

***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.

1     **TITLE I—FEDERAL EVIDENCE—**  
 2             **BUILDING ACTIVITIES**

3     **SEC. 101. FEDERAL EVIDENCE-BUILDING ACTIVITIES.**

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

6                     (1) *by inserting before section 301 the following:*

7                     “SUBCHAPTER I—GENERAL PROVISIONS”; AND

8                     (2) *by adding at the end the following:*

9                     “SUBCHAPTER II—FEDERAL EVIDENCE-  
 10                     BUILDING ACTIVITIES

11     “§ 311. **Definitions**

12             *“In this subchapter:*

13                     “(1) *AGENCY.*—The term ‘agency’ has the mean-  
 14                     ing given the term ‘Executive agency’ under section  
 15                     105.

16                     “(2) *DIRECTOR.*—The term ‘Director’ means the  
 17                     Director of the Office of Management and Budget.

1           “(3) *EVALUATION*.—The term ‘evaluation’ means  
2           an assessment using systematic data collection and  
3           analysis of one or more programs, policies, and orga-  
4           nizations intended to assess their effectiveness and ef-  
5           ficiency.

6           “(4) *EVIDENCE*.—The term ‘evidence’ has the  
7           meaning given that term in section 3561 of title 44.

8           “(5) *STATE*.—The term ‘State’ means each of the  
9           several States, the District of Columbia, each territory  
10          or possession of the United States, and each federally  
11          recognized governing body of any Indian Tribe, band,  
12          nation, pueblo, or other organized group or commu-  
13          nity which is recognized as eligible for the special  
14          programs and services provided by the United States  
15          to Indians because of their status as Indians.

16          “(6) *STATISTICAL ACTIVITIES; STATISTICAL*  
17          *AGENCY OR UNIT; STATISTICAL PURPOSE*.—The terms  
18          ‘statistical activities’, ‘statistical agency or unit’, and  
19          ‘statistical purpose’ have the meanings given those  
20          terms in section 3561 of title 44.

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

22          “(a) *REQUIREMENT*.—The head of each agency shall  
23          include in the strategic plan required under section 306 a  
24          systematic plan for identifying and addressing policy ques-

1 tions relevant to the programs, policies, and regulations of  
2 the agency. Such plan shall contain the following:

3           “(1) A list of policy-relevant questions for which  
4 the agency intends to develop evidence to support pol-  
5 icymaking.

6           “(2) A list of data the agency intends to collect,  
7 use, or acquire to facilitate the use of evidence in pol-  
8 icymaking.

9           “(3) A list of methods and analytical approaches  
10 that may be used to develop evidence to support pol-  
11 icymaking.

12           “(4) A list of any challenges to developing evi-  
13 dence to support policymaking, including any statu-  
14 tory or other restrictions to accessing relevant data.

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

17           “(6) Any other information as required by guid-  
18 ance issued by the Director.

19           “(b) *EVALUATION PLAN.*—The head of each agency  
20 shall issue in conjunction with the performance plan re-  
21 quired under section 1115(b) of title 31, an evaluation plan  
22 describing activities the agency plans to conduct pursuant  
23 to subsection (a) of this section during the fiscal year fol-  
24 lowing the year in which the performance plan is sub-  
25 mitted. Such plan shall—

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

4           “(2) describe key information collections or ac-  
5           quisitions the agency plans to begin in the next fiscal  
6           year; and

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

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

14       **“§ 313. Evaluation Officers**

15          “(a) ESTABLISHMENT.—The head of each agency shall  
16          designate a senior employee of the agency as the Evaluation  
17          Officer of the agency.

18          “(b) QUALIFICATIONS.—The Evaluation Officer of an  
19          agency shall be appointed or designated without regard to  
20          political affiliation and based on demonstrated expertise in  
21          evaluation methodology and practices and appropriate ex-  
22          pertise to the disciplines of the agency.

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

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

3 “(d) *FUNCTIONS.—The Evaluation Officer of each*  
4 *agency shall—*

5 “(1) *continually assess the coverage, quality,*  
6 *methods, consistency, effectiveness, independence, and*  
7 *balance of the portfolio of evaluations, policy research,*  
8 *and ongoing evaluation activities of the agency;*

9 “(2) *assess agency capacity to support the devel-*  
10 *opment and use of evaluation;*

11 “(3) *establish and implement an agency evalua-*  
12 *tion policy; and*

13 “(4) *coordinate, develop, and implement the*  
14 *plans required under section 312.*

15 **“§ 314. *Statistical expertise***

16 “(a) *IN GENERAL.—The head of each agency shall des-*  
17 *ignate the head of any statistical agency or unit within*  
18 *the agency, or in the case of an agency that does not have*  
19 *a statistical agency or unit, any senior agency official with*  
20 *appropriate expertise, as a statistical official to advise on*  
21 *statistical policy, techniques, and procedures. Agency offi-*  
22 *cials engaged in statistical activities may consult with any*  
23 *such statistical official as necessary.*

24 “(b) *MEMBERSHIP ON INTERAGENCY COUNCIL ON STA-*  
25 *TISTICAL POLICY.—Each statistical official designated*

1 *under subsection (a) shall serve as a member of the Inter-*  
2 *agency Council on Statistical Policy established under sec-*  
3 *tion 3504(e)(8) of title 44.*

4 **“§315. Advisory Committee on Data for Evidence**  
5 **Building**

6 “(a) *ESTABLISHMENT.—The Director, or the head of*  
7 *an agency designated by the Director, shall establish an Ad-*  
8 *visory Committee on Data for Evidence Building (in this*  
9 *section referred to as the ‘Advisory Committee’) to review,*  
10 *analyze, and make recommendations on how to promote the*  
11 *use of Federal data for evidence building.*

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

17 “(1) *One member who is an agency Chief Infor-*  
18 *mation Officer.*

19 “(2) *One member who is an agency Chief Pri-*  
20 *vacancy Officer.*

21 “(3) *One member who is an agency Chief Per-*  
22 *formance Officer.*

23 “(4) *Three members who are agency Chief Data*  
24 *Officers.*

1           “(5) *Three members who are agency Evaluation*  
2           *Officers.*

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

6           “(7) *At least 10 members who are representatives*  
7           *of State and local governments and nongovernmental*  
8           *stakeholders with expertise in government data policy,*  
9           *privacy, technology, transparency policy, evaluation*  
10           *and research methodologies, and other relevant sub-*  
11           *jects, of whom—*

12                   “(A) *at least one shall have expertise in*  
13                   *transparency policy;*

14                   “(B) *at least one shall have expertise in pri-*  
15                   *vacy policy;*

16                   “(C) *at least one shall have expertise in sta-*  
17                   *tistical data use;*

18                   “(D) *at least one shall have expertise in in-*  
19                   *formation management;*

20                   “(E) *at least one shall have expertise in in-*  
21                   *formation technology; and*

22                   “(F) *at least one shall be from the research*  
23                   *and evaluation community.*

24           “(c) *TERM OF SERVICE.—*



1           “(1) *IN GENERAL.*—Each member of the Advi-  
2           sory Committee shall serve for a term of 2 years.

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

10          “(d) *COMPENSATION.*—Members of the Advisory Com-  
11         mittee shall serve without compensation.

12          “(e) *DUTIES.*—The Advisory Committee shall—

13                 “(1) assist the Director in carrying out the du-  
14                 ties of the Director under part D of subchapter III of  
15                 chapter 35 of title 44;

16                 “(2) evaluate and provide recommendations to  
17                 the Director on how to facilitate data sharing, enable  
18                 data linkage, and develop privacy enhancing tech-  
19                 niques; and

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

22          “(f) *REPORTS.*—The Advisory Committee shall submit  
23         to the Director and make publicly available an annual re-  
24         port on the activities and findings of the Advisory Com-  
25         mittee.

1       “(g) *TERMINATION.*—*The Advisory Committee shall*  
 2 *terminate not later than two years after the date of the first*  
 3 *meeting.*”.

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

7           (1) *by inserting before the item relating to sec-*  
 8 *tion 301 the following:*

“*SUBCHAPTER I—GENERAL PROVISIONS*”; AND

9           (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.*”.

