

TITLE 15 - COMMERCE AND TRADE

CHAPTER 1 - MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93–528, § 3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 94–145, § 2, Dec. 12, 1975, 89 Stat. 801; Pub. L. 101–588, § 4(a), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 108–237, title II, § 215(a), June 22, 2004, 118 Stat. 668.)

Amendments

2004—Pub. L. 108–237 substituted “\$100,000,000” for “\$10,000,000”, “\$1,000,000” for “\$350,000”, and “10” for “three”.

1990—Pub. L. 101–588 substituted “\$10,000,000” for “one million dollars” and “\$350,000” for “one hundred thousand dollars”.

1975—Pub. L. 94–145 struck out from first sentence two provisos granting anti-trust exemption to State fair trade laws.

1974—Pub. L. 93–528 substituted “a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years” for “a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year”.

1955—Act July 7, 1955, substituted “fifty thousand dollars” for “five thousand dollars”.

1937—Act Aug. 17, 1937, inserted two provisos.

Effective Date of 2001 Amendment

Pub. L. 107–72, § 4, Nov. 20, 2001, 115 Stat. 650, provided that: “This Act [enacting and amending provisions set out as notes under this section] and the amendments made by this Act shall take effect on September 30, 2001.”

Effective Date of 1975 Amendment

Section 4 of Pub. L. 94–145 provided that: “The amendments made by sections 2 and 3 of this Act [amending this section and section 45 of this title] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act [Dec. 12, 1975].”

Short Title of 2008 Amendment

Pub. L. 110–327, § 1, Sept. 30, 2008, 122 Stat. 3566, provided that: “This Act [amending provisions set out as a note under this section] may be cited as the ‘Need-Based Educational Aid Act of 2008’.”

Short Title of 2007 Amendment

Pub. L. 110–6, § 1, Feb. 26, 2007, 121 Stat. 61, provided that: “This Act [amending provisions set out as a note under this section] may be cited as the ‘Antitrust Modernization Commission Extension Act of 2007’.”

Short Title of 2004 Amendment

Pub. L. 108–237, title II, § 201, June 22, 2004, 118 Stat. 665, provided that: “This title [amending this section and sections 2, 3, and 16 of this title and enacting provisions set out as notes under this section and section 16 of this title] may be cited as the ‘Antitrust Criminal Penalty Enhancement and Reform Act of 2004’.”

Short Title of 2002 Amendment

Pub. L. 107–273, div. C, title IV, § 14101, Nov. 2, 2002, 116 Stat. 1921, provided that: “This title [amending sections 3, 12, 27, and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing sections 30 and 31 of this title, enacting provisions set out as a note under section 3 of this title, amending provisions set out as notes under this section and section 8 of this title, and repealing provisions set out as notes under section 15 of this title and section 41309 of Title 49, Transportation] may be cited as the ‘Antitrust Technical Corrections Act of 2002’.”

Short Title of 2001 Amendment

Pub. L. 107–72, § 1, Nov. 20, 2001, 115 Stat. 648, provided that: “This Act [enacting and amending provisions set out as notes under this section] may be cited as the ‘Need-Based Educational Aid Act of 2001’.”

Short Title of 1998 Amendment

Pub. L. 105–297, § 1, Oct. 27, 1998, 112 Stat. 2824, provided that: “This Act [enacting section 26b of this title and provisions set out as a note under section 26b of this title] may be cited as the ‘Curt Flood Act of 1998’.”

Short Title of 1997 Amendments

Pub. L. 105–43, § 1, Sept. 17, 1997, 111 Stat. 1140, provided that: “This Act [enacting and amending provisions set out as notes below] may be cited as the ‘Need-Based Educational Aid Antitrust Protection Act of 1997’.”

Pub. L. 105–26, § 1, July 3, 1997, 111 Stat. 241, provided that: “This Act [amending sections 37 and 37a of this title and enacting provisions set out as notes under section 37 of this title] may be cited as the ‘Charitable Donation Antitrust Immunity Act of 1997’.”

