ . . . [and] the use should be generally related to the purpose for which the record is maintained.” See *Federal Register*, Vol. 40, No. 132 (*Privacy Act Implementation Guidelines and Responsibilities*), page 28954.

<sup>32</sup> “[T]he 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.” See [5 U.S.C. §552a\(a\)\(7\)](#).

<sup>33</sup> Please refer to Appendix A for further detail on the routine use exception.

<sup>34</sup> See [5 U.S.C. §552a\(b\)\(4\)](#).

<sup>35</sup> See [5 U.S.C. §552a\(b\)\(5\)](#).

<sup>36</sup> See [5 U.S.C. §552a\(a\)\(8\)\(B\)\(i\)-\(ii\)](#).

the individual whenever practicable,”<sup>37</sup> which implies that statistical records may be obtained indirectly from already collected administrative data. (Further information about how the Privacy Act applies to providing information for statistical purposes is provided in Appendix A.)

Beyond the Privacy Act, agencies must comply with agency-specific and other statutes, regulations, interagency agreements, and other requirements that may limit or prohibit disclosure of certain records in providing administrative data for statistical purposes.

### **VIII. Reporting Requirement**

The goal of this Memorandum is to help both program and statistical agencies and components leverage administrative data more fully for statistical purposes, to the mutual benefit of both program agencies and statistical agencies and components. It will thereby promote burden reduction through the efficient use of information previously collected by Federal agencies while maintaining appropriate privacy and confidentiality protections.

Based on the definitions, policies, and guidance in this Memorandum, departments and agencies are required to provide an initial report to the Chief Statistician, Office of Information and Regulatory Affairs (OIRA) by June 30, 2014, using the electronic mail address provided below. This reporting requirement applies to the 15 departments (the department shall submit a single report to OMB on behalf of all of its agencies and offices) and to those other agencies that had a staffing level, as of the beginning of FY14, of more than 50 FTEs. The status report shall provide a description of both processes established or adapted in response to this Memorandum and substantive findings to date, specifically:

#### *Processes established or adapted:*

1. A copy of the department head’s communication with staff on the importance of promoting the use of administrative data for statistical purposes;
2. The process by which program and statistical agencies and components are convening to review administrative datasets of potential statistical value; and
3. Identification of the offices or functional areas that are participating in that process.

#### *Substantive findings to date:*

4. Three datasets—whether within or outside of the department—identified through the above process as of highest potential statistical value, as well as:
  - The statistical agency or component(s) that would like access to the datasets; and
  - A brief description of the analyses these datasets would allow statistical agencies and components to complete and the value of these analyses to government and the public.

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<sup>37</sup> See [Federal Register, Vol. 40, No. 132](#) (*Privacy Act Implementation Guidelines and Responsibilities*), page 28961.



5. The status of requests related to the statistical use of these three datasets, which could include:
  - Data identified; request in process but not yet submitted;
  - Data provision anticipated and estimated timeframe for provision;
  - Data not provided; access does not seem possible due to critical barriers to data provision for statistical purposes
    - Please specify the reasons the request cannot be fulfilled (critical barriers could include policy, statutory, or related impediments causing significant delays to data provision); and
  - All high-value data identified already provided.

These reports will help OMB to better understand common barriers to administrative data provision for statistical purposes. This understanding will, in turn, inform the need for future guidance, technical assistance, or other support to enhance program and statistical agencies' and components' use of administrative data for statistical purposes toward increased operational efficiency and decreased information collection burden.

OMB may request supplemental reports from agencies after the initial reporting deadline.

Please submit these reports to OMB at [AdminDataforStats@omb.eop.gov](mailto:AdminDataforStats@omb.eop.gov). Any questions regarding this Memorandum can also be directed to OMB at this email address.

Appendices:

1. Appendix A: Further Guidance on Privacy Act Requirements Related to the Provision of Administrative Data for Statistical Purposes
2. Appendix B: Model Agreement for the Provision of Administrative Records for Statistical Purposes

## Appendix A: Further Guidance on Privacy Act Requirements Related to the Provision of Administrative Data for Statistical Purposes

When collecting identifiable information, agencies must adhere to all applicable requirements in the Paperwork Reduction Act (PRA)<sup>38</sup>, the Privacy Act of 1974, and other applicable laws. This appendix describes some of the requirements regarding the need for Privacy Act statements and system of records notices (SORNs) when providing and using administrative data about individual persons for statistical purposes. It also provides additional guidance on the Privacy Act's routine use exception, one of four that may be applicable when providing data for statistical purposes mentioned in the *Legal Responsibilities for Protecting Privacy* section of this Memorandum.