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

12           (1) *in paragraph (7), by striking “; and” at the*  
 13 *end and inserting a semicolon;*

14           (2) *in paragraph (8), by—*

15               (A) *striking the period at the end; and*

16               (B) *inserting after “to be conducted” the*  
 17 *following: “, and citations to relevant provisions*  
 18 *of the plans required under section 312; and”;*  
 19 *and*

20           (3) *by adding at the end the following:*

1           “(9) an assessment of the coverage, quality,  
2           *methods, effectiveness, and independence of the statis-*  
3           *tics, evaluation, research, and analysis efforts of the*  
4           *agency, including—*

5                   “(A) a list of the activities and operations  
6                   *of the agency that are currently being evaluated*  
7                   *and analyzed;*

8                   “(B) the extent to which the evaluations, re-  
9                   *search, and analysis efforts and related activities*  
10                   *of the agency support the needs of various divi-*  
11                   *sions within the agency;*

12                   “(C) the extent to which the evaluation re-  
13                   *search and analysis efforts and related activities*  
14                   *of the agency address an appropriate balance be-*  
15                   *tween needs related to organizational learning,*  
16                   *ongoing program management, performance*  
17                   *management, strategic management, interagency*  
18                   *and private sector coordination, internal and ex-*  
19                   *ternal oversight, and accountability;*

20                   “(D) the extent to which the agency uses  
21                   *methods and combinations of methods that are*  
22                   *appropriate to agency divisions and the cor-*  
23                   *responding research questions being addressed,*  
24                   *including an appropriate combination of forma-*

1            *tive and summative evaluation research and*  
2            *analysis approaches;*

3            *“(E) the extent to which evaluation and re-*  
4            *search capacity is present within the agency to*  
5            *include personnel and agency processes for plan-*  
6            *ning and implementing evaluation activities,*  
7            *disseminating best practices and findings, and*  
8            *incorporating employee views and feedback; and*

9            *“(F) the extent to which the agency has the*  
10           *capacity to assist agency staff and program of-*  
11           *fices to develop the capacity to use evaluation re-*  
12           *search and analysis approaches and data in the*  
13           *day-to-day operations.”.*

14           *(d) GAO REPORT.—Not later than 2 years after the*  
15           *date on which each strategic plan required under section*  
16           *306(a) of title 5, United States Code, is published, the*  
17           *Comptroller General of the United States shall submit to*  
18           *Congress a report that—*

19           *(1) summarizes agency findings and highlights*  
20           *trends in the assessment conducted pursuant to sub-*  
21           *section (a)(9) of section 306 of title 5, United States*  
22           *Code, as added by subsection (c); and*

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

1       (e) *EVALUATION AND PERSONNEL STANDARDS.*—

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

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

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

12               (2) *GUIDANCE.*—Not later than 90 days after the  
13       date on which the guidance under paragraph (1) is  
14       issued, the head of each agency shall oversee the im-  
15       plementation of such guidance.

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

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

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

1            *ries, for program evaluation within an agency;*  
 2            *and*

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

5            *(4) DEFINITIONS.—In this Act:*

6            *(A) AGENCY.—Except as otherwise pro-*  
 7            *vided, the term “agency” has the meaning given*  
 8            *the term “Executive agency” under section 105.*

9            *(B) EVALUATION.—The term “evaluation”*  
 10           *has the meaning given that term in section 311*  
 11           *of title 5, United States Code, as added by sub-*  
 12           *section (a).*

13           ***TITLE II—OPEN GOVERNMENT***  
 14           ***DATA ACT***

15           ***SEC. 201. SHORT TITLE.***

16           *This title may be cited as the “Open, Public, Elec-*  
 17           *tronic, and Necessary Government Data Act” or the “OPEN*  
 18           *Government Data Act”.*

19           ***SEC. 202. OPEN GOVERNMENT DATA.***

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

22           *(1) in paragraph (13), by striking “; and” at the*  
 23           *end and inserting a semicolon;*

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

1           (3) by adding at the end the following new para-  
2       graphs:

3           “(15) the term ‘comprehensive data inventory’  
4       means the inventory created under section 3511(a),  
5       but does not include any underlying data asset listed  
6       on the inventory;

7           “(16) the term ‘data’ means recorded informa-  
8       tion, regardless of form or the media on which the  
9       data is recorded;

10          “(17) the term ‘data asset’ means a collection of  
11       data elements or data sets that may be grouped to-  
12       gether;

13          “(18) the term ‘machine-readable’, when used  
14       with respect to data, means data in a format that can  
15       be easily processed by a computer without human  
16       intervention while ensuring no semantic meaning is  
17       lost;

18          “(19) the term ‘metadata’ means structural or  
19       descriptive information about data such as content,  
20       format, source, rights, accuracy, provenance, fre-  
21       quency, periodicity, granularity, publisher or respon-  
22       sible party, contact information, method of collection,  
23       and other descriptions;

24          “(20) the term ‘open Government data asset’  
25       means a public data asset that is—

1           “(A) machine-readable;

2           “(B) available (or could be made available)

3           in an open format;

4           “(C) not encumbered by restrictions, other

5           than intellectual property rights, including

6           under titles 17 and 35, that would impede the

7           use or reuse of such asset; and

8           “(D) based on an underlying open standard

9           that is maintained by a standards organization;

10          “(21) the term ‘open license’ means a legal guar-  
11          antee that a data asset is made available—

12                 “(A) at no cost to the public; and

13                 “(B) with no restrictions on copying, pub-

14                 lishing, distributing, transmitting, citing, or

15                 adapting such asset;

16          “(22) the term ‘public data asset’ means a data

17          asset, or part thereof, maintained by the Federal Gov-

18          ernment that has been, or may be, released to the pub-

19          lic, including any data asset, or part thereof, subject

20          to disclosure under section 552 of title 5; and

21          “(23) the term ‘statistical laws’ means sub-

22          chapter III of this chapter and other laws pertaining

23          to the protection of information collected for statis-

24          tical purposes as designated by the Director.”.



1       **(b) GUIDANCE TO MAKE DATA OPEN BY DEFAULT.**—  
2 *Section 3504(b) of title 44, United States Code, is amend-*  
3 *ed—*

4           (1) *in paragraph (4), by striking “; and” and*  
5 *inserting a semicolon;*

6           (2) *in paragraph (5), by striking the period at*  
7 *the end and inserting “; and”; and*

8           (3) *by adding at the end the following new para-*  
9 *graph:*

10           “(6) *issue guidance for agencies to implement*  
11 *section 3506(b)(6) in a manner that takes into ac-*  
12 *count—*

13                   “(A) *risks and restrictions related to the*  
14 *disclosure of personally identifiable information,*  
15 *including the risk that an individual data asset*  
16 *in isolation does not pose a privacy or confiden-*  
17 *tiality risk but when combined with other avail-*  
18 *able information may pose such a risk;*

19                   “(B) *security considerations, including the*  
20 *risk that information in an individual data*  
21 *asset in isolation does not pose a security risk*  
22 *but when combined with other available informa-*  
23 *tion may pose such a risk;*

1           “(C) *the cost and benefits to the public of*  
2           *converting a data asset into a machine-readable*  
3           *format that is accessible and useful to the public;*

4           “(D) *whether the application of the require-*  
5           *ments described in such section to a data asset*  
6           *could result in legal liability;*

7           “(E) *a determination of whether a data*  
8           *asset—*

9                   “(i) *is subject to intellectual property*  
10                   *rights, including rights under titles 17 and*  
11                   *35;*

12                   “(ii) *contains confidential business in-*  
13                   *formation, that could be withheld under sec-*  
14                   *tion 552(b)(4) of title 5; or*

15                   “(iii) *is otherwise restricted by con-*  
16                   *tract or other binding, written agreement;*

17           “(F) *the requirement that a data asset be*  
18           *disclosed, if it would otherwise be made available*  
19           *under section 552 of title 5 (commonly known as*  
20           *the ‘Freedom of Information Act’); and*

21           “(G) *any other considerations that the Di-*  
22           *rector determines to be relevant.”.*

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

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

3           *(A) in subsection (b)—*

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

6           *“(2) in accordance with guidance by the Direc-*  
7     *tor, develop and maintain a strategic information re-*  
8     *sources management plan that, to the extent prac-*  
9     *ticable—*

10          *“(A) describes how information resources*  
11        *management activities help accomplish agency*  
12        *missions;*

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

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

16                    *“(I) require data collection mech-*  
17                    *anisms created on or after the date of*  
18                    *the enactment of the OPEN Govern-*  
19                    *ment Data Act to be available in an*  
20                    *open format; and*

21                    *“(II) facilitate collaboration with*  
22                    *non-Government entities (including*  
23                    *businesses), researchers, and the public*  
24                    *for the purpose of understanding how*

1           *data users value and use government*  
2           *data;*

3           “(ii) *identifies and implements meth-*  
4           *ods for collecting and analyzing digital in-*  
5           *formation on data asset usage by users*  
6           *within and outside of the agency, including*  
7           *designating a point of contact within the*  
8           *agency to assist the public and to respond*  
9           *to quality issues, usability issues, rec-*  
10          *ommendations for improvements, and com-*  
11          *plaints about adherence to open data re-*  
12          *quirements within a reasonable period of*  
13          *time;*

14          “(iii) *develops and implements a proc-*  
15          *ess to evaluate and improve the timeliness,*  
16          *completeness, consistency, accuracy, useful-*  
17          *ness, and availability of open Government*  
18          *data assets;*

19          “(iv) *includes requirements for meeting*  
20          *the goals of the agency open data plan, in-*  
21          *cluding the acquisition of technology, provi-*  
22          *sion of training for employees, and the im-*  
23          *plementation of procurement standards, in*  
24          *accordance with existing law, regulation,*  
25          *and policy, that allow for the acquisition of*

1            *innovative solutions from public and pri-*  
2            *vate sectors;*