Short Title of 1995 Amendment

Pub. L. 104–63, § 1, Dec. 8, 1995, 109 Stat. 687, provided that: “This Act [enacting sections 37 and 37a of this title and provisions set out as a note under section 37 of this title] may be cited as the ‘Charitable Gift Annuity Antitrust Relief Act of 1995’.”

Short Title of 1990 Amendment

Section 1 of Pub. L. 101–588 provided: “That this Act [amending this section and sections 2, 3, 15a, and 19 of this title and repealing section 20 of this title] may be cited as the ‘Antitrust Amendments Act of 1990’.”

Short Title of 1984 Amendment

Pub. L. 98–544, § 1, Oct. 24, 1984, 98 Stat. 2750, provided: “That this Act [enacting sections 34 to 36 of this title and provisions set out as a note under section 34 of this title] may be cited as the ‘Local Government Antitrust Act of 1984’.”

Short Title of 1982 Amendment

Pub. L. 97–290, title IV, § 401, Oct. 8, 1982, 96 Stat. 1246, provided that: “This title [enacting section 6a of this title and amending section 45 of this title] may be cited as the ‘Foreign Trade Antitrust Improvements Act of 1982’.”

Short Title of 1980 Amendment

Pub. L. 96–493, § 1, Dec. 2, 1980, 94 Stat. 2568, provided: “That this Act [enacting section 26a of this title] may be cited as the ‘Gasohol Competition Act of 1980’.”

Short Title of 1976 Amendment

Section 1 of Pub. L. 94–435, Sept. 30, 1976, 90 Stat. 1383, provided: “That this Act [enacting sections 15c to 15h, 18a, and 66 of this title, amending sections 12, 15b, 16, 26, and 1311 to 1314 of this title, section 1505 of Title 18, Crimes and Criminal Procedure, and section 1407 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 8, 15c, 18a, and 1311 of this title] may be cited as the ‘Hart-Scott-Rodino Antitrust Improvements Act of 1976’.”

Short Title of 1975 Amendment

Section 1 of Pub. L. 94–145 provided: “That this Act [amending this section and section 45 of this title and enacting provisions set out as a note under this section] may be cited as the ‘Consumer Goods Pricing Act of 1975’.”

Short Title of 1974 Amendment

Section 1 of Pub. L. 93–528 provided: “That this Act [amending this section and section 2, 3, 16, 28, and 29 of this title, section 401 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and sections 43, 44, and 45 of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 29 of this title] may be cited as the ‘Antitrust Procedures and Penalties Act’.”

Short Title

Pub. L. 94–435, title III, § 305(a), Sept. 30, 1976, 90 Stat. 1397, added immediately following the enacting clause of act July 2, 1890, the following: “That this Act [this section and sections 2 to 7 of this title] may be cited as the ‘Sherman Act’.”

Antitrust Enforcement Enhancements and Cooperation Incentives

Pub. L. 108–237, title II, §§ 211–214, June 22, 2004, 118 Stat. 666, 667, provided that:

“SEC. 211. SUNSET.

“(a) In General.—Except as provided in subsection (b), the provisions of sections 211 through 214 shall cease to have effect 5 years after the date of enactment of this Act [June 22, 2004].

“(b) Exception.—With respect to an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle [this note] shall cease to have effect, the provisions of sections 211 through 214 of this subtitle shall continue in effect.

“SEC. 212. DEFINITIONS.

“In this subtitle [subtitle A (§§ 211–215) of title II of Pub. L. 108–237, amending this section and sections 2 and 3 of this title and enacting this note]:

“(1) Antitrust division.—The term ‘Antitrust Division’ means the United States Department of Justice Antitrust Division.

“(2) Antitrust leniency agreement.—The term ‘antitrust leniency agreement,’ or ‘agreement,’ means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.

“(3) Antitrust leniency applicant.—The term ‘antitrust leniency applicant,’ or ‘applicant,’ means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.

“(4) Claimant.—The term ‘claimant’ means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of the Sherman Act [15 U.S.C. 1, 3] or any similar State law, except that the term does not include a State or a subdivision of a State with respect to a civil action brought to recover damages sustained by the State or subdivision.