The Privacy Act requires agencies to provide certain information to individuals who are asked to supply information that will become part of a system of records. Specifically, agencies must describe the authority for the collection, whether the disclosure of the information is mandatory or voluntary, the principal purpose or purposes for which the information is intended to be used, and any routine uses to which the information may be subject.<sup>39</sup> These details must be provided in understandable language in a Privacy Act statement on the form used to collect the information or a separate form that can be retained by the individual.

In addition to Privacy Act statements, the statute and OMB implementation guidance also require agencies to publish a SORN in the *Federal Register* that informs the public of the existence and character of any new or significantly modified system of records.<sup>40</sup> As described in the Privacy Act at 5 U.S.C. §552a(e)(4), a SORN provides greater detail about the nature of the system of records and the rules to which it will be subject. For example, agencies must describe each routine use of the records contained in the system, including the categories of users and the purpose of such use.

When drafting Privacy Act statements and SORNs, agencies should provide a sufficient level of detail regarding the collection or use of data for statistical purposes. In particular, agencies should ensure that any routine uses that would allow for the disclosure of information for statistical purposes are clearly and accurately explained. In a Privacy Act statement, the description of routine uses should be a summary of the material published in the SORN, tailored to the circumstances of the data collection.<sup>41</sup> Program and statistical agencies should bear in mind:

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<sup>38</sup> The PRA requires agencies to inform individuals (including businesses or other institutions) of several things, including how the information will be used, though agencies have some discretion related to the amount of detail provided.

<sup>39</sup> See [5 U.S.C. §552a\(e\)\(3\)](#).

<sup>40</sup> See [5 U.S.C. §552a\(e\)\(4\)](#).

<sup>41</sup> See [Federal Register, Vol. 40, No. 132](#) (*Privacy Act Implementation Guidelines and Responsibilities*), page 28962.

1. The most effective notices provide all of the required information about the statistical uses of the administrative data in clear, salient language appropriate for a general audience.
2. Consistent with law, regulation, and policy, program agencies should take time to consider adopting a routine use for their administrative data that are likely to be requested for statistical activities, in order to permit the provision under the Privacy Act's routine use exception.
3. Consistent with law, regulation, and policy, statistical agencies or components should consider whether a particular Privacy Act statement or SORN should be modified to allow for the combining or linking of administrative data that are received from a program agency with survey data or other acquired administrative data, if applicable.
4. Agencies must always provide an appropriate level of specificity in their notices; however, they may also elect to provide additional details on the agency's website, such as information on each specific data provision arrangement.
5. Program and statistical agencies should confer with general counsel and/or senior privacy official for additional guidance.

While agencies retain the final responsibility for complying with the Privacy Act, as noted in the *Legal Responsibilities for Protecting Privacy* section of this Memorandum, there are four exceptions to the general prohibition on agencies from disclosing information in a "system of records," as defined in the statute, without the prior written consent of the individual to whom the information pertains.

The following scenarios are intended to help clarify when an agency could disclose data for statistical purposes under the Privacy Act's routine use exception, the second of four described in the Memorandum, and when it could not.

1. The routine use exception can be used and no additional notice is required if the program agency determines that providing data to a statistical agency or component for statistical purposes is authorized by law and covered by the data collection purpose in the SORN and Privacy Act statement—and is either identified as a routine use or is otherwise permissible under the Privacy Act. Before a statistical agency or component receives data about individuals, it may need to create or revise a SORN.
2. If providing data to a statistical agency or component for statistical purposes is authorized by law and is compatible with the purpose for which the data were collected, but was not previously identified as a routine use of the data, the routine use exception can be used after the program agency does two things. First, it must publish a revised SORN. Second, it must modify the description of routine uses in its Privacy Act statement to inform future program participants of potential data provision for statistical purposes. The 1975 [\*Privacy Act Implementation Guidelines and Responsibilities\*](#) cites, as an example, meeting the "compatible and related" criteria of a routine use, "[the]

development of a sampling frame for an evaluation study or other statistical purposes.”<sup>42</sup> Such statistical purposes will often include combining the administrative data with other datasets. Before a statistical agency or component receives data about individuals, it may need to create or revise a SORN.