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

12           *“(vi) requires the agency to comply*  
13           *with requirements under section 3511, in-*  
14           *cluding any standards established by the*  
15           *Director under such section, when disclosing*  
16           *a data asset pursuant to such section; and*

17           *“(C) is updated annually and made pub-*  
18           *licly available on the website of the agency not*  
19           *later than 5 days after each such update;”;*

20           *(ii) in paragraph (4), by striking “;*  
21           *and” and inserting a semicolon;*

22           *(iii) in paragraph (5), by striking the*  
23           *period at the end and inserting “; and”;*  
24           *and*

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

3                   “(6) in accordance with guidance by the Direc-  
4                   tor—

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

7                   “(B) make each public data asset of the  
8                   agency available—

9                   “(i) as an open Government data asset;  
10                  and

11                  “(ii) under an open license.”; and

12                  (B) in subsection (d)—

13                  (i) in paragraph (3), by striking  
14                  “and” at the end;

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

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

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

22                  “(6) engage the public in using public data as-  
23                  sets of the agency and encourage collaboration by—

24                  “(A) publishing on the website of the agen-  
25                  cy, on a regular basis (not less than annually),

1            *information on the usage of such assets by non-*  
2            *Government users;*

3            *“(B) providing the public with the oppor-*  
4            *tunity to request specific data assets to be*  
5            *prioritized for disclosure and to provide sugges-*  
6            *tions for the development of agency criteria with*  
7            *respect to prioritizing data assets for disclosure;*

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

10           *“(D) hosting challenges, competitions,*  
11           *events, or other initiatives designed to create ad-*  
12           *ditional value from public data assets of the*  
13           *agency.”.*

14           *(2) USE OF OPEN DATA ASSETS.—Not later than*  
15           *1 year after the date of the enactment of this Act, the*  
16           *head of each agency (as defined in section 3502 of*  
17           *title 44, United States Code) shall ensure that any ac-*  
18           *tivity by the agency meets the requirements of section*  
19           *3506 of title 44, United States Code, as amended by*  
20           *this subsection.*

21           *(3) EFFECTIVE DATE.—The amendments made*  
22           *by this subsection shall take effect on the date that is*  
23           *1 year after the date of the enactment of this Act.*

24           *(d) DATA INVENTORY AND FEDERAL DATA CATA-*  
25           *LOGUE.—*

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

3   **“§ 3511. Data inventory and Federal data catalogue**

4           “(a) *COMPREHENSIVE DATA INVENTORY.*—

5                 “(1) *IN GENERAL.*—*In consultation with the Di-*  
6                 *rector and in accordance with the guidance estab-*  
7                 *lished under paragraph (2), the head of each agency*  
8                 *shall, to the maximum extent practicable, develop and*  
9                 *maintain a comprehensive data inventory that ac-*  
10                *counts for all data assets created by, collected by,*  
11                *under the control or direction of, or maintained by*  
12                *the agency. The head of each agency shall ensure that*  
13                *such inventory provides a clear and comprehensive*  
14                *understanding of the data assets in the possession of*  
15                *the agency.*

16               “(2) *GUIDANCE.*—*The Director shall establish*  
17                *guidance for agencies to develop and maintain com-*  
18                *prehensive data inventories under paragraph (1).*  
19                *Such guidance shall include the following:*

20                         “(A) *A requirement for the head of an agen-*  
21                         *cy to include in the comprehensive data inven-*  
22                         *tory metadata on each data asset of the agency,*  
23                         *including, to the maximum extent practicable,*  
24                         *the following:*



1           “(i) *A description of the data asset, in-*  
2           *cluding all variable names and definitions.*

3           “(ii) *The name or title of the data*  
4           *asset.*

5           “(iii) *An indication of whether or not*  
6           *the agency—*

7                   “(I) *has determined or can deter-*  
8                   *mine if the data asset is—*

9                           “(aa) *an open Government*  
10                           *data asset;*

11                           “(bb) *subject to disclosure or*  
12                           *partial disclosure or exempt from*  
13                           *disclosure under section 552 of*  
14                           *title 5;*

15                           “(cc) *a public data asset eli-*  
16                           *gible for disclosure under sub-*  
17                           *section (b); or*

18                           “(dd) *a data asset not subject*  
19                           *to open format or open license re-*  
20                           *quirements due to existing limita-*  
21                           *tions or restrictions on govern-*  
22                           *ment distribution of the asset; or*

23                           “(II) *as of the date of such indica-*  
24                           *tion, has not made such determination.*

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

3           “(v) A description of the method by  
4           which the public may access or request ac-  
5           cess to the data asset.

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

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

10          “(viii) The owner of the data asset.

11          “(ix) To the extent practicable, any re-  
12          striction on the use of the data asset.

13          “(x) The location of the data asset.

14          “(xi) Any other metadata necessary to  
15          make the comprehensive data inventory use-  
16          ful to the agency and the public, or other-  
17          wise determined useful by the Director.

18          “(B) A requirement for the head of an agen-  
19          cy to exclude from the comprehensive data inven-  
20          tory any data asset contained on a national se-  
21          curity system, as defined in section 11103 of title  
22          40.

23          “(C) Criteria for the head of an agency to  
24          use in determining which metadata required by  
25          subparagraph (A), if any, in the comprehensive

1        *data inventory may not be made publicly avail-*  
2        *able, which shall include, at a minimum, a re-*  
3        *quirement to ensure all information that could*  
4        *not otherwise be withheld from disclosure under*  
5        *section 552 of title 5 is made public in the com-*  
6        *prehensive data inventory.*

7            *“(D) A requirement for the head of each*  
8        *agency, in accordance with a procedure estab-*  
9        *lished by the Director, to submit for inclusion in*  
10       *the Federal data catalogue maintained under*  
11       *subsection (c) the comprehensive data inventory*  
12       *developed pursuant to subparagraph (C), includ-*  
13       *ing any real-time updates to such inventory, and*  
14       *data assets made available in accordance with*  
15       *subparagraph (E) or any electronic hyperlink*  
16       *providing access to such data assets.*

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

21            *“(i) risks and restrictions related to the*  
22            *disclosure of personally identifiable infor-*  
23            *mation, including the risk that an indi-*  
24            *vidual data asset in isolation does not pose*  
25            *a privacy or confidentiality risk but when*

1           *combined with other available information*  
2           *may pose such a risk;*

3           “(ii) *security considerations, including*  
4           *the risk that information in an individual*  
5           *data asset in isolation does not pose a secu-*  
6           *rity risk but when combined with other*  
7           *available information may pose such a risk;*

8           “(iii) *the cost and benefits to the public*  
9           *of converting the data into a format that*  
10           *could be understood and used by the public;*

11           “(iv) *whether the public dissemination*  
12           *of the data asset could result in legal liabil-*  
13           *ity;*

14           “(v) *whether the data asset—*

15            “(I) *is subject to intellectual prop-*  
16            *erty rights, including rights under ti-*  
17            *ties 17 and 35;*

18            “(II) *contains confidential busi-*  
19            *ness information, that could be with-*  
20            *held under section 552(b)(4) of title 5;*

21            *or*

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

24            “(vi) *whether the holder of a right to*  
25            *such data asset has been consulted;*

1                   “(vii) the expectation that all data as-  
2                   sets that would otherwise be made available  
3                   under section 552 of title 5 be disclosed; and

4                   “(viii) any other considerations that  
5                   the Director determines to be relevant.

6                   “(F) Criteria for the head of an agency to  
7                   use in assessing the indication of a determina-  
8                   tion under subparagraph (A)(iii) and how to  
9                   prioritize any such subsequent determinations in  
10                  the strategic information management plan  
11                  under section 3506, in consideration of the exist-  
12                  ing resources available to the agency.

13                  “(3) *REGULAR UPDATES REQUIRED.*—With re-  
14                  spect to each data asset created or identified by an  
15                  agency, the head of the agency shall update the com-  
16                  prehensive data inventory of the agency not later  
17                  than 90 days after the date of such creation or identi-  
18                  fication.

19                  “(b) *PUBLIC DATA ASSETS.*—The head of each agency  
20                  shall submit public data assets, or links to public data as-  
21                  sets available online, as open Government data assets for  
22                  inclusion in the Federal data catalogue maintained under  
23                  subsection (c), in accordance with the guidance established  
24                  under subsection (a)(2).

