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In the Senate of the United States,

December 19, 2018.

Resolved, That the bill from the House of Representatives (H.R. 4174) entitled "An Act to amend titles 5 and 44, United States Code, to require Federal evaluation activities, improve Federal data management, and for other purposes.", do pass with the following

AMENDMENT:

Strike all after the enacting clause and insert the following:

1 ***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

2 *(a) SHORT TITLE.—This Act may be cited as the*
3 *"Foundations for Evidence-Based Policymaking Act of*
4 *2018".*

5 *(b) TABLE OF CONTENTS.—The table of contents for*
6 *this Act is as follows:*

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL EVIDENCE–BUILDING ACTIVITIES

Sec. 101. Federal evidence-building activities.

TITLE II—OPEN GOVERNMENT DATA ACT

Sec. 201. Short title.
Sec. 202. OPEN Government data.

TITLE III—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY

Sec. 301. Short title.
Sec. 302. Confidential information protection and statistical efficiency.
Sec. 303. Increasing access to data for evidence.

TITLE IV—GENERAL PROVISIONS

Sec. 401. Rule of construction.
Sec. 402. Use of existing resources.
Sec. 403. Effective date.

TITLE I—FEDERAL EVIDENCE–BUILDING ACTIVITIES

SEC. 101. FEDERAL EVIDENCE-BUILDING ACTIVITIES.

(a) IN GENERAL.—Chapter 3 of part I of title 5, United States Code, is amended—

(1) by inserting before section 301 the following: "SUBCHAPTER I—GENERAL PROVISIONS"; AND

(2) by adding at the end the following:

"SUBCHAPTER II—FEDERAL EVIDENCE-BUILDING ACTIVITIES

"§ 311. Definitions

"In this subchapter:

"(1) AGENCY.—The term 'agency' has the meaning given the term 'Executive agency' under section 105.

"(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' has the meaning given that term in section 3561 of title 44.

"(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 governing body of any Indian Tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(6) STATISTICAL ACTIVITIES; STATISTICAL AGENCY OR UNIT; STATISTICAL PURPOSE.—The terms 'statistical activities', 'statistical 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.—The head of each agency shall include in the strategic plan required under section 306 a systematic plan for identifying and addressing policy ques-

tions relevant to the programs, policies, and regulations of the agency. Such plan shall 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) EVALUATION PLAN.—The head of each agency shall issue in conjunction with the performance plan required under section 1115(b) of title 31, an evaluation plan describing activities the agency plans to conduct pursuant to subsection (a) of this section during the fiscal year following the year in which the performance plan is submitted. Such plan shall—

"(1) describe key questions for each significant evaluation study that the agency plans to begin in the next fiscal year;

"(2) describe key information collections or acquisitions the agency plans to begin in the next fiscal year; and

"(3) any other information included in guidance issued by the Director under subsection (a)(6).

"(c) CONSULTATION.—In developing the plan required under subsection (a), the head of an agency shall consult with stakeholders, including the public, agencies, State and local governments, and representatives of non-governmental researchers.

"§ 313. Evaluation Officers

"(a) ESTABLISHMENT.—The head of each agency shall designate a senior employee of the agency as the Evaluation Officer of the agency.

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

"(c) COORDINATION.—The Evaluation Officer of an agency shall, to the extent practicable, coordinate activities

with agency officials necessary to carry out the functions required under subsection (d).

"(d) FUNCTIONS.—The 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 plans required under section 312.

"§ 314. 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 ON STATISTICAL POLICY.—Each statistical official designated

under subsection (a) shall serve as a member of the Interagency Council on Statistical Policy established under section 3504(e)(8) of title 44.

"§ 315. Advisory Committee on Data for Evidence Building

"(a) ESTABLISHMENT.—The Director, or the head of an agency 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 promote the 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 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; and

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

"(c) TERM OF SERVICE.—

"(1) IN GENERAL.—Each member of the Advisory Committee shall serve for a term of 2 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.—The Advisory Committee shall—

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

"(2) evaluate and provide recommendations to the Director on how to facilitate data sharing, enable data linkage, and develop privacy enhancing techniques; and

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

"(f) REPORTS.—The Advisory Committee shall submit to the Director and make publicly available an annual report on the activities and findings of the Advisory Committee.

