

Appendix: Federal Statutes Affecting Information Sharing

The following laws place restrictions on transfers of information made by Federal agencies.

- *The Trade Secrets Act* (18 U.S.C. § 1905). This law prohibits federal agencies and personnel from disclosing specified information unless the disclosures are authorized by law. The information subject to this prohibition “concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures by any person, firm, partnership, corporation, or association.” Persons disclosing these types of information without requisite authority may be fined, imprisoned, and removed from federal service.

It is unsettled whether inter-agency transfers are disclosures subject to the Trade Secrets Act¹³. Department of Justice opinions reflect that, in addition to express statutory authorization, lawful sources of disclosure authority under the Trade Secrets Act may arise from, among other sources, an agency’s substantive regulations or necessary statutory implication.¹⁴

- *The Privacy Act of 1974* (5 U.S.C. § 552a). This law restricts federal agencies’ collection and dissemination of information about individuals. Under this law, an agency may collect and maintain information about an individual only if it is relevant and necessary to accomplish a purpose of the agency that is required to be accomplished by statute or executive order. Disclosure of such information may not generally occur without the consent of the information’s subject. However, twelve statutory exceptions to the principle of “no disclosure without consent” exist. Of these, two have relevance to and may authorize the transfer of information about an individual to other federal or state agencies. Under the first of these exceptions, disclosure may occur pursuant to a routine use if the use is compatible with the purposes for which records about an individual are maintained. Additionally, if

¹³ *Compare Shell Oil Co. v. Department of Energy*, 447 F. Supp. 413 (1979), affirmed 631 F.2d 231 (3d Cir. 1980) (inter-agency transfer held to constitute disclosure) *with Emerson v. Schlesinger*, 609 F.2d 898 (8th Cir. 1979) (TSA was designed to apply only to public disclosures).

¹⁴ 41 Op. Att’y Gen 106 (1953) (authority to make disclosures implied from statutory mandate to liquidate the RFC); 5 Op. Off. Legal Counsel 255 (1981) (summarization of sources of TSA disclosure authority). requested in writing by a federal or state agency for an authorized civil or criminal law enforcement purpose, disclosure may also occur.

- *The Right to Financial Privacy Act* (12 U.S.C. §§ 3401-3422) (RFPA). While the focus of the Privacy Act is on a broader category of information about individuals, the RFPA applies only to information obtained from a financial institution's records pertaining to an individual customer's relationship with the institution. With respect to this information, federal agencies are generally limited in the means through which this information may be obtained from an institution. However, specific provision is made in the RFPA for examinations conducted by the federal financial regulatory agencies.

Once information is obtained by a federal agency, it may not generally be transferred to another without notice of the transfer being provided to the customer. However, certain transfers are exempt from this general requirement. Included among these exemptions are transfers: (1) between two designated supervisory agencies having statutory examination authority with respect to the same institution¹⁵; (2) among and between FFIEC members and the SEC¹⁶; (3) sought by a federal agency in connection with an investigation or examination of a financial institution¹⁷; and (4) required by law.¹⁸

¹⁵ 12 U.S.C. § 3412(d).

¹⁶ 12 U.S.C. §3412(e).

¹⁷ 12 U.S.C. §3413(h)(1).

¹⁸ 12 U.S.C. §3413(d).