

118TH CONGRESS  
1ST SESSION

# H. R. 6886

To direct agencies to be transparent when using automated and augmented systems to interact with the public or make critical decisions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 22, 2023

Mr. HIGGINS of Louisiana (for himself, Mr. WEBER of Texas, Mr. McGOVERN, and Mr. DAVIS of North Carolina) introduced the following bill; which was referred to the Committee on Oversight and Accountability

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## A BILL

To direct agencies to be transparent when using automated and augmented systems to interact with the public or make critical decisions, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Transparent Auto-  
5       mated Governance Act” or the “TAG Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1           (1) AGENCY.—The term “agency” has the  
2           meaning given the term in section 3502 of title 44,  
3           United States Code.

4           (2) ARTIFICIAL INTELLIGENCE.—The term “ar-  
5           tificial intelligence” has the meaning given the term  
6           in section 238(g) of the John S. McCain National  
7           Defense Authorization Act for Fiscal Year 2019 (10  
8           U.S.C. note prec. 4061; Public Law 115–232).

9           (3) AUGMENTED CRITICAL DECISION PROC-  
10          ESS.—The term “augmented critical decision proc-  
11          ess” means the use by an agency, or by a third  
12          party on behalf of the agency, of an automated sys-  
13          tem to determine or substantially influence the out-  
14          comes of critical decisions.

15          (4) AUTOMATED SYSTEM.—The term “auto-  
16          mated system”—

17                (A) means a set of computational processes  
18                derived from statistics or artificial intelligence  
19                techniques, or that otherwise rely on data about  
20                specific individuals or groups, to substantially  
21                influence the outcome of critical decisions, in-  
22                cluding computational processes that stand  
23                alone or are embedded within another process,  
24                system, or application, including paper-based  
25                processes; and

1 (B) does not include computational proc-  
2 esses or infrastructure the function of which is  
3 not directly related to influencing or deter-  
4 mining the outcome of critical decisions.

5 (5) CRITICAL DECISION.—The term “critical  
6 decision” means an agency determination, including  
7 the assignment of a score or classification, related to  
8 the status, rights, property, or wellbeing of specific  
9 individuals or groups, the outcome of which—

10 (A) is likely to meaningfully differ from  
11 one individual or group to another; and

12 (B) meaningfully affects access to, or the  
13 cost, terms, or availability of—

14 (i) education and vocational training;

15 (ii) employment;

16 (iii) essential utilities, including elec-  
17 tricity, heat, water, and internet;

18 (iv) transportation;

19 (v) any benefits or assistance under  
20 any Federal public assistance program or  
21 under any State or local public assistance  
22 program financed in whole or in part with  
23 Federal funds;

24 (vi) financial services, including access  
25 to credit or insurance;

- 1 (vii) asylum and immigration services;
- 2 (viii) healthcare;
- 3 (ix) housing, lodging, or public accom-
- 4 modations; and
- 5 (x) any other service, program, or op-
- 6 portunity a determination about which
- 7 would have a legal, material, or significant
- 8 effect on the life of an individual, as deter-
- 9 mined by the Director.

10 (6) DIRECTOR.—The term “Director” means  
 11 the Director of the Office of Management and Budg-  
 12 et.

13 (7) PLAIN LANGUAGE.—The term “plain lan-  
 14 guage” has the meaning given the term in section  
 15 1311(e)(3)(B) of the Patient Protection and Afford-  
 16 able Care Act (42 U.S.C. 18031(e)(3)(B)).

17 (8) TRANSPARENT AUTOMATED GOVERNANCE  
 18 GUIDANCE.—The term “transparent automated gov-  
 19 ernance guidance” means the guidance issued by the  
 20 Director pursuant to section 3(a).

21 **SEC. 3. TRANSPARENT AUTOMATED GOVERNANCE GUID-**  
 22 **ANCE.**

23 (a) IN GENERAL.—Not later than 270 days after the  
 24 date of enactment of this Act, the Director shall issue  
 25 guidance that—

1           (1) is consistent with relevant legal authorities  
2 relating to privacy, civil rights, and civil liberties  
3 protections; and

4           (2) requires agencies to provide disclosure and  
5 opportunity for appeal when using certain auto-  
6 mated systems and augmented critical decision proc-  
7 esses.