"(g) TERMINATION.—The Advisory Committee shall terminate not later than two years after the date of the first meeting.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 3 of part I of title 5, United States Code, is amended—

(1) by inserting before the item relating to section 301 the following:

"SUBCHAPTER I—GENERAL PROVISIONS"; AND

(2) by adding at the end the following:

"SUBCHAPTER II—FEDERAL EVIDENCE-BUILDING ACTIVITIES

"311. Definitions.
"312. Agency evidence-building plan.
"313. Evaluation Officers.
"314. Statistical expertise.
"315. Advisory Committee on Data for Evidence Building.".

(c) AGENCY STRATEGIC PLANS.—Section 306(a) of title 5, United States Code, is amended—

(1) in paragraph (7), by striking "; and" at the end and inserting a semicolon;

(2) in paragraph (8), by—

(A) striking the period at the end; and

(B) inserting after "to be conducted" the following: ", and citations to relevant provisions of the plans required under section 312; and"; and

(3) by adding at the end the following:

"(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 forma-

tive 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.".

(d) GAO REPORT.—Not later than 2 years after the date on which each strategic plan required under section 306(a) of title 5, United States Code, 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) of section 306 of title 5, United States Code, as added by subsection (c); and

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

(e) EVALUATION AND PERSONNEL STANDARDS.—

(1) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, the Director of the Office of Management and Budget, in consultation with any interagency council relating to evaluation, shall—

(A) issue guidance for program evaluation for agencies consistent with widely accepted standards for evaluation; and

(B) identify best practices for evaluation that would improve Federal program evaluation.

(2) GUIDANCE.—Not later than 90 days after the date on which the guidance under paragraph (1) is issued, the head of each agency shall oversee the implementation of such guidance.

(3) OPM GUIDANCE.—Not later than 180 days after the date on which the guidance under paragraph (1) is issued, the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, shall—

(A) identify key skills and competencies needed for program evaluation in an agency;

(B) establish a new occupational series, or update and improve an existing occupational se-

ries, for program evaluation within an agency; and

(C) establish a new career path for program evaluation within an agency.

(4) DEFINITIONS.—In this Act:

(A) AGENCY.—Except as otherwise provided, the term "agency" has the meaning given the term "Executive agency" under section 105.

(B) EVALUATION.—The term "evaluation" has the meaning given that term in section 311 of title 5, United States Code, as added by subsection (a).

TITLE II—OPEN GOVERNMENT DATA ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Open, Public, Electronic, and Necessary Government Data Act" or the "OPEN Government Data Act".

SEC. 202. OPEN GOVERNMENT DATA.

(a) DEFINITIONS.—Section 3502 of title 44, United States Code, is amended—

(1) in paragraph (13), by striking "; and" at the end and inserting a semicolon;

(2) in paragraph (14), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(15) the term 'comprehensive data inventory' means the inventory created under section 3511(a), but does not include any underlying data asset listed on the inventory;

"(16) the term 'data' means recorded information, regardless of form or the media on which the data is recorded;

"(17) the term 'data asset' means a collection of data elements or data sets that may be grouped together;

"(18) 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;

"(19) 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;

"(20) 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, other than intellectual property rights, including under titles 17 and 35, 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;

"(21) 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;

"(22) the term 'public data asset' means a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under section 552 of title 5; and

"(23) 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.".

(b) GUIDANCE TO MAKE DATA OPEN BY DEFAULT.—Section 3504(b) of title 44, United States Code, is amended—

(1) in paragraph (4), by striking "; and" and inserting a semicolon;

(2) in paragraph (5), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(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 the application of the requirements described in such section to a data asset could result in legal liability;

"(E) a determination of whether a data asset—

"(i) is subject to intellectual property rights, including rights under titles 17 and 35;

"(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;

"(F) 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

"(G) any other considerations that the Director determines to be relevant.".

