

Date: October 4, 2004

Commissioner's Order No. 3-04

Subject: Confidential Nature of BLS Records

1. Purpose. The purpose of this Order is to state the Bureau of Labor Statistics (BLS) policy concerning its confidential records.
2. Reference Office. Office of Administration, Division of Management Systems.
3. Authority. Secretary's Order 39-72, "Control of Data and Information Collected by the Bureau of Labor Statistics," assigns the Commissioner of Labor Statistics responsibility for confidentiality policy and procedures related to the protection of BLS data and for deciding on all requests for public disclosure of data collected by the BLS. The Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), Title 5 of Public Law 107-347, establishes statutory provisions protecting the confidentiality of data collected by Federal Executive Branch agencies for exclusively statistical purposes under a pledge of confidentiality. The Workforce Investment Act of 1998, Public Law 105-220, section 309(a)(2), establishes statutory provisions protecting the confidentiality of data collected through the Federal/State Labor Market Information programs. The Federal Statistical Confidentiality Order issued by the Office of Management and Budget, 62 Federal Register 35043 (June 27, 1997), establishes a consistent government policy protecting the confidentiality interests of respondents who provide information for Federal statistical programs.
4. Directives Affected. Commissioner's Order 3-93, "Confidential Nature of BLS Records," is replaced by this Order. In all cases where Commissioner's Order 3-93 is cited as the BLS policy, this Order is henceforth the applicable document.
5. References. Administrative Procedure 1-96, "Responsibility for Safeguarding Confidential Information," Commissioner's Order 3-00, "Contracts and Agreements Involving BLS Confidential Data or Privacy Act Data," and Commissioner's Order 4-00, "Advance Release of Embargoed News and Data Releases," provide additional information on the BLS confidentiality policy.
6. Definitions. For purposes of this Order:
 - a. Confidential information includes:

- i. Individually identifiable data. Any representation of information that permits the identity of the respondent to whom the information applies to be reasonably inferred by either direct or indirect means.
 - ii. Pre-release economic data. Statistics and analyses that have not yet officially been released to the public, whether or not there is a set date and time of release before which they must not be divulged.
 - iii. Embargoed data. Pre-release economic data for the Principal Federal Economic Indicators produced by the BLS. Currently, the following BLS data series have been designated by OMB as Principal Federal Economic Indicators: the Consumer Price Index, Employment Situation, Employment Cost Index, Producer Price Indexes, Productivity and Costs, Real Earnings, and U.S. Import and Export Price Indexes.
- b. Respondent. A person who, or organization that, is requested or required to supply information to the BLS, is the subject of information requested or required to be supplied to the BLS, or provides that information to the BLS. A person or organization is not required to actually have provided information to BLS, or have had information provided to BLS from another source, to be considered a respondent.
- c. Statistical purposes. The description, estimation, or analysis of the characteristics of groups without identifying the individuals or organizations that comprise such groups, and the development, implementation, or maintenance of methods, procedures, or information resources that support such purposes. This definition does not include any use of individually identifiable data for administrative, regulatory, law enforcement, adjudicatory, disclosure under the Freedom of Information Act, or other similar purposes that affect the rights, privileges, or benefits of a particular respondent.
- d. Statistical activities. The collection, compilation, processing, or analysis of data for the purpose of describing or making estimates or tabulations concerning the whole, or relevant groups or components within the economy, society, or the natural environment. Statistical activities include the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames.
- e. Authorized persons. Officers, employees, and agents of the BLS who are responsible for collecting, processing, or using confidential data in furtherance of statistical purposes or for the other stated purposes for which the data were collected. Authorized persons are authorized access to only those confidential data that are integral to the program or project on which they work, and only to the extent required to perform their duties.