25                  “(c) *FEDERAL DATA CATALOGUE.*—

1           “(1) *IN GENERAL.*—*The Administrator of Gen-*  
2           *eral Services shall maintain a single public interface*  
3           *online as a point of entry dedicated to sharing agency*  
4           *data assets with the public, which shall be known as*  
5           *the ‘Federal data catalogue’. The Administrator and*  
6           *the Director shall ensure that agencies can submit*  
7           *public data assets, or links to public data assets, for*  
8           *publication and public availability on the interface.*

9           “(2) *REPOSITORY.*—*The Director shall collabo-*  
10           *rate with the Office of Government Information Serv-*  
11           *ices and the Administrator of General Services to de-*  
12           *velop and maintain an online repository of tools, best*  
13           *practices, and schema standards to facilitate the*  
14           *adoption of open data practices across the Federal*  
15           *Government, which shall—*

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

19                   “(B) *facilitate collaboration and the adop-*  
20                   *tion of best practices across the Federal Govern-*  
21                   *ment relating to the adoption of open data prac-*  
22                   *tices; and*

23                   “(C) *be made available on the Federal data*  
24                   *catalogue maintained under paragraph (1).*

1           “(3) *ACCESS TO OTHER DATA ASSETS.*—*The Di-*  
2           *rector shall ensure the Federal data catalogue main-*  
3           *tained under paragraph (1) provides information on*  
4           *how the public can access a data asset included in a*  
5           *comprehensive data inventory under subsection (a)*  
6           *that is not yet available on the Federal data cata-*  
7           *logue, including information regarding the applica-*  
8           *tion process established under section 3583 of title 44.*

9           “(d) *DELEGATION.*—*The Director shall delegate to the*  
10          *Administrator of the Office of Information and Regulatory*  
11          *Affairs and the Administrator of the Office of Electronic*  
12          *Government the authority to jointly issue guidance required*  
13          *under this section.”.*

14                 (2) *TECHNICAL AND CONFORMING AMEND-*  
15          *MENTS.*—

16                 (A) *TABLE OF SECTIONS.*—*The item relat-*  
17                 *ing to section 3511 of the table of sections at the*  
18                 *beginning of chapter 35 of title 44, United States*  
19                 *Code, is amended to read as follows:*

                  “3511. *Data inventory and Federal data catalogue.*”.

20                 (B)                 *CROSS-REFERENCE.*—*Section*  
21                 *3504(b)(2)(A) of title 44, United States Code, is*  
22                 *amended by striking “the use of the Government*  
23                 *Information Locator Service” and inserting “the*  
24                 *use of comprehensive data inventories and the*  
25                 *Federal data catalogue under section 3511”.*

1       (e) *CHIEF DATA OFFICERS.*—

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

4       **“§ 3520. Chief Data Officers**

5               “(a) *ESTABLISHMENT.*—*The head of each agency shall*  
6 *designate a career appointee (as defined in section 3132 of*  
7 *title 5) in the agency as the Chief Data Officer of the agen-*  
8 *cy.*

9               “(b) *QUALIFICATIONS.*—*The Chief Data Officer of an*  
10 *agency shall be designated on the basis of demonstrated*  
11 *training and experience in data management, governance*  
12 *(including creation, application, and maintenance of data*  
13 *standards), collection, analysis, protection, use, and dis-*  
14 *semination, including with respect to any statistical and*  
15 *related techniques to protect and de-identify confidential*  
16 *data.*

17               “(c) *FUNCTIONS.*—*The Chief Data Officer of an agency*  
18 *shall—*

19                       “(1) *be responsible for lifecycle data manage-*  
20 *ment;*

21                       “(2) *coordinate with any official in the agency*  
22 *responsible for using, protecting, disseminating, and*  
23 *generating data to ensure that the data needs of the*  
24 *agency are met;*



1           “(3) manage data assets of the agency, including  
2           the standardization of data format, sharing of data  
3           assets, and publication of data assets in accordance  
4           with applicable law;

5           “(4) in carrying out the requirements under  
6           paragraphs (3) and (5), consult with any statistical  
7           official of the agency (as designated under section 314  
8           of title 5);

9           “(5) carry out the requirements of the agency  
10          under subsections (b) through (d), (f), and (i) of sec-  
11          tion 3506, section 3507, and section 3511;

12          “(6) ensure that, to the extent practicable, agency  
13          data conforms with data management best practices;

14          “(7) engage agency employees, the public, and  
15          contractors in using public data assets and encourage  
16          collaborative approaches on improving data use;

17          “(8) support the Performance Improvement Offi-  
18          cer of the agency in identifying and using data to  
19          carry out the functions described in section  
20          1124(a)(2) of title 31;

21          “(9) support the Evaluation Officer of the agency  
22          in obtaining data to carry out the functions described  
23          in section 313(d) of title 5;

24          “(10) review the impact of the infrastructure of  
25          the agency on data asset accessibility and coordinate

1 *with the Chief Information Officer of the agency to*  
2 *improve such infrastructure to reduce barriers that*  
3 *inhibit data asset accessibility;*

4 *“(11) ensure that, to the extent practicable, the*  
5 *agency maximizes the use of data in the agency, in-*  
6 *cluding for the production of evidence (as defined in*  
7 *section 3561), cybersecurity, and the improvement of*  
8 *agency operations;*

9 *“(12) identify points of contact for roles and re-*  
10 *sponsibilities related to open data use and implemen-*  
11 *tation (as required by the Director);*

12 *“(13) serve as the agency liaison to other agen-*  
13 *cies and the Office of Management and Budget on the*  
14 *best way to use existing agency data for statistical*  
15 *purposes (as defined in section 3561); and*

16 *“(14) comply with any regulation and guidance*  
17 *issued under subchapter III, including the acquisition*  
18 *and maintenance of any required certification and*  
19 *training.*

20 *“(d) DELEGATION OF RESPONSIBILITIES.—*

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

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

6           “(3) *DEFERENCE.*—*The Chief Data Officer of the*  
7           *agency shall defer to the individual to whom a re-*  
8           *sponsibility has been delegated under paragraph (1)*  
9           *regarding the necessary delegation of such responsi-*  
10          *bility with respect to any data acquired, maintained,*  
11          *or disseminated by the agency under applicable sta-*  
12          *tistical law.*

13          “(e) *REPORTS.*—*The Chief Data Officer of an agency*  
14          *shall submit to the Committee on Homeland Security and*  
15          *Governmental Affairs of the Senate and the Committee on*  
16          *Oversight and Government Reform of the House of Rep-*  
17          *resentatives an annual report on the compliance of the*  
18          *agency with the requirements of this subchapter, including*  
19          *information on each requirement that the agency could not*  
20          *carry out and, if applicable, what the agency needs to carry*  
21          *out such requirement.”.*

22                 (2) *TECHNICAL AND CONFORMING AMEND-*  
23                 *MENT.*—*The item relating to section 3520 of the table*  
24                 *of sections at the beginning of chapter 35 of title 44,*  
25                 *United States Code, is amended to read as follows:*

“3520. *Chief Data Officers.*”.

1       (f) *CHIEF DATA OFFICER COUNCIL.*—

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

5       **“§ 3520A. Chief Data Officer Council**

6               “(a) *ESTABLISHMENT.*—*There is established in the Of-*  
7       *fice of Management and Budget a Chief Data Officer Coun-*  
8       *cil (in this section referred to as the ‘Council’).*

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

10              “(1) *establish Governmentwide best practices for*  
11       *the use, protection, dissemination, and generation of*  
12       *data;*

13              “(2) *promote and encourage data sharing agree-*  
14       *ments between agencies;*

15              “(3) *identify ways in which agencies can im-*  
16       *prove upon the production of evidence for use in pol-*  
17       *icymaking;*

18              “(4) *consult with the public and engage with*  
19       *private users of Government data and other stake-*  
20       *holders on how to improve access to data assets of the*  
21       *Federal Government; and*

22              “(5) *identify and evaluate new technology solu-*  
23       *tions for improving the collection and use of data.*

24              “(c) *MEMBERSHIP.*—

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

3           “(2) *CHAIR.*—*The Director shall select the Chair*  
4           *of the Council from among the members of the Coun-*  
5           *cil.*

6           “(3) *ADDITIONAL MEMBERS.*—*The Adminis-*  
7           *trator of the Office of Electronic Government shall*  
8           *serve as a member of the Council.*

9           “(4) *EX OFFICIO MEMBER.*—*The Director shall*  
10          *appoint a representative for all Chief Information Of-*  
11          *ficers and Evaluation Officers, and such representa-*  
12          *tive shall serve as an ex officio member of the Council.*

13          “(d) *REPORTS.*—*The Council shall submit to the Di-*  
14          *rector, the Committee on Homeland Security and Govern-*  
15          *mental Affairs of the Senate, and the Committee on Over-*  
16          *sight and Government Reform of the House of Representa-*  
17          *tives a biennial report on the work of the Council.*

18          “(e) *EVALUATION AND TERMINATION.*—

19                 “(1) *GAO EVALUATION OF COUNCIL.*—*Not later*  
20                 *than 4 years after date of the enactment of this sec-*  
21                 *tion, the Comptroller General shall submit to Con-*  
22                 *gress a report on whether the additional duties of the*  
23                 *Council improved the use of evidence and program*  
24                 *evaluation in the Federal Government.*

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

6           (2) *TECHNICAL AND CONFORMING AMEND-*  
7           *MENT.*—*The table of sections at the beginning of*  
8           *chapter 35 of title 44, United States Code, is amended*  
9           *by inserting before the item relating to section 3521*  
10          *the following new item:*

“3520A. *Chief Data Officer Council.*”.

