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118TH CONGRESS, 2d Session | SENATE | REPORT 118–324

MODERNIZING DATA PRACTICES TO IMPROVE GOVERNMENT ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 5109

TO AMEND SECTION 3520A OF TITLE 44, UNITED STATES CODE, TO EXTEND THE CHIEF DATA OFFICER COUNCIL'S SUNSET AND ADD NEW AUTHORITIES FOR IMPROVING FEDERAL AGENCY DATA GOVERNANCE, INCLUDING TO ENABLE RELIABLE AND SECURE ADOPTION OF EMERGING TECHNOLOGIES AND ARTIFICIAL INTELLIGENCE, AND FOR OTHER PURPOSES

DECEMBER 19 (legislative day, DECEMBER 16), 2024.—Ordered to be printed

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DECEMBER 19 (legislative day, DECEMBER 16), 2024.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 5109]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 5109) to amend section 3520A of title 44, United States Code, to extend the Chief Data Officer Council's sunset and add new authorities for improving Federal agency data governance, including to enable reliable and secure adoption of emerging technologies and artificial intelligence, and for other purposes, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended do pass.

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I. PURPOSE AND SUMMARY

S. 5109, the *Modernizing Data Practices to Improve Government Act*, would amend section 3520A of Title 44, United States Code, to extend the authorities of the Chief Data Officers Council (CDO Council) seven years after enactment of this legislation. The bill would also codify new data governance responsibilities for the CDO

Council and require additional reporting related to improving data governance across federal government. The bill would require the CDO Council to report to the Office of Management and Budget (OMB) and Congress on key data governance issues for agencies, including recommendations for best practices to ensure agency data is reliable, transparent, and high-quality, as well as an assessment of any data challenges preventing artificial intelligence (AI) adoption across agencies. Further, under this bill, OMB would make recommendations to Congress to clarify and enhance the roles of Chief Data Officers (CDOs) across government and identify the resources and skills needed for CDOs to support data governance and AI adoption at federal agencies.

II. Background and Need for the Legislation

In 2019, Congress passed the *Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act),* to improve data management, expand access to government information, and strengthen agency evaluation capacity. Among its provisions, the bill codified the CDO position at agencies and created the CDO Council. While CDOs are permanent positions, the law terminates the CDO Council "upon the expiration of the 2-year period that begins on the date the Comptroller General submits the report under paragraph (1) to Congress."[1] The Comptroller General submitted the referenced report on December 15, 2022; the Council will terminate on December 15, 2024.[2]

Without the CDO Council, the federal government would lose the main interagency council responsible for cross-agency data management. The termination of this Council would arrive just as agencies are adopting new technologies and facing greater data challenges than ever before.[3] Extending the Council would allow it to continue assisting agencies across the government. In a survey of agency CDOs, many CDOs found the Council helpful for achieving their missions.[4] A 2023 Government Accountability Office (GAO) review of the Council's operations found that the Council was successful in carrying out each of its core statutory missions.[5]

This bill would allow the Council to build on and extend its success to new topics critical for agency data management, such as managing data in the age of artificial intelligence (AI) and defining data standards.[6] The *Modernizing Data Practices to Improve Government Act* would, for example, require the CDO Council to help agencies mitigate risks associated with misuse and mismanagement of personally identifiable information, when adopting AI. In October 2024, OMB released an RFI about issues related to agency

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[1] Evidence-Based Policymaking Act of 2018, Pub. L. No. 115–435, 44 USC § 3520A. *See also* H. Rept. 115–411.

[2] Government Accountability Office, *Progress Strengthening Federal Evidence-Based Policymaking* (GAO–23–105514) (Dec. 2022).

[3] Government Accountability Office, *Artificial Intelligence: Agencies Have Begun Implementation but Need to Complete Key Requirements* (GAO–24–105980) (Dec. 2023); *Data, Talent, Funding Among Top Barriers for Federal Agency AI Implementation,* FedScoop (Oct. 10, 2024) (https://fedscoop.com/data-talent-funding-among-top-barriers-for-federal-agency-ai-implementation).