3. If providing data for statistical purposes is not compatible with the original purpose for which the data were collected, then the routine use exception cannot be used. If none of the other three exceptions described in the *Legal Responsibilities for Protecting Privacy* section of this Memorandum apply, then three things must occur: (a) a new or revised SORN must be published by the program agency, (b) individuals who previously supplied data must provide written consent, and (c) a revised Privacy Act statement must be provided in future rounds of data collection. This situation would occur when the program agency identified only purposes and uses that could not be interpreted to include statistical purposes in the original SORN and Privacy Act statement. The revised notices would permit statistical uses only of data collected after the new or revised notices were in effect. If already collected administrative data are deemed essential for a statistical purpose, the program agency would need to re-contact individuals from whom data were previously collected in order to obtain their written consent to use the data for statistical purposes. Re-contacting individuals can be difficult and costly—and may cause statistical bias by obtaining data only for the subset of the population successfully contacted and having provided consent. Thus, agencies need to carefully evaluate the need for data in this situation. Before a statistical agency or component receives data about individuals, it may need to create or revise a SORN.

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<sup>42</sup> See [Federal Register, Vol. 40, No. 132](#), page 28953.

**Appendix B: Model Agreement for the Provision of Administrative Records for Statistical Purposes**

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## Introduction

Agreements are a tool that Federal agencies should use whenever there is an exchange of data, funds, personnel, property, services, or any type of commitment or obligation because they help to optimize the benefits from each party's efforts in a well-defined, legally sound manner. This appendix provides a model that Federal agencies can use when an agency wishes to provide data for a statistical purpose to another agency. While agencies may find the document helpful in other contexts, it was specifically crafted to facilitate the provision of administrative records data from agencies or other organizations holding such data to Federal statistical agencies and components. Consistent with OMB policy, including M-11-02 and M-13-13, statistical agencies and components seek to acquire and use administrative data for statistical purposes to contain costs and reduce burdens on respondents, while increasing the quality and quantity of statistical information. Data provision agreements are the method for statistical agencies or components to obtain administrative data from other governmental entities or other institutions.

Currently there are myriad different agreements that government entities apply to exchange data and administrative records. Crucial components of agreements designed to permit one agency to provide data to another agency for statistical purposes, such as data security procedures, are addressed in varying approaches or may be inadvertently omitted from the agreements. In addition, the lack of standardization means that agreements tend to require extensive review and revision at multiple stages of review, creating substantial delays. This model agreement provides guidance on the issues that agencies should consider when executing agreements to provide administrative records for statistical purposes. While use of the model is not required, the model agreement will promote uniform implementation of interagency data provision agreements while considering specific factual circumstances and different individual program requirements and procedures. The Model Agreement may also be used when necessary to govern the relationship between program components and statistical components within the same agency.

The **model agreement** includes basic elements, principles, and practice recommendations. The elements in the model agreement should be included in agreements that provide data for statistical purposes unless circumstances warrant their exclusion. Principles address common challenges or issues facing agencies as they engage in the provision or exchange of data. The concepts are broad enough that they should be considered prior to entering into any agreement where data would be provided for statistical purposes. For example, provisions such as legal and programmatic authority, confidentiality and privacy, data security procedures, and records retention may be very similar across many such data use agreements. The model agreement also offers recommendations for applying various provisions to agreements. Practice recommendations are best practices that should be carefully reviewed and incorporated into agency policies and procedures, as appropriate. The common issues in data use agreements have been drawn from projects where agencies have successfully provided administrative data to another agency for statistical purposes.

OMB encourages agencies to start from this model, rather than "home grown" agreement templates when they identify new opportunities for providing data for statistical purposes. In so doing, agencies will begin from a comprehensive, common base, which should increase the

sufficiency of agreements while reducing the time and resources invested in their creation and implementation. Making such exchanges more efficient is essential to enabling the policy direction set forth in this Memorandum. The **standard elements** of a model agreement follow.

**1. Parties**

*Identify the primary organizations or offices that are partnering to provide administrative records to another for statistical purposes.*

| Principle(s)   | Practice Recommendation(s)   |
|--|--|
| <ul style="list-style-type: none"> <li>The parties agree to provide and receive data in accordance with the terms and conditions described in the data provision agreement which outlines each party’s obligations and responsibilities for ensuring that the provided data are appropriately used, secured, and protected.</li> </ul> | <ul style="list-style-type: none"> <li>The data provision agreement should reflect all promises to perform between the parties to the agreement. There may be multiple data provision or use agreements in any given project.</li> <li>The names and addresses of the primary organizations/offices should be included in this section.</li> </ul> |

**2. Legal and Programmatic Authority**

*Identify the legal authority that authorizes the parties to enter into the data provision agreement.*

| Principle(s)   | Practice Recommendation(s)   |
|--|--|
| <ul style="list-style-type: none"> <li>A Federal agency may enter into an agreement if authorized by law. An agreement may require both legal and programmatic authority.</li> </ul> | <ul style="list-style-type: none"> <li>Cite the statutory and/or regulatory provision that authorizes the provision of data for statistical purposes, as well as any transfer authority that may be applicable.</li> </ul> |

