

Comment Regarding Proposed Guidelines for the Federal Information Technology Acquisition Reform Act

The Council of Professional Associations on Federal Statistics (COPAFS) represents over 300,000 individual researchers, educators, public health professionals, civic groups, and businesses that rely on the quality and accessibility of statistics that can only be effectively collected, managed, and curated by the federal government. COPAFS contends that the proposed guidance for the Federal Information Technology Acquisition Reform Act (FITARA) would violate federal law and Executive Directives that assure critically essential independence of officially designated statistical agenciesⁱ and should thus explicitly exclude these agencies from its requirements. Potential consequences of less than independent collection, storage, announcement, dissemination, and selective accessibility to federal statistics include economic market disruption (related to agencies' time-sensitive release of principle economic indicators), inadequate communication with those who answer surveys or use resultant data, and slow response to the need for on-the-minute statistical information for unanticipated federal policy or program decision making.

The Confidential Information Protection and Statistical Efficiency Act (CIPSEA; Pub.L. 107-347, 116 Stat. 2899, 44 U.S.C. § 101) provides strong confidentiality protections to many Federal agencies conducting statistical information collections such as surveys and censuses as well as other statistical activities including data analysis and modeling. Under CIPSEA, it is the statistical agencies themselves, not the Department within they reside, that hold ultimate responsibility and accountability for the confidential information that the agency acquires under a CIPSEA pledge. Any inappropriate use or disclosure of CIPSEA-protected information violates the law and can undermine public trust. The minimum standards for safeguarding confidential information under CIPSEA make clear that each person having access to confidential information understands the statistical uses that apply to his/her responsibility in maintaining the confidentiality of that information. In addition, these standards make clear that it is the statistical agency that is independently accountable for each part of the information protection process, including:

- determining and monitoring procedures for statistical collection and statistical release;
- evaluating the reason for accessing the information and controlling access to the information;
- maintaining physical and information systems security

We are particularly concerned that the proposed FITARA guidelines would prevent statistical agencies from guaranteeing the confidentiality of the data for which they are, by law, the stewards. As users of the data and selective data access procedures, we support statistical agencies' independent monitoring, access and security and trust them to continue their outstanding job in doing so. Without the agencies' guarantees, it would not be surprising to see survey response rates drop, with a consequential decrease in the accuracy of survey statistics.

Statistical Policy Directive #1 on “Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units” (<http://www.gpo.gov/fdsys/pkg/FR-2014-12-02/pdf/2014-28326.pdf>) is more explicit about the actions and activities that must be independently controlled by the agencies without the influence of others, including the Secretaries of the Cabinet Departments in which they are organized. The Directive, issued under the authority of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 1104 (d)) and the Paperwork Reduction Act of 1995 (44 U.S.C. 3504 (e)), is aimed at maintaining trust in the accuracy, objectivity, and integrity of the Federal statistical system and its products. Lack of trust causes uncertainty about the validity of measures the Nation uses to monitor and assess its performance, progress, and needs by undermining the public’s confidence in the information released by the Government and/or reducing response rates to extents that affect quality. Even the perception of a lack of objectivity or a 30-second delay in the release of market-sensitive statistics can have substantial consequences.

Statistical Directive #1 specifies the responsibilities for which statistical agencies are held accountable. Under Responsibility #3, “Conduct objective statistical activities,” several requirements are notable with regard to the proposed FITARA guidelines:

- “Federal statistical agencies and recognized statistical units must function in an environment that is clearly separate and autonomous from the other administrative, regulatory, law enforcement, or policy making activities within their respective Departments.”

We interpret IT oversight as falling within administrative activities, meaning that it has to occur within the statistical agencies, not from outside.

- “Federal statistical agencies must be able to conduct statistical activities autonomously, (including)... when and how to store and disseminate their statistical products and which staff to select to join their agencies.”

The proposed FITARA guidelines would violate this requirement on several levels, including Departmental CIO approval of agencies’ selections for their own CIO, and their influence on decisions concerning statistical software and secure statistical data storage technology.

Furthermore, under Responsibility #4 “Protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses,” statistical agencies themselves, not their Departments, are responsible for maintaining strict privacy and confidentiality of statistical data. They are also independently responsible for assuring that the data are made available and utilized only for “statistical purposes,” as defined by law.

We are also concerned that the many approval processes required by the proposed FITARA guidelines could jeopardize the timeliness of federal statistics’ release, and the ability of statistical agencies’ “sworn agent” contractors to fulfill tasks central to the agencies’ missions.

Federal statistics are used: to allocate federal funding and services to states and local areas; as economic indicators directing private sector investment and location decisions; in gauging the state of economic development, education, trade, transportation, health and other functions of government; and to evaluate federal programs for evidence-based policy decision making. They must be accurate, objective, relevant, timely, and accessible to individuals cleared by the responsible statistical agencies solely for “statistical purposes” as defined by CIPSEA. CIO’s are a vital part of the support required to achieve this. But only the statistical agencies have the training and know-how to carry out the unique responsibilities given them by law and through Executive Directives.

ⁱ Designated (by OMB) federal statistical agencies and currently recognized (by OMB) statistical units are: the Bureau of Economic Analysis, Bureau of Justice Statistics, Bureau of Labor Statistics, Bureau of Transportation Statistics, Census Bureau, Economic Research Service (USDA), Energy Information Administration, National Agricultural Statistics Service, National Center for Education Statistics, National Center for Health Statistics, National Center for Science and Engineering Statistics, Office of Research, Evaluation and Statistics (Social Security Administration), Statistics of Income Division (IRS), Microeconomic Surveys Unit (Federal Reserve Board), Center for Behavioral health Statistics and Quality, Substance Abuse and Mental Health Services (HHS), and the National Animal Health Monitoring System of the Animal and Plant Health Inspection Service (USDA).