CODE

Overview of Evidence Act and the Federal Data Strategy for Statistical Agencies

Introduction

This background paper provides an overview of the policies and regulations applicable to statistical agencies in light of the Foundations for Evidence-Based Policymaking Act, the Federal Data Strategy, and the Information Quality Guidelines.

The [Foundations for Evidence-Based Policymaking Act](#) ("Evidence Act"), which was signed into law in January of 2019, is the legal framework for a statutory mandate requiring federal agencies to focus on evidence building goals, and to open their government data while maintaining protection of confidential information. In July 2019, the Office of Management and Budget issued a [memo](#) (the "Evidence Act Implementation Memo") containing guidance on implementation of Phase 1 of the Evidence Act.[1]

At the same time, the President's Management Agenda articulated a clear focus on data for accountability and transparency.[2] This resulted in the development of the Federal Data Strategy ("Strategy") which consists of principles and practices that federal agencies are expected to follow in managing the data they collect and use. The [principles](#) are the foundational framework for both the generators of data (i.e., the federal agencies) and the potential users of data (i.e., the public). The [practices](#) are meant to serve as actionable goals for a 5-to 10-year time frame. In December 2019, the Office of Management and Budget ("OMB") released the final [2020 Action Plan](#) which identifies action steps to be taken for the first year.

Another set of applicable regulations are the OMB *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies* ("[Information Quality Guidelines](#)").[3] First passed in 2002, these guidelines require agencies to develop information resources management procedures to review the quality of information before it is published.

In April 2019, OMB issued an update to these guidelines (M-19-15) which requires agencies to revisit the definition of "influential information", improve the peer review process for scientific information, and encourages agencies to publish and re-use data while protecting confidentiality.[4]

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[1] Office of Management and Budget, *Memorandum on Phase 1 Implementation of the Foundations for Evidence Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance* (July 2019), Accessed September 20, 2019 https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf

[2] Office of Management and Budget, The President's Management Agenda, Accessed September 15, 2019 https://www.whitehouse.gov/wp-content/uploads/2018/03/Presidents-Management-Agenda.pdf

[3] Office of Management and Budget, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Accessed September 20, 2019 https://www.federalregister.gov/documents/2002/02/22/R2-59/guidelines-for-ensuring-and-maximizing-the-quality-objectivity-utility-and-integrity-of-information

[4] Office of Management and Budget, Memorandum on Improving Implementation of the Information Quality Act, Accessed September 22, 2019, https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf

This background paper sets the context for a discussion of the cross-cutting themes across the Evidence Act, the Federal Data Strategy, and the Information Quality Guidelines with respect to a federal statistical agency.

1. Data Stewardship and Governance

The Strategy envisages "ethical governance" as a core component of data management and use. Inherent to this principle is responsible data stewardship and transparency on the purpose and use of federal data with the objective of gaining public trust.[5] Some of the actionable goals presented in the practices include using a learning agenda process to identify the agency's key questions, leaders championing data-driven decision making, and proactively addressing barriers to interagency sharing of data.[6]

The Evidence Act stipulates a number of ways in which an agency can promote ethical governance. It recognizes the need for leaders within the agency who will promote learning goals and employ sound privacy and security practices. The Evidence Act requires agencies to develop a learning agenda with multi-year evidence-building plans to address priority questions relevant to the programs and policies of the agency.[7] They are meant to establish and prioritize strategies to develop evidence to answer short-term and long-term strategic questions. These plans will also drive the implementation of planning activities mandated by the Evidence Act such as the Evaluation Plan, Capacity Assessments, and Open Data Plan.

The Evidence Act elevates program evaluation from ad-hoc efforts to a key agency function. The Evaluation Plan, which will form part of the agency's Strategic Plan, is a systematic plan to identify and address policy questions relevant to the agency. Among other things, the Evaluation Plan needs to contain a list of analytical approaches to build evidence for policymaking and associated challenges. The Capacity Assessment is meant to be a comprehensive view of agency capacity, while also ensuring that the review takes into account specific needs identified through the development of the agency's learning agenda.[8] The Evidence Act places these obligations on CFO Act agencies. However, OMB in its guidance encourages other agencies, such as statistical units within CFO Act agencies, to develop their own learning agendas, evaluation plans, and capacity assessments.