“(5) Cooperating individual.—The term ‘cooperating individual’ means, with respect to an antitrust leniency agreement, a current or former director, officer, or employee of the antitrust leniency applicant who is covered by the agreement.

“(6) Person.—The term ‘person’ has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12 (a)].

“SEC. 213. LIMITATION ON RECOVERY.

“(a) In General.—Subject to subsection (d), in any civil action alleging a violation of section 1 or 3 of the Sherman Act [15 U.S.C. 1, 3], or alleging a violation of any similar State law, based on conduct covered by a currently effective antitrust leniency agreement, the amount of damages recovered by or on behalf of a claimant from an antitrust leniency applicant who satisfies the requirements of subsection (b), together with the amounts so recovered from cooperating individuals who satisfy such requirements, shall not exceed that portion of the actual damages sustained by such claimant which is attributable to the commerce done by the applicant in the goods or services affected by the violation.

“(b) Requirements.—Subject to subsection (c), an antitrust leniency applicant or cooperating individual satisfies the requirements of this subsection with respect to a civil action described in subsection (a) if the court in which the civil action is brought determines, after considering any appropriate pleadings from the claimant, that the applicant or cooperating individual, as the case may be, has provided satisfactory cooperation to the claimant with respect to the civil action, which cooperation shall include—

“(1) providing a full account to the claimant of all facts known to the applicant or cooperating individual, as the case may be, that are potentially relevant to the civil action;

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“(2) furnishing all documents or other items potentially relevant to the civil action that are in the possession, custody, or control of the applicant or cooperating individual, as the case may be, wherever they are located; and

“(3)(A) in the case of a cooperating individual—

“(i) making himself or herself available for such interviews, depositions, or testimony in connection with the civil action as the claimant may reasonably require; and

“(ii) responding completely and truthfully, without making any attempt either falsely to protect or falsely to implicate any person or entity, and without intentionally withholding any potentially relevant information, to all questions asked by the claimant in interviews, depositions, trials, or any other court proceedings in connection with the civil action; or

“(B) in the case of an antitrust leniency applicant, using its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation described in clauses (i) and (ii) and subparagraph (A).

“(c) Timeliness.—If the initial contact by the antitrust leniency applicant with the Antitrust Division regarding conduct covered by the antitrust leniency agreement occurs after a State, or subdivision of a State, has issued compulsory process in connection with an investigation of allegations of a violation of section 1 or 3 of the Sherman Act [15 U.S.C. 1, 3] or any similar State law based on conduct covered by the antitrust leniency agreement or after a civil action described in subsection (a) has been filed, then the court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant’s initial cooperation with the claimant.

“(d) Continuation.—Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 4, 4A, and 4C of the Clayton Act [15 U.S.C. 15, 15a, 15c] relating to the recovery of costs of suit, including a reasonable attorney’s fee, and interest on damages, to the extent that such recovery is authorized by such sections.

“SEC. 214. RIGHTS, AUTHORITIES, AND LIABILITIES NOT AFFECTED.

“Nothing in this subtitle [subtitle A (§§ 211–215) of title II of Pub. L. 108–237, amending this section and sections 2 and 3 of this title and enacting this note] shall be construed to—

“(1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 213 (b) from impairing or impeding the investigation or prosecution by the Antitrust Division of conduct covered by the agreement;

“(2) create any right to challenge any decision by the Antitrust Division with respect to an antitrust leniency agreement; or

“(3) affect, in any way, the joint and several liability of any party to a civil action described in section 213 (a), other than that of the antitrust leniency applicant and cooperating individuals as provided in section 213 (a) of this title.”

Antitrust Modernization Commission

Pub. L. 107–273, div. C, title I, subtitle D, Nov. 2, 2002, 116 Stat. 1856, as amended by Pub. L. 110–6, § 2, Feb. 26, 2007, 121 Stat. 61, provided that:

“SEC. 11051. SHORT TITLE.

“This subtitle may be cited as the ‘Antitrust Modernization Commission Act of 2002’.

“SEC. 11052. ESTABLISHMENT.

“There is established the Antitrust Modernization Commission (in this subtitle referred to as the ‘Commission’).