**3. Duration or Period of Agreement**

*Indicate effective start and end dates of the agreement.*

| Principle(s)  | Practice Recommendation(s)  |
|---|---|
| <ul style="list-style-type: none"> <li>The parties should carefully consider the term of the agreement in order to mutually accommodate their interests.</li> </ul> | <ul style="list-style-type: none"> <li>Establish the period of the agreement as appropriate, whether the agreement is mutually beneficial (i.e., up to 5 years) or reimbursable (i.e., one-year, two-year to coincide with availability of funds).</li> <li>Agreements become effective when both parties have signed.</li> </ul> |

#### 4. Purpose

*Describe the specific purpose of the agreement, including the anticipated benefits and goals of the parties.*

| Principle(s)  | Practice Recommendation(s)  |
|---|---|
| <ul style="list-style-type: none"> <li>• A detailed purpose that clearly describes the intended benefits of the parties and key stakeholders promotes communication and increases the likelihood that the benefits and goals will be achieved. This description includes specific deliverables, actions, and milestones each party agrees to complete during the performance period.</li> <li>• If the agency providing the data intends to issue a contract or order to provide the requested data, state or attach a specific, definite, and clear description of the contracted work. The description should be definitive enough to demonstrate a bona fide need and support a binding agreement that can be recorded as an obligation in the fiscal year that funds or other services are available for obligation.</li> </ul> | <ul style="list-style-type: none"> <li>• Briefly describe the relationship between/among the agencies and explain how work described in this agreement will benefit the relationship. This may include a short history of the relationship.</li> <li>• Include general introductory information about the functions of the parties involved. Clearly define how the data will be used, the organizations that are permitted to use the data, the period of time the data may be used, and what happens to the data after it is used.</li> <li>• Include specific reference to the data or data files that will be used and the authorized studies that will be undertaken.</li> </ul> |

#### 5. Use of Data

*List any constraints on use of the data.*

| Principle(s)   | Practice Recommendation(s)  |
|--|---|
| <ul style="list-style-type: none"> <li>• Specify the approved projects and/or uses for which the other agency can use the data. Set limitations on the type of use and specific applications, particularly if/when access/usage requirements are expanded.</li> <li>• If the parties are publicly releasing any documents or research related to the exchange of administrative records data specified in the agreement, specify the subject matter, rights, and responsibilities pertaining to public use of data. This may include disclosure avoidance procedures.</li> </ul> | <ul style="list-style-type: none"> <li>• Specify the individuals who are authorized to access the data subject to the agreement.</li> <li>• If the data are being linked to other data files, specify the linkage procedure and approved uses of the data.</li> <li>• If the data are being linked to other data files, comply with the statutes relevant to each of the files (e.g., Privacy Act, the Paperwork Reduction Act, the Confidential Information Protection and Statistical Efficiency Act (CIPSEA), and</li> </ul> |



| <b>Principle(s)</b>   | <b>Practice Recommendation(s)</b>  |
|---|--|
| <ul style="list-style-type: none"> <li>If the parties are publicly releasing any documents or research, note the anticipated public disclosure and set forth the publication review and approval procedures.</li> </ul> | <p>the Family Educational Rights and Privacy Act (FERPA).</p> <ul style="list-style-type: none"> <li>For Federal agencies where there is a practice of ongoing provision of data, the agreement may specify that additional projects and/or uses of data may be added to the agreement with written permission. Note that some agreements only require notification rather than approval. The parties to the agreement can discuss the additional project in advance and review a draft of the memorandum prior to formal transmissions and approval.</li> <li>Establish guidelines for publication, including providing a draft report, establishing the approval process, designating a period of time for a response to the draft report, and issuing the final report. The guidelines apply to all public releases and activities planned during the term of agreement.</li> <li>The agreement should specify the individuals and/or entity, such as the Disclosure Review Board (DRB) charged with the responsibility of reviewing and approving reports prior to public release.</li> <li>If the data subject to the agreement will be made available to researchers via a restricted data use license, reference the policies and procedures that apply to licenses for restricted use data files.</li> </ul> |

