

FOUNDATIONS FOR EVIDENCE-BASED POLICYMAKING  
 ACT OF 2017

NOVEMBER 15, 2017.—Committed to the Committee of the Whole House on the  
 State of the Union and ordered to be printed

Mr. GOWDY, from the Committee on Oversight and Government  
 Reform, submitted the following

R E P O R T

[To accompany H.R. 4174]

The Committee on Oversight and Government Reform, to whom  
 was referred the bill (H.R. 4174) to amend titles 5 and 44, United  
 States Code, to require Federal evaluation activities, improve Fed-  
 eral data management, and for other purposes, having considered  
 the same, report favorably thereon without amendment and rec-  
 ommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 4174, the Foundations for Evidence-Based Policymaking Act  
 of 2017, advances the evidence building functions in the Federal

government by improving access to data and expanding evaluation capacity. The bill incorporates H.R. 1770, the OPEN Government Data Act, in titles I and II, which expand public access to Federal data assets and make information about Federal data assets publicly available in a comprehensive, searchable inventory. H.R. 4174 improves data management practices by codifying the Chief Data Officer position and requiring the new position to coordinate the agency’s data management functions. H.R. 4174 also establishes the position of Chief Evaluation Officer, which is responsible for coordinating evidence-building activities across the agency and leading the agency’s evidence-building strategic planning. The bill further expands access to data by establishing a secure process for accessing nonpublic data assets for the purpose of evidence-building.

#### BACKGROUND AND NEED FOR LEGISLATION

Enacted in March 2016, the *Evidence-Based Policy Commission Act of 2016*, established a 15-member commission to “conduct a comprehensive study of the data inventory, data infrastructure, database security, and statistical protocols related to Federal policymaking and the agencies responsible for maintaining that data.”<sup>1</sup> The Act was the result of a bicameral and bipartisan effort by Speaker Paul Ryan (R–WI) and Senator Patty Murray (D–WA) to examine solutions to the problems facing the Federal evidence building community.<sup>2</sup> The Commission on Evidence-Based Policymaking (the “Commission” or “CEP”) was charged with making recommendations related to the access, integration, use, and control of data to facilitate research and evidence-based evaluation of government programs.<sup>3</sup>

With 15 months to complete its work, the Commission took a two-phase approach. First, the Commission engaged in a fact-finding mission. During the eight months following the initial meeting, the Commission administered a survey of 209 Federal government offices, convened seven public meetings with 49 witnesses, solicited public comments, held three public hearings, and conducted meetings with more than 30 organizations and experts.<sup>4</sup> Second, the Commission spent five months reviewing the information collected and deliberating. The Commission established five guiding principles:

1. **Privacy:** Individual privacy and confidentiality must be respected in the generation and use of data and evidence.
2. **Rigor:** Evidence should be developed using well-designed and well-implemented methods tailored to the questions being asked.
3. **Transparency:** Those engaged in generating and using data and evidence should operate transparently, providing meaningful channels for public input and comment and ensuring that evidence produced is made publicly available.
4. **Humility:** Care should be taken not to over-generalize from findings that may be specific to a particular study or context.

<sup>1</sup>Pub. L. 114–140 (2016).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>COMM’N ON EVIDENCE-BASED POLICYMAKING, THE PROMISE OF EVIDENCE-BASED POLICY-MAKING 5 (2017) [hereinafter CEP Report].

**5. Capacity:** The capacity to generate and use data and evidence should be integrated within government institutions and adequately funded and staffed.<sup>5</sup>

Relying on these principles, the Commission produced a final report, *The Promise of Evidence-Based Policymaking*, detailing 22 recommendations on how to improve Federal data and evidence usage.<sup>6</sup> The Commission approved the report unanimously and released the report on September 6, 2017.<sup>7</sup> The Committee held a hearing on September 26, 2017 titled, “Recommendations from the Commission on Evidence-Based Policymaking” to receive testimony from four commissioners explaining the findings and recommendations.<sup>8</sup>

*The Commission’s findings and recommendations*

The Commission found that while Federal policymakers need good information on which to base their decisions, “too little evidence is produced to meet this need.”<sup>9</sup> Ron Haskins, Co-Chair of the Commission, testified, “There are all kinds of evidence that 80 to 90 percent of programs in medicine, in social science, and in business, fail. That’s the main reason that we need to have more evidence. We need to develop these programs. . . . [M]ost programs . . . have a good reputation, but when you look at what they do in the country as a whole they are not successful.”<sup>10</sup>

Dr. Haskins also observed that some “programs that were initiated 5, 6, 7 years ago” are using evidence that shows we need “better strategies.”<sup>11</sup> He explained such programs do not “go overnight from 10 or 15 percent success to 80 percent. . . . It will take us years to develop this. We need to be patient and do it right.”<sup>12</sup>

*What is evidence-based policymaking?*

The Commission defined evidence as “information produced by ‘statistical activities’ with a ‘statistical purpose’ that is potentially useful when evaluating government programs and policies.”<sup>13</sup> The Commission acknowledged that evidence could be defined broadly to include any information that would assist in the development of a conclusion, but the statute suggested a more narrow focus. Dr. Katharine Abraham, Chair of the Commission, explained:

[T]he Commission was directed to review the barriers to using the administrative data that the Government already collects to ‘facilitate program evaluation, continuous improvement, policy-relevant research, and cost-benefit analyses.’ These types of analytic and evaluative activities consider the impact of policies and programs on groups of people, rather than individuals. The essence of a ‘statistical activity’ with a ‘statistical purpose’ is that the results

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Recommendations of the Commission on Evidence-Based Policymaking: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 115th Cong. (Sept. 26, 2017) (testimony of Dr. Ron Haskins) [hereinafter Haskins Testimony], available at <https://oversight.house.gov/hearing/recommendations-commission-evidence-based-policymaking/>.

<sup>8</sup> *Id.*

<sup>9</sup> CEP REPORT, *supra* note 4 at 1.

<sup>10</sup> Haskins Testimony, *supra* note 7.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> CEP REPORT, *supra* note 4 at 8.

summarizes information about a group rather than a single individual or organization.<sup>14</sup>

Evidence is distinct from policymaking, but evidence can be used by policymakers to determine whether a particular policy option will meet the goals or solve the problems that give rise to the need to create policy.

Evidence is an objective description of what is, whereas policymaking is the subjective determination of what ought to be. Dr. Abraham testified, “I think that evidence can tell you that if you do A, the outcome appears to be B. That can’t tell you what your policy should be. . . . [E]vidence [should have] a seat at the table so that everyone can look at it and then, given that and other value judgments and other inputs make decisions about policy.”<sup>15</sup>

The promise of evidence-based policy making is to apply this evidence to “inform decisions in government.”<sup>16</sup> Describing the role of evidence in policymaking, Dr. Haskins testified, “I do not expect that Congress would make decisions exclusively based on evidence. I want evidence to have a place at the table. I want Congress to understand what the evidence is. But they will use other factors to decide how much money they should spend or whether they do anything at all.”<sup>17</sup> The intent of government is to utilize limited resources efficiently. Through evidence-based policy making, services and programs can be developed to address efficiency.

One example of how evidence can inform decisions comes from the Drug Resistance Education program (D.A.R.E.). At its peak, DARE was in more than 75 percent of schools in the United States.<sup>18</sup> Throughout the 1990s and 2000s, evaluations of the program yielded a hard truth: D.A.R.E. was not effective at reducing long-term substance abuse in teenagers.<sup>19</sup> As a result the nonprofit organization made a change to the curriculum. DARE’s original curriculum entailed long lectures about the harms caused by drugs and alcohol; while the new curriculum consists of short instruction about good decision-making skills followed by group practice in implementing those skills.<sup>20</sup> D.A.R.E. used evidence to conclude that the old curriculum failed to advance the intended policy goal.

The Commission identified a number of potential questions to be answered with additional evidence. Common sense would dictate that the Federal Government would make policy decisions based on good evidence without the need for a new law. Unfortunately, there are currently barriers to making the necessary evidence available to policymakers. Often the data needed for evidence building is not available, and even when it is available, agencies lack the resources and expertise to effectively evaluate the programs.<sup>21</sup> The Commission also found that “[g]enerating and using evidence to inform government policymaking and program administration is not

<sup>14</sup> *Recommendations of the Commission on Evidence-Based Policymaking: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 115th Cong. (2017) (Question for the Record).

<sup>15</sup> *Id.* (testimony of Dr. Katharine Abraham) [hereinafter Abraham Testimony].

<sup>16</sup> CEP REPORT, *supra* note 4 at 11–12.

<sup>17</sup> Haskins Testimony, *supra* note 7.

<sup>18</sup> CEP REPORT, *supra* note 4 at 9.

<sup>19</sup> *Id.*

<sup>20</sup> Amy Nordrum, *The New D.A.R.E. Program—This One Works*, SCIENTIFIC AMER., Sept. 10, 2014, available at <https://www.scientificamerican.com/article/the-new-d-a-r-e-program-this-one-works/>.

<sup>21</sup> CEP REPORT, *supra* note 4 at 20.

a partisan issue.”<sup>22</sup> Evidence should inform both Congressional and Executive branch policy decisions.

*Improving evidence-building capacity*

According to the Commission and the Government Accountability Office (GAO), evidence-building efforts, coordination, and capacity are uneven across Federal agencies.<sup>23</sup> As is common in Federal agencies, the Commission found that evidence-building activities tend to be siloed, which results in missed opportunities, unnecessary duplication, and wasted resources.<sup>24</sup> Ineffective coordination and prioritization of evidence-building has a significant impact on the Federal Government. GAO reports, “Agencies’ continued lack of evaluations may be the greatest barrier to their informing managers and policy makers and constitutes a lost opportunity to improve the efficiency and effectiveness of limited government resources.”<sup>25</sup>

Silos are particularly problematic because of the large number of key actors within the Federal evidence-building community. CEP Commissioner Robert Shea testified at the Committee’s hearing. Mr. Shea explained, “We’ve taken to calling those who generate, manage, and analyze data, those who transform information into evidence, and those who support those functions through the routine processes of government, members of the evidence community.”<sup>26</sup> The Commission identified the following components of the evidence-building community:

1. The Federal Statistical System: This includes the 13 Principal Statistical Agencies (PSAs) and other statistical programs.
2. Evaluation offices: Evaluators use systematic data collection and analysis to assess the strengths and weaknesses of programs, policies, and organizations.
3. Policy research offices: Policy research means activities conducted to increase the stock of knowledge about programs and policies. This activity often occurs prior to formal evaluation to develop a knowledge base upon which to develop questions to be answered through evaluation.
4. Program administrators: Program administrators are responsible for ensuring programs are effectively and efficiently achieving the agency’s mission. Federal programs are both an audience for evidence and a source of data used to generate the evidence.
5. Performance management offices: Performance management offices are responsible for improving performance and achieving cost-effective results. Such offices are another important audience for evidence.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> CEP REPORT, *supra* note 4 at 88; and U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-15-25, PROGRAM EVALUATION: SOME AGENCIES REPORTED THAT NETWORKING, HIRING, AND INVOLVING PROGRAM STAFF HELP BUILD CAPACITY (2014) [hereinafter GAO-15-25].

<sup>24</sup> CEP REPORT, *supra* note 4 at 88.

<sup>25</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-17-743, PROGRAM EVALUATION ANNUAL AGENCY-WIDE PLANS COULD ENHANCE LEADERSHIP SUPPORT FOR PROGRAM EVALUATIONS (2017) [hereinafter GAO-17-743] (citing to the highlights).

<sup>26</sup> *Recommendations of the Commission on Evidence-Based Policymaking: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 115th Cong. (2017) (testimony of Robert Shea) [hereinafter Shea Testimony].

6. Centralized policy analysis offices: Described as “knowledge brokers,” policy analysis offices translate the knowledge obtained through evaluation and policy research into information accessible to the evidence audience, including program and performance management offices, Congress, and the public.

7. External partners: Some agencies also seek to develop evidence through external partnerships with researchers and service providers with tools like cooperative-agreements or grants.

All departments have some combination of these functions.<sup>27</sup> President Trump’s 2018 Budget Proposal argued for an integrated infrastructure for the evidence-building community:

A strong evidence infrastructure requires a variety of capacities, and developing and supporting the use of evidence and evaluation in decision-making requires coordination between those managing the operations of a program . . . and those responsible for using data and evaluation to understand program effectiveness.<sup>28</sup>

Reports from GAO support these findings and show that agencies with centralized leadership report greater rates of evaluation and use of evaluation results in decision-making.<sup>29</sup>

#### *Chief Evaluation Officers*

H.R. 4174 addresses the need to improve coordination and support evidence-building functions in agencies by requiring the 24 *Chief Financial Officers Act* agencies to designate Chief Evaluation Officers (CEOs), as recommended by the Commission. The role of a CEO is not a political role, instead candidates must have a “demonstrated expertise in evaluation methodology, practices, and appropriate expertise to the disciplines of the agency.”<sup>30</sup> The responsibility of a CEO is to oversee the agency’s efforts in conducting policy research and evaluation activities.

For most agencies, the identification and designation of a CEO will require very few changes in their organizational structures. In 2014, GAO found approximately one-third of the Federal agencies have already established CEOs or similarly titled positions, and about half of the agencies reported establishing a centralized evaluation office.<sup>31</sup> However, establishing statutory requirements to coordinate and assess capacity of the evidence-building functions of the agency will elevate the role and ensure greater consistency across agencies.

In 2012, the Office of Management and Budget (OMB) issued guidance on the “Use of Evidence and Evaluation in the 2014 Budget,” encouraging agencies to designate a “high-level official who is responsible for program evaluation” and other tasks to support evidence-building capacity and coordination.<sup>32</sup> OMB suggested the designation of a Chief Evaluation Officer or assigning the re-

<sup>27</sup> CEP REPORT, *supra* note 4, at 101.

<sup>28</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT FISCAL YEAR 2018, at 55–58 (2017).

<sup>29</sup> GAO–17–743, *supra* note 26, at 5.

<sup>30</sup> Foundations for Evidence-Based Policymaking Act of 2017, H.R. 4147, 115th Cong. (2017).

<sup>31</sup> GAO–15–25, *supra* note 24 at 10 (2014).

<sup>32</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, M–12–14, MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES: USE OF EVIDENCE AND EVALUATION IN THE 2014 BUDGET (2012).

sponsibility to the head of an independent entity within the agency, explaining, “An existing official could play the role, or a forceful new position could replace several less empowered ones.”<sup>33</sup>

The Administration highlighted the value of Chief Evaluation Offices in the 2018 Budget Proposal:

Centralized or chief evaluation offices play an important role in an evidence infrastructure that can develop and sustain agency capacity to build and use evidence. A recent Government Accountability Office (GAO) report found that Federal agencies with a centralized evaluation authority reported greater evaluation coverage of their performance goals and were more likely to use evaluation results in decision making. Centralized or chief evaluation offices are often essential for ensuring that key evidence and evaluation principles are reflected in practice. The establishment of a centralized evaluation office and an official, public evaluation policy that reflects these principles is a particularly strong and mutually reinforcing combination. A centralized office allows the agency to credibly establish the independence and transparency of its evaluation activity, develop the specialized expertise required to implement rigorous evaluations, and have a centralized entity responsible for coordinating and disseminating research findings.<sup>34</sup>

#### *Annual agency-wide evidence-building plans*

The Commission recommended departments develop multi-year agendas of pressing research and policy questions and a plan to address them, which the Commission referred to as, “learning agendas.”<sup>35</sup> Commissioner Robert Shea described the plan as “essentially a strategic plan for evidence building, identifying important policy questions relevant to the department’s mission.”<sup>36</sup>

H.R. 4174 requires the 24 *Chief Financial Officers Act* agencies to submit the annual evidence-building plans to Congress and OMB by the first Monday in February of each year. The timing allows the agencies to consider the development of evidence in conjunction with the development of their strategic plans, which are annual long-term planning tools required by current law that describe goals, planned actions to achieve those goals, and plans for dealing with challenges and risks.<sup>37</sup> Agencies will be required to develop lists of: (1) policy questions the agency intends to address through evidence-building functions, (2) data needed to facilitate evidence-building, (3) methods and analytical approaches that may be used in developing the evidence, and (4) challenges to developing evidence. The bill addresses recommendations for agency-wide evidence or evaluation plans recommended by the Commission, the Administration, and GAO.

According to GAO and OMB, the development of a plan or agenda for evidence-building is important “to ensure that an agency’s

<sup>33</sup> *Id.*

<sup>34</sup> OFFICE OF MGMT, & BUDGET, *supra* note 29, at 55–58.

<sup>35</sup> CEP REPORT, *supra* note 4 at 93.

<sup>36</sup> Shea Testimony, *supra* note 27.

<sup>37</sup> OFFICE OF MGMT, & BUDGET, EXEC. OFFICE OF THE PRESIDENT, CIRCULAR A–11 SEC. 230, AGENCY STRATEGIC PLANNING (2017).

scarce research and evaluation resources are targeted to its most important issues.”<sup>38</sup> Currently, about one-quarter of Federal agencies develop annual and long-term evaluation plans.<sup>39</sup> OMB has encouraged agencies to develop “a planned approach to learning in the context of evidence-based decision-making and improving program performance through evaluation and analysis.”<sup>40</sup>

In September 2017, GAO recommended OMB direct each of the 24 *Chief Financial Officers Act* agencies develop an annual agency-wide evaluation plan to describe key questions for each significant evaluation planned in the upcoming year.<sup>41</sup> An agency’s annual strategic review provides a good opportunity to help target its evaluation agenda to its management, budget, and policy priorities.<sup>42</sup>

GAO suggested that OMB’s guidance for strategic reviews could serve as a foundation for a comprehensive evidence-building plan.<sup>43</sup> The guidance “directs agencies to consider a broad array of evidence and external influences on their objectives, identify any gaps in their evidence and areas where additional evaluations or other analyses are needed, and thus focus their limited evaluation resources to inform the strategic decisions facing the agency.”<sup>44</sup> Agencies are already required to identify gaps in evidence-building efforts and take actions to address them.<sup>45</sup>

The Committee does not intend the requirements in title I to create a basis for judicial action.

H.R. 4174 also requires agencies to engage in consultation with key stakeholders in development of evidence-building plans. Involving agency staff that will use the final product in planning and conducting the evaluations improves the utility of the evidence produced.<sup>46</sup> Experienced evaluation offices already practice stakeholder consultation.<sup>47</sup>

Congressional consultation is also required under H.R. 4174. Congressional consultation and all consultation required under this bill should be more than “one-directional [communication], resembling reporting more than dialogue.”<sup>48</sup> Agency staff have described statutorily mandated consultation as “formal briefings . . . in a tense, high-stakes environment.”<sup>49</sup> However, formal briefings without an opportunity to discuss findings and results or exchange ideas is not consultation. Consultation is a discussion and a deliberation. It is an opportunity to engage stakeholders to obtain their unique perspective, solicit their support, and adapt the final product to address new ideas.

In approaching consultation under this bill, agencies should consider GAO’s findings:

<sup>38</sup> GAO-17-743, *supra* note 26.

<sup>39</sup> *Id.*

<sup>40</sup> OFFICE OF MGMT. & BUDGET, *supra* note 29, at 55-58.

<sup>41</sup> GAO-17-743, *supra* note 26, at 29. In response to the recommendation, OMB suggested that they would prefer to continue to simply encourage the plan rather than establish a requirement. However, GAO noted that OMB’s encouragement has achieved only limited success and “a more directive approach is needed.” *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 28.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 17.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

1. Congressional consultation on agency evaluation plans could increase the studies' credibility with those whose support is needed to implement program reforms.<sup>50</sup>

2. GAO previously reported that involving agency staff in planning and conducting evaluations helps to ensure they are relevant, credible, and used in decision making.<sup>51</sup>

3. [GAO's] previous literature review found that collaboration with program stakeholders in evaluation planning is a widely recognized element of evaluation capacity.<sup>52</sup>

4. Although only some agencies have developed agency-wide evaluation plans, evaluators who have them found that obtaining stakeholder input helped ensure evaluation relevance and facilitate use of their results.<sup>53</sup>

5. [GAO] also described in a previous report how experienced agency evaluation offices reach out to key program stakeholders to identify important policy and program management questions, vet initial ideas with the evaluations' intended users, and then scrutinize the proposed portfolio of studies for relevance and feasibility within available resources. The resulting evaluation agenda aims to provide timely, credible answers to important policy and program management questions. This can help ensure that their evaluations will be used effectively in management and legislative oversight.<sup>54</sup>

6. Congressional committees can communicate their interest in evaluation by consulting with agencies on their strategic plans and priority goals, reviewing agency annual evaluation plans to ensure they address issues that will inform congressional decision making, and requesting evaluations to address specific questions of interest.<sup>55</sup>

7. Consulting with program staff throughout an evaluation was said to help ensure a more trusting relationship and a greater willingness to hear not-so-good news when the evaluation results came in. Program staff may be unwilling to accept negative findings because they have a vested interest in trying to make the program work. But this can be countered if staff understand the logic of the evaluation or if the study provides information on barriers that might be overcome.<sup>56</sup>

8. Yet, nearly 40 percent of managers who had evaluations reported that they did not know whether lack of ongoing congressional commitment to using evaluations was a barrier, and some of the evaluators [GAO] interviewed reported few congressional consultations in planning evaluations. Consultation with congressional stakeholders in developing evaluation agendas is important to help ensure that agency evaluations meet their information needs and inform decisions.<sup>57</sup>

Per the Commission's recommendation that OMB serve a coordinating role for evidence-building, H.R. 4174 requires OMB to consolidate the agency evidence-building plans and to facilitate inter-

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 17.