(c) FEDERAL AGENCY RESPONSIBILITIES TO MAKE DATA OPEN BY DEFAULT.—

(1) AMENDMENTS.—Section 3506 of title 44, United States Code, is amended—

(A) in subsection (b)—

(i) by amending paragraph (2) to read as follows:

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

"(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;

"(v) identifies as priority data assets any data asset for which disclosure would be in the public interest and establishes a plan to evaluate each priority data asset for disclosure on the Federal Data Catalogue under section 3511 and for a determination under 3511(a)(2)(A)(iii)(I)(bb), including an accounting of which priority data assets have not yet been evaluated; and

"(vi) 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 5 days after each such update;";

(ii) in paragraph (4), by striking "; and" and inserting a semicolon;

(iii) in paragraph (5), by striking the period at the end and inserting "; and"; and

(iv) by adding at the end the following new paragraph:

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

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

"(B) make each public data asset of the agency available—

"(i) as an open Government data asset; and

"(ii) under an open license."; and

(B) in subsection (d)—

(i) in paragraph (3), by striking "and" at the end;

(ii) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(iii) by adding at the end the following new paragraphs:

"(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.".

(2) USE OF OPEN DATA ASSETS.—Not later than 1 year after the date of the enactment of this Act, the head of each agency (as defined in section 3502 of title 44, United States Code) shall ensure that any activity by the agency meets the requirements of section 3506 of title 44, United States Code, as amended by this subsection.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 1 year after the date of the enactment of this Act.

(d) DATA INVENTORY AND FEDERAL DATA CATALOGUE.—

(1) AMENDMENT.—Section 3511 of title 44, United States Code, is amended to read as follows:

"§ 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, to the maximum extent practicable, develop and maintain a comprehensive data inventory that accounts for all data assets created 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, to the maximum extent practicable, 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 or not the agency—

"(I) has determined or can determine if the data asset is—

"(aa) an open Government data asset;

"(bb) subject to disclosure or partial disclosure or exempt from disclosure under section 552 of title 5;

"(cc) a public data asset eligible for disclosure under subsection (b); or

"(dd) a data asset not subject to open format or open license requirements due to existing limitations or restrictions on government distribution of the asset; 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) To the extent practicable, any restriction 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 metadata required by subparagraph (A), if any, in the comprehensive

data inventory may not be made publicly available, which shall include, at a minimum, a requirement to ensure all information that could not otherwise be withheld from disclosure under section 552 of title 5 is made public in the comprehensive data inventory.

"(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 comprehensive data inventory developed pursuant to subparagraph (C), including any real-time updates to such inventory, and data assets made available in accordance with subparagraph (E) or any electronic hyperlink providing access to such data assets.

"(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 format that could be understood and used by the public;

"(iv) whether the public dissemination of the data asset could result in legal liability;

"(v) whether the data asset—

"(I) is subject to intellectual property rights, including rights under titles 17 and 35;

"(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;

"(vi) whether the holder of a right to such data asset has been consulted;

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

"(viii) any other considerations that the Director determines to be relevant.

"(F) Criteria for the head of an agency to use in assessing the indication of a determination under subparagraph (A)(iii) and how to prioritize any such subsequent determinations in the strategic information management plan under section 3506, in consideration of the existing resources available to the agency.

"(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 maintained under subsection (c), in accordance with the guidance established under 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, for publication and public availability 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 maintained 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 a data asset included in a comprehensive data inventory under subsection (a) that is 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.".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) TABLE OF SECTIONS.—The item relating to section 3511 of the table of sections at the beginning of chapter 35 of title 44, United States Code, is amended to read as follows:

"3511. Data inventory and Federal data catalogue.".

(B) CROSS-REFERENCE.—Section 3504(b)(2)(A) of title 44, United States Code, is amended by striking "the use of the Government Information Locator Service" and inserting "the use of comprehensive data inventories and the Federal data catalogue under section 3511".

(e) CHIEF DATA OFFICERS.—

(1) AMENDMENT.—Section 3520 of title 44, United States Code, is amended to read as follows:

"§ 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 of the agency.

"(b) QUALIFICATIONS.—The Chief Data Officer of an agency shall be designated on the basis of demonstrated training and experience in data management, governance (including creation, application, and maintenance of data standards), collection, analysis, protection, use, and dissemination, including with respect to any statistical and related techniques to protect and de-identify confidential data.