11          (g) *REPORTS.*—

12           (1) *GAO REPORT.*—*Not later than 3 years after*  
13           *the date of the enactment of this Act, the Comptroller*  
14           *General of the United States shall submit to the Com-*  
15           *mittee on Homeland Security and Governmental Af-*  
16           *airs of the Senate and the Committee on Oversight*  
17           *and Government Reform of the House of Representa-*  
18           *tives a report that identifies, to the extent prac-*  
19           *ticable—*

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

23                   (B) *whether the public availability of any*  
24                   *information that has not yet been made so avail-*  
25                   *able would be valuable to the public; and*

1           (C) the completeness of each comprehensive  
2           data inventory developed under section 3511 of  
3           title 44, United States Code, as amended by sub-  
4           section (d).

5           (2) *BIENNIAL OMB REPORT*.—Not later than 1  
6           year after date of the enactment of this Act, and bien-  
7           nially thereafter, the Director of the Office of Manage-  
8           ment and Budget shall electronically publish a report  
9           on agency performance and compliance with this Act  
10          and the amendments made by this Act.

11 **TITLE III—CONFIDENTIAL IN-**  
12 **FORMATION PROTECTION**  
13 **AND STATISTICAL EFFI-**  
14 **CIENCY**

15 **SEC. 301. SHORT TITLE.**

16           This title may be cited as the “Confidential Informa-  
17          tion Protection and Statistical Efficiency Act of 2018”.

18 **SEC. 302. CONFIDENTIAL INFORMATION PROTECTION AND**  
19 **STATISTICAL EFFICIENCY.**

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

1 “SUBCHAPTER III—CONFIDENTIAL INFORMA-  
2 TION PROTECTION AND STATISTICAL EFFI-  
3 CIENCY

4 “PART A—GENERAL

5 “§ 3561. *Definitions*

6 “*In this subchapter:*

7 “(1) *AGENCY.*—*The term ‘agency’ means any en-*  
8 *tity that falls within the definition of the term ‘execu-*  
9 *tive agency’, as defined in section 102 of title 31, or*  
10 *‘agency’, as defined in section 3502.*

11 “(2) *AGENT.*—*The term ‘agent’ means an indi-*  
12 *vidual—*

13 “(A)(i) *who is an employee of a private or-*  
14 *ganization or a researcher affiliated with an in-*  
15 *stitution of higher learning (including a person*  
16 *granted special sworn status by the Bureau of*  
17 *the Census under section 23(c) of title 13), and*  
18 *with whom a contract or other agreement is exe-*  
19 *cuted, on a temporary basis, by an executive*  
20 *agency to perform exclusively statistical activi-*  
21 *ties under the control and supervision of an offi-*  
22 *cer or employee of that agency;*

23 “(ii) *who is working under the authority of*  
24 *a government entity with which a contract or*  
25 *other agreement is executed by an executive agen-*



1           *cy to perform exclusively statistical activities*  
2           *under the control of an officer or employee of*  
3           *that agency;*

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

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

15           *“(B) who agrees in writing to comply with*  
16           *all provisions of law that affect information ac-*  
17           *quired by that agency.*

18           *“(3) BUSINESS DATA.—The term ‘business data’*  
19           *means operating and financial data and information*  
20           *about businesses, tax-exempt organizations, and gov-*  
21           *ernment entities.*

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

24           *“(5) DIRECTOR.—The term ‘Director’ means the*  
25           *Director of the Office of Management and Budget.*

1           “(6) *EVIDENCE*.—The term ‘evidence’ means in-  
2           formation produced as a result of statistical activities  
3           conducted for a statistical purpose.

4           “(7) *IDENTIFIABLE FORM*.—The term ‘identifi-  
5           able form’ means any representation of information  
6           that permits the identity of the respondent to whom  
7           the information applies to be reasonably inferred by  
8           either direct or indirect means.

9           “(8) *NONSTATISTICAL PURPOSE*.—The term  
10          ‘nonstatistical purpose’—

11           “(A) means the use of data in identifiable  
12          form for any purpose that is not a statistical  
13          purpose, including any administrative, regu-  
14          latory, law enforcement, adjudicatory, or other  
15          purpose that affects the rights, privileges, or ben-  
16          efits of a particular identifiable respondent; and

17           “(B) includes the disclosure under section  
18          552 of title 5 of data that are acquired for exclu-  
19          sively statistical purposes under a pledge of con-  
20          fidentiality.

21          “(9) *RESPONDENT*.—The term ‘respondent’  
22          means a person who, or organization that, is re-  
23          quested or required to supply information to an agen-  
24          cy, is the subject of information requested or required

1 *to be supplied to an agency, or provides that informa-*  
2 *tion to an agency.*

3 “(10) *STATISTICAL ACTIVITIES.*—*The term ‘sta-*  
4 *tistical activities’—*

5 “(A) *means the collection, compilation,*  
6 *processing, or analysis of data for the purpose of*  
7 *describing or making estimates concerning the*  
8 *whole, or relevant groups or components within,*  
9 *the economy, society, or the natural environment;*  
10 *and*

11 “(B) *includes the development of methods or*  
12 *resources that support those activities, such as*  
13 *measurement methods, models, statistical classi-*  
14 *fications, or sampling frames.*

15 “(11) *STATISTICAL AGENCY OR UNIT.*—*The term*  
16 *‘statistical agency or unit’ means an agency or orga-*  
17 *nizational unit of the executive branch whose activi-*  
18 *ties are predominantly the collection, compilation,*  
19 *processing, or analysis of information for statistical*  
20 *purposes, as designated by the Director under section*  
21 *3562.*

22 “(12) *STATISTICAL PURPOSE.*—*The term ‘statis-*  
23 *tical purpose’—*

24 “(A) *means the description, estimation, or*  
25 *analysis of the characteristics of groups, without*

1           *identifying the individuals or organizations that*  
2           *comprise such groups; and*

3                   “(B) *includes the development, implementa-*  
4           *tion, or maintenance of methods, technical or ad-*  
5           *ministrative procedures, or information resources*  
6           *that support the purposes described in subpara-*  
7           *graph (A).*

8   **“§ 3562. Coordination and oversight of policies**

9           “(a) *IN GENERAL.—The Director shall coordinate and*  
10   *oversee the confidentiality and disclosure policies estab-*  
11   *lished by this subchapter. The Director may promulgate*  
12   *rules or provide other guidance to ensure consistent inter-*  
13   *pretation of this subchapter by the affected agencies. The*  
14   *Director shall develop a process by which the Director des-*  
15   *ignates agencies or organizational units as statistical agen-*  
16   *cies and units. The Director shall promulgate guidance to*  
17   *implement such process, which shall include specific criteria*  
18   *for such designation and methods by which the Director will*  
19   *ensure transparency in the process.*

20           “(b) *AGENCY RULES.—Subject to subsection (c), agen-*  
21   *cies may promulgate rules to implement this subchapter.*  
22   *Rules governing disclosures of information that are author-*  
23   *ized by this subchapter shall be promulgated by the agency*  
24   *that originally collected the information.*

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

6       “(d) *REPORTS.*—

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

10              “(2) *Each Designated Statistical Agency (as de-*  
11 *finied in section 3576(e)) shall report annually to the*  
12 *Director, the Committee on Oversight and Govern-*  
13 *ment Reform of the House of Representatives, and the*  
14 *Committee on Homeland Security and Governmental*  
15 *Affairs of the Senate on the actions it has taken to*  
16 *implement section 3576. The report shall include cop-*  
17 *ies of each written agreement entered into pursuant*  
18 *to section 3576(c)(1) for the applicable year.*

19              “(3) *The Director shall include a summary of re-*  
20 *ports submitted to the Director under this subsection*  
21 *and actions taken by the Director to advance the pur-*  
22 *poses of this subchapter in the annual report to Con-*  
23 *gress on statistical programs prepared under section*  
24 *3504(e)(2).*

1 **“§ 3563. Statistical agencies**

2 “(a) *RESPONSIBILITIES.*—

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

5 “(A) *produce and disseminate relevant and*  
6 *timely statistical information;*

7 “(B) *conduct credible and accurate statis-*  
8 *tical activities;*

9 “(C) *conduct objective statistical activities;*  
10 *and*

11 “(D) *protect the trust of information pro-*  
12 *viders by ensuring the confidentiality and exclu-*  
13 *sive statistical use of their responses.*

14 “(2) *POLICIES, BEST PRACTICES, AND PROCE-*  
15 *DURES.*—*Each statistical agency or unit shall adopt*  
16 *policies, best practices, and appropriate procedures to*  
17 *implement the responsibilities described in paragraph*  
18 *(1).*

19 “(b) *SUPPORT FROM OTHER AGENCIES.*—*The head of*  
20 *each agency shall enable, support, and facilitate statistical*  
21 *agencies or units in carrying out the responsibilities de-*  
22 *scribed in subsection (a)(1).*

23 “(c) *REGULATIONS.*—*The Director shall prescribe reg-*  
24 *ulations to carry out this section.*

25 “(d) *DEFINITIONS.*—*In this section:*

1           “(1) *ACCURATE*.—The term ‘accurate’, when  
2           used with respect to statistical activities, means sta-  
3           tistics that consistently match the events and trends  
4           being measured.