[4] The Data Foundation, *Five Years of Progress and the Road Ahead Insights from the 2024 Survey of Federal Chief Data Officers* (2024) (file:///C:/Users/ch44360/Downloads/2024%20CDO%20Survey.pdf).

[5] Government Accountability Office, *supra* note 3.

[6] Chief Data Officer Council, Success Stories (https://www.cdo.gov/success-stories/) (accessed Dec. 17, 2024).

"collection, processing, maintenance, use dissemination, and disposition of commercially available information containing personally identifiable information."[7] Additionally, the legislation requires the Council to recommend (1) definitions for key data standards and (2) best practices for defining, generating, and using synthetic data (artificial data that have some of the statistical characteristics of the seed data). A recent Congressional Research Service report found that federal agencies have conflicting definitions and approaches to data standards.[8] This bill would require the CDO Council to recommend data standard definitions and best practices. These elements reflect challenges agencies have experienced in defining critical data terms and practices. The CDO Council itself has recently published Requests for Information involving definition, generation, and use of synthetic data.[9] A recent survey of CDOs showed a desire for consistent information, and the reporting requirements in this legislation would help accomplish that objective.[10]

The legislation would also require OMB to publish a report to help identify, clarify, and enhance the roles of CDOs in government, and to assess other CDO needs to ensure they are able to meet mission outcomes. CDOs have reported lower levels of clarity of their roles and responsibilities over the last several years.[11] They have also identified that lack of guidance has produced obstacles for agencies attempting to adopt AI in their daily operations. For example, in the 2024 survey of agency CDOs, 43% of those surveyed reported lack of guidance related to AI as a primary barrier for using AI in their organizations.[12]

III. Legislative History

Senator Gary Peters (D–MI) introduced S. 5109, the *Modernizing Data Practices to Improve Government Act,* on September 19, 2024, with original cosponsor Senator Todd Young (R–IN). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 5109 at a business meeting on September 25, 2024. At the business meeting, Senator Peters offered a substitute amendment to the bill, as well as a modification to the substitute amendment. The substitute amendment, as modified, incorporated agency feedback, including technical changes and changes to: (1) ensure the CDO Council's responsibilities match and build on its current authorities; (2) ensure the Council's recommendations include coordination with other relevant agency officials; (3) clarify that one representative from among Chief AI Officers and one representative from Chief Privacy Officers should be on the Council; and (4) allow the Council to enter into an interagency agreement with the General Services Administration (GSA)

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[7] Office of Management and Budget, *Request for Information: Executive Branch Agency Handling of Commercially Available Information Containing Personally Identifiable Information,* 89 FR 83517 (Oct. 16, 2024).

[8] Congressional Research Service, *Federal Data Management: Issues and Challenges in the Use of Data Standards* (Apr. 29, 2024)(R48053).

[9] National Institute of Standards and Technology (NIST), Glossary, Synthetic Data Generation (https://csrc.nist.gov/glossary/term/synthetic_data_generation) (accessed Dec. 11, 2024).

[10] The Data Foundation, *supra* note 5.

[11] *Id.*

[12] *Id.*

for staffing the Council. The amendment also added language specifying that no additional funds are authorized to be appropriated for the purpose of carrying out this Act, and clarified that the Act does not require agencies to implement the recommendations in the CDO Council's report to Congress and OMB. The Committee adopted the modification to the Peters substitute amendment, and the substitute amendment as modified, by unanimous consent, with Senators Peters, Hassan, Sinema, Rosen, Blumenthal, Butler, Paul, Lankford, and Hawley present.

The bill, as amended by the Peters substitute amendment as modified, was ordered reported favorably by roll call vote of 7 yeas to 2 nays, with Senators Peters, Hassan, Sinema, Rosen, Blumenthal, Butler, and Hawley voting in the affirmative, and Senators Paul and Lankford voting in the negative. Senators Carper, Ossoff, Romney, Scott, and Marshall voted yea by proxy, and Senator Johnson voted nay by proxy, for the record only.

Consistent with Committee Rule 3(G), the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

IV. Section-by-Section Analysis of the Bill, as Reported

Section 1. Short title

This section establishes the short title of the bill as the "Modernizing Data Practices to Improve Government Act."