<sup>55</sup> GAO-15-25, *supra* note 24.

<sup>56</sup> *Id.* at 27.

<sup>57</sup> *Id.* at 29.

agency coordination of evidence-building plans. The bill explicitly requires agencies to submit the plans to OMB and Congress at the same time. The purpose of this requirement is to focus OMB's efforts on facilitating interagency coordination, rather than conducting a content review of the plans for purposes of providing feedback on whether agencies should pursue answers to particular policy questions.

Interagency coordination should improve the use of limited resources and expand the production of evidence at Federal agencies. Commissioner Robert Shea described the Commission's recommendation for OMB coordination as follows:

Efficiently implementing evidence-building activities across government requires strong coordination. This committee has already vested a great deal of responsibility in OMB, but we firmly believe it's the right institution to help coordinate these activities. We recommend OMB facilitate cross-government coordination and consider whether consolidation or reorganization of evidence-based policy-making functions at OMB would accelerate adoption of the Commission's recommendations.<sup>58</sup>

*Continued consideration of recommendation for National Secure Data Service*

The first recommendation offered by the Commission is to establish a National Secure Data Service (NSDS). The NSDS, as envisioned by the Commission, would be a model of privacy protection, secure and temporary data linkage, and transparent activity and processes. The NSDS would develop state-of-the-art methods for secure access to data and apply strict data minimization techniques. The Commission also recommended that the NSDS be established in the existing framework of the Department of Commerce.

Establishing a new program, office, or agency not currently in existence in the Federal Government necessitates a comprehensive study of the appropriate parameters of the recommended permanent establishment of an expansion of the Executive branch and an evaluation of the expected return on the investment of taxpayer dollars. H.R. 4174 continues the discussion about the need and value of the NSDS by establishing an advisory committee to evaluate and provide recommendations to OMB regarding the implementation of the NSDS.

The recommendation to house the NSDS in the Department of Commerce warrants particular attention. Dr. Haskins explained, "one of our explicit intents was not to create some big new agency that would have mountains of data. Rather it was to build on things the Census Bureau is already doing and expand those gradually over a period of years so that primarily we could have a temporary repository for data that is needed for good studies that have been approved through an elaborate process. And then the data would be sent back to wherever it came from, whatever agency it came from."<sup>59</sup>

However, housing the new service at the Department of Commerce raises concerns about how a new statistical function might

<sup>58</sup>Shea Testimony, *supra* note 27.

<sup>59</sup>Haskins Testimony, *supra* note 7.

affect the Census Bureau in the lead up to the 2020 census. In 2015, the Department of Commerce estimated the 2020 census would cost \$12.3 billion—just two years later the estimate was revised to \$15.6 billion, an increase of more than \$3 billion.<sup>60</sup> David A. Powner, Director of Information Technology at the Government Accountability Office, testified that the Census Bureau has “missed many milestones”<sup>61</sup> when it comes to implementing the 43 systems required for the decennial census. Additionally, there is concern that “schedule pressure and late deliveries will result in compressed and inadequate testing.”<sup>62</sup> Careful consideration must be made before redirecting resources from a program that is increasingly costly and behind schedule.

Both the House and the Senate held hearings on the 2020 Census in October 2017. Secretary of Commerce Wilbur Ross requested additional funding following the new cost estimates and testified that “Many challenges still lie ahead for the 2020 Census. We are keenly aware of the challenges, risks, and costs associated with this new approach.”<sup>63</sup> In his appearance before the House on October 12, 2017, Secretary Ross provided a new life-cycle cost estimate of \$15.6 billion dollars, an increase of \$3.3 billion from the 2015 cost estimate.<sup>64</sup>

#### *OPEN Government Data Act*

On May 9, 2013, President Obama issued Executive Order 13642, titled “Making Open and Machine Readable the New Default for Government Information.”<sup>65</sup> Shortly thereafter, OMB issued Memorandum M–13–13, “Open Data Policy—Managing Information as an Asset,”<sup>66</sup> and further guidance in a document titled, “Supplemental Guidance on the Implementation of M–13–13 ‘Open Data Policy—Managing Information as an Asset.’”<sup>67</sup>

The open data policies placed unprecedented data management requirements on agencies. Under this policy, agencies were required to collect and create information electronically by default, in machine-readable and open formats, with data standards that promote interoperability and openness, and under open licenses. Agencies were also required to begin inventorying their data assets. M–13–13 described the process as accounting for data assets in the agency’s information systems to be built out over time and to ultimately include all data assets to the extent practicable.

The open data policy lacked one important openness requirement—the requirement to make the data inventories themselves open. The policy only required a small subset of the inventories to be made available online. In December 2013, the Sunlight Founda-

<sup>60</sup> CENSUS BUREAU, 2020 CENSUS PROGRAM MANAGEMENT REVIEW (2017), available at <https://www2.census.gov/programs-surveys/decennial/2020/program-management/pmr-materials/10-27-2017/pmr-welcome-high-level-updates-10-27-2017.pdf>.

<sup>61</sup> *Hearing on the 2020 Census: Hearing Before H. Comm. on Oversight and Gov’t Reform*, 115th Cong. (2017).

<sup>62</sup> *Ibid.*

<sup>63</sup> *2020 Census: Examining Cost Overruns, Information Security, and Accuracy: Hearing before the S. Comm. on Homeland Sec. and Gov’t Affairs*, 115th Cong. (2017) (written statement of Wilbur Ross, Secretary of Commerce).

<sup>64</sup> *Id.*

<sup>65</sup> 78 Fed. Reg. § 28111–3 (May 9, 2013).

<sup>66</sup> OFFICE OF THE FED. CHIEF FIN. OFFICER, M–13–13, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES: DATA POLICY—MANAGING INFORMATION AS AN ASSET (May 13, 2013).

<sup>67</sup> OFFICE OF MGMT AND BUDGET, SUPPLEMENTAL GUIDANCE ON THE IMPLEMENTATION OF M–13–13 “OPEN DATA POLICY – MANAGING INFORMATION AS AN ASSET” (Nov. 30, 2013).

tion filed a FOIA request for all of the enterprise data inventories and data inventory schedules submitted to OMB.<sup>68</sup> After 14 months of resisting, OMB agreed to provide a plan to comply with the FOIA request.<sup>69</sup> In late February 2015, OMB began to publish the agency data inventories online, in accordance with the legal requirements for disclosure under FOIA.<sup>70</sup>

In the 114th Congress, Representatives Derek Kilmer (D-WA) and Blake Farenthold (R-TX) introduced the Open, Public, Electronic, and Necessary (OPEN) Government Data Act on April 26, 2016. The bill essentially codified the requirements of the existing open data policy. The bill was reintroduced in the 115th Congress on March 29, 2017. The policies of that bill are incorporated into title II and section 101(c) of H.R. 4174, with some additional requirements to address recommendations of the Commission.

Title II of H.R. 4174, the OPEN Government Data Act, establishes a default of openness, meaning government data should be available to and usable by the public to the greatest extent possible. Open formats and open licenses are necessary components of a default of openness because they remove barriers to accessing and using the data. The presumptions expand upon, but do not alter existing openness requirements related to the treatment of any work of the United States Government under section 105 of title 17 or any other rights regimes.

The default is only that—a default. There are instances where it could be inappropriate for the government to impose open license requirements, such as for data that the government uses and maintains but does not own. For example, an agency might contract with a commercial data provider to obtain data that, if the agency attempted to collect on its own, the agency would need to spend significant time and resources verifying. This bill is not intended to prevent agencies from contracting with commercial data providers to obtain data under restricted terms, when such contract is in the public interest and is the most cost-effective way to meet the Federal Government’s needs.

### *Comprehensive inventory*

An inventory of Federal data assets with basic technical information “is fundamental to evidence building.”<sup>71</sup> The evidence building community cannot use data unless there is some way to know that the data exists and where the data is located. The Federal Government produces a wealth of data that could be responsibly utilized by researchers, but is difficult to find across multiple agencies and thousands of datasets. A data inventory would allow researchers to quickly ascertain the scope of data products available and the location of the available data so that they can direct requests for access accordingly.<sup>72</sup>

<sup>68</sup> Ginger McCall, *Sunlight files FOIA request for full list of agency databases*, SUNLIGHT FOUND. (2013), available at <https://sunlightfoundation.com/2013/12/06/sunlight-files-foia-request-for-full-list-of-agency-databases/>.

<sup>69</sup> Matt Rumsey, et al., *A big win for open government: Sunlight gets U.S. to release indexes of federal data* SUNLIGHT FOUND. (2015), available at <https://sunlightfoundation.com/2015/02/09/a-big-win-for-open-government-sunlight-gets-us-to-release-indexes-of-federal-data/>.

<sup>70</sup> Matt Rumsey, et al., *After Sunlight FOIA, comprehensive data indexes arrive on Data.gov* SUNLIGHT FOUND. (2015), available at <https://sunlightfoundation.com/2015/03/02/after-sunlight-foia-comprehensive-data-indexes-arrive-on-data-gov/>.

<sup>71</sup> CEP REPORT, *supra* note 4 at 78.

<sup>72</sup> *Id.*

The Commission notes: “Notwithstanding recent attempts to develop a data inventory and calls for improved technical information about datasets, government lags behind the private sector in its standards for managing and documenting data that could be used for evidence building.”<sup>73</sup> Agency inventories are of uneven quality and completeness, and the inventory does not include all datasets useful for evidence building.<sup>74</sup> According to the Commission, the indications of availability will be “extremely valuable,” and the data inventory should include information on any restrictions to use of each data asset.<sup>75</sup>

To be of maximum utility, agency data inventories need to include the maximum amount of metadata about the maximum number of data assets. In practical terms, that means the agencies should account for every data asset owned, used, maintained, or accessed by the agency. This includes data from applications, devices, networks, and equipment, which is often underutilized and can be useful for strengthening cybersecurity and forensics, improving security, reducing costs, identifying waste, reducing energy consumption, and improving agency operations. It also means that any information on the inventory that can be made available should be made available.

The inventory must include information about the data assets that will help the public better understand the data. Required information includes: the name of the data asset, the date the data asset was last updated, the owner of the data asset, and a description of the method by which the public may request access to the data asset. There are existing methods of accessing data through Federal agencies, such as requests under the Freedom of Information Act (FOIA). This bill adds additional methods to access data, such through the Federal data catalogue and through the process established in section 303 for researchers and others to access data for evidence-building purposes. In some circumstances, the government may maintain data owned by a private entity. Contacting the private entity to access the privately owned data may be another method the public can use to access data.

H.R. 4174 adds to the OPEN Government Data Act the requirement that any information on the inventory that would be available under the Freedom of Information Act (FOIA) must be included in the publicly released portion of the inventory. In consideration of the efforts of the Sunlight Foundation and many other FOIA requesters, this requirement would eliminate the unnecessary procedural burdens of FOIA to ensure transparency of the inventory, which is “likely to become the subject of subsequent requests for substantially the same records.”<sup>76</sup>

#### *Expanding access to data*

Even beyond the evidence-building applications, expanding access and usability of government data can have a profound effect

<sup>73</sup> CEP REPORT, *supra* note 4, at 78.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> 5 U.S.C. § 552(a)(2)(D)(ii)(I). Enacted last year, the *FOIA Improvements Act*, Pub. L. 114–185, established another pertinent requirement that any record requested three or more times would also need to be made publicly available. The requirement in H.R. 4174 reduces the burden on the requesters that are clearly interested in a comprehensive data inventory and on the agencies that would need to comply with this request.

on the American public. The Department of Commerce estimates that the private sector's use of government data generates as much as \$221 billion a year in private sector revenue.<sup>77</sup> Another study estimated that government data is potentially worth as much as \$5 trillion per year in economic value, in seven areas of the global economy, according to a McKinsey Global Institute study.<sup>78</sup> The government should treat data as the valuable national resource that it is.

Agencies should also treat data as a valuable agency resource and manage it so as to maximize their capacity to gain insights. According to the CIO Council:

Improving the management of government data and information can increase operational efficiencies, reduce costs, improve services, and better safeguard personal information. Furthermore, improved information management can allow for the efficient release and reuse of this data by others outside of an agency".<sup>79</sup>

In March 2017, Hudson Hollister, Founder and Executive Director of the Data Coalition, testified before the Committee about the value of open data to the Federal agencies. Mr. Hollister stated:

Most of the expense of big data projects comes from extracting information from different sources, transforming those data sets into the same format, and then loading them into new systems to be analyzed. If Federal data sets were consistently available using machine-readable formats to begin with, those expensive one-off projects would not be necessary.<sup>80</sup>

An excerpt from a report by the Data Foundation entitled, *The State of the Union of Open Data 2016*, further explains the importance of open data:

Within government, open data greatly reduces the costs of sharing and using information. When information is expressed as open data, a range of functions become easier and cheaper: measuring program performance, discovering fraud and waste, improving citizens' customer experience, and informing decisions.<sup>81</sup>

At a recent roundtable discussion, White House officials supported the continued expansion of open data. According to the Sunlight Foundation, one official "said they think that open data is an example of an important enabler to encouraging innovation in emerging technology fields, empowering Americans to create better services and systems," and another "expressed optimism that more

<sup>77</sup> U.S. DEPT. OF COMMERCE, FOSTERING INNOVATION, CREATING JOBS, DRIVING BETTER DECISIONS: THE VALUE OF GOVERNMENT DATA (2014), available at <https://esa.gov/sites/default/files/revisedfosteringinnovationcreatingjobsdrivingbetterdecisions-thevalueofgovernmentdata.pdf>.

<sup>78</sup> JAMES MANYIKA, ET AL., OPEN DATA: UNLOCKING INNOVATION AND PERFORMANCE WITH LIQUID INFORMATION, MCKINSEY GLOBAL INST. (2013), available at <https://www.mckinsey.com/business-functions/digital-mckinsey/our-insights/open-data-unlocking-innovation-and-performance-with-liquid-information>.

<sup>79</sup> OFFICE OF FED. CHIEF INFORMATION OFFICER, STATE OF FEDERAL INFORMATION TECHNOLOGY (2017).

<sup>80</sup> *Legislative Proposals for Fostering Transparency, Hearing Before H. Comm. on Oversight and Gov't. Reform*, 115th Cong. (2017).

<sup>81</sup> ALISON GILL, ET. AL., THE STATE OF THE UNION OF OPEN DATA (2016), available at <http://www.datafoundation.org/state-of-the-union-of-open-data-2016/> (Noting, the State of the Union of Open Data 2016 provides a history of federal open data efforts).

useful data sets will be identified and opened up, fueling job growth and economic activity, creating new opportunities.”<sup>82</sup>

#### *Chief Data Officers*

The Commission found that many departments lack senior leadership focused on data management. The Commission urged agencies to develop more meaningful collaboration: “Coordinating evidence-building activities and supporting use of administrative data across departments leads to useable inventories, data resources, and analytic capabilities for responding to specific policy and research questions.”<sup>83</sup> The Commission expressed concern about the expansive portfolios of CIOs and other senior officials, which would prevent such officials from prioritizing data management.<sup>84</sup>

Similarly, the CIO Council expressed concerns about the inability to manage data with sufficient focus on expanding access to data, due to competing priorities and limited resources.<sup>85</sup> The CIO Council’s concerns are furthered by the state of information technology (IT) in the Federal Government. In fact, IT management has been on the GAO High-Risk List since 2015.<sup>86</sup> By some accounts, Federal IT spending may be as much as \$200 billion each year.<sup>87</sup>

The CIO Council also expressed concern about the complexity of open data policy management. Time and resources are required to navigate the complex disclosure and nondisclosure laws and the numerous stakeholders of Federal data.<sup>88</sup> Further, increased access to quantity is not enough. Coordination and feedback from the public is necessary to ensure the quality of the effort.<sup>89</sup> The Federal Chief Information Officer’s *State of Federal Information Technology* report recommended that information management roles be clarified.<sup>90</sup>

In testimony before the Committee, Dr. Sweeney explained why an official dedicated to data management is needed in addition to the existing role of the Chief Information Officer:

Many of the Federal information technology officers are primarily focused on just that, the machines themselves, the IT, the infrastructure of the systems on which work is based. The chief privacy officer in most of the agencies is based on making sure that the agency is in compliance with privacy laws and regulations. But what we’re talking about is a different issue. It’s about the data that’s on the technology, the data that’s being provided within the context of existing privacy laws. That is, the agency has the right to give out the data or not, or is responding to the Privacy Act. That would be in the chief privacy officer. But what version of the data is actually being given? That’s a

<sup>82</sup> Alex Howard, *Notes from a roundtable on open data at the White House*, SUNLIGHT FOUND. (July 26, 2017), <https://sunlightfoundation.com/2017/07/26/white-house-open-data-roundtable/>.

<sup>83</sup> CEP REPORT, *supra* note 4 at 59.

<sup>84</sup> *Id.*

<sup>85</sup> OFFICE OF FED. CHIEF INFORMATION OFFICER, *supra* note 80, at C–12.

<sup>86</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO–15–290, HIGH-RISK SERIES: AN UPDATE (2015).

<sup>87</sup> Troy K. Schneider, *White House pushes TBM for IT savings and smarter spending*, FCW (July 20, 2017), <https://fcw.com/articles/2017/07/20/tbm-summit-schneider.aspx>.

<sup>88</sup> OFFICE OF FED. CHIEF INFORMATION OFFICER, *supra* note 86, at C–14.

<sup>89</sup> *Id.* at C–11.

<sup>90</sup> *Id.* at Rec-10.

technical analysis that neither of the other two would be able to actually implement.<sup>91</sup>

The Commission also highlighted concerns with the Information Collection Review process under the *Paperwork Reduction Act*. Inefficiencies in the process result in delays and reduce coordination and transparency of information collections.<sup>92</sup> The Commission noted that while there are complaints about the difficulty and length of the review process, the problems also seem to stem from a failure to exercise existing flexibilities in the law.<sup>93</sup>

H.R. 4174 establishes Chief Data Officers (CDOs) at agencies to take on the role of data managers and coordinators. CDOs will carry out the information management, collection, and dissemination responsibilities under the *Paperwork Reduction Act*, while CIOs will be able to continue their focus on technology, procurement, and physical information systems. Data management, as opposed to IT management or IT security, is about establishing effective procedures, standards, and controls to ensure quality, accuracy, transparency, and privacy of data.<sup>94</sup> The centralized management of data will improve interoperability and enhance transparency of existing resources.

#### *Role of designated statistical officials*

There are some laws that prohibit access and use of data except under specific circumstances and by specific individuals. Statistical agencies have strict data access laws and policies to protect the confidentiality of data collected under a pledge of confidentiality. The Congressional Research Service provided the Commission with a list of statistical laws that establish agencies and govern the protection of the data obtained by such agencies for statistical purposes.<sup>95</sup> The reference to statistical laws in H.R. 4174 extends to those laws that govern the protection of data for statistical purposes.

To create flexibility and to avoid overlap with existing legal protections, H.R. 4174 delegates responsibilities of the Chief Data Officer to a designated statistical official, with expertise and authority necessary to access and manage statistical data, to the extent necessary to avoid conflicts with existing statistical laws. The designated statistical official will have the expertise necessary to know when these laws that govern the protection of data for statistical purposes apply. Therefore, H.R. 4174 authorizes the statistical official to make the determination of what responsibilities are necessary to delegate in order to avoid noncompliance with legal requirements designed to protect privacy and confidentiality. The Commission explained why this flexibility is necessary:

<sup>91</sup> *Recommendations of the Commission on Evidence-Based Policymaking: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 115th Cong. (2017) (testimony of Dr. Latanya Sweeney) [hereinafter Sweeney Testimony].