“SEC. 11053. DUTIES OF THE COMMISSION.

“The duties of the Commission are—

“(1) to examine whether the need exists to modernize the antitrust laws and to identify and study related issues;

“(2) to solicit views of all parties concerned with the operation of the antitrust laws;

“(3) to evaluate the advisability of proposals and current arrangements with respect to any issues so identified; and

“(4) to prepare and to submit to Congress and the President a report in accordance with section 11058.

“SEC. 11054. MEMBERSHIP.

“(a) Number and Appointment.—The Commission shall be composed of 12 members appointed as follows:

“(1) Four members, no more than 2 of whom shall be of the same political party, shall be appointed by the President. The President shall appoint members of the opposing party only on the recommendation of the leaders of Congress from that party.

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“(2) Two members shall be appointed by the majority leader of the Senate.

“(3) Two members shall be appointed by the minority leader of the Senate.

“(4) Two members shall be appointed by the Speaker of the House of Representatives.

“(5) Two members shall be appointed by the minority leader of the House of Representatives.

“(b) Ineligibility for Appointment.—Members of Congress shall be ineligible for appointment to the Commission.

“(c) Term of Appointment.—

“(1) In general.—Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.

“(2) Early termination of appointment.—If a member of the Commission who is appointed to the Commission as—

“(A) an officer or employee of a government ceases to be an officer or employee of such government; or

“(B) an individual who is not an officer or employee of a government becomes an officer or employee of a government;

then such member shall cease to be a member of the Commission on the expiration of the 90-day period beginning on the date such member ceases to be such officer or employee of such government, or becomes an officer or employee of a government, as the case may be.

“(d) Quorum.—Seven members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

“(e) Appointment Deadline.—Initial appointments under subsection (a) shall be made not later than 60 days after the date of enactment of this Act [Nov. 2, 2002].

“(f) Meetings.—The Commission shall meet at the call of the chairperson. The first meeting of the Commission shall be held not later than 30 days after the date on which all members of the Commission are first appointed under subsection (a) or funds are appropriated to carry out this subtitle, whichever occurs later.

“(g) Vacancy.—A vacancy on the Commission shall be filled in the same manner as the initial appointment is made.

“(h) Consultation Before Appointment.—Before appointing members of the Commission, the President, the majority and minority leaders of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall consult with each other to ensure fair and equitable representation of various points of view in the Commission.

“(i) Chairperson; Vice Chairperson.—The President shall select the chairperson of the Commission from among its appointed members. The leaders of Congress from the opposing party of the President shall select the vice chairperson of the Commission from among its remaining members.

“SEC. 11055. COMPENSATION OF THE COMMISSION.

“(a) Pay.—

“(1) Nongovernment employees.—Each member of the Commission who is not otherwise employed by a government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

“(2) Government employees.—A member of the Commission who is an officer or employee of a government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Commission.

“(b) Travel Expenses.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

“SEC. 11056. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

“(a) Staff.—

“(1) Appointment.—The chairperson of the Commission may, without regard to the provisions of chapter 51 of title 5 of the United States Code (relating to appointments in the competitive service), appoint and terminate an executive director and such other staff as are necessary to enable the Commission to perform its duties. The appointment of an executive director shall be subject to approval by the Commission.

“(2) Compensation.—The chairperson of the Commission may fix the compensation of the executive director and other staff without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code (relating to classification of positions and General Schedule pay rates), except that the rate of pay for the executive director and other staff may not exceed the rate of basic pay payable for level V of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time.

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“(b) Experts and Consultants.—The Commission may procure temporary and intermittent services of experts and consultants in accordance with section 3109 (b) of title 5, United States Code.

“SEC. 11057. POWERS OF THE COMMISSION.

“(a) Hearings and Meetings.—The Commission, or a member of the Commission if authorized by the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers to be appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or such member.

“(b) Official Data.—The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court information necessary to enable it to carry out its duties under this subtitle. On the request of the chairperson of the Commission, and consistent with any other law, the head of an executive agency or of a Federal court shall provide such information to the Commission.