Section 2. Amendments

Section 2 amends section 3520A of Title 44, United States Code. It strikes subsection (d) of section 3520A, which required the CDO Council to produce a report, and subsection (e), which required an evaluation of the Council and for the Council to be terminated in December of 2024. These provisions are later replaced with a provision requiring a new report from the Council and a provision that extends the CDO Council for seven years.

Section 2 also adds a new subsection (a) to section 3520A, to define "artificial intelligence" and "data governance."

Section 2 adds new purposes to the CDO Council under subsection (c) of 3520A of Title 44. The language would require the CDO Council to identify opportunities and procedures to improve data governance and ensure agencies' data is transparent, accessible, and sufficient quality for intended use. Additionally, the provision clarifies that the Council shall support agency heads if those agencies adopt emerging technologies, to ensure they are implemented reliably and securely.

Section 2 also amends the membership of the CDO Council (subsection (d) of section 3520A of Title 44) by adding representatives from all Chief Privacy Officers and Chief AI Officers to the council as *ex officio* members.

In addition, Section 2 adds new subsections (e) through (j) to section 3520A of Title 44, with requirements as follows.

New subsection (e) would allow GSA to provide staffing to the Council, codifying existing practice.

New subsection (f) would require the CDO Council to submit to OMB and Congress: (1) a biennial report on the work of the Council, and (2) a report with recommendations for improving data gov-

ernance at agencies. The subsection requires the Council to include any updates to the broader data governance report in its biennial report. The report with data governance recommendations must include data policy recommendations for agencies adopting artificial intelligence. Other elements in the report include an assessment of key data governance and sharing challenges; agency criteria for data transparency, security, and evaluation metrics; recommendations for data governance best practices, agency use case prioritization, data risk management, secure expansion of public access to federal data, and agency adoption and use of synthetic data generation.

New subsection (g) would allow OMB to issue agency guidance once it receives the report required under new subsection (f).

New subsection (h) would require the OMB Director, in consultation with the CDO Council, to submit a report with: (1) recommendations for clarifying and enhancing the roles of federal Chief Data Officers, and (2) opportunities for the CDO Council to collaborate with other interagency councils. This subsection also requires OMB to annually publish on a public website a list of all CDOs, any additional roles they hold, and their respective responsibilities relating to data and AI.

New subsection (i) would require GAO to submit a biennial report for six years to Congress with an evaluation of the Council's work to improve the use of data and evidence in government. The report must also indicate any challenges the Council faces in carrying out its responsibilities.

New subsection (j) would clarify that nothing in this section shall be interpreted to require agencies to implement the recommendations included in the CDO Council's report to Congress and OMB.

Section 3. No additional funds

This section provides that no additional funds are authorized to be appropriated for the purpose of carrying out this Act.

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. Congressional Budget Office Cost Estimate

Summary Estimates of Legislation Ordered Reported

The Congressional Budget Act of 1974 requires the Congressional Budget Office, to the extent practicable, to prepare estimates of the budgetary effects of legislation ordered reported by Congressional authorizing committees. In order to provide the Congress with as much information as possible, the attached table summarizes information about the estimated direct spending and revenue effects of

some of the legislation that has been ordered reported by the Senate Committee on Homeland Security and Governmental Affairs during the 118th Congress. The legislation listed in this table generally would have small effects, if any, on direct spending or revenues, CBO estimates. Where possible, the table also provides information about the legislation's estimated effects on spending subject to appropriation and on intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act.

ESTIMATED BUDGETARY EFFECTS AND MANDATES INFORMATION

Bill Number	Title	Status	Last Action	Budget Function	Direct Spending, 2025–2034	Revenues, 2025–2034	Spending Subject to Appropriation, 2025–2029	Pay-As-You-Go Procedures Apply?	Budgetary Effects After 2034	Mandates	Contact
S. 5109	Modernizing Data Practices to Improve Government Act.	Ordered reported	09/25/24	800	0	0	Not Estimated	No	No	No	Matthew Pickford