<sup>92</sup> CEP REPORT, *supra* note 4 at 99.

<sup>93</sup> *Id.* at 100.

<sup>94</sup> Randy Bean, *Big Data and the Emergence of the Chief Data Officer*, FORBES (Aug. 8, 2016), available at <https://www.forbes.com/sites/ciocentral/2016/08/08/big-data-and-the-emergence-of-the-chief-data-officer/>.

<sup>95</sup> Memorandum from Clinton T. Brass, Co-Coordinator Specialist in Gov't Org. and Mgmt., and Jennifer D. Williams, Co-Coordinator, Specialist in American Nat'l Gov't to Honorable Paul Ryan, Speaker of the House of Representatives, and Honorable Patty Murray, Ranking Member, S. Comm. on Health, Educ., Labor, and Pensions, 115th Cong. (Feb. 28, 2017); U.S. GEN. ACCOUNTING OFFICE, GAO/GGD-96-106, STATISTICAL AGENCIES: STATUTORY REQUIREMENTS AFFECTING GOVERNMENT POLICIES AND PROGRAMS (1996).

The very legal framework that requires statistical agencies to protect data collected or acquired under a pledge of confidentiality and limit its use to statistical purposes provides a privacy-protective way to protect newly available data for evidence building. The data protection requirement extends to all of [the] representatives operating on a PSA's behalf, including those working in data centers that store agency data. Under the law, each person with any confidential statistical data access must be made an agent, subject to the law's penalty. Statistical agencies therefore require that non-agency data center employees with access to servers containing confidential data complete training about data stewardship, formally affirm their commitment to keeping statistical data secure and confidential, and pledge not to divulge or attempt to re-identify data. In fact, many statistical statutes provide for notable penalties, including jail time, for breaches of confidentiality.<sup>96</sup>

*Secure access to nonpublic data for evidence-building*

Evidence has the power to transform inefficient and ineffective programs to better serve the American public. Often, the production of evidence requires the use of data containing personally identifiable information. The American public expects and deserves robust privacy protection when data is given in confidence. Access to and protection of data can be competing goals at times; however, the Federal Government's data management practices have hurt both interests.

Due to inconsistent data privacy safeguards, agencies have both unnecessarily restricted access to data valuable for the production of evidence and inappropriately released data creating an unnecessary risk.<sup>97</sup> To address this problem, the Commission offered a number of recommendations to improve data privacy protections with standards and methodologies to ensure thoughtful and consistent decision-making about data access.

As Dr. Abraham explained, "We're not so much talking about the hardware and having to buy new hardware. We're talking about applying the right sort of methods to the way that data files that are going to be released get structured."<sup>98</sup> Data privacy should not be confused with IT security. The purpose of IT security is to prevent hacks and data breaches on physical systems. The purpose of data privacy is to prevent uninformed decisions to intentionally release personally identifiable information. Dr. Sweeney, the Commission's privacy expert, testified:

The Commission believes we can securely increase access to confidential data for evidence building based in great part on new advances made in how we think about privacy, in particular data privacy, and new techniques that use the same technology that challenges privacy to help provide protections. If we don't take these actions, we risk exposing confidential data about Americans widely, which leaves us vulnerable to many problems.

<sup>96</sup> *Recommendations of the Commission on Evidence-Based Policymaking: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 115th Cong. (2017) (Question for the Record).

<sup>97</sup> Sweeney Testimony, *supra* note 92.

<sup>98</sup> Abraham Testimony, *supra* note 16.

The Federal Government collects a lot of information about individuals and businesses during the course of its daily operations, and much of that information is and should be open data. That is, it should be publicly accessible government information. And things like weather forecasts and train timetables do not carry the same privacy burden.

The government says it will keep some of that information confidential, like names and dates of birth of Social Security recipients. And when the government pledges to keep data confidential, the data should have strong protections, and data used should generally be made known to the American public. Versions of the data that can be rendered sufficiently de-identified should also be made publicly available.<sup>99</sup>

*Codifying statistical laws and policies in Title 44, United States Code*

The *Confidential Information Protection and Statistical Efficiency Act of 2002* (CIPSEA) was enacted as part of the *E-Government Act of 2002*. CIPSEA has two purposes: (1) to create strong and uniform confidentiality protections for information collected exclusively for statistical purposes and under a pledge of confidentiality, and (2) to provide a limited authority to share protected data. According to the Commission, CIPSEA creates consistent statutory authority for the agencies responsible for statistical data to protect the data and codifies the long-standing principal of functional separation of statistical activities.<sup>100</sup>

*Statistical Policy Directive #1*

H.R. 4174 codifies CIPSEA in chapter 35 of title 44, United States Code, with a few enhancements such as clarifying the definition of statistical agencies and units and codifying Statistical Policy Directive #1 (SPD#1). According to the Commission, SPD#1 affirmed “long-acknowledged, fundamental responsibilities of Federal statistical agencies” and placement in the law would improve the protection of confidential data used in evidence-building. The Commission recommended codifying the four responsibilities identified in SPD#1:<sup>101</sup>

*Responsibility 1: Produce and disseminate relevant and timely information.* The requirement for relevance means that statistical agencies must communicate and coordination across the department and with other stakeholders.

*Responsibility 2: Conduct credible and accurate statistical activities.* Ensuring accuracy and credibility means ensuring data and information produced meet established standards like the OMB established “Information Quality Guidelines” and the agency’s established guidelines. Transparency of sources, dissemination practices, data collection methods, and other relevant details supports credibility.

<sup>99</sup> Sweeney Testimony, *supra* note 92.

<sup>100</sup> CEP REPORT, *supra* note 4 at 27.

<sup>101</sup> Statistical Policy Directive No. 1, Federal Register 79 (Dec. 2, 2014): 71609–71616; <https://www.gpo.gov/fdsys/pkg/FR-2014-12-02/pdf/FR-2014-12-02.pdf>.

*Responsibility 3: Conduct objective statistical activities.* Objective requires the avoidance of “even the appearance that agency design, collection, processing, editing, compilation, storage, analysis, release, and dissemination processes may be manipulated.” This responsibility requires statistical activities be conducted “autonomously when determining what information to collect and process, the physical security and information systems security employed to protect confidential data, which methods to apply in their estimation procedures and data analysis, when and how to store and disseminate their statistical products, and which staff to select to join their agencies.”

*Responsibility 4: Protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses.* Trust is “essential for the completeness and accuracy of statistical information as well as the efficiency and burden of its production.” Agencies build and maintain trust “by maintaining a strong organizational climate that safeguards and protects the integrity and confidentiality of the data collected, processed, and analyzed to ensure that the information is secure against unauthorized access, editing, deletion, or use.”

H.R. 4174 codifies these responsibilities in new section 3563 of title 44, United States Code. The requirement for OMB to issue regulations, as opposed to guidance, is an additional method to reinforce the responsibilities of SPD#1 by requiring the use of an established, transparent process to develop and institute policies to implement the requirements in section 3563. H.R. 4174 furthers SPD#1’s responsibility to establish trust by holding agencies accountable for the pledge to keep data protected and by requiring the agency to protect the data in accordance with that pledge.

#### *Relationship to FITARA*

Enacted in December 2014, the *Federal Information Technology Acquisition Reform Act* (FITARA) was the first serious IT acquisition reform effort since the *Clinger-Cohen Act of 1996*.<sup>102</sup> The impetus for FITARA was a lack of clear accountability for IT investment outcomes and other issues identified through oversight. FITARA addresses the accountability problem by enhancing existing CIO authorities and ensuring the CIO has a significant role in the budgeting, execution, management, and governance processes related to IT management and acquisition. For example, by law the agency CIO shall: (1) approve the agency’s IT budget request; (2) certify that IT investments are implementing incremental development; and (3) approve the appointment of any other employee with the title of CIO or who functions as a CIO within the agency. The CIO must also approve all major IT contracts and reprogramming of IT program funds.<sup>103</sup>

<sup>102</sup>40 U.S.C. § 11101, et seq. The *Clinger-Cohen Act* created the position of the agency CIO and made the CIO responsible for assisting agency heads in IT acquisition and management. It also made the CIO responsible for IT capital planning, investment control, performance, and results-based management. The E-Government Act of 2002 reiterated the CIO’s management responsibility for agency IT management and information security at individual agencies and created the CIO Council.

<sup>103</sup>The CIO may delegate the approval of non-major IT contracts to an individual who reports to the CIO. FITARA also provides some flexibility in how the CIO approval might work by al-

The Commission's report raises some important questions about the intent of codifying SPD#1. Some comments received by the Commission suggested that FITARA raised questions about statistical agencies' abilities to adequately protect the confidentiality of the data and suggested that "well-intentioned efforts" to comply with FITARA may hinder statistical agencies' ability to follow through with their pledges of confidentiality and non-disclosure.<sup>104</sup> Commenters also suggested that PSAs should have their legal authority restored.<sup>105</sup> The recommendation asserted that placing SPD#1 into law "provides PSAs a stronger basis from which to defend their need for independent information technology resources and tailored procedures to secure the confidentiality of Federal data used for evidence building."<sup>106</sup>

The Committee is a strong proponent of FITARA and opposes policies that alter the legal authorities provided under the law. H.R. 4174 does not alter any existing authorities under FITARA, including of the CIO, or otherwise affect the requirements under that law. Dr. Abraham clarified the Commission's intent: "We do not believe there need be a conflict between the objectives of FITARA and statistical confidentiality."<sup>107</sup> Thus, the intent and the text of the bill do not create a conflict. Agencies should be able to meet the requirements under FITARA and this bill.

*Enhancing privacy protections and expanding secure access*

Many statistical agencies have been at the forefront of privacy for decades. The Commission reports there are new, cutting-edge technologies being explored by the Census Bureau to mitigate the risk of identification. According to the Commission, improvements in privacy protection are foundational for using data for evidence building because strong and effective privacy protections build public trust.

The Commission found that government-wide agencies are not consistently applying best practices for privacy protections and do not require a risk assessment prior to the public release of this data. Furthermore, privacy protection techniques like data minimization, the practice of allowing access only to the data that is necessary to complete a project, are applied differently across agencies and departments.<sup>108</sup> Because of rapid changes in computer science, additional vigilance is required when releasing data, even when names, addresses, and social security numbers have all been removed.

Dr. Sweeney explained that protecting privacy through consistent and established policies can increase the public's understanding of government activities. She testified:

Privacy does not mean secrecy, and there's often a lot of confusion that the idea of privacy is to hide it and not let anyone know about it. But, in fact, the Commission believes that advancing beyond the status quo and achieving

lowing for the use of agency "governance processes" as long as the CIO is a "full participant." FITARA, Section 831(b)(1)(C).

<sup>104</sup> CEP REPORT, *supra* note 4 at 59–60.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 64.

<sup>107</sup> *Recommendations of the Commission on Evidence-Based Policymaking: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 115th Cong. (2017) (Question for the Record).

<sup>108</sup> CEP REPORT, *supra* note 4 at 38–39.

unparalleled transparency means first telling the public about how government data are used for evidence building, and, second, regularly auditing whether the government is doing what it said it would do to protect privacy when allowing access to government data for evidence building. Further, transparency means how was the data redacted and learning new ways and encouraging the use of new techniques.<sup>109</sup>

The Commission recommended a tiered access approach to data protection. Explaining data access under a tiered access approach, Dr. Sweeney said, “It’s not a binary decision. That’s how we’ve historically looked at it. But today’s technology allows us the opportunity to say we can, in fact, provide public versions of data. The question is which version and the techniques used to render that version.”<sup>110</sup> The problem is “there’s a great variation in how Federal agencies go about protecting confidential data today.”<sup>111</sup>

A tiered access approach means using data minimization, which means giving access to the least amount of data necessary for the project.<sup>112</sup> Under the Commission’s approach agencies would need to assess the sensitivity of each data asset by analyzing the potential harm in the context of the potential use. The Commission noted that the government lacks a consistent and objective system to classify sensitivity, which means agencies cannot ensure equal treatment of all data assets. Dr. Sweeney explained:

Government agencies follow their own applicable laws and regulations in providing access to their confidential data. These agencies are not necessarily coordinated in the decisionmaking they make. And the fact that they have different policies and different procedures about what it means to be identifiable creates a lot of problems. Sometimes two different agencies releasing the same data make different decisions, and the two pieces can be put together.<sup>113</sup>

The Commission’s report discussed several new techniques for enhancing privacy protections. For example, differential privacy means the risk of re-identification is mathematically computed, and a quantifiable measure of the excess privacy risk of an individual subject is produced.<sup>114</sup> OnTheMap, an online mapping and reporting tool that shows areas where people work and where workers live, uses differential privacy. OnTheMap uses an algorithm, known as synthetic data generation, to anonymize data, which allows the application to provide significant detail for what would otherwise be confidential data.<sup>115</sup>

Under the Commission’s recommended approach, agencies could improve privacy protections while also improving access to data. Dr. Sweeney testified, “protecting the privacy of the American people means being transparent and open about decision making and processes, and clear about how confidential information is being

<sup>109</sup> Sweeney Testimony, *supra* note 92.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> CEP REPORT, *supra* note 4 at 38.

<sup>113</sup> Sweeney Testimony, *supra* note 90.

<sup>114</sup> CEP REPORT, *supra* note 4 at 57.

<sup>115</sup> *Id.* at 58.

used, and giving opportunities for feedback and improvement.”<sup>116</sup> Improved use of state of the art techniques, in conjunction with a transparent and consistent process, will lead to both more security and more access.

H.R. 4174 establishes a framework under which the statistical agencies will establish and implement a consistent, secure, and comprehensive approach to protecting confidential information in data obtained from program agencies for use to develop evidence. The PSAs will be required to analyze data obtained under CIPSEA, including the presumption discussed below, to determine the level of sensitivity of the data asset and to apply a consistent level of access to such data asset. The result of the sensitivity analysis is greater uniformity across agencies for determining appropriate access to nonpublic data assets.

The PSAs will also be tasked with developing standards and methodology to de-identify, meaning to obscure identifying information in a data asset so that the identity of the subject cannot be reasonably inferred by either direct or indirect means. The purpose of the effort is to increase access to data, but not necessarily to make such data publicly accessible. Prior to releasing any data obtained under CIPSEA, statistical agencies will be required to conduct a comprehensive analysis of the risk of publicly releasing such data.

#### *Presumption of access*

Agency interpretations of restrictions on data sharing often govern access and use of the data, but agencies may interpret the same law differently, causing confusion. Sharing data between Federal agencies can be difficult, costly, and cumbersome. The Commission found that as a result of years of statutory buildup of regulations related to statistical and administrative data collected by the government, there is no consensus on how, when, and with whom collected data can be shared.<sup>117</sup> This stems in part from the decentralized nature of the Federal statistical programs, which are spread among multiple different agencies.<sup>118</sup> According to Dr. Abraham:

In its review of applicable laws, the Commission found considerable variation in provisions governing data confidentiality and permissible uses of data. The laws that authorize statistical agencies, for example, include varying restrictions on who can access data that has been collected and for what purposes. Many program agencies’ authorizing statutes do not address data confidentiality and the use of data for evidence building at all. Other program agencies’ laws establish narrow standards for the acceptable use of administrative data. For example, Title 26 of the U.S. Code generally limits the use of tax data to projects that would improve tax administration, precluding the use of these data under controlled circumstances and conditions for other evidence building purposes.<sup>119</sup>

<sup>116</sup>Sweeney Testimony, *supra* note 92.

<sup>117</sup>CEP REPORT, *supra* note 4 at 26.

<sup>118</sup>*Id.*

<sup>119</sup>Abraham Testimony, *supra* note 16.

H.R. 4174 creates a presumption that Federal data should be made available to statistical agencies for evidence-building purposes. To create greater clarity regarding which laws restrict access, the bill requires OMB to develop a list of laws that prevent statistical agencies from accessing data and for all future restrictions to specifically cite to the code section when intending to create an exemption from the presumption in this bill.

Similarly, H.R. 4174 does not alter agencies' existing statutory access to statistical data or information otherwise protected by provisions of the bill, or memoranda of understanding thereon, including, for example under the *Federal Cybersecurity Enhancement Act of 2015*.<sup>120</sup> Nor does the bill alter Congress's authorities derived from its constitutional power of inquiry, such as access to information and records by the House of Representatives or the Senate, or a committee thereof.

#### *Application process*

The Commission described access to government data as governed by "cumbersome and onerous processes, often the result of idiosyncratic processes that vary across government."<sup>121</sup> Currently, there is no established, consistent process by which researchers and other appropriate individuals can seek access to data that would be valuable for evidence-building, but otherwise not available under the *Freedom of Information Act* (FOIA). Dr. Abraham testified:

During its fact-finding phase, the Commission heard about several examples of exciting research done using confidential data that has generated valuable information for designing and carrying out programs and policies . . . . Too often, however, we found legal and bureaucratic barriers to accessing data have prevented researchers from studying important policy questions. Surmounting these barriers is especially difficult when the researcher seeks to access data from multiple jurisdictions or agencies.<sup>122</sup>

Agency application processes for researchers seeking to access various agency data sources are inconsistent and specific only to the data held at that agency. Some agencies lack any formal program for outside researcher access. These burdens may increase the costs associated with conducting federally funded research. Beyond the issue of inconsistent access procedures, the Commission's review found that agencies often lack the capacity to provide access to data resources.

H.R. 4174 addresses access concerns by establishing a common application process for researchers and other entities for purposes of developing evidence to apply to access data through statistical agencies. While the application process will not guarantee access, the process will create efficiency and clarity for the evidence-building community to maximize the value obtained from resources devoted to evidence building. Restricting the process to statistical agencies will ensure the greatest level of privacy protection, with protections established in CIPSEA and in other parts of this bill.

<sup>120</sup> Pub. L. 114–113, Title II, Subtitle B, 129 Stat. 2963, et seq.

<sup>121</sup> CEP REPORT, *supra* note 4 at 35.

<sup>122</sup> Abraham Testimony, *supra* note 16.

Statistical agencies also have a greater incentive than other agencies to engage in the access and use of data for purposes of developing evidence because those activities are part of the statistical agencies' missions.

#### LEGISLATIVE HISTORY

On October 31, 2017, Representative Paul Ryan (R-WI), the Speaker of the House, introduced H.R. 4174, the Foundations for Evidence-Based Policymaking Act of 2017, with Representative Trey Gowdy (R-SC), the Chairman of the Committee, and Representatives Blake Farenthold (R-TX) and Derek Kilmer (D-WA). H.R. 4174 was referred to the Committee on Oversight and Government Reform. The Committee considered H.R. 4174 at a business meeting on November 2, 2017, and ordered the bill favorably reported by voice vote.

Senator Patty Murray (D-WA) introduced S. 2046, the Senate companion to H.R. 4174, on October 31, 2017, which was referred to the Committee on Homeland Security and Governmental Affairs.

Representative Derek Kilmer (D-WA) introduced a related bill, H.R. 1770, the Open, Public, Electronic, and Necessary Government Data Act, on March 29, 2017, with Representative Blake Farenthold (R-TX). H.R. 1770 was also referred to the Committee on Oversight and Government Reform.

Senator Brian Schatz (D-HI) introduced S. 760, the Senate companion to H.R. 1770, on March 29, 2017, with Senators Ben Sasse (R-NE), Gary Peters (D-MI), Cory Gardner (R-CO), and Chris Coons (D-DE). S. 760 was referred to the Committee on Homeland Security and Governmental Affairs. The Senate Committee on Homeland Security and Governmental Affairs considered S. 760 at a business meeting on May 17, 2017, and order the bill reported favorably, as amended, by voice vote.

#### SECTION-BY-SECTION

##### *Section 1. Short title; table of contents*

Section 1 provides the short title of the bill and the table of contents.

#### TITLE I—FEDERAL EVIDENCE-BUILDING ACTIVITIES

##### *Sec. 101. Federal evidence-building activities*

Section 101 adds subchapter II to chapter 3 of title 5, United States Code, which establishes requirements for expanded capacity and prioritization of evidence-building and evaluation.

The new section 311 of new subchapter II defines terms used in the subchapter.

The new section 312 establishes a requirement for *Chief Financial Officers Act* agencies to develop annual evidence-building plans, which will include policy questions for which the agency needs to develop evidence, data the agency intends to acquire or use for evidence-building, and other information necessary to help the agency better plan for evidence-building activities.