**6. Data Quality**

*Describe the quality of the datasets to be provided.*

| <b>Principle(s)</b>  | <b>Practice Recommendation(s)</b>  |
|--|--|
| <ul style="list-style-type: none"> <li>• A statement about the quality of data is important to ensure appropriate use of the data by the receiving agency. The statement should address the quality of the provided data in terms of its timeliness, accuracy, reliability, and completeness.</li> <li>• If data errors, inaccuracies, and/or discrepancies are discovered subsequent to information sharing for statistical purposes, either party to the data sharing agreement should have the opportunity to clarify or address data issues in a timely manner.</li> </ul> | <ul style="list-style-type: none"> <li>• Include concepts, definitions, and codes (e.g., NAICS, SOC) used to describe the data collected, including copies of the data collection instrument.</li> <li>• Also, include a description of the universe, frame, target population, and any sample design used to identify respondents.</li> <li>• Add a description and findings from any quality control procedures (e.g. edits, imputation, reviews) including notice of any changes that are made to identifiers, coding flags, or other items that may affect the interpretation of the data.</li> <li>• Include a provision specifying that, upon discovery of data errors, inaccuracies, and/or discrepancies in data provided for statistical purposes, any party to the agreement may address data issues, including in some cases, correcting inaccuracies, where feasible and appropriate, within 30 days of discovery of the data errors.</li> </ul> |

**7. Roles and Responsibilities for Data Protection**

*Delineate each entity’s agreed-upon roles and responsibilities for protecting provided data. The division of responsibilities and commitments of each entity should be defined as precisely as possible, with separate paragraphs for each of the key following roles and responsibilities:*

**7(a). Confidentiality and Privacy**

*Describe the required processes that the receiver must use to ensure that data remain confidential.*

| Principle(s)  | Practice Recommendation(s)  |
|---|---|
| <ul style="list-style-type: none"> <li>• Agencies providing data must ensure that they comply with applicable government-wide and agency-specific statutes and regulations governing the collection and dissemination of information.</li> <li>• Entities using provided data must establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data and prevent unauthorized use or access to it.</li> </ul> | <ul style="list-style-type: none"> <li>• Agencies providing data should indicate whether the Privacy Act, the Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (a), the Family Educational Rights and Privacy Act (FERPA), the Education Sciences Reform Act of 2002, or other relevant statutes are applicable given the facts and circumstances. Describe the requirements of each statute with respect to the provided data.</li> <li>• For individuals who are approved to work with the provided data, consider requiring certification of training for safeguarding and protecting confidential information.</li> <li>• Cite Privacy Act system of records notice (SORN) if applicable so that all parties are aware of what will be published in the <i>Federal Register</i> regarding access to and use of information.</li> <li>• Institutional Review Board (IRB) approval may be required, particularly if data acquisition involves personally identifiable information. In certain circumstances, agency or IRB rules governing the use of data for research projects may require notice and consent procedures beyond those described in the Privacy Act and the Paperwork Reduction</li> </ul> |

| Principle(s) | Practice Recommendation(s) |
|--------------|----------------------------|
|              | Act.                       |

**7(b). Data Security**

*Include the data security procedures in the agreement and reference relevant policies and procedures that provide guidance in the protection of confidential data.*

| Principle(s)   | Practice Recommendation(s)   |
|--|--|
| <ul style="list-style-type: none"> <li>Maintaining secure data is a shared responsibility and requires all parties to take appropriate measures to ensure that data are protected from unauthorized access.</li> </ul> | <ul style="list-style-type: none"> <li>Describe the specific methods that the receiver must use to maintain data security. The data security procedures should be comprehensive and restrict access to all protected information obtained from the other to only those authorized employees and officials who perform their duties in accordance with the uses of the information and requirements as stipulated in applicable data security agreements.</li> <li>Specify procedures to be followed, including when, how, and to whom notifications will be sent, if an attempt is made to gain inappropriate access to data or personally identifiable information is lost or stolen.</li> <li>Chief information security officers should have sufficient authority to conduct onsite reviews and require other provisions are instituted to ensure that adequate safeguards are being maintained by the other entity.</li> <li>Provisions should specify that agencies will store sensitive records in areas that are physically safe (criteria for this may vary across agencies) from access by unauthorized person at all times. These should describe or reference a description of what is meant by “safe”.</li> <li>The agreement should require a security agreement that clearly delineates the</li> </ul> |

| Principle(s) | Practice Recommendation(s)   |
|--------------|--|
|              | <p>requirements for information technology (IT) security. The date that the Security Plan received operational approval should be set forth in the agreement.</p> <ul style="list-style-type: none"> <li>• Consider whether the Federal Information Security Management Act of 2002 (FISMA) applies. FISMA provides in pertinent part that “[e]ach agency shall develop, document, and implement an agency-wide information security program . . . to provide information security for the information and information systems that support the operations and assets of the agency.”<sup>43</sup> The provision includes developing “[p]olicies and procedures that . . . cost-effectively reduce information security risks to an acceptable level.”<sup>44</sup></li> <li>• Reference the OMB procedures that require agencies to report all incidents involving personally identifiable information to US-CERT within one hour of discovering the incident. Specify the individuals from each agency or entity that is a party to the agreement who are responsible to report all incidents involving personally identifiable information to a Federal incident response center (US-CERT) within one hour of discovering the incident.<sup>45</sup></li> <li>• Examining the quality, quantity, authenticity, and condition of the security arrangements as well as inspecting security arrangements may be necessary for the agency providing the data to confirm that the user is in compliance</li> </ul> |

<sup>43</sup> [44 U.S.C §3544 \(b\)](#).