S. 5109 would expand the authorities of the Chief Data Officer Council concerning data management within the federal government. The bill also would create reporting requirements for that council and the Government Accountability Office on agencies' use of emerging technologies and artificial intelligence. Those authorities would end seven years after enactment. CBO estimates that enacting S. 5109 would have no effect on direct spending or revenues. CBO has not estimated the bill's effects on spending subject to appropriation. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

UNITED STATES CODE

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TITLE 44—PUBLIC PRINTING AND DOCUMENTS

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CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

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Subchapter I—Federal Information Policy

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SEC. 3520A. CHIEF DATA OFFICER COUNCIL

(a) DEFINITIONS.—In this section:

(1) ARTIFICIAL INTELLIGENCE.—The term 'artificial intelligence'—

(A) has the meaning given that term in section 5002 of the National Artificial Intelligence Initiative Act of 2020 (15 U.S.C. 9401); and

(B) includes the artificial systems and techniques described in paragraphs (1) through (5) of section 238(g) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 4061 note prec.).

(2) DATA GOVERNANCE.—The term 'data governance'—

(A) means the approach of an agency to managing data during the lifecycle of the data; and

(B) includes—

(i) agency responsibilities and requirements to ensure data is secure, private, accurate, available, and usable; and

(ii) authorities, roles, responsibilities, organizational structures, policies, procedures, standards, and resources for the definition, stewardship, production, security provenance, dissemination, and use of data.

[(a)]*(b)* * * *

[(b)]*(c)* 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 opportunities and procedures to improve data governance to—

(A) ensure that publicly available data of agencies are transparent, accessible, and of sufficient quality for the intended use of the data; and

(B) support agency heads and their efforts to reliably and securely leverage emerging technologies and artificial intelligence, including to ensure mission outcomes and improve operational efficiency across agencies; and

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

[(c)] *(d)* MEMBERSHIP.—

(1) * * *

(2) * * *

(3) * * *

(4) EX OFFICIO MEMBER.—The Director shall appoint a representative for all Chief Information Officers [and Evaluation Officers, and such representative shall serve as an ex officio member of the Council], *a representative from all Chief Artificial Intelligence Officers, and a representative for all Chief Privacy Officers, and such representatives shall serve as non-voting ex officio members of the Council.*

(e) COUNCIL STAFF.—The Council may enter into an interagency agreement with the Administrator of General Services for shared services for the purpose of staffing the Council.

(f) DATA GOVERNANCE 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 Accountability of the House of Representatives—

(1) a biennial report on the work of the Council, including any updates to the recommendations provided in the report required under paragraph (2) of this subsection and an explanation of the work to ensure progress on each of the objectives in subsection (c);

(2) not later than 1 year after the date of enactment of this subsection, a report with recommendations and best practices for agencies (taking into account that the recommendations may not apply to all agencies or to all agencies equally, based on the unique missions and capabilities of each agency) for developing datasets, data governance policies, and infrastructure, including to enable adoption and use of emerging technologies and artificial intelligence, such as for use in training, testing, and operation of artificial intelligence within agencies, which shall include—

(A) an assessment of key data governance and sharing challenges, including those that prevent adoption of emerging technologies and artificial intelligence across agencies;

(B) an assessment, as applicable, of ways to strengthen and clarify the roles and responsibilities relating to data governance of agency officials, in addition to the Chief Data Officer;

(C) recommendations for data governance best practices, including—

(i) best practices to ensure data used is reliable, fit for purpose, transparent, high quality, protects privacy

and personally identifiable information, and protects confidentiality of individuals and other sensitive information, including data used for testing, training, and operation of artificial intelligence; and

(ii) defining key data standards, including data quality;

(D) a prioritization of existing and future agency artificial intelligence use cases that address a critical need across the Federal Government, for which new or shared datasets are needed to support adoption;

(E) identification of existing data available to 1 or more agencies that would benefit other such agencies if the data were shared or made available;

(F) recommendations for ways Chief Data Officers should work with relevant agency officials to assist in addressing increases in risks associated with—

(i) the potential for misuse of, mismanagement of, and unauthorized access to data and personally identifiable information of individuals when an agency leverages data for use in artificial intelligence, including identification of software or hardware solutions, technical processes, techniques, or other technological means of mitigating privacy risks arising from data processing; and