“(c) Facilities and Support Services.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. On request of the Commission, the head of an executive agency may make any of the facilities or services of such agency available to the Commission, on a reimbursable or nonreimbursable basis, to assist the Commission in carrying out its duties under this subtitle.

“(d) Expenditures and Contracts.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or such member considers to be appropriate for the purpose of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in advance in appropriation Acts.

“(e) Mails.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

“(f) Gifts, Bequests, and Devises.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

“SEC. 11058. REPORT.

“Not later than 3 years after the first meeting of the Commission, the Commission shall submit to Congress and the President a report containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative or administrative action the Commission considers to be appropriate.

“SEC. 11059. TERMINATION OF COMMISSION.

“The Commission shall cease to exist 60 days after the date on which the report required by section 11058 is submitted.

“SEC. 11060. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated \$4,000,000 to carry out this subtitle.”

Year 2000 Information and Readiness Disclosure

Pub. L. 105–271, Oct. 19, 1998, 112 Stat. 2386, as amended by Pub. L. 107–273, div. C, title IV, § 14102(e), Nov. 2, 2002, 116 Stat. 1922, known as the Year 2000 Information and Readiness Disclosure Act, provided for the free disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.

Application of Antitrust Laws to Award of Need-Based Educational Aid

Pub. L. 107–72, § 3, Nov. 20, 2001, 115 Stat. 648, provided that:

“(a) Study.—

“(1) In general.—The Comptroller General shall conduct a study of the effect of the antitrust exemption on institutional student aid under section 568 of the Improving America’s Schools Act of 1994 (15 U.S.C. 1 note) [Pub. L. 103–382, see below].

“(2) Consultation.—The Comptroller General shall have final authority to determine the content of the study under paragraph (1), but in determining the content of the study, the Comptroller General shall consult with—

“(A) the institutions of higher education participating under the antitrust exemption under section 568 of the Improving America’s Schools Act of 1994 (15 U.S.C. 1 note) (referred to in this Act [see Short Title of 2001 Amendment note above] as the ‘participating institutions’);

- “(B) the Antitrust Division of the Department of Justice; and
- “(C) other persons that the Comptroller General determines are appropriate.
- “(3) Matters studied.—
- “(A) In general.—The study under paragraph (1) shall—
- “(i) examine the needs analysis methodologies used by participating institutions;
- “(ii) identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions, including—
- “(I) the percentage of first-year students receiving institutional grant aid;
- “(II) the mean and median grant eligibility and institutional grant aid to first-year students; and
- “(III) the mean and median parental and student contributions to undergraduate costs of attendance for first year students receiving institutional grant aid;
- “(iii) to the extent useful in determining the effect of the antitrust exemption under section 568 of the Improving America’s Schools Act of 1994 (15 U.S.C. 1 note), examine—
- “(I) comparison data, identified in clauses (i) and (ii), from institutions of higher education that do not participate under the antitrust exemption under section 568 of the Improving America’s Schools Act of 1994 (15 U.S.C. 1 note); and
- “(II) other baseline trend data from national benchmarks; and
- “(iv) examine any other issues that the Comptroller General determines are appropriate, including other types of aid affected by section 568 of the Improving America’s Schools Act of 1994 (15 U.S.C. 1 note).
- “(B) Assessment.—
- “(i) In general.—The study under paragraph (1) shall assess what effect the antitrust exemption on institutional student aid has had on institutional undergraduate grant aid and parental contribution to undergraduate costs of attendance.
- “(ii) Changes over time.—The assessment under clause (i) shall consider any changes in institutional undergraduate grant aid and parental contribution to undergraduate costs of attendance over time for institutions of higher education, including consideration of—
- “(I) the time period prior to adoption of the consensus methodologies at participating institutions; and
- “(II) the data examined pursuant to subparagraph (A)(iii).
- “(b) Report.—
- “(1) In general.—Not later than September 30, 2006, the Comptroller General shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains the findings and conclusions of the Comptroller General regarding the matters studied under subsection (a).
- “(2) Identifying individual institutions.—The Comptroller General shall not identify an individual institution of higher education in information submitted in the report under paragraph (1) unless the information on the institution is available to the public.
- “(c) Recordkeeping Requirement.—
- “(1) In general.—For the purpose of completing the study under subsection (a)(1), a participating institution shall—
- “(A) collect and maintain for each academic year until the study under subsection (a)(1) is completed—
- “(i) student-level data that is sufficient, in the judgment of the Comptroller General, to permit the analysis of expected family contributions, identified need, and undergraduate grant aid awards; and
- “(ii) information on formulas used by the institution to determine need; and
- “(B) submit the data and information under paragraph (1) to the Comptroller General at such time as the Comptroller General may reasonably require.
- “(2) Non-participating institutions.—Nothing in this subsection shall be construed to require an institution of higher education that does not participate under the antitrust exemption under section 568 of the Improving America’s Schools Act of 1994 (15 U.S.C. 1 note) to collect and maintain data under this subsection.”