5           “(2) *CONFIDENTIALITY*.—The term ‘confiden-  
6           tiality’ means a quality or condition accorded to in-  
7           formation as an obligation not to disclose that infor-  
8           mation to an unauthorized party.

9           “(3) *OBJECTIVE*.—The term ‘objective’, when  
10          used with respect to statistical activities, means accu-  
11          rate, clear, complete, and unbiased.

12          “(4) *RELEVANT*.—The term ‘relevant’, when used  
13          with respect to statistical information, means proc-  
14          esses, activities, and other such matters likely to be  
15          useful to policymakers and public and private sector  
16          data users.

17   **“§ 3564. Effect on other laws**

18          “(a) *TITLE 44, UNITED STATES CODE*.—This sub-  
19          chapter does not diminish the authority under section 3510  
20          of the Director to direct, and of an agency to make, disclo-  
21          sures that are not inconsistent with any applicable law.

22          “(b) *TITLE 13 AND TITLE 44, UNITED STATES*  
23          *CODE*.—This subchapter does not diminish the authority of  
24          the Bureau of the Census to provide information in accord-

1 *ance with sections 8, 16, 301, and 401 of title 13 and section*  
2 *2108 of this title.*

3       “(c) *TITLE 13, UNITED STATES CODE.—This sub-*  
4 *chapter shall not be construed as authorizing the disclosure*  
5 *for nonstatistical purposes of demographic data or informa-*  
6 *tion collected by the Bureau of the Census pursuant to sec-*  
7 *tion 9 of title 13.*

8       “(d) *VARIOUS ENERGY STATUTES.—Data or informa-*  
9 *tion acquired by the Energy Information Administration*  
10 *under a pledge of confidentiality and designated by the En-*  
11 *ergy Information Administration to be used for exclusively*  
12 *statistical purposes shall not be disclosed in identifiable*  
13 *form for nonstatistical purposes under—*

14               “(1) *section 12, 20, or 59 of the Federal Energy*  
15 *Administration Act of 1974 (15 U.S.C. 771, 779,*  
16 *790h);*

17               “(2) *section 11 of the Energy Supply and Envi-*  
18 *ronmental Coordination Act of 1974 (15 U.S.C. 796);*  
19 *or*

20               “(3) *section 205 or 407 of the Department of En-*  
21 *ergy Organization Act (42 U.S.C. 7135, 7177).*

22       “(e) *SECTION 201 OF CONGRESSIONAL BUDGET ACT*  
23 *OF 1974.—This subchapter shall not be construed to limit*  
24 *any authorities of the Congressional Budget Office to work*  
25 *(consistent with laws governing the confidentiality of infor-*



1 *mation the disclosure of which would be a violation of law)*  
2 *with databases of Designated Statistical Agencies (as de-*  
3 *ined in section 3576(e)), either separately or, for data that*  
4 *may be shared pursuant to section 3576(c) or other author-*  
5 *ity, jointly in order to improve the general utility of these*  
6 *databases for the statistical purpose of analyzing pension*  
7 *and health care financing issues.*

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

11       “(g) *STATUTES REGARDING FALSE STATEMENTS.*—  
12 *Notwithstanding section 3572, information collected by an*  
13 *agency for exclusively statistical purposes under a pledge*  
14 *of confidentiality may be provided by the collecting agency*  
15 *to a law enforcement agency for the prosecution of submis-*  
16 *sions to the collecting agency of false statistical information*  
17 *under statutes that authorize criminal penalties (such as*  
18 *section 221 of title 13) or civil penalties for the provision*  
19 *of false statistical information, unless such disclosure or use*  
20 *would otherwise be prohibited under Federal law.*

21       “(h) *CONSTRUCTION.*—*Nothing in this subchapter*  
22 *shall be construed as restricting or diminishing any con-*  
23 *fidentiality protections or penalties for unauthorized disclo-*  
24 *sure that otherwise apply to data or information collected*  
25 *for statistical purposes or nonstatistical purposes, includ-*

1 *ing, but not limited to, section 6103 of the Internal Revenue*  
2 *Code of 1986.*

3 “(i) *AUTHORITY OF CONGRESS.*—*Nothing in this sub-*  
4 *chapter shall be construed to affect the authority of the Con-*  
5 *gress, including its committees, members, or agents, to ob-*  
6 *tain data or information for a statistical purpose, includ-*  
7 *ing for oversight of an agency’s statistical activities.*

8 **“PART B—CONFIDENTIAL INFORMATION**

9 **PROTECTION**

10 **“§ 3571. Findings**

11 *“The Congress finds the following:*

12 *“(1) Individuals, businesses, and other organiza-*  
13 *tions have varying degrees of legal protection when*  
14 *providing information to the agencies for strictly sta-*  
15 *tistical purposes.*

16 *“(2) Pledges of confidentiality by agencies pro-*  
17 *vide assurances to the public that information about*  
18 *individuals or organizations or provided by individ-*  
19 *uals or organizations for exclusively statistical pur-*  
20 *poses will be held in confidence and will not be used*  
21 *against such individuals or organizations in any*  
22 *agency action.*

23 *“(3) Protecting the confidentiality interests of*  
24 *individuals or organizations who provide information*  
25 *under a pledge of confidentiality for Federal statis-*

1     *tical programs serves both the interests of the public*  
2     *and the needs of society.*

3             *“(4) Declining trust of the public in the protec-*  
4     *tion of information provided under a pledge of con-*  
5     *fidentiality to the agencies adversely affects both the*  
6     *accuracy and completeness of statistical analyses.*

7             *“(5) Ensuring that information provided under*  
8     *a pledge of confidentiality for statistical purposes re-*  
9     *ceives protection is essential in continuing public co-*  
10    *operation in statistical programs.*

11    **“§ 3572. Confidential information protection**

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

14             *“(1) To ensure that information supplied by in-*  
15     *dividuals or organizations to an agency for statistical*  
16     *purposes under a pledge of confidentiality is used ex-*  
17     *clusively for statistical purposes.*

18             *“(2) To ensure that individuals or organizations*  
19     *who supply information under a pledge of confiden-*  
20     *tiality to agencies for statistical purposes will neither*  
21     *have that information disclosed in identifiable form to*  
22     *anyone not authorized by this subchapter nor have*  
23     *that information used for any purpose other than a*  
24     *statistical purpose.*

1           “(3) *To safeguard the confidentiality of individ-*  
2           *ually identifiable information acquired under a*  
3           *pledge of confidentiality for statistical purposes by*  
4           *controlling access to, and uses made of, such informa-*  
5           *tion.*

6           “(b) *USE OF STATISTICAL DATA OR INFORMATION.—*  
7           *Data or information acquired by an agency under a pledge*  
8           *of confidentiality and for exclusively statistical purposes*  
9           *shall be used by officers, employees, or agents of the agency*  
10           *exclusively for statistical purposes and protected in accord-*  
11           *ance with such pledge.*

12           “(c) *DISCLOSURE OF STATISTICAL DATA OR INFORMA-*  
13           *TION.—*

14           “(1) *Data or information acquired by an agency*  
15           *under a pledge of confidentiality for exclusively sta-*  
16           *tistical purposes shall not be disclosed by an agency*  
17           *in identifiable form, for any use other than an exclu-*  
18           *sively statistical purpose, except with the informed*  
19           *consent of the respondent.*

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

24           “(3) *This section does not restrict or diminish*  
25           *any confidentiality protections in law that otherwise*

1       *apply to data or information acquired by an agency*  
2       *under a pledge of confidentiality for exclusively sta-*  
3       *tistical purposes.*

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

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

18       “(f) *FINES AND PENALTIES.—Whoever, being an offi-*  
19       *cer, employee, or agent of an agency acquiring information*  
20       *for exclusively statistical purposes, having taken and sub-*  
21       *scribed the oath of office, or having sworn to observe the*  
22       *limitations imposed by this section, comes into possession*  
23       *of such information by reason of his or her being an officer,*  
24       *employee, or agent and, knowing that the disclosure of the*  
25       *specific information is prohibited under the provisions of*

1 *this subchapter, willfully discloses the information in any*  
2 *manner to a person or agency not entitled to receive it, shall*  
3 *be guilty of a class E felony and imprisoned for not more*  
4 *than 5 years, or fined not more than \$250,000, or both.*

5 **“PART C—STATISTICAL EFFICIENCY**

6 **“§ 3575. Findings**

7 *“The Congress finds the following:*

8 *“(1) Federal statistics are an important source*  
9 *of information for public and private decision-makers*  
10 *such as policymakers, consumers, businesses, inves-*  
11 *tors, and workers.*

12 *“(2) Federal statistical agencies should continu-*  
13 *ously seek to improve their efficiency. Statutory con-*  
14 *straints limit the ability of these agencies to share*  
15 *data and thus to achieve higher efficiency for Federal*  
16 *statistical programs.*

17 *“(3) The quality of Federal statistics depends on*  
18 *the willingness of businesses to respond to statistical*  
19 *surveys. Reducing reporting burdens will increase re-*  
20 *sponse rates, and therefore lead to more accurate*  
21 *characterizations of the economy.*