"(c) 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 requirements under paragraphs (3) and (5), consult with any statistical official of the agency (as designated under section 314 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, to the extent practicable, 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 Evaluation Officer of the agency in obtaining data to carry out the functions described in section 313(d) 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.

"(d) 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 (c) 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.

"(e) 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.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The item relating to section 3520 of the table of sections at the beginning of chapter 35 of title 44, United States Code, is amended to read as follows:

"3520. Chief Data Officers.".

(f) CHIEF DATA OFFICER COUNCIL.—

(1) AMENDMENT.—Subchapter I of chapter 35 of title 44, United States Code, is amended by inserting before section 3521 the following new section:

"§ 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 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 2-year period that begins on the date the Comptroller General submits the report under paragraph (1) to Congress.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 35 of title 44, United States Code, is amended by inserting before the item relating to section 3521 the following new item:

"3520A. Chief Data Officer Council.".

(g) REPORTS.—

(1) GAO REPORT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States 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 a report that identifies, to the extent practicable—

(A) the value of information made available to the public as a result of this Act and the amendments made by this Act;

(B) whether the public availability of any information that has not yet been made so available would be valuable to the public; and

(C) the completeness of each comprehensive data inventory developed under section 3511 of title 44, United States Code, as amended by subsection (d).

(2) BIENNIAL OMB REPORT.—Not later than 1 year after date of the enactment of this Act, and biennially thereafter, the Director of the Office of Management and Budget shall electronically publish a report on agency performance and compliance with this Act and the amendments made by this Act.

TITLE III—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY

SEC. 301. SHORT TITLE.

This title may be cited as the "Confidential Information Protection and Statistical Efficiency Act of 2018".

SEC. 302. CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY.

(a) IN GENERAL.—Chapter 35 of title 44, United States Code, is amended by adding at the end the following new subchapter:

"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 agen-

cy 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 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 guidance 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. 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 other such matters likely to be useful 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 accord-

ance 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 infor-

mation 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 statistical 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, includ-

ing, 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 statis-

tical 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 5 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 abil-

ity 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.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 35 of title 44, United States Code, as amended by proceeding provisions of this Act, is further amended by adding at the end the following:

"SUBCHAPTER III—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY

"PART A—GENERAL

"3561. Definitions.
"3562. Coordination and oversight of policies.
"3563. Statistical agencies.
"3564. Effect on other laws.

"PART B—CONFIDENTIAL INFORMATION PROTECTION

"3571. Findings.
"3572. Confidential information protection.

"PART C—STATISTICAL EFFICIENCY

"3575. Findings.
"3576. Designated statistical agencies.".

(c) CONFORMING AMENDMENTS.—

(1) REPEAL OF CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY ACT OF 2002.—Title V of the E–Government Act of 2002 (Pub-

lic Law 107–347; 44 U.S.C. 3501 note) is repealed (and the table of contents of such Act shall be conformed accordingly).

(2) TITLE 13, UNITED STATES CODE.—Section 402 of title 13, United States Code, is amended by striking "the Confidential Information Protection and Statistical Efficiency Act of 2002" and inserting "section 3576(e) of title 44".

(3) TITLE 49, UNITED STATES CODE.—Title 49, United States Code, is amended—

(A) in section 6302(d)(4), by striking "the Confidential Information" and all that follows through the period and inserting "section 3572 of title 44."; and

(B) in section 6314(d)(2), by striking "the Confidential Information" and all that follows through the period and inserting "section 3572 of title 44.".

(4) ACT OF JANUARY 27, 1938.—The first section of the Act of January 27, 1938, entitled "An Act to make confidential certain information furnished to the Bureau of Foreign and Domestic Commerce, and for other purposes" (52 Stat. 8, chapter 11; 15 U.S.C. 176a), is amended by striking "the Confidential Information Protection and Statistical Efficiency Act of

2002" and inserting "subchapter III of chapter 35 of title 44, United States Code".

(5) FIXING AMERICA'S SURFACE TRANSPORTATION ACT.—Section 7308(e)(2) of the Fixing America's Surface Transportation Act (Public Law 114–94; 49 U.S.C. 20155 note) is amended by striking "the Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note)" and inserting "section 3572 of title 44, United States Code".