The new section 313 requires the OMB to coordinate government-wide evidence-building efforts by consolidating the evidence-building plans and facilitating interagency coordination of evi-

dence-building activities. This section codifies the current Inter-agency Council on Evaluation Policy.

The new section 314 requires each *Chief Financial Officers Act* agency to designate an employee of the agency as the Chief Evaluation Officer, who shall coordinate evidence-building activities across the agency.

The new section 315 requires agencies to designate statistical officials to advise on statistical policy, techniques, and procedures.

The new section 316 establishes the Advisory Committee on Data for Evidence-Based Policymaking to further evaluate the Commission on Evidence-Based Policymaking's recommendation to establish a National Secure Data Service and to assist OMB with developing guidance as required under the bill.

Section 101 of the bill also adds a requirement to the agency strategic plan to include an assessment of coverage, quality, methods, effectiveness and independence of statistics, evaluation, and research and analysis efforts of the agency. In addition, it requires GAO conduct a government-wide review of agency strategic plans.

#### TITLE II—OPEN GOVERNMENT DATA ACT

##### *Sec. 201. Short title*

Section 201 provides the short title of title II of the bill.

##### *Sec. 202. OPEN government data*

Section 202 adds definitions to section 3502 of title 44, United States Code. The section expands agency responsibilities for managing information by requiring agencies to establish an open data plan, requiring agencies to make data available under an open format and an open license and as machine-readable data, and by encouraging agencies to collaborate with the public on the use of Federal data.

OMB must issue guidance to agencies regarding their implementation of the requirements to make data available under an open format and open license, which takes into consideration security, privacy, intellectual property, and the expectation to disclose data available under the Freedom of Information Act (FOIA).

Section 202 amends section 3511 of title 44, United States Code, to require agencies to develop a comprehensive inventory of agency data assets and to publish data assets on the Federal data catalogue in accordance with guidance issued by OMB, which considers security, privacy, intellectual property, and the expectation to disclose data available under FOIA. It also amends section 3520 of title 44, United States Code, to establish Chief Data Officers to coordinate the management of data at each agency, to manage information collection request processes, and to develop the inventory in section 3511.

Section 202 creates a new section 3520A of title 44, United States Code, to establish a Chief Data Officer Council for Chief Data Officers to share best practices, promote data sharing, and identify ways to improve access to data.

GAO shall report on the value of the improved data access under the bill and the completeness of the data inventories, and OMB must report on performance and compliance with amendments made by the bill.

TITLE III—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL  
EFFICIENCY

*Sec. 301. Short title*

Section 301 provides the short title of title III of the bill.

*Sec. 302. Confidential information protection and statistical efficiency*

Section 302 codifies the *Confidential Information Protection and Statistical Efficiency Act of 2002* (CIPSEA) in a new subchapter III, of chapter 35 of title 44, United States Code with certain changes. Those include:

(1) Definitions for director and evidence are added to section 3561.

(2) The definition of statistical agencies is clarified by requiring OMB to establish a process by which an agency is designated as a CIPSEA statistical agency.

(3) Section 3563 is added to codify Statistical Policy Directive #1, which establishes responsibilities for statistical agencies and requires other agencies to support statistical agencies in fulfilling their responsibilities.

(4) Section 3572(b) is amended to codify the requirement that information obtained under a pledge of confidentiality and for statistical purposes will be protected in accordance with the pledge. Nothing in this provision is intended to alter an existing statutory authorization for access to information, or memoranda of understanding based on such a statutory authorization, or impede Congress's constitutional right of access to information and records of Federal agencies.

*Sec. 303. Increasing access to data for evidence*

Section 303 adds part D to chapter 35 subchapter III of title 44, United States Code, which establishes new procedures for data access and privacy protection. The bill clarifies the requirement that agencies must share data with statistical agencies for the purposes of developing evidence unless the underlying statute prohibits data sharing in a manner that leaves no discretion. Statistical agencies are charged with expanding access to data in a manner that protects the data from inappropriate access and use. The bill requires OMB to establish regulations for statistical agencies to assess data and categorize access to data based on the sensitivity of the data, to conduct an analysis of risks prior to releasing any data publicly, and to develop methods to reduce the sensitivity of data to improve access to such data. The bill also establishes an application process for researchers, state and local governments, and other entities to access data for the purpose of developing evidence.

TITLE IV—GENERAL PROVISIONS

*Sec. 401. Rule of construction*

The rule of construction clarifies that the bill does not require the disclosure of any material that is exempt from disclosure under FOIA and does not create any new exemptions to FOIA.

*Sec. 402. Effective date*

The effective date is 180 days after enactment.

## EXPLANATION OF AMENDMENTS

There were no amendments to H.R. 4174 offered or adopted during Committee consideration of the bill.

## COMMITTEE CONSIDERATION

On November 2, 2017, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported by voice vote, without amendment.

## ROLL CALL VOTES

There were no roll call votes requested or conducted during Committee consideration of H.R. 4174.

## APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill amends titles 5 and 44, United States Code, to require Federal evaluation activities, improve Federal data management, and for other purposes. As such, this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF  
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to amend titles 5 and 44, United States Code, to require Federal evaluation activities, improve Federal data management, and for other purposes.

## DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

This bill directs the completion of the following specific rule makings within the meaning of section 551 of title 5, United States Code:

- In section 302(a), section 3563(c) of title 44, United States Code, requires the Director of the Office of Management and Budget (OMB) to promulgate regulations to carry out subsections (a) and (b) of the section.
- In section 303(a), section 3581(c) of title 44, United States Code, requires the Director of OMB to promulgate regulations to carry out subsections (a) and (b) of the section.
- In section 303(a), section 3582(b) of title 44, United States Code, requires the Director of OMB to promulgate regulations to carry out subsections (a).

## FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation establishes an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code. No equivalent advisory committee currently exists. The creation of an advisory committee to carry out the intended policy is necessary because the establishment of a service to facilitate data sharing for statistical activities conducted for statistical purposes affects both government and non-government entities.

## UNFUNDED MANDATES STATEMENT

H.R. 4174 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

## EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

## COMMITTEE ESTIMATE

Based on a review of similar legislation and provisions of legislation in this and previous Congresses, the Committee estimates the cost of implementing H.R. 4174 would not be substantial. The Congressional Budget Office did not provide a cost estimate for the bill.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE

With respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget & Impound Control Act of 1974, the Committee has not received a cost estimate for this bill from the Director of Congressional Budget Office. The bill provides no new budget authority or increase or decrease in revenues or tax expenditures within the meaning of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives or section 308(a) of the Congressional Budget & Impound Control Act of 1974.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

## TITLE 5, UNITED STATES CODE

\* \* \* \* \*

## PART I—THE AGENCIES GENERALLY

\* \* \* \* \*

## CHAPTER 3—POWERS

Sec.

*SUBCHAPTER I—GENERAL PROVISIONS*

- 301. Departmental regulations.
- 302. Delegation of authority.
- 303. Oaths to witnesses.
- 304. Subpenas.
- 305. Systematic agency review of operations.
- 306. Agency strategic plans.

*SUBCHAPTER II—FEDERAL EVIDENCE-BUILDING ACTIVITIES*

Sec.

- 311. *Definitions.*
- 312. *Agency evidence-building plan.*
- 313. *Governmentwide evidence-building coordination.*
- 314. *Chief Evaluation Officers.*
- 315. *Statistical expertise.*
- 316. *Advisory Committee on Data for Evidence Building.*

*SUBCHAPTER I—GENERAL PROVISIONS*

\* \* \* \* \*

**§ 306. Agency strategic plans**

(a) Not later than the first Monday in February of any year following the year in which the term of the President commences under section 101 of title 3, the head of each agency shall make available on the public website of the agency a strategic plan and notify the President and Congress of its availability. Such plan shall contain—

- (1) a comprehensive mission statement covering the major functions and operations of the agency;
- (2) general goals and objectives, including outcome-oriented goals, for the major functions and operations of the agency;
- (3) a description of how any goals and objectives contribute to the Federal Government priority goals required by section 1120(a) of title 31;
- (4) a description of how the goals and objectives are to be achieved, including—
  - (A) a description of the operational processes, skills and technology, and the human, capital, information, and other

resources required to achieve those goals and objectives;  
and

(B) a description of how the agency is working with other agencies to achieve its goals and objectives as well as relevant Federal Government priority goals;

(5) a description of how the goals and objectives incorporate views and suggestions obtained through congressional consultations required under subsection (d);

(6) a description of how the performance goals provided in the plan required by section 1115(a) of title 31, including the agency priority goals required by section 1120(b) of title 31, if applicable, contribute to the general goals and objectives in the strategic plan;

(7) an identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives【; and】;

(8) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations to be conducted【.】, and citations to relevant provisions of the plan required under section 312; and

(9) an assessment of the coverage, quality, methods, effectiveness, and independence of the statistics, evaluation, research, and analysis efforts of the agency, including—

(A) a list of the activities and operations of the agency that are currently being evaluated and analyzed;

(B) the extent to which the evaluations, research, and analysis efforts and related activities of the agency support the needs of various divisions within the agency;

(C) the extent to which the evaluation research and analysis efforts and related activities of the agency address an appropriate balance between needs related to organizational learning, ongoing program management, performance management, strategic management, interagency and private sector coordination, internal and external oversight, and accountability;

(D) the extent to which the agency uses methods and combinations of methods that are appropriate to agency divisions and the corresponding research questions being addressed, including an appropriate combination of formative and summative evaluation research and analysis approaches;

(E) the extent to which evaluation and research capacity is present within the agency to include personnel and agency processes for planning and implementing evaluation activities, disseminating best practices and findings, and incorporating employee views and feedback; and

(F) the extent to which the agency has the capacity to assist agency staff and program offices to develop the capacity to use evaluation research and analysis approaches and data in the day-to-day operations.

(b) The strategic plan shall cover a period of not less than 4 years following the fiscal year in which the plan is submitted. As needed, the head of the agency may make adjustments to the strategic plan to reflect significant changes in the environment in

which the agency is operating, with appropriate notification of Congress.

(c) The performance plan required by section 1115(b) of title 31 shall be consistent with the agency's strategic plan. A performance plan may not be submitted for a fiscal year not covered by a current strategic plan under this section.

(d) When developing or making adjustments to a strategic plan, the agency shall consult periodically with the Congress, including majority and minority views from the appropriate authorizing, appropriations, and oversight committees, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan. The agency shall consult with the appropriate committees of Congress at least once every 2 years.

(e) The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of strategic plans under this section shall be performed only by Federal employees.

(f) *Not later than two years after the date on which each strategic plan required under subsection (a) is published, the Comptroller General of the United States shall submit to Congress a report that—*

*(1) summarizes agency findings and highlights trends in the assessment conducted pursuant to subsection (a)(9); and*

*(2) if appropriate, recommends actions to further improve agency capacity to use evaluation techniques and data to support evaluation efforts.*

[(f)] (g) For purposes of this section the term "agency" means an Executive agency defined under section 105, but does not include the Central Intelligence Agency, the Government Accountability Office, the United States Postal Service, and the Postal Regulatory Commission.

## SUBCHAPTER II—FEDERAL EVIDENCE-BUILDING ACTIVITIES

### § 311. Definitions

*In this subchapter:*

(1) *AGENCY.*—The term "agency" means an agency referred to under section 901(b) of title 31.

(2) *DIRECTOR.*—The term "Director" means the Director of the Office of Management and Budget.

(3) *EVALUATION.*—The term "evaluation" means an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.

(4) *EVIDENCE.*—The term "evidence" means evaluation, policy research and analysis, and information produced as a result of statistical activities conducted for a statistical purpose.

(5) *STATE.*—The term "State" means each of the several States, the District of Columbia, each territory or possession of the United States, and each federally recognized Indian Tribe.

(6) *STATISTICAL ACTIVITIES; STATISTICAL AGENCY OR UNIT; STATISTICAL PURPOSE.*—The terms "statistical activities", "sta-

tistical agency or unit”, and “statistical purpose” have the meanings given those terms in section 3561 of title 44.

**§ 312. Agency evidence-building plan**

(a) *REQUIREMENT.*—Not later than the first Monday in February of each year, the head of each agency shall submit to the Director and Congress a systematic plan for identifying and addressing policy questions relevant to the programs, policies, and regulations of the agency. Such plan shall be made available on the public website of the agency and shall cover at least a 4-year period beginning with the first fiscal year following the fiscal year in which the plan is submitted and published and contain the following:

(1) A list of policy-relevant questions for which the agency intends to develop evidence to support policymaking.

(2) A list of data the agency intends to collect, use, or acquire to facilitate the use of evidence in policymaking.

(3) A list of methods and analytical approaches that may be used to develop evidence to support policymaking.

(4) A list of any challenges to developing evidence to support policymaking, including any statutory or other restrictions to accessing relevant data.

(5) A description of the steps the agency will take to accomplish paragraphs (1) and (2).

(6) Any other information as required by guidance issued by the Director.

(b) *CONSULTATION.*—In developing the plan required under subsection (a), the head of an agency shall consult with the following:

(1) The public.

(2) Any evaluation or analysis unit and personnel of the agency.

(3) Agency officials responsible for implementing privacy policy.

(4) The Chief Data Officer of the agency.

(5) The officials of the agency designated under section 315.

(6) The Performance Improvement Officer of the agency.

(7) Program administrators of the agency.

(8) The committees of the House of Representatives and Senate with oversight jurisdiction over the agency.

**§ 313. Governmentwide evidence-building coordination**

(a) *UNIFIED EVIDENCE-BUILDING COORDINATION.*—

(1) *IN GENERAL.*—The Director shall consolidate the plans submitted under section 312 in a unified evidence-building plan. The Director shall notify agency heads of potentially overlapping or unnecessary duplicative data acquisition plans and facilitate interagency evidence gathering and sharing. The head of the agency may incorporate the results of any interagency coordination by updating the plan required under section 312. The Director shall incorporate any such agency update in the unified evidence-building plan.

(2) *CONSULTATION.*—In developing the unified evidence-building plan required under paragraph (1), the Director shall consult with the following:

(A) The public.

(B) *The Interagency Council on Evaluation Policy established under subsection (b).*

(C) *The Interagency Council on Statistical Policy established under section 3504(e)(8) of title 44.*

(D) *Any other relevant interagency council.*

(E) *The head of each agency.*

(b) *INTERAGENCY COUNCIL ON EVALUATION POLICY.—*

(1) *ESTABLISHMENT.—There is established an Interagency Council on Evaluation Policy (in this section referred to as the “Council”) to advise and assist the Director in supporting Governmentwide evaluation activities and policies.*

(2) *PURPOSE AND FUNCTION.—The Council shall act as the principal interagency forum for coordinating cross-agency evaluation activities and improving agency practices related to program evaluation. The Council shall—*

(A) *advise and assist the Director in supporting Governmentwide evaluation activities and policies;*

(B) *foster capacity for program evaluation across agencies by collaborating on a set of Governmentwide human capital strategies that develop and maintain agencies’ capacity for program evaluation;*

(C) *advise on the development of department-wide evaluation policies and the systematic plans for identifying and addressing priority policy questions described in agency evidence-building plans under section 312; and*

(D) *serve as a forum in which members may engage in collective learning and sharing of information to strengthen and promote high-quality program evaluation practices across the Government.*

(3) *MEMBERSHIP.—The members of the Council shall be the Chief Evaluation Officers appointed or designated under section 314. The Director shall designate a Chair of the Council. Additional members may be designated by the Chair.*

(4) *MEETINGS.—The Council shall meet not less than twice per fiscal year and may meet at the call of the Chair or a majority of the members of the Council.*

(5) *SUPPORT.—The head of each agency with a Chief Evaluation Officer serving on the Council shall, as appropriate and to the extent permitted by law, provide support in operating the Council, upon the request of the Chair.*

(6) *ANNUAL REPORT.—The Chair of the Council shall submit an annual report on the Council’s work under paragraph (2) to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Government Affairs of the Senate. The Director shall make such report publicly available online.*

(7) *REPORT AND TERMINATION.—*

(A) *EVALUATION OF COUNCIL.—Not later than four years after the date of the enactment of this subsection, the Comptroller General of the United States shall submit a report to Congress on whether the Council improved the use of evidence and program evaluation in the Federal Government.*

(B) *TERMINATION OF COUNCIL.—The Council shall terminate and this subsection shall be repealed upon the expiration of the two-year period that begins on the date the*

*Comptroller General of the United States submits the evaluation under subparagraph (A) to Congress.*

**§ 314. Chief Evaluation Officers**

(a) *ESTABLISHMENT.*—*The head of each agency shall appoint or designate an employee of the agency as the Chief Evaluation Officer of the agency.*

(b) *QUALIFICATIONS.*—*The Chief Evaluation Officer of an agency shall be appointed or designated without regard to political affiliation and based on demonstrated expertise in evaluation methodology, practices, and appropriate expertise to the disciplines of the agency.*

(c) *LIMITATIONS.*—*The Chief Evaluation Officer of an agency may not simultaneously serve as any of the following:*

- (1) *The Chief Financial Officer of any agency.*
- (2) *The Chief Information Officer of any agency.*
- (3) *The Chief Human Capital Officer of any agency.*
- (4) *The Chief Acquisition Officer of any agency.*
- (5) *The Inspector General of any agency.*

(d) *COORDINATION.*—*The Chief Evaluation Officer of an agency shall, to the extent practicable, coordinate activities with agency officials, including the following:*

- (1) *Agency officials responsible for implementing privacy policy regarding privacy and confidentiality issues.*
- (2) *The Chief Data Officer of the agency.*
- (3) *Agency officials designated under section 315.*
- (4) *Any evaluation or analysis unit and personnel of the agency on the needs for evaluation and analysis.*
- (5) *The Performance Improvement Officer of the agency.*
- (6) *Program administrators of the agency.*
- (7) *The Chief Evaluation Officers of other agencies.*

(e) *FUNCTIONS.*—*The Chief Evaluation Officer of each agency shall—*

- (1) *continually assess the coverage, quality, methods, consistency, effectiveness, independence, and balance of the portfolio of evaluations, policy research, and ongoing evaluation activities of the agency;*
- (2) *assess agency capacity to support the development and use of evaluation;*
- (3) *establish and implement an agency evaluation policy; and*
- (4) *coordinate, develop, and implement the plan required under section 312.*

**§ 315. Statistical expertise**

(a) *IN GENERAL.*—*The head of each agency shall designate the head of any statistical agency or unit within the agency, or in the case of an agency that does not have a statistical agency or unit, any senior agency official with appropriate expertise, as a statistical official to advise on statistical policy, techniques, and procedures. Agency officials engaged in statistical activities may consult with any such statistical official as necessary.*

(b) *MEMBERSHIP ON INTERAGENCY COUNCIL FOR STATISTICAL POLICY.*—*Each statistical official designated under subsection (a) shall serve as a member of the Interagency Council for Statistical Policy established under section 3504(e)(8) of title 44.*

**§ 316. Advisory Committee on Data for Evidence Building**

(a) *ESTABLISHMENT.*—The Director, or the head of an agency head designated by the Director, shall establish an Advisory Committee on Data for Evidence Building (in this section referred to as the “Advisory Committee”) to review, analyze, and make recommendations on how to expand access to and use of Federal data for evidence building.

(b) *MEMBERSHIP.*—The members of the Advisory Committee shall consist of the Chief Statistician of the United States, who shall serve as the Chair of the Advisory Committee, and other members appointed by the Director as follows:

(1) One member who is an agency Chief Information Officer.

(2) One member who is an agency Chief Privacy Officer.

(3) One member who is an agency Chief Performance Officer.

(4) Three members who are agency Chief Data Officers.

(5) Three members who are agency Chief Evaluation Officers.

(6) Three members who are members of the Interagency Council for Statistical Policy established under section 3504(e)(8) of title 44.

(7) At least 10 members who are representatives of State and local governments and nongovernmental stakeholders with expertise in government data policy, privacy, technology, transparency policy, evaluation and research methodologies, and other relevant subjects, of whom—

(A) at least one shall have expertise in transparency policy;

(B) at least one shall have expertise in privacy policy;

(C) at least one shall have expertise in statistical data use;

(D) at least one shall have expertise in information management;

(E) at least one shall have expertise in information technology;

(F) at least one shall be from the research and evaluation community; and

(G) if practicable, at least one shall be a former member of the Commission on Evidence-Based Policymaking.

(c) *TERM OF SERVICE.*—

(1) *IN GENERAL.*—Each member of the Advisory Committee (other than the Chair) shall serve for a term of two years.