22 *“(4) Enhanced sharing of business data among*  
23 *the Bureau of the Census, the Bureau of Economic*  
24 *Analysis, and the Bureau of Labor Statistics for ex-*  
25 *clusively statistical purposes will improve their abil-*

1 *ity to track more accurately the large and rapidly*  
2 *changing nature of United States business. In par-*  
3 *ticular, the statistical agencies will be able to better*  
4 *ensure that businesses are consistently classified in*  
5 *appropriate industries, resolve data anomalies,*  
6 *produce statistical samples that are consistently ad-*  
7 *justed for the entry and exit of new businesses in a*  
8 *timely manner, and correct faulty reporting errors*  
9 *quickly and efficiently.*

10 *“(5) Congress enacted the International Invest-*  
11 *ment and Trade in Services Survey Act (Public Law*  
12 *94–472), which allowed the Bureau of the Census, the*  
13 *Bureau of Economic Analysis, and the Bureau of*  
14 *Labor Statistics to share data on foreign-owned com-*  
15 *panies. The Act not only expanded detailed industry*  
16 *coverage from 135 industries to over 800 industries*  
17 *with no increase in the data collected from respond-*  
18 *ents but also demonstrated how data sharing can re-*  
19 *sult in the creation of valuable data products.*

20 *“(6) With part B of this subchapter, the sharing*  
21 *of business data among the Bureau of the Census, the*  
22 *Bureau of Economic Analysis, and the Bureau of*  
23 *Labor Statistics continues to ensure the highest level*  
24 *of confidentiality for respondents to statistical sur-*  
25 *veys.*

1 **“§ 3576. Designated statistical agencies**

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

4 “(1) *To authorize the sharing of business data*  
5 *among the Bureau of the Census, the Bureau of Eco-*  
6 *nomics Analysis, and the Bureau of Labor Statistics*  
7 *for exclusively statistical purposes.*

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

11 “(3) *To improve the comparability and accuracy*  
12 *of Federal economic statistics by allowing the Bureau*  
13 *of the Census, the Bureau of Economic Analysis, and*  
14 *the Bureau of Labor Statistics to update sample*  
15 *frames, develop consistent classifications of establish-*  
16 *ments and companies into industries, improve cov-*  
17 *erage, and reconcile significant differences in data*  
18 *produced by the three agencies.*

19 “(4) *To increase understanding of the United*  
20 *States economy, especially for key industry and re-*  
21 *gional statistics, to develop more accurate measures of*  
22 *the impact of technology on productivity growth, and*  
23 *to enhance the reliability of the Nation’s most impor-*  
24 *tant economic indicators, such as the National In-*  
25 *come and Product Accounts.*



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

4           “(1) *identify opportunities to eliminate duplica-*  
5 *tion and otherwise reduce reporting burden and cost*  
6 *imposed on the public in providing information for*  
7 *statistical purposes;*

8           “(2) *enter into joint statistical projects to im-*  
9 *prove the quality and reduce the cost of statistical*  
10 *programs; and*

11          “(3) *protect the confidentiality of individually*  
12 *identifiable information acquired for statistical pur-*  
13 *poses by adhering to safeguard principles, includ-*  
14 *ing—*

15           “(A) *emphasizing to their officers, employ-*  
16 *ees, and agents the importance of protecting the*  
17 *confidentiality of information in cases where the*  
18 *identity of individual respondents can reason-*  
19 *ably be inferred by either direct or indirect*  
20 *means;*

21           “(B) *training their officers, employees, and*  
22 *agents in their legal obligations to protect the*  
23 *confidentiality of individually identifiable infor-*  
24 *mation and in the procedures that must be fol-*  
25 *lowed to provide access to such information;*

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

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

8           “(E) being prepared to document their com-  
9 pliance with safeguard principles to other agen-  
10 cies authorized by law to monitor such compli-  
11 ance.

12       “(c) *SHARING OF BUSINESS DATA AMONG DES-*  
13 *IGNATED STATISTICAL AGENCIES.*—

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

19           “(A) *the business data to be shared;*

20           “(B) *the statistical purposes for which the*  
21 *business data are to be used;*

22           “(C) *the officers, employees, and agents au-*  
23 *thorized to examine the business data to be*  
24 *shared; and*

1           “(D) appropriate security procedures to  
2           safeguard the confidentiality of the business  
3           data.

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

12          “(3) *RESPONSIBILITIES OF OFFICERS, EMPLOY-*  
13          *EES, AND AGENTS.*—*Examination of business data in*  
14          *identifiable form shall be limited to the officers, em-*  
15          *ployees, and agents authorized to examine the indi-*  
16          *vidual reports in accordance with written agreements*  
17          *pursuant to this section. Officers, employees, and*  
18          *agents of a Designated Statistical Agency who receive*  
19          *data pursuant to this section shall be subject to all*  
20          *provisions of law, including penalties, that relate—*

21                 “(A) *to the unlawful provision of the busi-*  
22                 *ness data that would apply to the officers, em-*  
23                 *ployees, and agents of the agency that originally*  
24                 *obtained the information; and*

1           “(B) to the unlawful disclosure of the busi-  
2           ness data that would apply to officers, employees,  
3           and agents of the agency that originally obtained  
4           the information.

5           “(4) NOTICE.—Whenever a written agreement  
6           concerns data that respondents were required by law  
7           to report and the respondents were not informed that  
8           the data could be shared among the Designated Sta-  
9           tistical Agencies, for exclusively statistical purposes,  
10          the terms of such agreement shall be described in a  
11          public notice issued by the agency that intends to pro-  
12          vide the data. Such notice shall allow a minimum of  
13          60 days for public comment.

14          “(d) LIMITATIONS ON USE OF BUSINESS DATA PRO-  
15          VIDED BY DESIGNATED STATISTICAL AGENCIES.—

16               “(1) GENERAL USE.—Business data provided by  
17               a Designated Statistical Agency pursuant to this sec-  
18               tion shall be used exclusively for statistical purposes.

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

1       “(e) *DESIGNATED STATISTICAL AGENCY DEFINED.*—  
 2 *In this section, the term ‘Designated Statistical Agency’*  
 3 *means each of the following:*

4               “(1) *The Census Bureau of the Department of*  
 5 *Commerce.*

6               “(2) *The Bureau of Economic Analysis of the*  
 7 *Department of Commerce.*

8               “(3) *The Bureau of Labor Statistics of the De-*  
 9 *partment of Labor.’’.*

10       “(b) *CLERICAL AMENDMENT.*—*The table of sections at*  
 11 *the beginning of chapter 35 of title 44, United States Code,*  
 12 *as amended by proceeding provisions of this Act, is further*  
 13 *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.’’.*

14       “(c) *CONFORMING AMENDMENTS.*—

15               “(1) *REPEAL OF CONFIDENTIAL INFORMATION*  
 16 *PROTECTION AND STATISTICAL EFFICIENCY ACT OF*  
 17 *2002.*—*Title V of the E–Government Act of 2002 (Pub-*

1     *lic Law 107–347; 44 U.S.C. 3501 note) is repealed*  
2     *(and the table of contents of such Act shall be con-*  
3     *formed accordingly).*

4             (2) *TITLE 13, UNITED STATES CODE.—Section*  
5     *402 of title 13, United States Code, is amended by*  
6     *striking “the Confidential Information Protection and*  
7     *Statistical Efficiency Act of 2002” and inserting “sec-*  
8     *tion 3576(e) of title 44”.*

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

11             (A) *in section 6302(d)(4), by striking “the*  
12     *Confidential Information” and all that follows*  
13     *through the period and inserting “section 3572*  
14     *of title 44.”; and*

15             (B) *in section 6314(d)(2), by striking “the*  
16     *Confidential Information” and all that follows*  
17     *through the period and inserting “section 3572*  
18     *of title 44.”.*

19             (4) *ACT OF JANUARY 27, 1938.—The first section*  
20     *of the Act of January 27, 1938, entitled “An Act to*  
21     *make confidential certain information furnished to*  
22     *the Bureau of Foreign and Domestic Commerce, and*  
23     *for other purposes” (52 Stat. 8, chapter 11; 15 U.S.C.*  
24     *176a), is amended by striking “the Confidential In-*  
25     *formation Protection and Statistical Efficiency Act of*

1     2002” and inserting “subchapter III of chapter 35 of  
2     title 44, United States Code”.

3             (5) *FIXING AMERICA’S SURFACE TRANSPOR-*  
4     *TATION ACT.*—Section 7308(e)(2) of the *Fixing Amer-*  
5     *ica’s Surface Transportation Act (Public Law 114–*  
6     *94; 49 U.S.C. 20155 note)* is amended by striking  
7     “*the Confidential Information Protection and Statis-*  
8     *tical Efficiency Act of 2002 (44 U.S.C. 3501 note)*”  
9     and inserting “section 3572 of title 44, United States  
10    Code”.

