



The Heritage Foundation  
**Executive Memorandum**

No. 604

June 8, 1999

## PRESERVE THE PUBLIC'S RIGHT TO KNOW ABOUT FEDERALLY FUNDED RESEARCH

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As part of the Fiscal Year (FY) 1999 Omnibus Appropriations Act (P.L. 105-277), Congress included a provision introduced by Senator Richard Shelby (R-AL) that for the first time allows the public to obtain federally funded research data collected through grants and agreements with universities and other nonprofit organizations. This provision is supposed to shine a light on data used to support federal policies, rules, and findings. Yet some Members of Congress want to reverse this law or suspend its implementation through the Treasury, Postal and General Government Appropriations for Fiscal Year 2000 and take away the public's right to know how tax dollars spent on research influence policies that affect their lives.

Giving and then taking away the public's access to information it funded would be a mistake. It also would be a victory for unelected federal employees as well as special interest academic elites who spend billions of federal dollars annually on research that influences policies affecting millions of Americans; yet they remain accountable to no one. Congress should work with the Office of Management and Budget (OMB) to implement the new access policy consistent with public input and drawing on the investments already made by academic institutions and professional organizations to develop guidelines to share data.

**The Access Provision.** P.L. 105-277 requires the OMB to amend Circular A-110, the Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education,

Hospitals, and Other Non-Profit Organizations, to require "Federal awarding agencies to ensure that all data produced under an award will be made available to the public" under the Freedom of Information Act (FOIA). Congress understood this would cover data not currently covered under the FOIA and apply to all federally funded data regardless of whether the awarding agency has them on hand when a request is made. The Supreme Court, in *Forsham v. Harris*, 445 U.S. 169, 179-180 (1980), established that data in the files of an award recipient, but not in the files of a federal agency, are not available under the FOIA.

A recent study for the AEI-Brookings Joint Center for Regulatory Studies concludes that the Shelby provision does not reflect a huge change from current data-sharing policies in the academic community. Federal agencies typically require the results of research to be published and data made available within a reasonable period. Researchers make information available according to university norms of good practices and customs, not because of the conditions of a federal grant.

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Produced by  
The Thomas A. Roe Institute  
for Economic Policy Studies

Published by  
The Heritage Foundation  
214 Massachusetts Ave., N.E.  
Washington, D.C.  
20002-4999  
(202) 546-4400  
<http://www.heritage.org>



If anything, the access provision simply requires federal awarding agencies to acquire data paid for by taxpayers. They generally have not done so because, if they do not have the data, they could not be forced under the FOIA to produce it. And if agencies cannot be required to make data available, then they will not be scrutinized and held accountable. The access provision forces the government to play by its own rules. If the federal government can force private institutions to share privately funded research with the public, then it also can provide the public with research funded by tax dollars.

**Better Decision-making.** In FY 1998, the federal government spent more than \$76 billion on a significant amount of research influencing policies that affect such aspects of American life as health, education, the criminal justice system, and the environment. Broader access to federally funded research will enhance scientific debate and promote new research; create caution among researchers about data of questionable validity; improve public perception of federally funded research; enhance data gathering and sharing; and help to define the appropriate roles of private versus public research ventures. Broader access to federally funded research also will lead to better policy. Instead of relying on the views of a few interest groups, decision-makers can gain insight from the broader public. And proposed policies or regulations will be examined more critically before they are implemented.

**FOIA Protections.** Opponents of providing the public with access to federally funded research argue that the release of such information may not protect the privacy of research subjects adequately, lead to the theft of intellectual property rights, and jeopardize trade secrets and financial data. They fail to acknowledge that the FOIA has a long history of balancing the public's right to know against the need to protect sensitive information. The FOIA includes exemptions to protect sensitive information regarding national security and law enforcement; trade secrets and commercial or financial information; personnel and medical files; files "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"; and

information protected by statute.

**Public Response.** Congress should work with the OMB to implement an effective data access policy. On February 4, 1999, the OMB published in the *Federal Register* a proposed revision to Circular A-110 to implement P.L. 105-277; federal awarding agencies would be required, on a request under the FOIA, to obtain federally funded published research data and make it available through FOIA procedures. This provision would apply only to data from published studies used by the federal government in developing a policy or rule. The public comment period on this proposed revision closed on April 5, 1999, after generating more than 6,000 comments, the majority focused on defining "policy," "rules," and "data," instead of on the merits of providing public access to such information.

The OMB has taken positive steps with its proposed interpretation and revision to Circular A-110, and Congress is working with the OMB to develop and refine the data access policy. In an April 5 letter to the OMB, Senators Shelby, Ben Nighthorse Campbell (R-CO), and Trent Lott (R-MS) offer guidance on implementing the provision, such as defining "policy" to include "guidances, risk assessments, government surveys, and other government findings"; ensuring public access to federally funded data that are used to support a federal rule or policy even if that data is not published; and clarifying that "data should include all information necessary to replicate and verify the results."

**Conclusion.** The public believes it should have the right to examine and question data funded with tax dollars and used to make federal policy. The Shelby provision is critical for forcing the development and refinement of federal data access policies by drawing on the existing work on data sharing done by academic institutions and professional organizations. There is no need to waste more money to determine whether taxpayers should have the right to access federally funded research.

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