(2) *VACANCY.*—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(d) *COMPENSATION.*—Members of the Advisory Committee shall serve without compensation.

(e) *DUTIES.*—

(1) *FIRST YEAR.*—During the first year of the Advisory Committee, the Advisory Committee shall—

(A) assist the Director in carrying out the duties of the Director under part D of subchapter III of chapter 35 of title 44; and

(B) evaluate and provide recommendations to the Director on the establishment of a shared service to facilitate data sharing, enable data linkage, and develop privacy enhancing techniques, including—

(i) the specific capabilities, needs, and necessary assets of such service, and the extent to which assets should be transferred from existing agencies;

(ii) any prospective location for such service;

(iii) best practices for transparency and interagency coordination;

(iv) best practices for monitoring and auditing of privacy, data linkage, and confidentiality of data accessed through such service; and

(v) necessary administrative and financial authorities to support the activities of such service.

(2) SECOND YEAR.—During the second and any subsequent year of the Advisory Committee, the Advisory Committee shall—

(A) if determined necessary by the Director, carry out the duties described in paragraph (1); and

(B) review the coordination of data sharing or availability for evidence building across all agencies.

(f) REPORTS.—For each year of the existence of the Advisory Committee, the Advisory Committee shall submit to the Director and make publicly available an annual report on the activities and findings of the Advisory Committee.

\* \* \* \* \*

**TITLE 44, UNITED STATES CODE**

\* \* \* \* \*

**PART A—GENERAL**

\* \* \* \* \*

**CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY**

SUBCHAPTER I—FEDERAL INFORMATION POLICY

Sec.

3501. Purposes.

\* \* \* \* \*

**[3511. Establishment and operation of Government Information Locator Service.]**

3511. *Data inventory and Federal data catalogue.*

\* \* \* \* \*

**[3520. Establishment of task force on information collection and dissemination.]**

3520. *Chief Data Officers.*

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SUBCHAPTER III—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY

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SUBCHAPTER I—FEDERAL INFORMATION POLICY

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**§ 3502. Definitions**

As used in this subchapter—

- (1) the term “agency” means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—
  - (A) the Government Accountability Office;
  - (B) Federal Election Commission;
  - (C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or
  - (D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;
- (2) the term “burden” means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—
  - (A) reviewing instructions;
  - (B) acquiring, installing, and utilizing technology and systems;
  - (C) adjusting the existing ways to comply with any previously applicable instructions and requirements;
  - (D) searching data sources;
  - (E) completing and reviewing the collection of information; and
  - (F) transmitting, or otherwise disclosing the information;
- (3) the term “collection of information”—
  - (A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—
    - (i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1);

(4) the term “Director” means the Director of the Office of Management and Budget;

(5) the term “independent regulatory agency” means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, the Bureau of Consumer Financial Protection, the Office of Financial Research, Office of the Comptroller of the Currency, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

(6) the term “information resources” means information and related resources, such as personnel, equipment, funds, and information technology;

(7) the term “information resources management” means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

(8) the term “information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

(9) the term “information technology” has the meaning given that term in section 11101 of title 40 but does not include national security systems as defined in section 11103 of title 40;

(10) the term “person” means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(11) the term “practical utility” means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

(12) the term “public information” means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public;

(13) the term “recordkeeping requirement” means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

(A) retain such records;

- (B) notify third parties, the Federal Government, or the public of the existence of such records;
- (C) disclose such records to third parties, the Federal Government, or the public; or
- (D) report to third parties, the Federal Government, or the public regarding such records[; and];
- (14) the term “penalty” includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit[.];
- (15) the term “data” means recorded information, regardless of form or the media on which the data is recorded;
- (16) the term “data asset” means a collection of data elements or data sets that may be grouped together;
- (17) the term “machine-readable”, when used with respect to data, means data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost;
- (18) the term “metadata” means structural or descriptive information about data such as content, format, source, rights, accuracy, provenance, frequency, periodicity, granularity, publisher or responsible party, contact information, method of collection, and other descriptions;
- (19) the term “open Government data asset” means a public data asset that is—
- (A) machine-readable;
- (B) available (or could be made available) in an open format;
- (C) not encumbered by restrictions that would impede the use or reuse of such asset; and
- (D) based on an underlying open standard that is maintained by a standards organization;
- (20) the term “open license” means a legal guarantee that a data asset is made available—
- (A) at no cost to the public; and
- (B) with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting such asset;
- (21) the term “public data asset” means a data asset maintained by the Federal Government that has been, or may be, released to the public, including any data asset subject to disclosure under section 552 of title 5; and
- (22) the term “statistical laws” means subchapter III of this chapter and other laws pertaining to the protection of information collected for statistical purposes as designated by the Director.

\* \* \* \* \*

#### **§ 3504. Authority and functions of Director**

(a)(1) The Director shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including burden reduction and service delivery to the public. In performing such oversight, the Director shall—

(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

(B) provide direction and oversee—

(i) the review and approval of the collection of information and the reduction of the information collection burden;

(ii) agency dissemination of and public access to information;

(iii) statistical activities;

(iv) records management activities;

(v) privacy, confidentiality, security, disclosure, and sharing of information; and

(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.

(2) The authority of the Director under this subchapter shall be exercised consistent with applicable law.

(b) With respect to general information resources management policy, the Director shall—

(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

(2) foster greater sharing, dissemination, and access to public information, including through—

(A) **the use of the Government Information Locator Service** *the use of the comprehensive data inventory and Federal data catalogue described under section 3511*; and

(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

(4) oversee the development and implementation of best practices in information resources management, including training**;** and**;**

(5) oversee agency integration of program and management functions with information resources management functions**;** and

(6) *issue guidance for agencies to implement section 3506(b)(6) in a manner that takes into account—*

(A) *risks and restrictions related to the disclosure of personally identifiable information, including the risk that an individual data asset in isolation does not pose a privacy or confidentiality risk but when combined with other available information may pose such a risk;*

(B) *security considerations, including the risk that information in an individual data asset in isolation does not pose a security risk but when combined with other available information may pose such a risk;*

- (C) *the cost and benefits to the public of converting a data asset into a machine-readable format that is accessible and useful to the public;*
- (D) *whether a data asset—*
- (i) *is protected by intellectual property rights;*
  - (ii) *contains confidential business information, that could be withheld under section 552(b)(4) of title 5; or*
  - (iii) *is otherwise restricted by contract or other binding, written agreement;*
- (E) *the requirement that a data asset be disclosed, if it would otherwise be made available under section 552 of title 5 (commonly known as the Freedom of Information Act); and*
- (F) *any other considerations that the Director determines to be relevant.*
- (c) With respect to the collection of information and the control of paperwork, the Director shall—
- (1) review and approve proposed agency collections of information;
  - (2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition and payment, and to reduce information collection burdens on the public;
  - (3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;
  - (4) maximize the practical utility of and public benefit from information collected by or for the Federal Government;
  - (5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information;?
  - (6) publish in the Federal Register and make available on the Internet (in consultation with the Small Business Administration) on an annual basis a list of the compliance assistance resources available to small businesses, with the first such publication occurring not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002.
- (d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—
- (1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and
  - (2) promote public access to public information and fulfill the purposes of this subchapter, including through the effective use of information technology.
- (e) With respect to statistical policy and coordination, the Director shall—
- (1) coordinate the activities of the Federal statistical system to ensure—
    - (A) the efficiency and effectiveness of the system; and

- (B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;
- (2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;
- (3) develop and oversee the implementation of Government-wide policies, principles, standards, and guidelines concerning—
  - (A) statistical collection procedures and methods;
  - (B) statistical data classification;
  - (C) statistical information presentation and dissemination;
  - (D) timely release of statistical data; and
  - (E) such statistical data sources as may be required for the administration of Federal programs;
- (4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;
- (5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;
- (6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;
- (7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;
- (8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—
  - (A) be headed by the chief statistician; and
  - (B) consist of—
    - (i) the heads of the major statistical programs; and
    - (ii) representatives of other statistical agencies under rotating membership; and
- (9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—
  - (A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and
  - (B) all costs of the training shall be paid by the agency requesting training.
- (f) With respect to records management, the Director shall—
  - (1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this subchapter;
  - (2) review compliance by agencies with—

- (A) the requirements of chapters 29, 31, and 33 of this title; and
- (B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and
- (3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.
- (g) With respect to privacy and security, the Director shall—
  - (1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies; and
  - (2) oversee and coordinate compliance with sections 552 and 552a of title 5, sections 20 and 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3 and 278g–4), section 11331 of title 40 and subchapter II of this chapter, and related information management laws.
- (h) With respect to Federal information technology, the Director shall—
  - (1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—
    - (A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and
    - (B) oversee the development and implementation of standards under section 11331 of title 40;
  - (2) monitor the effectiveness of, and compliance with, directives issued under subtitle III of title 40 and directives issued under section 322 of title 40;
  - (3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;
  - (4) ensure, through the review of agency budget proposals, information resources management plans and other means—
    - (A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and
    - (B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and
  - (5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

\* \* \* \* \*

### § 3506. Federal agency responsibilities

- (a)(1) The head of each agency shall be responsible for—

(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

(B) complying with the requirements of this subchapter and related policies established by the Director.

(2)(A) Except as provided under subparagraph (B), the head of each agency shall designate a Chief Information Officer who shall report directly to such agency head to carry out the responsibilities of the agency under this subchapter.

(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate Chief Information Officers who shall report directly to such Secretary to carry out the responsibilities of the department under this subchapter. If more than one Chief Information Officer is designated, the respective duties of the Chief Information Officers shall be clearly delineated.

(3) The Chief Information Officer designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this subchapter, including the reduction of information collection burdens on the public. The Chief Information Officer and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this subchapter.

(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the Chief Information Officer designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

(b) With respect to general information resources management, each agency shall—

(1) manage information resources to—

(A) reduce information collection burdens on the public;

(B) increase program efficiency and effectiveness; and

(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

【(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;】

*(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that—*

*(A) describes how information resources management activities help accomplish agency missions;*

*(B) includes an open data plan that—*

*(i) requires the agency to develop processes and procedures that—*

*(I) require data collection mechanisms created on or after the date of the enactment of the OPEN Government Data Act to be available in an open format; and*

*(II) facilitate collaboration with non-Government entities (including businesses), researchers, and the public for the purpose of understanding how data users value and use government data;*

*(ii) identifies and implements methods for collecting and analyzing digital information on data asset usage by users within and outside of the agency, including designating a point of contact within the agency to assist the public and to respond to quality issues, usability issues, recommendations for improvements, and complaints about adherence to open data requirements within a reasonable period of time;*

*(iii) develops and implements a process to evaluate and improve the timeliness, completeness, consistency, accuracy, usefulness, and availability of open Government data assets;*

*(iv) includes requirements for meeting the goals of the agency open data plan, including the acquisition of technology, provision of training for employees, and the implementation of procurement standards, in accordance with existing law, regulation, and policy, that allow for the acquisition of innovative solutions from public and private sectors; and*

*(v) requires the agency to comply with requirements under section 3511, including any standards established by the Director under such section, when disclosing a data asset pursuant to such section; and*

*(C) is updated annually and made publicly available on the website of the agency not later than five days after each such update;*

(3) develop and maintain an ongoing process to—

(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this subchapter; and

(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training pro-

grams to educate agency program and management officials about information resources management[.]; and

(6) *in accordance with guidance by the Director—*

(A) *make each data asset of the agency available in an open format and under an open license;*

(B) *make each public data asset of the agency available as an open Government data asset; and*

(C) *make each open Government data asset created by or for the agency available under an open license.*

(c) With respect to the collection of information and the control of paperwork, each agency shall—

(1) establish a process within the office headed by the Chief Information Officer designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this subchapter, to—

(A) review each collection of information before submission to the Director for review under this subchapter, including—

(i) an evaluation of the need for the collection of information;

(ii) a functional description of the information to be collected;

(iii) a plan for the collection of the information;

(iv) a specific, objectively supported estimate of burden;

(v) a test of the collection of information through a pilot program, if appropriate; and

(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

(B) ensure that each information collection—

(i) is inventoried, displays a control number and, if appropriate, an expiration date;

(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

(iii) informs the person receiving the collection of information of—

(I) the reasons the information is being collected;

(II) the way such information is to be used;

(III) an estimate, to the extent practicable, of the burden of the collection;

(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

(V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number; and

(C) assess the information collection burden of proposed legislation affecting the agency;

(2)(A) except as provided under subparagraph (B) or section 3507(j), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agen-

cies concerning each proposed collection of information, to solicit comment to—

- (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
  - (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
  - (iii) enhance the quality, utility, and clarity of the information to be collected; and
  - (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and
- (B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A)(i) through (iv);
- (3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—
- (A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;
  - (B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;
  - (C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as—
    - (i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;
    - (ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or
    - (iii) an exemption from coverage of the collection of information, or any part thereof;
  - (D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;
  - (E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;
  - (F) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;
  - (G) contains the statement required under paragraph (1)(B)(iii);
  - (H) has been developed by an office that has planned and allocated resources for the efficient and effective man-

agement and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(I) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public; and

(4) in addition to the requirements of this chapter regarding the reduction of information collection burdens for small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees.

(d) With respect to information dissemination, each agency shall—

(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through—

(A) encouraging a diversity of public and private sources for information based on government public information;

(B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

(C) agency dissemination of public information in an efficient, effective, and economical manner;

(2) regularly solicit and consider public input on the agency's information dissemination activities;

(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; **[and]**

(4) not, except where specifically authorized by statute—

(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

(B) restrict or regulate the use, resale, or redissemination of public information by the public;

(C) charge fees or royalties for resale or redissemination of public information; or

(D) establish user fees for public information that exceed the cost of dissemination**[.]**;

(5) *ensure that any public data asset of the agency is machine-readable; and*

(6) *engage the public in using public data assets of the agency and encourage collaboration by—*

(A) *publishing on the website of the agency, on a regular basis (not less than annually), information on the usage of such assets by non-Government users;*

(B) *providing the public with the opportunity to request specific data assets to be prioritized for disclosure and to provide suggestions for the development of agency criteria with respect to prioritizing data assets for disclosure;*

*(C) assisting the public in expanding the use of public data assets; and*

*(D) hosting challenges, competitions, events, or other initiatives designed to create additional value from public data assets of the agency.*

(e) With respect to statistical policy and coordination, each agency shall—

(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

(6) make data available to statistical agencies and readily accessible to the public.

(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

(g) With respect to privacy and security, each agency shall—

(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency; and

(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, subchapter II of this chapter, and related information management laws.

(h) With respect to Federal information technology, each agency shall—

(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

(2) assume responsibility and accountability for information technology investments;

(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

(5) assume responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

(A) integrated with budget, financial, and program management decisions; and

(B) used to select, control, and evaluate the results of major information systems initiatives.

(i)(1) In addition to the requirements described in subsection (c), each agency shall, with respect to the collection of information and the control of paperwork, establish 1 point of contact in the agency to act as a liaison between the agency and small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)).

(2) Each point of contact described under paragraph (1) shall be established not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002.

\* \* \* \* \*

### **§ 3511. Establishment and operation of Government Information Locator Service**

[(a) In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—

[(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the “Service”), which shall identify the major information systems, holdings, and dissemination products of each agency;

[(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

[(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Director of the Government Publishing Office, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

[(4) consider public access and other user needs in the establishment and operation of the Service;

[(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

[(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

[(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 U.S.C. 431 et seq.).]

### **§ 3511. Data inventory and Federal data catalogue**

(a) *COMPREHENSIVE DATA INVENTORY.*—

(1) *IN GENERAL.*—*In consultation with the Director and in accordance with the guidance established under paragraph (2), the head of each agency shall develop and maintain a comprehensive data inventory that accounts for all data assets cre-*

ated by, collected by, under the control or direction of, or maintained by the agency. The head of each agency shall ensure that such inventory provides a clear and comprehensive understanding of the data assets in the possession of the agency.

(2) *GUIDANCE.*—The Director shall establish guidance for agencies to develop and maintain comprehensive data inventories under paragraph (1). Such guidance shall include the following:

(A) A requirement for the head of an agency to include in the comprehensive data inventory metadata on each data asset of the agency, including the following:

(i) A description of the data asset, including all variable names and definitions.

(ii) The name or title of the data asset.

(iii) An indication of whether the agency—

(I) has determined if the data asset is an open Government data asset, available by request under section 552 of title 5, or a public data asset eligible for disclosure under subsection (b); or

(II) as of the date of such indication, has not made such determination.

(iv) Any determination made under section 3582, if available.

(v) A description of the method by which the public may access or request access to the data asset.

(vi) The date on which the data asset was most recently updated.

(vii) Each agency responsible for maintaining the data asset.

(viii) The owner of the data asset.

(ix) Any restrictions on the use of the data asset.

(x) The location of the data asset.

(xi) Any other metadata necessary to make the comprehensive data inventory useful to the agency and the public, or otherwise determined useful by the Director.

(B) A requirement for the head of an agency to exclude from the comprehensive data inventory any data asset contained on a national security system, as defined in section 11103 of title 40.

(C) Criteria for the head of an agency to use in determining which information, if any, in the comprehensive data inventory shall not be made publicly available, which shall include, at a minimum, a requirement to ensure all information in the inventory that would be subject to disclosure under section 552 of title 5 is made publicly available.

(D) A requirement for the head of each agency, in accordance with a procedure established by the Director, to submit for inclusion in the Federal data catalogue maintained under subsection (c) the data inventory developed pursuant to subparagraph (C), including any real-time updates to such inventory and data assets, or any electronic hyperlink providing access to such data assets, made available in accordance with subparagraph (E), listed on such inventory.

(E) *Criteria for the head of an agency to use in determining whether a particular data asset should not be made publicly available in a manner that takes into account—*

(i) *risks and restrictions related to the disclosure of personally identifiable information, including the risk that an individual data asset in isolation does not pose a privacy or confidentiality risk but when combined with other available information may pose such a risk;*

(ii) *security considerations, including the risk that information in an individual data asset in isolation does not pose a security risk but when combined with other available information may pose such a risk;*

(iii) *the cost and benefits to the public of converting the data into a manner that could be understood and used by the public;*

(iv) *whether the data asset—*

(I) *is protected by intellectual property rights;*

(II) *contains confidential business information, that could be withheld under section 552(b)(4) of title 5; or*

(III) *is restricted by contract or other binding, written agreement;*

(v) *the expectation that all data assets that would otherwise be made available under section 552 of title 5 be disclosed; and*

(vi) *any other considerations that the Director determines to be relevant.*

(3) *REGULAR UPDATES REQUIRED.—With respect to each data asset created or identified by an agency, the head of the agency shall update the comprehensive data inventory of the agency not later than 90 days after the date of such creation or identification.*

(b) *PUBLIC DATA ASSETS.—The head of each agency shall submit public data assets, or links to public data assets available online, as open Government data assets for inclusion in the Federal data catalogue in accordance with the guidance established in subsection (a)(2).*

(c) *FEDERAL DATA CATALOGUE.—*

(1) *IN GENERAL.—The Administrator of General Services shall maintain a single public interface online as a point of entry dedicated to sharing agency data assets with the public which shall be known as the “Federal data catalogue”. The Administrator and the Director shall ensure that agencies can submit public data assets or links to public data assets to be published and made publicly available on the interface.*

(2) *REPOSITORY.—The Director shall collaborate with the Office of Government Information Services and the Administrator of General Services to develop and maintain an online repository of tools, best practices, and schema standards to facilitate the adoption of open data practices across the Federal Government, which shall—*

(A) *include any definitions, regulations, policies, checklists, and case studies related to open data policy;*

(B) facilitate collaboration and the adoption of best practices across the Federal Government relating to the adoption of open data practices; and

(C) be made available on the Federal data catalogue developed under paragraph (1).

(3) ACCESS TO OTHER DATA ASSETS.—The Director shall ensure the Federal data catalogue maintained under paragraph (1) provides information on how the public can access data assets included in the public data inventory that are not yet available on the Federal data catalogue, including information regarding the application process established under section 3583 of title 44.

(d) DELEGATION.—The Director shall delegate to the Administrator of the Office of Information and Regulatory Affairs and the Administrator of the Office of Electronic Government the authority to jointly issue guidance required under this section.

(e) USE OF EXISTING RESOURCES.—To the extent practicable, the head of each agency shall use existing procedures and systems to carry out agency requirements under this section.

\* \* \* \* \*

### **§ 3520. Establishment of task force on information collection and dissemination**

[(a) There is established a task force to study the feasibility of streamlining requirements with respect to small business concerns regarding collection of information and strengthening dissemination of information (in this section referred to as the “task force”).