The law identifies three leadership positions that agencies are expected to have to implement these measures:

- Chief Evaluation Officer[9] - The officer is a non-political appointee with expertise in evaluation methodology and relevant subject matter experience. They are expected to lead the development and implementation of the learning agenda. The Evidence Act

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[5] Federal Data Strategy, Principles 1-3..
[6] Federal Data Strategy, Practices 1,3, and 5.
[7] The Evidence Act Implementation Memo, Appendix B, Section I.
[8] The Evidence Act Implementation Memo, Appendix B, Section III.
[9] 5 USC §313.

Implementation Memo encourages other statistical units to consider appointing an Evaluation Officer.

- Chief Data Officer (CDO)[10] - The officer is a non-political appointee with experience in data management and governance, including the use of statistical techniques to protect data. The CDO also chairs the Data Governance Body, which is a body consisting of senior level agency staff from business units, data functions, and financial management.[11] The law allows the CDO to delegate responsibilities to and consult with the statistical officer with respect to compliance with statistical laws.
- Statistical Official[12] - The official is the head of the statistical agency within the relevant federal agency who is expected to advise on statistical policy, technique, and procedure. For agencies with internal statistical units or agencies, the head of that agency will serve as the Statistical Official. For agencies without internal statistical units or agencies, any senior agency official with appropriate expertise may be appointed as the Statistical Official.

The law envisions interagency communities of experts through Councils for the Chief Data Officers and Evaluation Officers. The law also expands the existing Interagency Council on Statistical Policy to include the statistical officials. These Councils are meant to serve as communities of practice so that their members can share leading practices, encourage peer learning, and build capacity. The OMB coordinates these councils. The Evidence Act Implementation Memo also requires CFO Act agencies to set up a "data governance body". This will be a body chaired by the Chief Data Officer and responsible for setting and enforcing priorities for managing data as a strategic asset. Statistical agencies may wish to consider the effects of the various organizational changes mandated by law at the CFO Act agency level and evaluate the potential to develop its own learning agenda.

2. Valuing and Promoting Open Data

The Strategy has outlined principles that center around promoting a learning environment for data use in federal agencies. It articulates the development of "data leaders at all levels" and captures the need to cultivate a sustained interest in the use of data throughout the agency.[13] Practice 27 builds on this principle by recognizing a need to increase capacity. Agency leadership is expected to empower the staff by investing in training and other tools for evaluation, data management, and privacy protection. Several practices also reflect the need to promote wide access while being intentional and transparent about allowable use. For example, Practice 33 states that agencies must promote "equitable and appropriate access to data in open,

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[10] 44 USC §3501.
[11] The Evidence Act Implementation Memo, Para II (a).
[12] 5 USC §314.
[13] Federal Data Strategy, Principles 8-9.

machine-readable form". Practice 31 complements this well by stating that agencies must employ descriptive metadata that provides clarity about access and use restrictions.

Title II of the Evidence Act, the Open Government Data Act, encapsulates this goal through a mandate to agencies to make data assets open by default.[14] For government data to be open, it needs to be in a machine-readable format, issued under an open license, and based on underlying open standards. The mandate also extends to engaging the public in using these data assets through a number of means, including through challenges, competitions, and other events.[15] While the primary responsibility to carry out this mandate lies with the CFO Act agency, statistical units will have an important role to play in implementing this mandate. This may include collaborating with the CFO Act agency to develop a strategic information resources management plan[16] and the comprehensive data inventory.[17] The information resources management plan is meant to set out how resource management activities will help accomplish agency objectives and include an open data plan. The head of every agency is also required to maintain a data inventory of all datasets created and maintained by that agency. The 2020 Action Plan requires all agencies to publish an open data plan that will document processes that require data collection and prioritize priority data assets.