(d) TRANSITIONAL AND SAVINGS PROVISIONS.—

(1) CUTOFF DATE.—This title replaces certain provisions of law enacted on December 17, 2002. If a law enacted after that date amends or repeals a provision replaced by this title, that law is deemed to amend or repeal, as the case may be, the corresponding provision enacted by this title. If a law enacted after that date is otherwise inconsistent with this title, it supersedes this title to the extent of the inconsistency.

(2) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining whether one provision of law supersedes another based on enactment later in time, the date of the enactment of a

provision enacted by this title is deemed to be the date of the enactment of the provision it replaced.

(3) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision of law replaced by this title, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this title.

(4) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a provision of law replaced by this title continues in effect under the corresponding provision enacted by this title.

(5) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a provision of law replaced by this title is deemed to have been taken or committed under the corresponding provision enacted by this title.

SEC. 303. INCREASING ACCESS TO DATA FOR EVIDENCE.

(a) IN GENERAL.—Subchapter III of chapter 35 of title 44, United States Code, as added by section 302, is amended by adding at the end the following new part:

1 ***"PART D—ACCESS TO DATA FOR EVIDENCE***

2 ***"§ 3581. Presumption of accessibility for statistical***
3 ***agencies and units***

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

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

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

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

16 *"(c) REGULATIONS.—The Director shall prescribe reg-*
17 *ulations for agencies to carry out this section. Such regula-*
18 *tions shall—*

19 *"(1) require the timely provision of data assets*
20 *under subsection (a);*

21 *"(2) provide a list of statutes that exempt agen-*
22 *cies from the requirement under subsection (a) pursu-*
23 *ant to subsection (b)(1);*

24 *"(3) establish clear and consistent standards, to*
25 *the extent possible, for complying with section 552a of*
26 *title 5 (commonly known as the 'Privacy Act of*

1974') and any other applicable law requiring the protection and confidentiality of individually identifiable information; and

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

"(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed as altering existing intellectual property rights or the terms of any contract or other binding, written agreement.

"§ 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 section and any assessment conducted under this section easily acces-

sible 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).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 35 of title 44, United States Code, as amended by preceding provisions of this Act, is further amended by adding at the end the following:

"PART D—ACCESS TO DATA FOR EVIDENCE

"3581. Presumption of accessibility for statistical agencies and units.
"3582. Expanding secure access to CIPSEA data assets.
"3583. Application to access data assets for developing evidence.".

(c) DEADLINE FOR GUIDANCE AND IMPLEMENTATION.—Not later than 1 year after the date of the enactment of this Act, the Director of the Office of Management and Budget shall promulgate or issue any regulation or guidance required by subchapter III of title 44, United States Code, as amended by this section, with a requirement for such regulation or guidance to be implemented not later than 1 year after the date on which such regulation or guidance has been promulgated or issued.

TITLE IV—GENERAL PROVISIONS

SEC. 401. RULE OF CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, may be construed—

(1) to require the disclosure of information or records that are exempt from disclosure under section

552 of title 5, United States Code (commonly known as the "Freedom of Information Act");

(2) to create or expand an exemption from disclosure under such section;

(3) to override, limit, or otherwise affect intellectual property rights, including rights under titles 17 and 35, United States Code;

(4) to affect the authority of a Federal agency regarding the use, disclosure, or licensing of—

(A) confidential business information that could be withheld under section 552(b)(4) of title 5, United States Code; or

(B) data assets restricted from disclosure under a contract or other binding, written agreement; or

(5) to affect the independence, responsibilities, or work products of an Inspector General of any agency.

SEC. 402. USE OF EXISTING RESOURCES.

To the extent practicable, the head of each agency shall use existing procedures and systems to carry out agency requirements and shall select existing employees for appointments under this Act and the amendments made by this Act.

SEC. 403. EFFECTIVE DATE.

Except as otherwise provided, this Act, and the amendments made by this Act, shall take effect on the date that is 180 days after the date of the enactment of this Act.

Attest:

Secretary.

115th CONGRESS
2d Session

H.R. 4174

AMENDMENT