[(b)(1) The Director shall determine—

[(A) subject to the minimum requirements under paragraph (2), the number of representatives to be designated under each subparagraph of that paragraph; and

[(B) the agencies to be represented under paragraph (2)(K).

[(2) After all determinations are made under paragraph (1), the members of the task force shall be designated by the head of each applicable department or agency, and include—

[(A) 1 representative of the Director, who shall convene and chair the task force;

[(B) not less than 2 representatives of the Department of Labor, including 1 representative of the Bureau of Labor Statistics and 1 representative of the Occupational Safety and Health Administration;

[(C) not less than 1 representative of the Environmental Protection Agency;

[(D) not less than 1 representative of the Department of Transportation;

[(E) not less than 1 representative of the Office of Advocacy of the Small Business Administration;

[(F) not less than 1 representative of the Internal Revenue Service;

[(G) not less than 2 representatives of the Department of Health and Human Services, including 1 representative of the Centers for Medicare and Medicaid Services;

[(H) not less than 1 representative of the Department of Agriculture;

[(I) not less than 1 representative of the Department of the Interior;

[(J) not less than 1 representative of the General Services Administration; and

[(K) not less than 1 representative of each of 2 agencies not represented by representatives described under subparagraphs (A) through (J).

[(c) The task force shall—

[(1) identify ways to integrate the collection of information across Federal agencies and programs and examine the feasibility and desirability of requiring each agency to consolidate requirements regarding collections of information with respect to small business concerns within and across agencies, without negatively impacting the effectiveness of underlying laws and regulations regarding such collections of information, in order that each small business concern may submit all information required by the agency—

[(A) to 1 point of contact in the agency;

[(B) in a single format, such as a single electronic reporting system, with respect to the agency; and

[(C) with synchronized reporting for information submissions having the same frequency, such as synchronized quarterly, semiannual, and annual reporting dates;

[(2) examine the feasibility and benefits to small businesses of publishing a list by the Director of the collections of information applicable to small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), organized—

[(A) by North American Industry Classification System code;

[(B) by industrial sector description; or

[(C) in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply;

[(3) examine the savings, including cost savings, and develop recommendations for implementing—

[(A) systems for electronic submissions of information to the Federal Government; and

[(B) interactive reporting systems, including components that provide immediate feedback to assure that data being submitted—

[(i) meet requirements of format; and

[(ii) are within the range of acceptable options for each data field;

[(4) make recommendations to improve the electronic dissemination of information collected under Federal requirements;

[(5) recommend a plan for the development of an interactive Governmentwide system, available through the Internet, to allow each small business to—

[(A) better understand which Federal requirements regarding collection of information (and, when possible, which other Federal regulatory requirements) apply to that particular business; and

[(B) more easily comply with those Federal requirements; and

[(6) in carrying out this section, consider opportunities for the coordination—

[(A) of Federal and State reporting requirements; and

[(B) among the points of contact described under section 3506(i), such as to enable agencies to provide small business concerns with contacts for information collection requirements for other agencies.

[(d) The task force shall—

[(1) by publication in the Federal Register, provide notice and an opportunity for public comment on each report in draft form; and

[(2) make provision in each report for the inclusion of—

[(A) any additional or dissenting views of task force members; and

[(B) a summary of significant public comments.

[(e) Not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002, the task force shall submit a report of its findings under subsection (c) (1), (2), and (3) to—

[(1) the Director;

[(2) the chairpersons and ranking minority members of—

[(A) the Committee on Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate; and

[(B) the Committee on Government Reform and the Committee on Small Business of the House of Representatives; and

[(3) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

[(f) Not later than 2 years after the date of enactment of the Small Business Paperwork Relief Act of 2002, the task force shall submit a report of its findings under subsection (c) (4) and (5) to—

[(1) the Director;

[(2) the chairpersons and ranking minority members of—

[(A) the Committee on Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate; and

[(B) the Committee on Government Reform and the Committee on Small Business of the House of Representatives; and

[(3) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

[(g) The task force shall terminate after completion of its work.

[(h) In this section, the term “small business concern” has the meaning given under section 3 of the Small Business Act (15 U.S.C. 632).]

### **§ 3520. Chief Data Officers**

(a) *ESTABLISHMENT.*—The head of each agency shall designate a career appointee (as defined in section 3132 of title 5) in the agency as the Chief Data Officer.

(b) *QUALIFICATIONS.*—The Chief Data Officer of an agency shall be designated on the basis of demonstrated training and experience

in data management, collection, analysis, protection, use, and dissemination, including with respect to any statistical and related techniques to protect and de-identify confidential data.

(c) *LIMITATIONS.*—The Chief Data Officer of an agency may not simultaneously serve as any of the following:

- (1) The Chief Financial Officer of any agency.
- (2) The Chief Human Capital Officer of any agency.
- (3) The Chief Acquisition Officer of any agency.
- (4) The Inspector General of any agency.
- (5) The Performance Improvement Officer of any agency.

(d) *FUNCTIONS.*—The Chief Data Officer of an agency shall—

- (1) be responsible for lifecycle data management;
- (2) coordinate with any official in the agency responsible for using, protecting, disseminating, and generating data to ensure that the data needs of the agency are met;
- (3) manage data assets of the agency, including the standardization of data format, sharing of data assets, and publication of data assets in accordance with applicable law;
- (4) in carrying out the requirement under paragraphs (3) and (5), consult with any statistical official of the agency (as designated under section 315 of title 5);
- (5) carry out the requirements of the agency under subsections (b) through (d), (f), and (i) of section 3506, section 3507, and section 3511;
- (6) ensure that agency data conforms with data management best practices;
- (7) engage agency employees, the public, and contractors in using public data assets and encourage collaborative approaches on improving data use;
- (8) support the Performance Improvement Officer of the agency in identifying and using data to carry out the functions described in section 1124(a)(2) of title 31;
- (9) support the Chief Evaluation Officer of the agency in obtaining data to carry out the functions described in section 314 of title 5;
- (10) review the impact of the infrastructure of the agency on data asset accessibility and coordinate with the Chief Information Officer of the agency to improve such infrastructure to reduce barriers that inhibit data asset accessibility;
- (11) ensure that, to the extent practicable, the agency maximizes the use of data in the agency, including for the production of evidence (as defined in section 3561), cybersecurity, and the improvement of agency operations;
- (12) identify points of contact for roles and responsibilities related to open data use and implementation (as required by the Director);
- (13) serve as the agency liaison to other agencies and the Office of Management and Budget on the best way to use existing agency data for statistical purposes (as defined in section 3561); and
- (14) comply with any regulation and guidance issued under subchapter III, including the acquisition and maintenance of any required certification and training.

(e) *DELEGATION OF RESPONSIBILITIES.*—

(1) *IN GENERAL.*—To the extent necessary to comply with statistical laws, the Chief Data Officer of an agency shall delegate any responsibility under subsection (d) to the head of a statistical agency or unit (as defined in section 3561) within the agency.

(2) *CONSULTATION.*—To the extent permissible under law, the individual to whom a responsibility has been delegated under paragraph (1) shall consult with the Chief Data Officer of the agency in carrying out such responsibility.

(3) *DEFERENCE.*—The Chief Data Officer of the agency shall defer to the individual to whom a responsibility has been delegated under paragraph (1) regarding the necessary delegation of such responsibility with respect to any data acquired, maintained, or disseminated by the agency under applicable statistical law.

(f) *REPORTS.*—The Chief Data Officer of an agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives an annual report on the compliance of the agency with the requirements of this subchapter, including information on each requirement that the agency could not carry out and, if applicable, what the agency needs to carry out such requirement.

#### **§ 3520A. Chief Data Officer Council**

(a) *ESTABLISHMENT.*—There is established in the Office of Management and Budget a Chief Data Officer Council (in this section referred to as the “Council”).

(b) *PURPOSE AND FUNCTIONS.*—The Council shall—

(1) establish Governmentwide best practices for the use, protection, dissemination, and generation of data;

(2) promote and encourage data sharing agreements between agencies;

(3) identify ways in which agencies can improve upon the production of evidence for use in policymaking;

(4) consult with the public and engage with private users of Government data and other stakeholders on how to improve access to data assets of the Federal Government; and

(5) identify and evaluate new technology solutions for improving the collection and use of data.

(c) *MEMBERSHIP.*—

(1) *IN GENERAL.*—The Chief Data Officer of each agency shall serve as a member of the Council.

(2) *CHAIR.*—The Director shall select the Chair of the Council from among the members of the Council.

(3) *ADDITIONAL MEMBERS.*—The Administrator of the Office of Electronic Government shall serve as a member of the Council.

(4) *EX OFFICIO MEMBER.*—The Director shall appoint a representative for all Chief Information Officers and Chief Evaluation Officers, and such representative shall serve as an ex officio member of the Council.

(d) *REPORTS.*—The Council shall submit to the Director, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the

*House of Representatives a biennial report on the work of the Council.*

(e) **EVALUATION AND TERMINATION.**—

(1) **GAO EVALUATION OF COUNCIL.**—*Not later than 4 years after date of the enactment of this section, the Comptroller General shall submit to Congress a report on whether the additional duties of the Council improved the use of evidence and program evaluation in the Federal Government.*

(2) **TERMINATION OF COUNCIL.**—*The Council shall terminate and this section shall be repealed upon the expiration of the two-year period that begins on the date the Comptroller General submits the evaluation under paragraph (1) to Congress.*

\* \* \* \* \*

### **SUBCHAPTER III—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY**

#### **PART A—GENERAL**

##### **§ 3561. Definitions**

*In this subchapter:*

(1) **AGENCY.**—*The term “agency” means any entity that falls within the definition of the term “executive agency”, as defined in section 102 of title 31, or “agency”, as defined in section 3502.*

(2) **AGENT.**—*The term “agent” means an individual—*

(A)(i) *who is an employee of a private organization or a researcher affiliated with an institution of higher learning (including a person granted special sworn status by the Bureau of the Census under section 23(c) of title 13), and with whom a contract or other agreement is executed, on a temporary basis, by an executive agency to perform exclusively statistical activities under the control and supervision of an officer or employee of that agency;*

(ii) *who is working under the authority of a government entity with which a contract or other agreement is executed by an executive agency to perform exclusively statistical activities under the control of an officer or employee of that agency;*

(iii) *who is a self-employed researcher, a consultant, a contractor, or an employee of a contractor, and with whom a contract or other agreement is executed by an executive agency to perform a statistical activity under the control of an officer or employee of that agency;*

(iv) *who is a contractor or an employee of a contractor, and who is engaged by the agency to design or maintain the systems for handling or storage of data received under this subchapter; and*

(B) *who agrees in writing to comply with all provisions of law that affect information acquired by that agency.*

(3) **BUSINESS DATA.**—*The term “business data” means operating and financial data and information about businesses, tax-exempt organizations, and government entities.*

(4) *DATA ASSET.*—The term “data asset” has the meaning given that term in section 3502.

(5) *DIRECTOR.*—The term “Director” means the Director of the Office of Management and Budget.

(6) *EVIDENCE.*—The term “evidence” means information produced as a result of statistical activities conducted for a statistical purpose.

(7) *IDENTIFIABLE FORM.*—The term “identifiable form” means 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.

(8) *NONSTATISTICAL PURPOSE.*—The term “nonstatistical purpose”—

(A) means the use of data in identifiable form for any purpose that is not a statistical purpose, including any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent; and

(B) includes the disclosure under section 552 of title 5 of data that are acquired for exclusively statistical purposes under a pledge of confidentiality.

(9) *RESPONDENT.*—The term “respondent” means a person who, or organization that, is requested or required to supply information to an agency, is the subject of information requested or required to be supplied to an agency, or provides that information to an agency.

(10) *STATISTICAL ACTIVITIES.*—The term “statistical activities”—

(A) means the collection, compilation, processing, or analysis of data for the purpose of describing or making estimates concerning the whole, or relevant groups or components within, the economy, society, or the natural environment; and

(B) includes the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames.

(11) *STATISTICAL AGENCY OR UNIT.*—The term “statistical agency or unit” means an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes, as designated by the Director under section 3562.

(12) *STATISTICAL PURPOSE.*—The term “statistical purpose”—

(A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and

(B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in subparagraph (A).

### **§ 3562. Coordination and oversight of policies**

(a) *IN GENERAL.*—The Director shall coordinate and oversee the confidentiality and disclosure policies established by this subchapter. The Director may promulgate rules or provide other guid-

ance to ensure consistent interpretation of this subchapter by the affected agencies. The Director shall develop a process by which the Director designates agencies or organizational units as statistical agencies and units. The Director shall promulgate guidance to implement such process, which shall include specific criteria for such designation and methods by which the Director will ensure transparency in the process.

(b) *AGENCY RULES.*—Subject to subsection (c), agencies may promulgate rules to implement this subchapter. Rules governing disclosures of information that are authorized by this subchapter shall be promulgated by the agency that originally collected the information.

(c) *REVIEW AND APPROVAL OF RULES.*—The Director shall review any rules proposed by an agency pursuant to this subchapter for consistency with the provisions of this chapter and such rules shall be subject to the approval of the Director.

(d) *REPORTS.*—

(1) The head of each agency shall provide to the Director such reports and other information as the Director requests.

(2) Each Designated Statistical Agency (as defined in section 3576(e)) shall report annually to the Director, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate on the actions it has taken to implement section 3576. The report shall include copies of each written agreement entered into pursuant to section 3576(c)(1) for the applicable year.

(3) The Director shall include a summary of reports submitted to the Director under this subsection and actions taken by the Director to advance the purposes of this subchapter in the annual report to Congress on statistical programs prepared under section 3504(e)(2).

### **§ 3563. Federal statistical agencies**

(a) *RESPONSIBILITIES.*—

(1) *IN GENERAL.*—Each statistical agency or unit shall—

(A) produce and disseminate relevant and timely statistical information;

(B) conduct credible and accurate statistical activities;

(C) conduct objective statistical activities; and

(D) protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses

(2) *POLICIES, BEST PRACTICES, AND PROCEDURES.*—Each statistical agency or unit shall adopt policies, best practices, and appropriate procedures to implement the responsibilities described in paragraph (1).

(b) *SUPPORT FROM OTHER AGENCIES.*—The head of each agency shall enable, support, and facilitate statistical agencies or units in carrying out the responsibilities described in subsection (a)(1).

(c) *REGULATIONS.*—The Director shall prescribe regulations to carry out this section.

(d) *DEFINITIONS.*—In this section:

(1) *ACCURATE.*—The term “accurate”, when used with respect to statistical activities, means statistics that consistently match the events and trends being measured.

(2) *CONFIDENTIALITY.*—The term “confidentiality” means a quality or condition accorded to information as an obligation not to disclose that information to an unauthorized party.

(3) *OBJECTIVE.*—The term “objective”, when used with respect to statistical activities, means accurate, clear, complete, and unbiased.

(4) *RELEVANT.*—The term “relevant”, when used with respect to statistical information, means processes, activities, and things that matter to policymakers and public and private sector data users.

**§ 3564. Effect on other laws**

(a) *TITLE 44, UNITED STATES CODE.*—This subchapter does not diminish the authority under section 3510 of the Director to direct, and of an agency to make, disclosures that are not inconsistent with any applicable law.

(b) *TITLE 13 AND TITLE 44, UNITED STATES CODE.*—This subchapter does not diminish the authority of the Bureau of the Census to provide information in accordance with sections 8, 16, 301, and 401 of title 13 and section 2108 of this title.

(c) *TITLE 13, UNITED STATES CODE.*—This subchapter shall not be construed as authorizing the disclosure for nonstatistical purposes of demographic data or information collected by the Bureau of the Census pursuant to section 9 of title 13.

(d) *VARIOUS ENERGY STATUTES.*—Data or information acquired by the Energy Information Administration under a pledge of confidentiality and designated by the Energy Information Administration to be used for exclusively statistical purposes shall not be disclosed in identifiable form for nonstatistical purposes under—

(1) section 12, 20, or 59 of the Federal Energy Administration Act of 1974 (15 U.S.C. 771, 779, 790h);

(2) section 11 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796); or

(3) section 205 or 407 of the Department of Energy Organization Act (42 U.S.C. 7135, 7177).

(e) *SECTION 201 OF CONGRESSIONAL BUDGET ACT OF 1974.*—This subchapter shall not be construed to limit any authorities of the Congressional Budget Office to work (consistent with laws governing the confidentiality of information the disclosure of which would be a violation of law) with databases of Designated Statistical Agencies (as defined in section 3576(e)), either separately or, for data that may be shared pursuant to section 3576(c) or other authority, jointly in order to improve the general utility of these databases for the statistical purpose of analyzing pension and health care financing issues.

(f) *PREEMPTION OF STATE LAW.*—Nothing in this subchapter shall preempt applicable State law regarding the confidentiality of data collected by the States.

(g) *STATUTES REGARDING FALSE STATEMENTS.*—Notwithstanding section 3572, information collected by an agency for exclusively statistical purposes under a pledge of confidentiality may be provided by the collecting agency to a law enforcement agency for the prosecution of submissions to the collecting agency of false statistical information under statutes that authorize criminal penalties (such as section 221 of title 13) or civil penalties for the provision of false sta-

tistical information, unless such disclosure or use would otherwise be prohibited under Federal law.

(h) *CONSTRUCTION.*—Nothing in this subchapter shall be construed as restricting or diminishing any confidentiality protections or penalties for unauthorized disclosure that otherwise apply to data or information collected for statistical purposes or nonstatistical purposes, including, but not limited to, section 6103 of the Internal Revenue Code of 1986.

(i) *AUTHORITY OF CONGRESS.*—Nothing in this subchapter shall be construed to affect the authority of the Congress, including its committees, members, or agents, to obtain data or information for a statistical purpose, including for oversight of an agency's statistical activities.

## **PART B—CONFIDENTIAL INFORMATION PROTECTION**

### **§ 3571. Findings**

*The Congress finds the following:*

(1) *Individuals, businesses, and other organizations have varying degrees of legal protection when providing information to the agencies for strictly statistical purposes.*

(2) *Pledges of confidentiality by agencies provide assurances to the public that information about individuals or organizations or provided by individuals or organizations for exclusively statistical purposes will be held in confidence and will not be used against such individuals or organizations in any agency action.*

(3) *Protecting the confidentiality interests of individuals or organizations who provide information under a pledge of confidentiality for Federal statistical programs serves both the interests of the public and the needs of society.*

(4) *Declining trust of the public in the protection of information provided under a pledge of confidentiality to the agencies adversely affects both the accuracy and completeness of statistical analyses.*

(5) *Ensuring that information provided under a pledge of confidentiality for statistical purposes receives protection is essential in continuing public cooperation in statistical programs.*

### **§ 3572. Confidential information protection**

(a) *PURPOSES.*—*The purposes of this section are the following:*

(1) *To ensure that information supplied by individuals or organizations to an agency for statistical purposes under a pledge of confidentiality is used exclusively for statistical purposes.*

(2) *To ensure that individuals or organizations who supply information under a pledge of confidentiality to agencies for statistical purposes will neither have that information disclosed in identifiable form to anyone not authorized by this subchapter nor have that information used for any purpose other than a statistical purpose.*

(3) *To safeguard the confidentiality of individually identifiable information acquired under a pledge of confidentiality for*

*statistical purposes by controlling access to, and uses made of, such information.*

(b) *USE OF STATISTICAL DATA OR INFORMATION.—Data or information acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes shall be used by officers, employees, or agents of the agency exclusively for statistical purposes and protected in accordance with such pledge.*

(c) *DISCLOSURE OF STATISTICAL DATA OR INFORMATION.—*

(1) *Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent.*

(2) *A disclosure pursuant to paragraph (1) is authorized only when the head of the agency approves such disclosure and the disclosure is not prohibited by any other law.*

(3) *This section does not restrict or diminish any confidentiality protections in law that otherwise apply to data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes.*

(d) *RULE FOR USE OF DATA OR INFORMATION FOR NONSTATISTICAL PURPOSES.—A statistical agency or unit shall clearly distinguish any data or information it collects for nonstatistical purposes (as authorized by law) and provide notice to the public, before the data or information is collected, that the data or information could be used for nonstatistical purposes.*

(e) *DESIGNATION OF AGENTS.—A statistical agency or unit may designate agents, by contract or by entering into a special agreement containing the provisions required under section 3561(2) for treatment as an agent under that section, who may perform exclusively statistical activities, subject to the limitations and penalties described in this subchapter.*

(f) *FINES AND PENALTIES.—Whoever, being an officer, employee, or agent of an agency acquiring information for exclusively statistical purposes, having taken and subscribed the oath of office, or having sworn to observe the limitations imposed by this section, comes into possession of such information by reason of his or her being an officer, employee, or agent and, knowing that the disclosure of the specific information is prohibited under the provisions of this subchapter, willfully discloses the information in any manner to a person or agency not entitled to receive it, shall be guilty of a class E felony and imprisoned for not more than five years, or fined not more than \$250,000, or both.*

## **PART C—STATISTICAL EFFICIENCY**

### **§ 3575. Findings**

*The Congress finds the following:*

(1) *Federal statistics are an important source of information for public and private decision-makers such as policymakers, consumers, businesses, investors, and workers.*

(2) *Federal statistical agencies should continuously seek to improve their efficiency. Statutory constraints limit the ability*

of these agencies to share data and thus to achieve higher efficiency for Federal statistical programs.