The focus on data for evidence-based policymaking is well aligned with the principles and practices applicable to statistical agencies as a federal statistical agency. The Principles set the mandate for statistical agencies that are required to provide information that is relevant to issues of public policy and useful to a broad range of public- and private-sector users.[18] The Practices take this further by emphasizing the need for wide dissemination of accessible and easy-to-use data.[19]

A complementary obligation under the Information Quality Guidelines[20] enforces the need to identify influential scientific, financial, or statistical information that "is held to higher quality standards". The Guidelines require that agencies categorize certain types of data as "influential" thereby subjecting it to pre-dissemination review.

For principal statistical agencies or units housed within CFO Act agencies, the learning agenda and data governance models adopted by the CFO Act agency will determine the goals, strategic objectives, and workflows within the statistical unit as well. Statistical agencies can consider what role it plays in this process.

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[14] 44 USC §3506(b)(6).
[15] 44 USC §3506.
[16] 44 USC §3506.
[17] 44 USC §3511.
[18] Committee on National Statistics, *Principles and Practices for a Federal Statistical Agency*, 6th Edition, July 2017, Principle 1; Accessed September 21, 2019, https://sites.nationalacademies.org/cs/groups/dbassesite/documents/webpage/dbasse_181986.pdf
[19] Committee on National Statistics, Principles and Practices for a Federal Statistical Agency, Practice 5.
[20] Office of Management and Budget, Memorandum on Improving Implementation of the Information Quality Act.

3. Confidential Information and Protection

The Strategy has outlined Principles which emphasize the need for a "conscious design" of data management processes. The Principles recognize the need for agencies to validate accurate and objective data while demonstrating responsiveness through continuous and ongoing feedback from users and stakeholders.[21] The Practices state that agencies should ensure that there are organizational structures and policies in place to provide appropriate access to confidential data to maintain public trust. Data integrity through a state-of-the-art security architecture is also an integral part of the Strategy.[22]

Title III of the Evidence Act, Confidential Information Protection and Statistical Efficiency Act (CIPSEA), addresses the legislative mandate on the twin concerns of confidential information protection and statistical efficiency. The law requires agencies to ensure that information supplied by individuals or organizations on a confidential basis for statistical purposes exclusively is protected. Such data cannot be disclosed in any identifiable form.[23]

The law also places an obligation on agencies to share data assets among themselves. Specifically, the law mandates a "presumption of accessibility for statistical agencies". If statistical agencies make a request to access data assets maintained by any federal agency, they are required to share such data unless the agency is explicitly prohibited to do so.[24] With respect to data acquired in that manner, the law recommends standardized guidelines that will make researcher access to federal data assets possible. The guidelines (not yet issued) will also contain rules for categorizing sensitivity levels for such data and comprehensive risk assessments to determine release.[25]

The revised guidance on Information Quality Guidelines in M-19-15 reinforce interagency sharing of data while placing the responsibility for ensuring the quality of information on each agency in this process. Agencies releasing data in this manner must provide the public with sufficient documentation about the datasets so that the users can determine if it meets their needs.[26] Further, the guidelines require that agencies consider existing data sources for statistical purposes.[27] There is an emphasis on protecting privacy and confidentiality through any such process.

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[21] Federal Data Strategy, Principle 4, 7.
[22] Federal Data Strategy, Practices 12-13.
[23] 44 USC §3572.
[24] 44 USC §3581.
[25] 44 USC §3582.
[26] Information Quality Guidelines, Implementation Updates 2.1 and 2.2.
[27] Information Quality Guidelines, Implementation Updates 2.3.

ABOUT CODE

The Center for Open Data Enterprise (CODE) is an independent nonprofit organization based in Washington, D.C. whose mission is to maximize the value of open government data for the public good. CODE believes that open government data is a powerful tool for economic growth, social benefit, and scientific research. Over the past several years, CODE has worked with the White House and numerous federal agencies to help them improve how they collect, publish, and apply data to better meet the needs of data users. For more information, please visit OpenDataEnterprise.org.