<sup>44</sup> [44 U.S.C. §3544 \(b\)\(2\)](#).

<sup>45</sup> [OMB Memorandum M-07-16](#), *Safeguarding Against and Responding to the Breach of Personally Identifiable Information* (May 22, 2007).

| Principle(s) | Practice Recommendation(s)   |
|--------------|--|
|              | with data security procedures and requirements specified by the agreement. |

**7(c). Data Transfer, Media, and Methods for Transmission of Data**

*Identify the way in which data will be securely transferred from the provider to the receiver.*

| Principle(s)   | Practice Recommendation(s)  |
|--|---|
| <ul style="list-style-type: none"> <li>Establish comprehensive methods for the transfer of data including the media utilized for transfer and the specific safeguards to be used.</li> </ul> | <ul style="list-style-type: none"> <li>Specify the method by which files will be received, encrypted and passwords used along with what constitutes an acceptable level of encryption, whether the transfer is one or two way; inter-connection security agreements; etc.</li> <li>Analyze whether an Interconnection Security Agreement is required per NIST SP 800-47.</li> </ul> |

**7(d). Record Keeping, Retention, and Disposition of Records**

*Develop procedures for record keeping, retention and disposition of records.*

| Principle(s)  | Practice Recommendation(s)  |
|---|---|
| <ul style="list-style-type: none"> <li>Clearly set forth procedures for record keeping, retention and disposition of records and designate the specific parties and/or personnel who are responsible for maintaining, destroying, and certifying destruction of the records.</li> </ul> | <ul style="list-style-type: none"> <li>Each agreement should contain a provision for retention of records by governmental and non-governmental entities. Specify what records shall be retained for the project contemplated by the agreement and for a back-up system. Specify the duration of time that records should be retained (e.g., commencing upon approval of the agreement and ending xx years hence).</li> <li>Identify the data custodian from each party to the agreement who is responsible for record keeping, retention and disposition of records.</li> </ul> |

**8. Specific Penalties for Unauthorized Disclosure of Information**

*Set forth potential criminal and civil penalties for unauthorized disclosure of information.*

| Principle(s)  | Practice Recommendation(s)   |
|---|--|
| <ul style="list-style-type: none"> <li>If criminal or civil penalties apply for unauthorized disclosure of information, set forth an acknowledgement of all criminal and civil penalties in the agreement.</li> </ul> | <ul style="list-style-type: none"> <li>Cite the applicable statutes and penalties governing the protection of the information, such as the Privacy Act or the Social Security Act.</li> <li>Insert a provision that the data user and any individual employed or affiliated therewith may be subject to civil suit under the Privacy Act for damages which occur as a result of willful or intentional actions which violate an individual's rights under the Privacy Act. (For Census Bureau employees, wrongful disclosure of confidential Census Bureau information could result in a fine of up to \$250,000, imprisonment of up to 5 years, or both, in accordance with 13 U.S.C. §214, as amended by 18 U.S.C. §3559 and §3571. For officers, employees, or agents of any agency acquiring information for exclusively statistical purposes under a pledge of confidentiality, wrongful disclosure of confidential information could result in a fine of up to \$250,000, imprisonment up to 5 years, or both, in accordance with section 513 of CIPSEA.)</li> </ul> |

**9. Potential Work Constraints**

*Anticipate restrictions or prohibition that may interrupt performance.*

| Principle(s)   | Practice Recommendation(s)   |
|--|--|
| <ul style="list-style-type: none"> <li>Procedures addressing potential work constraints should be inserted into agreements.</li> </ul> | <ul style="list-style-type: none"> <li>Potential work constraints such as changes due to employment ceilings, reductions in force, temporary furloughs, or other controls imposed by OMB, Executive Order, or congressional action can interrupt performance.</li> </ul> |