Pub. L. 103–382, title V, § 568(a)–(d), Oct. 20, 1994, 108 Stat. 4060, 4061, as amended by Pub. L. 105–43, § 2(a), Sept. 17, 1997, 111 Stat. 1140; Pub. L. 105–244, title I, § 102(a)(3), Oct. 7, 1998, 112 Stat. 1618; Pub. L. 107–72, § 2, Nov. 20, 2001, 115 Stat. 648; Pub. L. 110–327, § 2, Sept. 30, 2008, 122 Stat. 3566, provided that:

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“(a) Exemption.—It shall not be unlawful under the antitrust laws for 2 or more institutions of higher education at which all students admitted are admitted on a need-blind basis, to agree or attempt to agree—

“(1) to award such students financial aid only on the basis of demonstrated financial need for such aid;

“(2) to use common principles of analysis for determining the need of such students for financial aid if the agreement to use such principles does not restrict financial aid officers at such institutions in their exercising independent professional judgment with respect to individual applicants for such financial aid;

“(3) to use a common aid application form for need-based financial aid for such students if the agreement to use such form does not restrict such institutions in their requesting from such students, or in their using, data in addition to the data requested on such form; or

“(4) to exchange through an independent third party, before awarding need-based financial aid to any of such students who is commonly admitted to the institutions of higher education involved, data submitted by the student so admitted, the student’s family, or a financial institution on behalf of the student or the student’s family relating to assets, liabilities, income, expenses, the number of family members, and the number of the student’s siblings in college, if each of such institutions of higher education is permitted to retrieve such data only once with respect to the student.

“(b) Limitations.—Subsection (a) shall not apply with respect to—

“(1) any financial aid or assistance authorized by the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.); or

“(2) any contract, combination, or conspiracy with respect to the amount or terms of any prospective financial aid award to a specific individual.

“(c) Definitions.—For purposes of this section—

“(1) the term ‘alien’ has the meaning given such term in section 101 (3) [101(a)(3)] of the Immigration and Nationality Act (8 U.S.C. 1101 (3) [1101(a)(3)]);

“(2) the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12 (a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition;

“(3) the term ‘institution of higher education’ has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001];

“(4) the term ‘lawfully admitted for permanent residence’ has the meaning given such term in section 101 (20) [101(a)(20)] of the Immigration and Nationality Act (8 U.S.C. 1101 (20) [1101(a)(20)]);

“(5) the term ‘national of the United States’ has the meaning given such term in section 101 (22) [101(a)(22)] of the Immigration and Nationality Act (8 U.S.C. 1101 (22) [1101(a)(22)]);

“(6) the term ‘on a need-blind basis’ means without regard to the financial circumstances of the student involved or the student’s family; and

“(7) the term ‘student’ means, with respect to an institution of higher education, a national of the United States or an alien admitted for permanent residence who is admitted to attend an undergraduate program at such institution on a full-time basis.

“(d) Expiration.—Subsection (a) shall expire on September 30, 2015.”

[Pub. L. 105–43, § 2(b), Sept. 17, 1997, 111 Stat. 1140, provided that: “The amendments made by subsection (a) [amending section 568 (a)–(d) of Pub. L. 103–382, set out above] shall take effect immediately before September 30, 1997.”]