(3) *The quality of Federal statistics depends on the willingness of businesses to respond to statistical surveys. Reducing reporting burdens will increase response rates, and therefore lead to more accurate characterizations of the economy.*

(4) *Enhanced sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics for exclusively statistical purposes will improve their ability to track more accurately the large and rapidly changing nature of United States business. In particular, the statistical agencies will be able to better ensure that businesses are consistently classified in appropriate industries, resolve data anomalies, produce statistical samples that are consistently adjusted for the entry and exit of new businesses in a timely manner, and correct faulty reporting errors quickly and efficiently.*

(5) *Congress enacted the International Investment and Trade in Services Survey Act (Public Law 94-472), which allowed the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to share data on foreign-owned companies. The Act not only expanded detailed industry coverage from 135 industries to over 800 industries with no increase in the data collected from respondents but also demonstrated how data sharing can result in the creation of valuable data products.*

(6) *With part B of this subchapter, the sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics continues to ensure the highest level of confidentiality for respondents to statistical surveys.*

#### **§ 3576. Designated Statistical Agencies**

(a) *PURPOSES.—The purposes of this section are the following:*

(1) *To authorize the sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics for exclusively statistical purposes.*

(2) *To reduce the paperwork burdens imposed on businesses that provide requested information to the Federal Government.*

(3) *To improve the comparability and accuracy of Federal economic statistics by allowing the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to update sample frames, develop consistent classifications of establishments and companies into industries, improve coverage, and reconcile significant differences in data produced by the three agencies.*

(4) *To increase understanding of the United States economy, especially for key industry and regional statistics, to develop more accurate measures of the impact of technology on productivity growth, and to enhance the reliability of the Nation's most important economic indicators, such as the National Income and Product Accounts.*

(b) *RESPONSIBILITIES OF DESIGNATED STATISTICAL AGENCIES.—The head of each of the Designated Statistical Agencies shall—*

(1) identify opportunities to eliminate duplication and otherwise reduce reporting burden and cost imposed on the public in providing information for statistical purposes;

(2) enter into joint statistical projects to improve the quality and reduce the cost of statistical programs; and

(3) protect the confidentiality of individually identifiable information acquired for statistical purposes by adhering to safeguard principles, including—

(A) emphasizing to their officers, employees, and agents the importance of protecting the confidentiality of information in cases where the identity of individual respondents can reasonably be inferred by either direct or indirect means;

(B) training their officers, employees, and agents in their legal obligations to protect the confidentiality of individually identifiable information and in the procedures that must be followed to provide access to such information;

(C) implementing appropriate measures to assure the physical and electronic security of confidential data;

(D) establishing a system of records that identifies individuals accessing confidential data and the project for which the data were required; and

(E) being prepared to document their compliance with safeguard principles to other agencies authorized by law to monitor such compliance.

(c) SHARING OF BUSINESS DATA AMONG DESIGNATED STATISTICAL AGENCIES.—

(1) IN GENERAL.—A Designated Statistical Agency may provide business data in an identifiable form to another Designated Statistical Agency under the terms of a written agreement among the agencies sharing the business data that specifies—

(A) the business data to be shared;

(B) the statistical purposes for which the business data are to be used;

(C) the officers, employees, and agents authorized to examine the business data to be shared; and

(D) appropriate security procedures to safeguard the confidentiality of the business data.

(2) RESPONSIBILITIES OF AGENCIES UNDER OTHER LAWS.—The provision of business data by an agency to a Designated Statistical Agency under this section shall in no way alter the responsibility of the agency providing the data under other statutes (including sections 552 and 552b of title 5) with respect to the provision or withholding of such information by the agency providing the data.

(3) RESPONSIBILITIES OF OFFICERS, EMPLOYEES, AND AGENTS.—Examination of business data in identifiable form shall be limited to the officers, employees, and agents authorized to examine the individual reports in accordance with written agreements pursuant to this section. Officers, employees, and agents of a Designated Statistical Agency who receive data pursuant to this section shall be subject to all provisions of law, including penalties, that relate—

(A) to the unlawful provision of the business data that would apply to the officers, employees, and agents of the agency that originally obtained the information; and

(B) to the unlawful disclosure of the business data that would apply to officers, employees, and agents of the agency that originally obtained the information.

(4) NOTICE.—Whenever a written agreement concerns data that respondents were required by law to report and the respondents were not informed that the data could be shared among the Designated Statistical Agencies, for exclusively statistical purposes, the terms of such agreement shall be described in a public notice issued by the agency that intends to provide the data. Such notice shall allow a minimum of 60 days for public comment.

(d) LIMITATIONS ON USE OF BUSINESS DATA PROVIDED BY DESIGNATED STATISTICAL AGENCIES.—

(1) GENERAL USE.—Business data provided by a Designated Statistical Agency pursuant to this section shall be used exclusively for statistical purposes.

(2) PUBLICATION.—Publication of business data acquired by a Designated Statistical Agency shall occur in a manner whereby the data furnished by any particular respondent are not in identifiable form.

(e) DESIGNATED STATISTICAL AGENCY DEFINED.—In this section, the term “Designated Statistical Agency” means each of the following:

(1) The Census Bureau of the Department of Commerce.

(2) The Bureau of Economic Analysis of the Department of Commerce.

(3) The Bureau of Labor Statistics of the Department of Labor.

## **PART D—ACCESS TO DATA FOR EVIDENCE**

### **§3581. Presumption of accessibility for statistical agencies and units**

(a) ACCESSIBILITY OF DATA ASSETS.—The head of an agency shall, to the extent practicable, make any data asset maintained by the agency available, upon request, to any statistical agency or unit for purposes of developing evidence.

(b) LIMITATIONS.—Subsection (a) does not apply to any data asset that is subject to a statute that—

(1) prohibits the sharing or intended use of such asset in a manner as to leave no discretion on the issue; or

(2) if enacted after the date of the enactment of this section, specifically cites to this paragraph.

(c) REGULATIONS.—The Director shall prescribe regulations for agencies to carry out this section. Such regulations shall—

(1) require the timely provision of data assets under subsection (a);

(2) provide a list of statutes that exempt agencies from the requirement under subsection (a) pursuant to subsection (b)(1); and

(3) require a transparent process for statistical agencies and units to request data assets from agencies and for agencies to respond to such requests.

**§ 3582. Expanding secure access to CIPSEA data assets**

(a) *STATISTICAL AGENCY RESPONSIBILITIES.*—To the extent practicable, each statistical agency or unit shall expand access to data assets of such agency or unit acquired or accessed under this subchapter to develop evidence while protecting such assets from inappropriate access and use, in accordance with the regulations promulgated under subsection (b).

(b) *REGULATIONS FOR ACCESSIBILITY OF NONPUBLIC DATA ASSETS.*—The Director shall promulgate regulations, in accordance with applicable law, for statistical agencies and units to carry out the requirement under subsection (a). Such regulations shall include the following:

(1) Standards for each statistical agency or unit to assess each data asset owned or accessed by the statistical agency or unit for purposes of categorizing the sensitivity level of each such asset and identifying the corresponding level of accessibility to each such asset. Such standards shall include—

(A) common sensitivity levels and corresponding levels of accessibility that may be assigned to a data asset, including a requisite minimum and maximum number of sensitivity levels for each statistical agency or unit to use;

(B) criteria for determining the sensitivity level and corresponding level of accessibility of each data asset; and

(C) criteria for determining whether a less sensitive and more accessible version of a data asset can be produced.

(2) Standards for each statistical agency or unit to improve access to a data asset pursuant to paragraph (1) or (3) by removing or obscuring information in such a manner that the identity of the data subject is less likely to be reasonably inferred by either direct or indirect means.

(3) A requirement for each statistical agency or unit to conduct a comprehensive risk assessment of any data asset acquired or accessed under this subchapter prior to any public release of such asset, including standards for such comprehensive risk assessment and criteria for making a determination of whether to release the data.

(4) Requirements for each statistical agency or unit to make any process or assessment established, produced, or conducted pursuant to this section transparent and easy to understand, including the following:

(A) A requirement to make information on the assessment of the sensitivity level of each data asset conducted pursuant to paragraph (1) available on the Federal data catalogue established under section 3511(c)(1).

(B) A requirement to make any comprehensive risk assessment, and associated determinations, conducted under paragraph (3) available on the Federal data catalogue established under section 3511(c)(1).

(C) A requirement to make any standard or policy established by the statistical agency or unit to carry out this sec-

- tion and any assessment conducted under this section easily accessible on the public website of such agency or unit.
- (c) **RESPONSIBILITIES OF THE DIRECTOR.**—The Director shall—
- (1) make public all standards and policies established under this section; and
  - (2) ensure that statistical agencies and units have the ability to make information public on the Federal data catalogue established under section 3511(c)(1), in accordance with requirements established pursuant to subsection (b).

**§3583. Application to access data assets for developing evidence**

(a) **STANDARD APPLICATION PROCESS.**—The Director shall establish a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access the data assets accessed or acquired under this subchapter by a statistical agency or unit for purposes of developing evidence. The process shall include the following:

- (1) Sufficient detail to ensure that each statistical agency or unit establishes an identical process.
- (2) A common application form.
- (3) Criteria for statistical agencies and units to determine whether to grant an applicant access to a data asset.
- (4) Timeframes for prompt determinations by each statistical agency or unit.
- (5) An appeals process for adverse decisions and noncompliance with the process established under this subsection.
- (6) Standards for transparency, including requirements to make the following information publicly available:
  - (A) Each application received.
  - (B) The status of each application.
  - (C) The determination made for each application.
  - (D) Any other information, as appropriate, to ensure full transparency of the process established under this subsection.

(b) **CONSULTATION.**—In establishing the process required under subsection (a), the Director shall consult with stakeholders, including the public, agencies, State and local governments, and representatives of non-governmental researchers.

(c) **IMPLEMENTATION.**—The head of each statistical agency or unit shall implement the process established under subsection (a).

\* \* \* \* \*

**E-GOVERNMENT ACT OF 2002**

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “E-Government Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

\* \* \* \* \*

[TITLE V—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL  
EFFICIENCY

- [Sec. 501. Short title.
- [Sec. 502. Definitions.
- [Sec. 503. Coordination and oversight of policies.
- [Sec. 504. Effect on other laws.

[Subtitle A—Confidential Information Protection

- [Sec. 511. Findings and purposes.
- [Sec. 512. Limitations on use and disclosure of data and information.
- [Sec. 513. Fines and penalties.

[Subtitle B—Statistical Efficiency

- [Sec. 521. Findings and purposes.
- [Sec. 522. Designation of statistical agencies.
- [Sec. 523. Responsibilities of designated statistical agencies.
- [Sec. 524. Sharing of business data among designated statistical agencies.
- [Sec. 525. Limitations on use of business data provided by designated statistical agencies.
- [Sec. 526. Conforming amendments.]

\* \* \* \* \*

**[TITLE V—CONFIDENTIAL INFORMATION  
PROTECTION AND STATISTICAL  
EFFICIENCY**

**[SEC. 501. SHORT TITLE.**

[This title may be cited as the “Confidential Information Protection and Statistical Efficiency Act of 2002”.

**[SEC. 502. DEFINITIONS.**

[As used in this title:

[(1) The term “agency” means any entity that falls within the definition of the term “executive agency” as defined in section 102 of title 31, United States Code, or “agency”, as defined in section 3502 of title 44, United States Code.

[(2) The term “agent” means an individual—

[(A)(i) who is an employee of a private organization or a researcher affiliated with an institution of higher learning (including a person granted special sworn status by the Bureau of the Census under section 23(c) of title 13, United States Code), and with whom a contract or other agreement is executed, on a temporary basis, by an executive agency to perform exclusively statistical activities under the control and supervision of an officer or employee of that agency;

[(ii) who is working under the authority of a government entity with which a contract or other agreement is executed by an executive agency to perform exclusively statistical activities under the control of an officer or employee of that agency;

[(iii) who is a self-employed researcher, a consultant, a contractor, or an employee of a contractor, and with whom a contract or other agreement is executed by an executive agency to perform a statistical activity under the control of an officer or employee of that agency; or

[(iv) who is a contractor or an employee of a contractor, and who is engaged by the agency to design or maintain the systems for handling or storage of data received under this title; and

[(B) who agrees in writing to comply with all provisions of law that affect information acquired by that agency.

[(3) The term “business data” means operating and financial data and information about businesses, tax-exempt organizations, and government entities.

[(4) The term “identifiable form” means 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.

[(5) The term “nonstatistical purpose”—

[(A) means the use of data in identifiable form for any purpose that is not a statistical purpose, including any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent; and

[(B) includes the disclosure under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act) of data that are acquired for exclusively statistical purposes under a pledge of confidentiality.

[(6) The term “respondent” means a person who, or organization that, is requested or required to supply information to an agency, is the subject of information requested or required to be supplied to an agency, or provides that information to an agency.

[(7) The term “statistical activities”—

[(A) means the collection, compilation, processing, or analysis of data for the purpose of describing or making estimates concerning the whole, or relevant groups or components within, the economy, society, or the natural environment; and

[(B) includes the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames.

[(8) The term “statistical agency or unit” means an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes.

[(9) The term “statistical purpose”—

[(A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and

[(B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in subparagraph (A).

#### **[SEC. 503. COORDINATION AND OVERSIGHT OF POLICIES.**

[(a) IN GENERAL.—The Director of the Office of Management and Budget shall coordinate and oversee the confidentiality and disclosure policies established by this title. The Director may promulgate rules or provide other guidance to ensure consistent interpretation of this title by the affected agencies.

[(b) AGENCY RULES.—Subject to subsection (c), agencies may promulgate rules to implement this title. Rules governing disclosures of information that are authorized by this title shall be promulgated by the agency that originally collected the information.

[(c) REVIEW AND APPROVAL OF RULES.—The Director shall review any rules proposed by an agency pursuant to this title for consistency with the provisions of this title and chapter 35 of title 44, United States Code, and such rules shall be subject to the approval of the Director.

[(d) REPORTS.—

[(1) The head of each agency shall provide to the Director of the Office of Management and Budget such reports and other information as the Director requests.

[(2) Each Designated Statistical Agency referred to in section 522 shall report annually to the Director of the Office of Management and Budget, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate on the actions it has taken to implement sections 523 and 524. The report shall include copies of each written agreement entered into pursuant to section 524(a) for the applicable year.

[(3) The Director of the Office of Management and Budget shall include a summary of reports submitted to the Director under paragraph (2) and actions taken by the Director to advance the purposes of this title in the annual report to the Congress on statistical programs prepared under section 3504(e)(2) of title 44, United States Code.

**[SEC. 504. EFFECT ON OTHER LAWS.**

[(a) TITLE 44, UNITED STATES CODE.—This title, including amendments made by this title, does not diminish the authority under section 3510 of title 44, United States Code, of the Director of the Office of Management and Budget to direct, and of an agency to make, disclosures that are not inconsistent with any applicable law.

[(b) TITLE 13 AND TITLE 44, UNITED STATES CODE.—This title, including amendments made by this title, does not diminish the authority of the Bureau of the Census to provide information in accordance with sections 8, 16, 301, and 401 of title 13, United States Code, and section 2108 of title 44, United States Code.

[(c) TITLE 13, UNITED STATES CODE.—This title, including amendments made by this title, shall not be construed as authorizing the disclosure for nonstatistical purposes of demographic data or information collected by the Census Bureau pursuant to section 9 of title 13, United States Code.

[(d) VARIOUS ENERGY STATUTES.—Data or information acquired by the Energy Information Administration under a pledge of confidentiality and designated by the Energy Information Administration to be used for exclusively statistical purposes shall not be disclosed in identifiable form for nonstatistical purposes under—

[(1) section 12, 20, or 59 of the Federal Energy Administration Act of 1974 (15 U.S.C. 771, 779, 790h);

[(2) section 11 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796); or

[(3) section 205 or 407 of the Department of the Energy Organization Act of 1977 (42 U.S.C. 7135, 7177).

[(e) SECTION 201 OF CONGRESSIONAL BUDGET ACT OF 1974.—This title, including amendments made by this title, shall not be construed to limit any authorities of the Congressional Budget Office to work (consistent with laws governing the confidentiality of information the disclosure of which would be a violation of law) with databases of Designated Statistical Agencies (as defined in section 522), either separately or, for data that may be shared pursuant to section 524 of this title or other authority, jointly in order to improve the general utility of these databases for the statistical purpose of analyzing pension and health care financing issues.

[(f) PREEMPTION OF STATE LAW.—Nothing in this title shall preempt applicable State law regarding the confidentiality of data collected by the States.

[(g) STATUTES REGARDING FALSE STATEMENTS.—Notwithstanding section 512, information collected by an agency for exclusively statistical purposes under a pledge of confidentiality may be provided by the collecting agency to a law enforcement agency for the prosecution of submissions to the collecting agency of false statistical information under statutes that authorize criminal penalties (such as section 221 of title 13, United States Code) or civil penalties for the provision of false statistical information, unless such disclosure or use would otherwise be prohibited under Federal law.

[(h) CONSTRUCTION.—Nothing in this title shall be construed as restricting or diminishing any confidentiality protections or penalties for unauthorized disclosure that otherwise apply to data or information collected for statistical purposes or nonstatistical purposes, including, but not limited to, section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103).

[(i) AUTHORITY OF CONGRESS.—Nothing in this title shall be construed to affect the authority of the Congress, including its committees, members, or agents, to obtain data or information for a statistical purpose, including for oversight of an agency's statistical activities.

## **[Subtitle A—Confidential Information Protection**

### **[SEC. 511. FINDINGS AND PURPOSES.**

[(a) FINDINGS.—The Congress finds the following:

[(1) Individuals, businesses, and other organizations have varying degrees of legal protection when providing information to the agencies for strictly statistical purposes.

[(2) Pledges of confidentiality by agencies provide assurances to the public that information about individuals or organizations or provided by individuals or organizations for exclusively statistical purposes will be held in confidence and will not be used against such individuals or organizations in any agency action.

[(3) Protecting the confidentiality interests of individuals or organizations who provide information under a pledge of confidentiality for Federal statistical programs serves both the interests of the public and the needs of society.

[(4) Declining trust of the public in the protection of information provided under a pledge of confidentiality to the agen-

cies adversely affects both the accuracy and completeness of statistical analyses.

[(5) Ensuring that information provided under a pledge of confidentiality for statistical purposes receives protection is essential in continuing public cooperation in statistical programs.

[(b) PURPOSES.—The purposes of this subtitle are the following:

[(1) To ensure that information supplied by individuals or organizations to an agency for statistical purposes under a pledge of confidentiality is used exclusively for statistical purposes.

[(2) To ensure that individuals or organizations who supply information under a pledge of confidentiality to agencies for statistical purposes will neither have that information disclosed in identifiable form to anyone not authorized by this title nor have that information used for any purpose other than a statistical purpose.

[(3) To safeguard the confidentiality of individually identifiable information acquired under a pledge of confidentiality for statistical purposes by controlling access to, and uses made of, such information.

**[SEC. 512. LIMITATIONS ON USE AND DISCLOSURE OF DATA AND INFORMATION.**

[(a) USE OF STATISTICAL DATA OR INFORMATION.—Data or information acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes shall be used by officers, employees, or agents of the agency exclusively for statistical purposes.

[(b) DISCLOSURE OF STATISTICAL DATA OR INFORMATION.—

[(1) Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent.

[(2) A disclosure pursuant to paragraph (1) is authorized only when the head of the agency approves such disclosure and the disclosure is not prohibited by any other law.

[(3) This section does not restrict or diminish any confidentiality protections in law that otherwise apply to data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes.