## 10. Breach

*Draft provisions in the event of the breaking or violation of an obligation or a law.*

| Principle(s)   | Practice Recommendation(s)  |
|--|---|
| <ul style="list-style-type: none"> <li>• When a party who owes a present duty under an agreement fails to perform that duty, it will have the effect of suspending or discharging the other party's obligation to perform under the agreement.</li> <li>• If the breach is partial (not material) it does not relieve the aggrieved party from continuing to perform under the agreement.</li> <li>• A breach of confidentiality could constitute a partial breach of the agreement.</li> <li>• The Federal Information Security Management Act of 2002 requires all agencies to report security incidents to a Federal incident response center (US-CERT).</li> </ul> | <ul style="list-style-type: none"> <li>• OMB requires agencies to develop and implement a breach notification policy, including the timing and form of notification. If one party breaches the agreement, set forth which party is responsible to notify other parties to the agreement of the breach. Specify which party is responsible for the costs of notification of the breach, as well as which stakeholders should be informed of the breach.</li> <li>• Specify the remedies and damages in the event of breach of the agreement, including liquidated damages if applicable. Parties negotiating an agreement often make an explicit agreement as to what each party's remedy for breach of contract shall be.</li> <li>• If liquidated damages are specified for breach of agreement, the amount fixed must be reasonable relative to the anticipated or actual loss from the breach. In some cases, the harm caused by the breach will be uncertain or very difficult to calculate accurately and should be noted as such.</li> <li>• Breaches subject to notification requirements include electronic systems and paper documents.</li> </ul> |



## 11. Disclaimers

*Consider including indemnification language to protect the parties from legal actions.*

| <b>Principle(s)</b>  | <b>Practice Recommendation(s)</b>  |
|--|--|
| <ul style="list-style-type: none"><li>• Divisions or operating units of Federal agencies cannot indemnify outside parties.</li><li>• Parties to the agreement may be requested to assist and cooperate if legal actions are brought.</li></ul> | <ul style="list-style-type: none"><li>• Consider including language that provides that if such suits are brought against one entity, the other party to the agreement will assist with or cooperate in the agency's defense.</li></ul> |

## 12. Reporting

*Specify the time periods and method of reporting (e.g. annual reports via e-mail) and specific elements to include in the reports.*

| <b>Principle(s)</b>  | <b>Practice Recommendation(s)</b>   |
|--|---|
| <ul style="list-style-type: none"><li>• Reporting may be required to meet statutory or regulatory requirements</li></ul> | <ul style="list-style-type: none"><li>• Draft a provision that specifies that each party to the agreement agrees to report to the other party inventories of approved projects that use the data as authorized in the agreement and inventories of training certification for individuals approved to work with the data received under this agreement.</li></ul> |

### 13. Administrative Points of Contact

*Identify administrative points of contact responsible for the day to day management of the data provision agreement.*

| Principle(s)  | Practice Recommendation(s)  |
|---|---|
| <ul style="list-style-type: none"> <li>• To ensure sound management of data provision agreements agencies must assign responsible individuals to be accountable for the day to day management and administration of the agreement.</li> <li>• Administrative points of contract should be identified in the data provision agreement and parties to the agreement should be notified generally within 30 days of any changes to the contact information.</li> </ul> | <ul style="list-style-type: none"> <li>• Administrative points of contact include the:               <ul style="list-style-type: none"> <li>- Project Officer who supervises adherence to reporting/notification requirements, updates to review of agreement, data management, data quality, retention and destruction of data files, data security procedures, etc.</li> <li>- Program Official(s), if work is performed by contractors, who ensure that the scope of work is properly defined and can be fulfilled for the order. The program official may or may not be a Contracting Officer depending on each agency's interagency acquisition business process.</li> </ul> </li> <li>• Agreements may identify additional points of contact as appropriate.</li> </ul> |

### 14. Funding Information

*Identify funding obligations.*

| Principle(s)  | Practice Recommendation(s)  |
|---|---|
| <ul style="list-style-type: none"> <li>• If funds are to be obligated under the agreement, the financial arrangements for all parties to the agreement must be clearly stipulated.</li> <li>• If no funds are to be obligated under the agreement, a statement should be included to make it clear that the agreement is not an instrument that obligates funds of any party to the agreement.</li> </ul> | <ul style="list-style-type: none"> <li>• Set forth the funding amounts that are certified by a certifying/approving official and are available. Where practical, the appropriations act that provided the funding should be cited. At a minimum, the following financial data are needed for each party to the agreement: Agency Locator Code (ALC), Business Event Transaction Code (BETC), Treasury Account Symbol (TAS), and Data Universal Numbering System/Business Partner Network (DUNS/BPN).</li> </ul> |