11    (d) *TRANSITIONAL AND SAVINGS PROVISIONS.*—

12            (1) *CUTOFF DATE.*—This title replaces certain  
13    provisions of law enacted on December 17, 2002. If a  
14    law enacted after that date amends or repeals a pro-  
15    vision replaced by this title, that law is deemed to  
16    amend or repeal, as the case may be, the cor-  
17    responding provision enacted by this title. If a law  
18    enacted after that date is otherwise inconsistent with  
19    this title, it supersedes this title to the extent of the  
20    inconsistency.

21            (2) *ORIGINAL DATE OF ENACTMENT UN-*  
22    *CHANGED.*—For purposes of determining whether one  
23    provision of law supersedes another based on enact-  
24    ment later in time, the date of the enactment of a

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

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

8             (4) *REGULATIONS, ORDERS, AND OTHER ADMIN-*  
9     *ISTRATIVE ACTIONS.*—A *regulation, order, or other*  
10    *administrative action in effect under a provision of*  
11    *law replaced by this title continues in effect under the*  
12    *corresponding provision enacted by this title.*

13            (5) *ACTIONS TAKEN AND OFFENSES COM-*  
14    *MITTED.*—An *action taken or an offense committed*  
15    *under a provision of law replaced by this title is*  
16    *deemed to have been taken or committed under the*  
17    *corresponding provision enacted by this title.*

18    **SEC. 303. INCREASING ACCESS TO DATA FOR EVIDENCE.**

19            (a) *IN GENERAL.*—Subchapter III of chapter 35 of  
20    *title 44, United States Code, as added by section 302, is*  
21    *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*

1 1974’) and any other applicable law requiring the  
2 protection and confidentiality of individually identi-  
3 fiable information; and

4 “(4) require a transparent process for statistical  
5 agencies and units to request data assets from agen-  
6 cies and for agencies to respond to such requests.

7 “(d) *RULE OF CONSTRUCTION.*—Nothing in this sec-  
8 tion may be construed as altering existing intellectual prop-  
9 erty rights or the terms of any contract or other binding,  
10 written agreement.

11 **“§ 3582. Expanding secure access to CIPSEA data as-**  
12 **sets**

13 “(a) *STATISTICAL AGENCY RESPONSIBILITIES.*—To  
14 the extent practicable, each statistical agency or unit shall  
15 expand access to data assets of such agency or unit acquired  
16 or accessed under this subchapter to develop evidence while  
17 protecting such assets from inappropriate access and use,  
18 in accordance with the regulations promulgated under sub-  
19 section (b).

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

1           “(1) Standards for each statistical agency or  
2           unit to assess each data asset owned or accessed by  
3           the statistical agency or unit for purposes of categorizing the sensitivity level of each such asset and  
4           identifying the corresponding level of accessibility to  
5           each such asset. Such standards shall include—  
6

7                   “(A) common sensitivity levels and corresponding levels of accessibility that may be assigned to a data asset, including a requisite  
8                   minimum and maximum number of sensitivity  
9                   levels for each statistical agency or unit to use;  
10                   “(B) criteria for determining the sensitivity  
11                   level and corresponding level of accessibility of  
12                   each data asset; and  
13

14                   “(C) criteria for determining whether a less  
15                   sensitive and more accessible version of a data  
16                   asset can be produced.  
17

18           “(2) Standards for each statistical agency or  
19           unit to improve access to a data asset pursuant to  
20           paragraph (1) or (3) by removing or obscuring information in such a manner that the identity of the data  
21           subject is less likely to be reasonably inferred by either  
22           direct or indirect means.  
23

24           “(3) A requirement for each statistical agency or  
25           unit to conduct a comprehensive risk assessment of

1 *any data asset acquired or accessed under this sub-*  
2 *chapter prior to any public release of such asset, in-*  
3 *cluding standards for such comprehensive risk assess-*  
4 *ment and criteria for making a determination of*  
5 *whether to release the data.*

6 *“(4) Requirements for each statistical agency or*  
7 *unit to make any process or assessment established,*  
8 *produced, or conducted pursuant to this section trans-*  
9 *parent and easy to understand, including the fol-*  
10 *lowing:*

11 *“(A) A requirement to make information on*  
12 *the assessment of the sensitivity level of each*  
13 *data asset conducted pursuant to paragraph (1)*  
14 *available on the Federal data catalogue estab-*  
15 *lished under section 3511(c)(1).*

16 *“(B) A requirement to make any com-*  
17 *prehensive risk assessment, and associated deter-*  
18 *minations, conducted under paragraph (3) avail-*  
19 *able on the Federal data catalogue established*  
20 *under section 3511(c)(1).*

21 *“(C) A requirement to make any standard*  
22 *or policy established by the statistical agency or*  
23 *unit to carry out this section and any assess-*  
24 *ment conducted under this section easily acces-*

1           sible on the public website of such agency or  
2           unit.

3           “(c) *RESPONSIBILITIES OF THE DIRECTOR.*—The Di-  
4   rector shall—

5           “(1) make public all standards and policies es-  
6   tablished under this section; and

7           “(2) ensure that statistical agencies and units  
8   have the ability to make information public on the  
9   Federal data catalogue established under section  
10   3511(c)(1), in accordance with requirements estab-  
11   lished pursuant to subsection (b).

12   **“§3583. Application to access data assets for devel-**  
13           **oping evidence**

14           “(a) *STANDARD APPLICATION PROCESS.*—The Direc-  
15   tor shall establish a process through which agencies, the  
16   Congressional Budget Office, State, local, and Tribal gov-  
17   ernments, researchers, and other individuals, as appro-  
18   priate, may apply to access the data assets accessed or ac-  
19   quired under this subchapter by a statistical agency or unit  
20   for purposes of developing evidence. The process shall in-  
21   clude the following:

22           “(1) Sufficient detail to ensure that each statis-  
23   tical agency or unit establishes an identical process.

24           “(2) A common application form.

1           “(3) *Criteria for statistical agencies and units to*  
2           *determine whether to grant an applicant access to a*  
3           *data asset.*

4           “(4) *Timeframes for prompt determinations by*  
5           *each statistical agency or unit.*

6           “(5) *An appeals process for adverse decisions*  
7           *and noncompliance with the process established under*  
8           *this subsection.*

9           “(6) *Standards for transparency, including re-*  
10          *quirements to make the following information pub-*  
11          *licly available:*

12                 “(A) *Each application received.*

13                 “(B) *The status of each application.*

14                 “(C) *The determination made for each ap-*  
15          *plication.*

16                 “(D) *Any other information, as appro-*  
17          *priate, to ensure full transparency of the process*  
18          *established under this subsection.*

19          “(b) *CONSULTATION.—In establishing the process re-*  
20          *quired under subsection (a), the Director shall consult with*  
21          *stakeholders, including the public, agencies, State and local*  
22          *governments, and representatives of non-governmental re-*  
23          *searchers.*

1       “(c) *IMPLEMENTATION.*—*The head of each statistical*  
2 *agency or unit shall implement the process established*  
3 *under subsection (a).*”.

4       (b) *CLERICAL AMENDMENT.*—*The table of sections at*  
5 *the beginning of chapter 35 of title 44, United States Code,*  
6 *as amended by preceding provisions of this Act, is further*  
7 *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.*”.

8       (c) *DEADLINE FOR GUIDANCE AND IMPLEMENTA-*  
9 *TION.*—*Not later than 1 year after the date of the enactment*  
10 *of this Act, the Director of the Office of Management and*  
11 *Budget shall promulgate or issue any regulation or guid-*  
12 *ance required by subchapter III of title 44, United States*  
13 *Code, as amended by this section, with a requirement for*  
14 *such regulation or guidance to be implemented not later*  
15 *than 1 year after the date on which such regulation or guid-*  
16 *ance has been promulgated or issued.*

17 **TITLE IV—GENERAL PROVISIONS**

18 **SEC. 401. RULE OF CONSTRUCTION.**

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

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

1     552 of title 5, United States Code (commonly known  
2     as the “Freedom of Information Act”);

3             (2) to create or expand an exemption from dis-  
4     closure under such section;

5             (3) to override, limit, or otherwise affect intellec-  
6     tual property rights, including rights under titles 17  
7     and 35, United States Code;

8             (4) to affect the authority of a Federal agency re-  
9     garding the use, disclosure, or licensing of—

10             (A) confidential business information that  
11     could be withheld under section 552(b)(4) of title  
12     5, United States Code; or

13             (B) data assets restricted from disclosure  
14     under a contract or other binding, written agree-  
15     ment; or

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

18     **SEC. 402. USE OF EXISTING RESOURCES.**

19             To the extent practicable, the head of each agency shall  
20     use existing procedures and systems to carry out agency re-  
21     quirements and shall select existing employees for appoint-  
22     ments under this Act and the amendments made by this  
23     Act.



1 **SEC. 403. EFFECTIVE DATE.**

2       *Except as otherwise provided, this Act, and the amend-*  
3 *ments made by this Act, shall take effect on the date that*  
4 *is 180 days after the date of the enactment of this Act.*

Attest:

*Secretary.*

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H.R. 4174**

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**AMENDMENT**