[(c) RULE FOR USE OF DATA OR INFORMATION FOR NONSTATISTICAL PURPOSES.—A statistical agency or unit shall clearly distinguish any data or information it collects for nonstatistical purposes (as authorized by law) and provide notice to the public, before the data or information is collected, that the data or information could be used for nonstatistical purposes.

[(d) DESIGNATION OF AGENTS.—A statistical agency or unit may designate agents, by contract or by entering into a special agreement containing the provisions required under section 502(2) for treatment as an agent under that section, who may perform exclusively statistical activities, subject to the limitations and penalties described in this title.

**[SEC. 513. FINES AND PENALTIES.**

[Whoever, being an officer, employee, or agent of an agency acquiring information for exclusively statistical purposes, having

taken and subscribed the oath of office, or having sworn to observe the limitations imposed by section 512, comes into possession of such information by reason of his or her being an officer, employee, or agent and, knowing that the disclosure of the specific information is prohibited under the provisions of this title, willfully discloses the information in any manner to a person or agency not entitled to receive it, shall be guilty of a class E felony and imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

## **[Subtitle B—Statistical Efficiency**

### **[SEC. 521. FINDINGS AND PURPOSES.**

**[(a) FINDINGS.—**The Congress finds the following:

**[(1)** Federal statistics are an important source of information for public and private decision-makers such as policymakers, consumers, businesses, investors, and workers.

**[(2)** Federal statistical agencies should continuously seek to improve their efficiency. Statutory constraints limit the ability of these agencies to share data and thus to achieve higher efficiency for Federal statistical programs.

**[(3)** The quality of Federal statistics depends on the willingness of businesses to respond to statistical surveys. Reducing reporting burdens will increase response rates, and therefore lead to more accurate characterizations of the economy.

**[(4)** Enhanced sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics for exclusively statistical purposes will improve their ability to track more accurately the large and rapidly changing nature of United States business. In particular, the statistical agencies will be able to better ensure that businesses are consistently classified in appropriate industries, resolve data anomalies, produce statistical samples that are consistently adjusted for the entry and exit of new businesses in a timely manner, and correct faulty reporting errors quickly and efficiently.

**[(5)** The Congress enacted the International Investment and Trade in Services Act of 1990 that allowed the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to share data on foreign-owned companies. The Act not only expanded detailed industry coverage from 135 industries to over 800 industries with no increase in the data collected from respondents but also demonstrated how data sharing can result in the creation of valuable data products.

**[(6)** With subtitle A of this title, the sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics continues to ensure the highest level of confidentiality for respondents to statistical surveys.

**[(b) PURPOSES.—**The purposes of this subtitle are the following:

**[(1)** To authorize the sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics for exclusively statistical purposes.

[(2) To reduce the paperwork burdens imposed on businesses that provide requested information to the Federal Government.

[(3) To improve the comparability and accuracy of Federal economic statistics by allowing the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to update sample frames, develop consistent classifications of establishments and companies into industries, improve coverage, and reconcile significant differences in data produced by the three agencies.

[(4) To increase understanding of the United States economy, especially for key industry and regional statistics, to develop more accurate measures of the impact of technology on productivity growth, and to enhance the reliability of the Nation's most important economic indicators, such as the National Income and Product Accounts.

**[SEC. 522. DESIGNATION OF STATISTICAL AGENCIES.**

[For purposes of this subtitle, the term "Designated Statistical Agency" means each of the following:

[(1) The Bureau of the Census of the Department of Commerce.

[(2) The Bureau of Economic Analysis of the Department of Commerce.

[(3) The Bureau of Labor Statistics of the Department of Labor.

**[SEC. 523. RESPONSIBILITIES OF DESIGNATED STATISTICAL AGENCIES.**

[The head of each of the Designated Statistical Agencies shall—

[(1) identify opportunities to eliminate duplication and otherwise reduce reporting burden and cost imposed on the public in providing information for statistical purposes;

[(2) enter into joint statistical projects to improve the quality and reduce the cost of statistical programs; and

[(3) protect the confidentiality of individually identifiable information acquired for statistical purposes by adhering to safeguard principles, including—

[(A) emphasizing to their officers, employees, and agents the importance of protecting the confidentiality of information in cases where the identity of individual respondents can reasonably be inferred by either direct or indirect means;

[(B) training their officers, employees, and agents in their legal obligations to protect the confidentiality of individually identifiable information and in the procedures that must be followed to provide access to such information;

[(C) implementing appropriate measures to assure the physical and electronic security of confidential data;

[(D) establishing a system of records that identifies individuals accessing confidential data and the project for which the data were required; and

[(E) being prepared to document their compliance with safeguard principles to other agencies authorized by law to monitor such compliance.

**[SEC. 524. SHARING OF BUSINESS DATA AMONG DESIGNATED STATISTICAL AGENCIES.**

[(a) IN GENERAL.—A Designated Statistical Agency may provide business data in an identifiable form to another Designated Statistical Agency under the terms of a written agreement among the agencies sharing the business data that specifies—

[(1) the business data to be shared;

[(2) the statistical purposes for which the business data are to be used;

[(3) the officers, employees, and agents authorized to examine the business data to be shared; and

[(4) appropriate security procedures to safeguard the confidentiality of the business data.

[(b) RESPONSIBILITIES OF AGENCIES UNDER OTHER LAWS.—The provision of business data by an agency to a Designated Statistical Agency under this subtitle shall in no way alter the responsibility of the agency providing the data under other statutes (including section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), and section 552b of title 5, United States Code (popularly known as the Privacy Act of 1974)) with respect to the provision or withholding of such information by the agency providing the data.

[(c) RESPONSIBILITIES OF OFFICERS, EMPLOYEES, AND AGENTS.—Examination of business data in identifiable form shall be limited to the officers, employees, and agents authorized to examine the individual reports in accordance with written agreements pursuant to this section. Officers, employees, and agents of a Designated Statistical Agency who receive data pursuant to this subtitle shall be subject to all provisions of law, including penalties, that relate—

[(1) to the unlawful provision of the business data that would apply to the officers, employees, and agents of the agency that originally obtained the information; and

[(2) to the unlawful disclosure of the business data that would apply to officers, employees, and agents of the agency that originally obtained the information.

[(d) NOTICE.—Whenever a written agreement concerns data that respondents were required by law to report and the respondents were not informed that the data could be shared among the Designated Statistical Agencies, for exclusively statistical purposes, the terms of such agreement shall be described in a public notice issued by the agency that intends to provide the data. Such notice shall allow a minimum of 60 days for public comment.

**[SEC. 525. LIMITATIONS ON USE OF BUSINESS DATA PROVIDED BY DESIGNATED STATISTICAL AGENCIES.**

[(a) USE, GENERALLY.—Business data provided by a Designated Statistical Agency pursuant to this subtitle shall be used exclusively for statistical purposes.

[(b) PUBLICATION.—Publication of business data acquired by a Designated Statistical Agency shall occur in a manner whereby the data furnished by any particular respondent are not in identifiable form.

**[SEC. 526. CONFORMING AMENDMENTS.**

[(a) DEPARTMENT OF COMMERCE.—Section 1 of the Act of January 27, 1938 (15 U.S.C. 176a) is amended by striking “The” and in-

serting “Except as provided in the Confidential Information Protection and Statistical Efficiency Act of 2002, the”.

[(b) TITLE 13.—Chapter 10 of title 13, United States Code, is amended—

[(1) by adding after section 401 the following:

["SEC. 402. Providing business data to Designated Statistical Agencies

["The Bureau of the Census may provide business data to the Bureau of Economic Analysis and the Bureau of Labor Statistics (‘Designated Statistical Agencies’) if such information is required for an authorized statistical purpose and the provision is the subject of a written agreement with that Designated Statistical Agency, or their successors, as defined in the Confidential Information Protection and Statistical Efficiency Act of 2002.”; and

[(2) in the table of sections for the chapter by adding after the item relating to section 401 the following:

["402. Providing business data to Designated Statistical Agencies."].]

## TITLE 13, UNITED STATES CODE

\* \* \* \* \*

### CHAPTER 10—EXCHANGE OF CENSUS INFORMATION

\* \* \* \* \*

#### § 402. Providing business data to Designated Statistical Agencies

The Bureau of the Census may provide business data to the Bureau of Economic Analysis and the Bureau of Labor Statistics (“Designated Statistical Agencies”) if such information is required for an authorized statistical purpose and the provision is the subject of a written agreement with that Designated Statistical Agency, or their successors, as defined in [the Confidential Information Protection and Statistical Efficiency Act of 2002] *section 3576(e) of title 44*.

\* \* \* \* \*

## TITLE 49, UNITED STATES CODE

\* \* \* \* \*

### SUBTITLE III—GENERAL AND INTERMODAL PROGRAMS

\* \* \* \* \*

#### CHAPTER 63—BUREAU OF TRANSPORTATION STATISTICS

\* \* \* \* \*

#### § 6302. Bureau of Transportation Statistics

(a) IN GENERAL.—There shall be within the Department of Transportation the Bureau of Transportation Statistics.

## (b) DIRECTOR.—

(1) APPOINTMENT.—The Bureau shall be headed by a Director, who shall be appointed in the competitive service by the Secretary.

(2) QUALIFICATIONS.—The Director shall be appointed from among individuals who are qualified to serve as the Director by virtue of their training and experience in the collection, analysis, and use of transportation statistics.

## (3) DUTIES.—

(A) IN GENERAL.—The Director shall—

(i) serve as the senior advisor to the Secretary on data and statistics; and

(ii) be responsible for carrying out the duties described in subparagraph (B).

(B) DUTIES.—The Director shall—

(i) ensure that the statistics compiled under clause (vi) are designed to support transportation decision-making by—

(I) the Federal Government;

(II) State and local governments;

(III) metropolitan planning organizations;

(IV) transportation-related associations;

(V) the private sector, including the freight community; and

(VI) the public;

(ii) establish on behalf of the Secretary a program—

(I) to effectively integrate safety data across modes; and

(II) to address gaps in existing safety data programs of the Department;

(iii) work with the operating administrations of the Department—

(I) to establish and implement the data programs of the Bureau; and

(II) to improve the coordination of information collection efforts with other Federal agencies;

(iv) continually improve surveys and data collection methods of the Department to improve the accuracy and utility of transportation statistics;

(v) encourage the standardization of data, data collection methods, and data management and storage technologies for data collected by—

(I) the Bureau;

(II) the operating administrations of the Department;

(III) State and local governments;

(IV) metropolitan planning organizations; and

(V) private sector entities;

(vi) collect, compile, analyze, and publish a comprehensive set of transportation statistics on the performance and impacts of the national transportation system, including statistics on—

(I) transportation safety across all modes and intermodally;

(II) the state of good repair of United States transportation infrastructure;

(III) the extent, connectivity, and condition of the transportation system, building on the national transportation atlas database developed under section 6309;

(IV) economic efficiency across the entire transportation sector;

(V) the effects of the transportation system on global and domestic economic competitiveness;

(VI) demographic, economic, and other variables influencing travel behavior, including choice of transportation mode and goods movement;

(VII) transportation-related variables that influence the domestic economy and global competitiveness;

(VIII) economic costs and impacts for passenger travel and freight movement;

(IX) intermodal and multimodal passenger movement;

(X) intermodal and multimodal freight movement; and

(XI) consequences of transportation for the human and natural environment;

(vii) build and disseminate the transportation layer of the National Spatial Data Infrastructure developed under Executive Order 12906 (59 Fed. Reg. 17671) (or a successor Executive Order), including by coordinating the development of transportation geospatial data standards, compiling intermodal geospatial data, and collecting geospatial data that is not being collected by other entities;

(viii) issue guidelines for the collection of information by the Department that the Director determines necessary to develop transportation statistics and carry out modeling, economic assessment, and program assessment activities to ensure that such information is accurate, reliable, relevant, uniform, and in a form that permits systematic analysis by the Department;

(ix) review and report to the Secretary on the sources and reliability of—

(I) the statistics proposed by the heads of the operating administrations of the Department to measure outputs and outcomes as required by the Government Performance and Results Act of 1993 (Public Law 103-62; 107 Stat. 285); and

(II) at the request of the Secretary, any other data collected or statistical information published by the heads of the operating administrations of the Department; and

(x) ensure that the statistics published under this section are readily accessible to the public, consistent with applicable security constraints and confidentiality interests.

(c) ACCESS TO FEDERAL DATA.—In carrying out subsection (b)(3)(B)(ii), the Director shall be given access to all safety data that the Director determines necessary to carry out that subsection that is held by the Department or any other Federal agency upon written request and subject to any statutory or regulatory restrictions.

(d) INDEPENDENCE OF BUREAU.—

(1) IN GENERAL.—The Director shall not be required—

(A) to obtain the approval of any other officer or employee of the Department with respect to the collection or analysis of any information; or

(B) prior to publication, to obtain the approval of any other officer or employee of the United States Government with respect to the substance of any statistical technical reports or press releases lawfully prepared by the Director.

(2) BUDGET AUTHORITY.—The Director shall have a significant role in the disposition and allocation of the authorized budget of the Bureau, including—

(A) all hiring, grants, cooperative agreements, and contracts awarded by the Bureau to carry out this section; and

(B) the disposition and allocation of amounts paid to the Bureau for cost-reimbursable projects.

(3) EXCEPTIONS.—The Secretary shall direct external support functions, such as the coordination of activities involving multiple modal administrations.

(4) INFORMATION TECHNOLOGY.—The Department Chief Information Officer shall consult with the Director to ensure decisions related to information technology guarantee the protection of the confidentiality of information provided solely for statistical purposes, in accordance with [the Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note; Public Law 107-347).] *section 3572 of title 44.*

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#### **§ 6314. Port performance freight statistics program**

(a) IN GENERAL.—The Director shall establish, on behalf of the Secretary, a port performance statistics program to provide nationally consistent measures of performance of, at a minimum—

- (1) the Nation's top 25 ports by tonnage;
- (2) the Nation's top 25 ports by 20-foot equivalent unit; and
- (3) the Nation's top 25 ports by dry bulk.

(b) REPORTS.—

(1) PORT CAPACITY AND THROUGHPUT.—Not later than January 15 of each year, the Director shall submit an annual report to Congress that includes statistics on capacity and throughput at the ports described in subsection (a).

(2) PORT PERFORMANCE MEASURES.—The Director shall collect port performance measures for each of the United States ports referred to in subsection (a) that—

(A) receives Federal assistance; or

(B) is subject to Federal regulation to submit necessary information to the Bureau that includes statistics on ca-

capacity and throughput as applicable to the specific configuration of the port.

(c) RECOMMENDATIONS.—

(1) IN GENERAL.—The Director shall obtain recommendations for—

(A) port performance measures, including specifications and data measurements to be used in the program established under subsection (a); and

(B) a process for the Department to collect timely and consistent data, including identifying safeguards to protect proprietary information described in subsection (b)(2).

(2) WORKING GROUP.—Not later than 60 days after the date of the enactment of the Transportation for Tomorrow Act of 2015, the Director shall commission a working group composed of—

(A) operating administrations of the Department;

(B) the Coast Guard;

(C) the Federal Maritime Commission;

(D) U.S. Customs and Border Protection;

(E) the Marine Transportation System National Advisory Council;

(F) the Army Corps of Engineers;

(G) the Saint Lawrence Seaway Development Corporation;

(H) the Bureau of Labor Statistics;

(I) the Maritime Advisory Committee for Occupational Safety and Health;

(J) the Advisory Committee on Supply Chain Competitiveness;

(K) 1 representative from the rail industry;

(L) 1 representative from the trucking industry;

(M) 1 representative from the maritime shipping industry;

(N) 1 representative from a labor organization for each industry described in subparagraphs (K) through (M);

(O) 1 representative from the International Longshoremen's Association;

(P) 1 representative from the International Longshore and Warehouse Union;

(Q) 1 representative from a port authority;

(R) 1 representative from a terminal operator;

(S) representatives of the National Freight Advisory Committee of the Department; and

(T) representatives of the Transportation Research Board of the National Academies of Sciences, Engineering, and Medicine.

(3) RECOMMENDATIONS.—Not later than 1 year after the date of the enactment of the Transportation for Tomorrow Act of 2015, the working group commissioned under paragraph (2) shall submit its recommendations to the Director.

(d) ACCESS TO DATA.—The Director shall ensure that—

(1) the statistics compiled under this section—

(A) are readily accessible to the public; and

(B) are consistent with applicable security constraints and confidentiality interests; and

(2) the data acquired, regardless of source, shall be protected in accordance with [the Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note; Public Law 107-347).] *section 3572 of title 44.*

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**ACT OF JANUARY 27, 1938**

AN ACT To make confidential certain information furnished to the Bureau of Foreign and Domestic Commerce, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any statistical information furnished in confidence to the Bureau of Foreign and Domestic Commerce by individuals, corporations, and firms shall be held to be confidential, and shall be used only for the statistical purposes for which it is supplied. Except as provided in [the Confidential Information Protection and Statistical Efficiency Act of 2002] *subchapter III of chapter 35 of title 44, United States Code,* the Director of the Bureau of Foreign and Domestic Commerce shall not permit anyone other than the sworn employees of the Bureau to examine such individual reports, nor shall he permit any statistics of domestic commerce to be published in such manner as to reveal the identity of the individual, corporation, or firm furnishing such data.

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**FIXING AMERICA'S SURFACE TRANSPORTATION ACT**

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**DIVISION A—SURFACE TRANSPORTATION**

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**TITLE VII—HAZARDOUS MATERIALS TRANSPORTATION**

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**Subtitle C—Safe Transportation of Flammable Liquids by Rail**

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**SEC. 7308. MODIFICATION REPORTING.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall implement a reporting requirement to monitor industry-wide progress toward modifying rail

tank cars used to transport Class 3 flammable liquids by the applicable deadlines established in section 7304.

(b) TANK CAR DATA.—The Secretary shall collect data from shippers and rail tank car owners on—

(1) the total number of tank cars modified to meet the DOT-117R specification, or equivalent, specifying—

(A) the type or specification of each tank car before it was modified, including non-jacketed DOT-111, jacketed DOT-111, non-jacketed DOT-111 meeting the CPC-1232 standard, or jacketed DOT-111 meeting the CPC-1232 standard; and

(B) the identification number of each Class 3 flammable liquid carried by each tank car in the past year;

(2) the total number of tank cars built to meet the DOT-117 specification, or equivalent; and

(3) the total number of tank cars used or likely to be used to transport Class 3 flammable liquids that have not been modified, specifying—

(A) the type or specification of each tank car not modified, including the non-jacketed DOT-111, jacketed DOT-111, non-jacketed DOT-111 meeting the CPC-1232 standard, or jacketed DOT-111 meeting the CPC-1232 standard; and

(B) the identification number of each Class 3 flammable liquid carried by each tank car in the past year.

(c) TANK CAR SHOP DATA.—The Secretary shall conduct a survey of tank car facilities modifying tank cars to the DOT-117R specification, or equivalent, or building new tank cars to the DOT-117 specification, or equivalent, to generate statistically- valid estimates of the anticipated number of tank cars those facilities expect to modify to DOT-117R specification, or equivalent, or build to the DOT-117 specification, or equivalent.

(d) FREQUENCY.—The Secretary shall collect the data under subsection (b) and conduct the survey under subsection (c) annually until May 1, 2029.

(e) INFORMATION PROTECTIONS.—

(1) IN GENERAL.—The Secretary shall only report data in industry-wide totals and shall treat company-specific information as confidential business information.

(2) LEVEL OF CONFIDENTIALITY.—The Secretary shall ensure the data collected under subsection (b) and the survey data under subsection (c) have the same level of confidentiality as required by [the Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note)] *section 3572 of title 44, United States Code*, as administered by the Bureau of Transportation Statistics.

(3) DESIGNEE.—The Secretary may—

(A) designate the Director of the Bureau of Transportation Statistics to collect data under subsection (b) and the survey data under subsection (c); and

(B) direct the Director to ensure the confidentiality of company-specific information to the maximum extent permitted by law.

(f) REPORT.—Each year, not later than 60 days after the date that both the collection of the data under subsection (b) and the

survey under subsection (c) are complete, the Secretary shall submit a written report on the aggregate results, without company-specific information, to—

(1) the Committee on Commerce, Science, and Transportation of the Senate; and

(2) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DEFINITION OF CLASS 3 FLAMMABLE LIQUID.—In this section, the term “Class 3 flammable liquid” has the meaning given the term flammable liquid in section 173.120 of title 49, Code of Federal Regulations.

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