## 15. Estimated Costs and Payment

*Describe how estimated costs will be reimbursed.*

| Principle(s)  | Practice Recommendation(s)   |
|---|--|
| <ul style="list-style-type: none"> <li>If the agreement results in the exchange of money between/among entities, state the estimated costs, budgeted amounts and terms of payment.</li> </ul> | <ul style="list-style-type: none"> <li>If appropriate, set forth a budget listing for each party to the agreement. If the agreement does not contain a detailed budget, the official agreement file may contain a copy of the budget listing with the total estimated costs for each party to the agreement.</li> <li>Enter the total agreed-upon direct cost for providing the products and/or services.</li> <li>Enter the total agreed-upon overhead fees and charges for providing the products and/or services.</li> <li>Enter the total agreed-upon estimated amount (direct cost plus overhead fees &amp; charges) for the agreement.</li> <li>If additional costs are incurred, describe how they are shared.</li> <li>The agreement should set forth the frequency of billing and how the funds will be transferred between agencies (e.g. IPAC, small purchase cards, etc.).</li> <li>The agreement should contain financial contact information for each party to the agreement.</li> </ul> |

## 16. Resolution of Conflicts

*Describe how disputes will be resolved.*

| <b>Principle(s)</b>  | <b>Practice Recommendation(s)</b>  |
|--|--|
| <ul style="list-style-type: none"><li>• Set forth a method to resolve disputes</li></ul> | <ul style="list-style-type: none"><li>• Specify various methods of conflict resolution according to the level of escalation of the dispute, including the conditions that trigger the formal attempt to resolve conflicts.</li><li>• Specify the individuals who are authorized to engage in conflict resolution.</li><li>• Consider inserting a provision that in the event of a dispute regarding any part of the agreement, the dispute may be submitted to non-binding arbitration upon consent of all parties to the agreement.</li></ul> |

## 17. Modification/Amendment of Agreement

*Indicate that amendments must be in writing signed by authorized individuals.*

| <b>Principle(s)</b>   | <b>Practice Recommendation(s)</b>   |
|---|---|
| <ul style="list-style-type: none"><li>• Amendments should not change the general purpose and effect of the agreement.</li><li>• Amendments should be made on consent of all parties to the data use agreement and in writing.</li></ul> | <ul style="list-style-type: none"><li>• The agreement should specify who is authorized to modify or amend the agreement.</li><li>• Amendments should include the signature(s) of the point(s) of contact for each agency or entity that is a party to the agreement or authorized individual as deemed by the participating entity.</li></ul> |

## 18. Cancellation of Agreement

*Describe how and under what circumstances the agreement may be cancelled.*

| Principle(s)   | Practice Recommendation(s)   |
|--|--|
| <ul style="list-style-type: none"><li>The agreement should contain a provision whereby each party may cancel the agreement within a specified time and, under what conditions - some situations may permit immediate termination if prior written notice is provided to all parties.</li></ul> | <ul style="list-style-type: none"><li>Draft language indicating that failure to maintain security adequate to avoid the unauthorized disclosure of confidential information shall be grounds for immediate termination of the authorization to access such data.</li><li>Consider inserting a provision specifying that in the event of agreement termination, each party shall be solely responsible for the payment of any expenses it has incurred.</li></ul> |

## 19. Periodic Review of Agreement

| Principle(s)   | Practice Recommendation(s)  |
|--|---|
| <ul style="list-style-type: none"><li>Each agency or entity should conduct annual self-audits of all offices where work on approved projects is conducted to ascertain whether confidentiality, privacy and security safeguards are adequate.</li><li>A complete report of each audit citing strengths, deficiencies, and corrective actions as necessary shall be made available to the chief information security officer and designated “point of contact” of the agency requesting the audit.</li><li>If the agreement is extended for an indefinite period of time, it should contain a provision for review, at least every three years, to determine the continuing need and whether the agreement should be revised, renewed, or canceled.</li></ul> | <ul style="list-style-type: none"><li>Consider inserting an “audit access clause” in any agreement between governmental agencies and non-governmental entities that involves the transfer of funds or department resources such as considerable staff time.</li></ul> |

**20. Concurrence and Agency Signatory**

| <b>Principle(s)</b>   | <b>Practice Recommendation(s)</b>   |
|---|---|
| <ul style="list-style-type: none"> <li>• In order to be a valid agreement, there must be approval among all parties to the agreement.</li> <li>• When there are factual circumstances wherein a third party must assent to the terms of the agreement, a third party concurrence should be drafted. The third party concurrence is made part of the original data provision agreement.</li> </ul> | <ul style="list-style-type: none"> <li>• Identify the agency signatory. Agency signatories agree that they have the authority to sign for the agency or participating entity and denote their acceptance of the agreement terms by affixing their signature and the date.</li> <li>• The agreement period must begin on or after the signature dates.</li> <li>• The agency official should be the highest level accepting authority or official as designated by the requesting agency and servicing agency to sign this agreement.</li> </ul> |