8           (b) GUIDANCE.—The transparent automated govern-  
9 ance guidance issued under subsection (a) shall include—

10           (1) an identification by the Director of any ad-  
11 ditional services, programs, or opportunities relating  
12 to critical decisions described in section 2(5)(B)(x),  
13 if appropriate, for use by agencies with respect to  
14 the requirements under this Act;

15           (2) a list of automated systems that may be  
16 used in augmented critical decision processes, that,  
17 as determined by the Director, are not subject to the  
18 requirements of this Act;

19           (3) with respect to automated systems that con-  
20 tribute to augmented critical decision processes and  
21 interact with the public, guidance for how agencies  
22 shall design, develop, procure, or update those auto-  
23 mated systems to provide plain language notice to  
24 individuals not later than the time and at the place

1 of interaction with such an automated system that  
2 they are interacting with such an automated system;

3 (4) the proper contents of the notice described  
4 in paragraph (3);

5 (5) examples of what the notice described in  
6 paragraph (3) could look like in practice;

7 (6) with respect to augmented critical decision  
8 processes, guidance for how agencies shall provide  
9 plain language notice to individuals not later than  
10 the time a critical decision is issued to an individual  
11 that a critical decision concerning the individual was  
12 made using an augmented critical decision process;

13 (7) the proper contents of the notice described  
14 in paragraph (6);

15 (8) examples of what the notice described in  
16 paragraph (6) could look like in practice;

17 (9) guidance for how agencies shall establish an  
18 appeals process for critical decisions made by an  
19 augmented critical decision process in which an indi-  
20 vidual is harmed as a direct result of the use of an  
21 automated system in the augmented critical decision  
22 process;

23 (10) with respect to critical decisions made by  
24 an augmented critical decision process, guidance for  
25 how agencies should provide individuals with the op-

1       portunity for an alternative review, as appropriate,  
2       by an individual working for or on behalf of the  
3       agency with respect to the critical decision, inde-  
4       pendent of the augmented critical decision process;  
5       and

6               (11) criteria for information that each agency is  
7       required to track and collect relating to issues that  
8       arise during the use of augmented critical decision  
9       processes—

10               (A) to ensure that the information col-  
11       lected can be used to determine whether each  
12       automated system and augmented critical deci-  
13       sion process covered by this Act is accurate, re-  
14       liable, and, to the greatest extent practicable,  
15       explainable; and

16               (B) that the agency shall make accessible  
17       for use by the agency, the Comptroller General  
18       of the United States, and Congress.

19       (c) PUBLIC COMMENT.—Not later than 180 days  
20       after the date of enactment of this Act, the Director shall  
21       make a preliminary version of the transparent automated  
22       governance guidance available for public comment for a  
23       period of 30 days.

1 (d) CONSULTATION.—In developing the transparent  
2 automated governance guidance, the Director shall con-  
3 sider soliciting input from—

4 (1) the Government Accountability Office;

5 (2) the General Services Administration, includ-  
6 ing on the topic of user experience;

7 (3) the private sector; and

8 (4) the nonprofit sector, including experts in  
9 privacy, civil rights, and civil liberties.

10 (e) ARTIFICIAL INTELLIGENCE GUIDANCE.—The  
11 guidance required by section 104 of the AI in Government  
12 Act of 2020 (40 U.S.C. 11301 note) may be used to sat-  
13 isfy the requirement for the transparent automated gov-  
14 ernance guidance with respect to relevant automated sys-  
15 tems and augmented critical decision processes, or a sub-  
16 set thereof, if such guidance addresses each requirement  
17 under subsection (b) of this section with respect to the  
18 automated system or augmented critical decision process.

19 (f) UPDATES.—Not later than 2 years after the date  
20 on which the Director issues the transparent automated  
21 governance guidance, and biennially thereafter, the Direc-  
22 tor shall issue updates to the guidance.

23 **SEC. 4. AGENCY IMPLEMENTATION.**

24 (a) AGENCY IMPLEMENTATION OF TRANSPARENT  
25 AUTOMATED GOVERNANCE GUIDANCE.—Not later than

1 270 days after the date on which the Director issues the  
2 transparent automated governance guidance, the head of  
3 each agency shall implement the transparent automated  
4 governance guidance to the extent that implementation  
5 does not require rulemaking.

6 (b) COMPTROLLER GENERAL REPORT.—Not later  
7 than 2 years after the date of enactment of this Act, and  
8 biannually thereafter, the Comptroller General of the  
9 United States shall review agency compliance with this Act  
10 and submit to the Committee on Homeland Security and  
11 Governmental Affairs of the Senate and the Committee  
12 on Oversight and Accountability of the House of Rep-  
13 resentatives a report with findings and recommendations.

14 **SEC. 5. SUNSET.**

15 Beginning on the date that is 10 years after the date  
16 of enactment of this Act, this Act shall have no force or  
17 effect.

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