(ii) increasing access to the data of the agency for the purposes of supporting a cross-Government mission;

(G) recommendations for data ownership and retention policies and procedures, including how Chief Data Officers can support Chief Procurement Officers and relevant officials in ensuring that agency contracts to procure emerging technology or artificial intelligence include any necessary clauses to ensure that the Federal Government—

(i) retains sufficient rights to data, and any modifications to that data;

(ii) avoids vendor lock-in and retains the ability to facilitate or conduct the continued design, development, testing, and operation of data by the Federal Government;

(iii) can conduct pre-procurement reviews of artificial intelligence to assess potential error issues; and

(iv) maximizes the use of and access to open data, open source software, and public access research to improve transparency, knowledge sharing, and interoperability;

(H) criteria agencies should consider when using data to train artificial intelligence used by agencies, including recommendations for—

(i) ways to increase transparency of training data for the public and for agency employees using the relevant artificial intelligence system software; and

(ii) processes and procedures to analyze and test training data for potential risks;

(I) recommendations for ways to expand public access to Federal data assets in a machine-readable format while

also taking into account the criteria listed under section 3511(a)(2)(E);

(J) recommendations for defining, generating, using, and ensuring the privacy and security of synthetic data in the Federal Government, including—

(i) a formalized definition of synthetic data generation for government use, including specifying definitions for data which is fully or partially synthetic;

(ii) best practices relating to synthetic data generation and use, including tools or techniques agencies should take to—

(I) mitigate privacy and security risks;

(II) ensure the accuracy and quality of synthetic data and the appropriateness for the intended use of the synthetic data by the agency;

(III) adopt the appropriate techniques to validate synthetic data, including data profiling, data consistency, data integrity, and data documentation; and

(IV) communicate opportunities, risks, and limitations of synthetic data internally to relevant Federal employees and externally to the public;

(iii) opportunities across the Federal Government and within specific agencies for using synthetic data;

(iv) circumstances when agencies should not use synthetic data; and

(v) opportunities for the Federal Government to partner with public and private sector entities in the development and sharing of data, including synthetic data, including to help in the adoption of emerging technologies and artificial intelligence, while also taking into account the criteria under section 3511(a)(2)(E); and

(K) for subparagraphs (A) through (J), an indication of how agencies can incorporate the respective recommendations and best practices into existing agency processes and statutory requirements.

(g) DATA GOVERNANCE GUIDANCE.—The Director, upon receipt of a report required under subsection (f), may issue guidance to agencies with respect to the implementation of the recommendations of the report.

(h) DATA MANAGEMENT REPORT.—Not later than 270 days after the date of enactment of this subsection, the Director, in consultation with the Council, shall—

(1) submit to Congress and make available on a public website a report with recommendations to clarify and enhance the roles of the Chief Data Officers across the Federal Government relating to data governance, including for artificial intelligence and including recommendations for suggested collaboration opportunities between the Council, other interagency councils, and additional Federal Government entities the Council determines relevant; and

(2) make available on a public website, not less frequently than annually—

(A) a list of all Chief Data Officers of agencies, including, with respect to each Chief Data Officer—

(i) any additional roles or titles the Chief Data Officer holds at the agency; and

(ii) the respective roles, responsibilities, and statutory authorities of the Chief Data Officer at the agency relating to data and artificial intelligence; and

(B) an identification of skills and resources needed by Chief Data Officers and their staffs, including to support artificial intelligence system adoption at agencies.

(i) EVALUATION.—Not later than 2 years after the date of enactment of this subsection, and not less frequently than once every 2 years thereafter, the Comptroller General shall submit to Congress a report on—

(1) whether the duties of the Council improved the use of evidence and data in the Federal Government; and

(2) any barriers or challenges preventing the Council from accomplishing the objectives under this section or the amendments made by the Modernizing Data Practices to Improve Government Act.

(j) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require an agency to implement any recommendation developed pursuant to subsection (f) or (h).

(k) SUNSET.—Beginning on the date that is 7 years after the date of enactment of this subsection, this section shall have no force or effect.

[(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 dateof 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 2-year period that begins on the date the Comptroller General submits the report under paragraph (1) to Congress.**]**

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