- f. Agents. Individuals who meet the definition of agent as set forth by CIPSEA and who have been designated by the BLS to perform exclusively statistical activities through an Agent Agreement.
 - g. Disclose or Disclosure. The release of confidential information to anyone other than authorized persons or the respondent who provided or is the subject of the data.
 - h. Advance Release. Providing a BLS news or data release (or any part or derivative of a release) to a person or organization outside the BLS prior to its official date and time of public release.
7. Policy. In conformance with existing law and Departmental regulations, it is the policy of the BLS that:
- a. Individually identifiable data collected or maintained by, or under the auspices of, the BLS for exclusively statistical purposes and under a pledge of confidentiality shall be treated in a manner that will ensure that the data will be used only for statistical purposes and will be accessible only to authorized persons.
 - b. Pre-release economic data, including embargoed data, prepared for release to the public will not be disclosed or used in an unauthorized manner before they officially have been released, and will be accessible only to authorized persons.
8. Designation of Authorized Persons. The following categories of individuals are authorized persons:
- a. BLS officers and employees who take the oath of office and who sign the BLS Employee Acknowledgment Letter when they enter on duty.
 - b. Individuals designated as agents who fall within one of the following categories:
 - i. State agency employees who are directly involved in the BLS/State cooperative programs, who are subject to the provisions of the BLS/State cooperative agreement, and who have signed a BLS Agent Agreement.
 - ii. BLS Contract employees whose contract under which they are working contains provisions that includes the BLS confidentiality policy and who have signed a BLS Agent Agreement.
 - iii. Individuals working under the authority of a separate government entity with which the BLS has entered into a contract or other agreement that includes the BLS confidentiality policy and who have signed a BLS Agent Agreement.

- iv. Researchers who are affiliated with an organization with which the BLS has entered into a contract or other agreement that includes the BLS confidentiality policy, who are working on a temporary basis on a statistical project of interest to the BLS, and who have signed a BLS Agent Agreement.
 - v. Any other individuals who are affiliated with an organization with which the BLS has entered into a contract or other agreement that includes the BLS confidentiality policy. Such individuals must meet the definition of an agent under CIPSEA, and must sign a BLS Agent Agreement.
9. Delegation of Authority for Designating Agents.
- a. The authority for designating agents for access to the confidential National Longitudinal Survey of Youth Geocode Files for statistical research is hereby delegated to the Senior Research Economist for Employment Research and Program Development.
 - b. The authority for designating agents for access to the confidential Census of Fatal Occupational Injuries Research File for statistical research is hereby delegated to the Assistant Commissioner for Safety, Health, and Working Conditions.
 - c. The authority for designating agents for access to all other BLS confidential data is delegated to the Associate Commissioner for the office in which the confidential data are maintained.
10. Implementation. In the execution of this general policy concerning confidential BLS records, the following requirements shall be in effect:
- a. Data collected in cooperation with another Federal or State agency for exclusively statistical purposes under a pledge of confidentiality are covered by the policy of this Order and by applicable Federal laws governing the handling of confidential information.
 - b. Files maintained by another Federal or State agency that are commingled with confidential information collected by BLS for exclusively statistical purposes under a pledge of confidentiality are covered by the policy of this Order and by applicable Federal laws governing the handling of confidential information. Further, any data, including publicly available data, that are commingled with confidential information covered by this Order are to be treated as confidential and handled in accordance with this policy.
 - c. Universe lists derived from information provided to the BLS for exclusively statistical purposes under a pledge of confidentiality shall be kept confidential.

- d. The survey sample composition, lists of reporters, names of respondents, and brand names shall be kept confidential, regardless of the source of such lists or names.
- e. Publications shall be prepared in such a way that they will not reveal the identity of any specific respondent and, to the knowledge of the preparer, will not allow information concerning the respondent to be reasonably inferred by either direct or indirect means.
- f. Frequency count data of establishments tabulated by the Quarterly Census of Employment and Wages (QCEW) are not considered confidential since general information about an establishment, particularly information on the establishment location and line of business (or industry) that would be used in a frequency count table, is publicly available. All other information maintained by BLS in the QCEW file, including the employment and wages of establishments, is considered confidential and must be handled in accordance with this policy and applicable Federal law.
- g. All individuals or organizations, government or private, who enter into a contract or other agreement with the BLS for the collection, processing, maintenance, or storage of data shall conform to CIPSEA and other applicable Federal laws, to the BLS confidentiality policy, to Commissioner's Order 3-00, "Contracts and Agreements Involving BLS Confidential Data or Privacy Act Data," and to all specific procedures published pursuant to this Order.
- h. Each BLS/State cooperative agreement shall designate a State official to serve as a State Cooperating Representative. The State Cooperating Representative shall act as the BLS representative for ensuring that all provisions of the BLS confidentiality policy are understood and complied with in the cooperating State agency. The State Cooperating Representative and all other State agency personnel who receive access to BLS confidential data must be designated agents of the BLS in accordance with Section 8, "Designation of Authorized Persons."
- i. Any restrictions placed by international sources upon the use of data obtained from those sources shall be observed. Also, any limitations placed by the Department of State or other agency upon the use, dissemination, or handling of data obtained through Foreign Service channels shall be observed wherever applicable.
- j. BLS officers, employees, and agents who are responsible for collecting data shall not sign any confidentiality agreements required by respondents. Such agreements may be forwarded to the Division of Management Systems for consideration. Signing of building entrance logs, which sometimes may contain confidentiality language, is allowed.

- k. Programs are responsible for complying with Disclosure Review Board (DRB) policies established under BLS Statistical Policy Directives. In addition, when specific disclosure limitation issues arise, programs are responsible for consulting with the DRB prior to disseminating potentially confidential information.

l. In order for data obtained solely from a publicly available source to be covered under this Order, a pledge of confidentiality must be provided to the person or organization that is the subject of the information.

- m. Programs may provide data to other BLS programs, with management approval, for the statistical purposes of data reconciliation.
- n. Under limited circumstances, advance release of pre-release economic data is permitted with the authorization of the Commissioner. Advance release of embargoed data is permitted only under the conditions set out in Commissioner's Order 4-00, "Advance Release of Embargoed News and Data Releases."

11. Exceptions Under Conditions of Informed Consent.

- a. Exceptions to the general policy relating to the disclosure of confidential data set forth in Section 7, "Policy," or to the provisions listed in Section 10, "Implementation," shall be granted only under the conditions of informed consent. Proposed informed consent arrangements shall be developed in consultation with the Division of Management Systems and must be authorized by the Commissioner prior to implementation. In order for an informed consent arrangement to be approved, one of the following conditions must be met:
 - i. It is made clear to the respondent when the data are obtained that they will be released under specified conditions. This notification must be in writing in all notices placed in the Federal Register as part of the Office of Management and Budget clearance process for survey collection instruments and either on the collection vehicle itself or in an accompanying letter.
 - ii. The written permission of the respondent to release the data is secured after the data have been furnished to BLS on a confidential basis. The actual respondent (or for establishments, a management level official who clearly has proper authority) must authorize the release. In cases where establishments no longer exist and no successor establishment can be located, the Commissioner retains sole discretion on whether a release will be authorized. The written permission of the respondent must be obtained and kept on file by the authorized person negotiating the conditions of informed consent.

- b. For BLS/State cooperative programs, the Associate Commissioner for Field Operations is assigned the responsibility to establish policies and procedures for exceptions to the publication policy set forth in Section 10e when the written consent of respondents has been obtained. Such policies and procedures shall provide for the approval of those exceptions, and for obtaining and maintaining records of the respondent's written consent in the regional office and State files.

12. Disciplinary Actions. It is the policy of the BLS to enforce the provisions of this Order to the full extent of its authority. Any unauthorized disclosure or use of confidential records by a BLS officer or employee may constitute cause for the BLS to take disciplinary action against that officer or employee including, but not limited to, reprimand, suspension, demotion, or removal. Any unauthorized disclosure or use of confidential records by a BLS contractor or other agent may constitute cause for removal from further work under the contract or other agreement through which access to confidential information is authorized or termination of the contract or other agreement. Furthermore, a knowing and willful disclosure by a BLS officer, employee, or agent of individually identifiable data collected for exclusively statistical purposes under a pledge of confidentiality would be a violation of CIPSEA and potentially other applicable Federal laws that carry criminal fines and penalties.

13. Effective Date. This Order is effective immediately.

KATHLEEN P. UTGOFF
Commissioner of Labor Statistics