ACDEB Year 1 Report: Public Comments

Table of Contents

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December 13, 2021

Emilda Rivers, Chair
Advisory Committee on Data for Evidence Building
Office of the Under Secretary for Economic Affairs
U.S. Department of Commerce
4600 Silver Hill Road (BE–64)
Suitland, MD 20746

Dear Chair Rivers:

In response to the Advisory Committee on Data for Evidence Building's (ACDEB) Request for Comments (RFC) on the First Annual Report of the Advisory Committee on Data for Evidence Building (86 FR 68465), attached please find Western Governors' Association (WGA) Policy Resolution 2021-02, *Utilizing State Data in Federal Decision Making*.
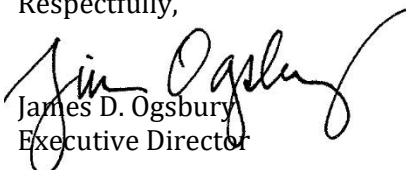
In the policy resolution, Western Governors address the benefits of utilizing state data in federal decision making. The resolution also recognizes: the importance of state privacy and data stewardship laws; the need for federal consultation with states during the development of data policies and data sharing; and the advisability of uniformity in data standards and stewardship policies across all levels of government. These policy positions are especially relevant to Section 3.4 of the Year 1 Report, Government Data for Evidence Building Findings and Recommendations. They are also applicable to Section 2.3, Standard-Setting Procedures; Section 2.7, Communication; Section 3.1, Legislation and Regulations Findings and Recommendations; Section 3.2, Governance, Transparency, and Accountability Findings and Recommendations; Section 3.3, Technical Infrastructure Findings and Recommendations; and Section 3.5, Other Services and Capacity-Building Opportunities Findings and Recommendations.

I appreciate your consideration of these comments as they articulate Western Governors' policy positions and recommendations on this important issue.

Western Governors submit these remarks through the public notice and comment process for administrative recordkeeping purposes. The Governors, however, maintain that this process is an insufficient channel for state-federal communication on federal actions that may affect state authority or administrative activity. Western Governors strongly urge you to engage in meaningful, substantive, and ongoing consultation with states in advance of prospective decisions or related public processes. Such consultation will result in more effective, efficient, and resilient federal policy that benefits our shared constituents.

Please contact me if you have any questions or require further information. In the meantime, with warm regards and best wishes, I am

Respectfully,

James D. Ogsbury
Executive Director

Attachment

A.   BACKGROUND

1.   State and federal agencies increasingly rely on quantitative and qualitative data to inform evidence-based policymaking, improve service delivery, more effectively manage resources, improve regulatory enforcement, and more accurately measure program performance and effectiveness.

2.   States serve a critical function as a primary sources and stewards of economic, social, geospatial, scientific, technical, and other datasets that support a wide array of federal agencies and programs. State agencies often have the best available science, expertise, and other institutional data resources for purposes of federal decision-making processes.

3.   States are both sovereignties and the primary administrators of numerous federal administrative and regulatory programs under a system of cooperative federalism, which distinguishes them from other non-federal sources of data.

4.   State agencies also rely on timely access to current and accurate federal datasets to inform their own decision-making processes, develop more effective policy, improve service delivery and public communication, and to administer federally-delegated administrative programs.

5.   In addition to federal laws and regulations, state agencies operate under their own privacy and data stewardship laws, regulations, and policies that protect personal and confidential information from public disclosure or other inappropriate use or disclosure. These protections help establish public trust that ultimately improves government effectiveness.

6.   Public access to datasets that serve as the basis for federal agency actions promotes transparency and accountability in the decision-making process. Nevertheless, blanket requirements to make publicly available all data considered by federal agencies – particularly if this data consists of raw data provided by states – may infringe upon states' statutory imperatives to protect personally identifiable and otherwise sensitive information. It may also infringe upon fundamental privacy and data stewardship principles like purpose specification and data minimization. Even where there is no state legal barrier to disclosure of raw data, state agencies may maintain significant reservations about the public release of raw data.

7.   The 2019 Federal Data Strategy directs federal agencies to "[e]ffectively, routinely, transparently, and appropriately use data in policy, planning, and operations to guide decision-making [and] share the data and analyses behind those decisions." Additionally, agencies are directed to "[f]acilitate data sharing between state, local, and tribal governments and the Federal Government, where relevant and appropriate and with

proper protections, particularly for programs that are federally funded and locally administered, to enable richer analyses for more informed decision-making."

8. Improvements in intergovernmental data sharing, stewardship, integration, protection, and utilization will require robust federal investments in a modern data infrastructure, technology, and training.

B. <u>GOVERNORS' POLICY STATEMENT</u>

1. State data serves a critical role in the successful implementation of a variety of federal programs and in federal agencies' fulfillment of their statutory missions and directives.

2. Subject to state laws and other requirements for data protection and transparency, federal agencies should be required to incorporate state and local data and expertise into their analysis and decision-making processes. This data should include geospatial, scientific, technical, economic, social, and other information relevant to issues the agency is trying to address.

3. Congress and the Executive Branch should look to states and state agencies as partners – rather than ordinary stakeholders – in the collection, stewardship, analysis, and use of data to inform federal decision-making processes. Federal agencies should recognize the existence and limitations of state privacy and data stewardship laws, regulations, and policies and work with states to develop strategies that encourage effective state-federal data sharing while appropriately protecting data according to state law.

4. State data – particularly non-aggregated raw data – is subject to differing levels of protection under various state laws, regulations, and policies. Western Governors encourage Congress and federal agencies to recognize the limitations on complete transparency of state data in federal decision making and to work with states to identify ways in which protected data can inform federal decision-making processes without conflicting with applicable state laws, regulations, or policies.

5. Federal agencies should consult with states – on a government-to-government basis – in the development and implementation of policies, programs, and strategies to more effectively and consistently incorporate state data into federal decision making, including implementation of applicable federal statutes and programs, as well as the Federal Data Strategy and development of annual Federal Data Strategy Action Plans.

6. Federal agencies should also consult with states to ensure that state and local partners have access to timely and reliable federal datasets for purposes of informing state and local decision-making processes.

7. Congress and the Executive Branch should support, and work with state toward, the modernization of our nation's data infrastructure and intergovernmental data-sharing and analysis capabilities. Data infrastructure should be based on best practices for data stewardship and must properly protect personal and confidential information in accordance with state and federal law. Federal agencies should consult with states to develop guidelines for intergovernmental data-sharing agreements and other protocols that include commitments to fundamental privacy and data stewardship principles like purpose specification and data minimization.

8. Federal agencies should work with state and local partners to develop uniform data standards, where appropriate, to maximize data quality and facilitate intergovernmental data use, access, sharing, and interoperability.

9. Western Governors support congressional efforts to broaden statutory exemptions under the Freedom of Information Act to protect personally identifiable and sensitive state-shared data from disclosure.

10. Western Governors urge the Executive Branch to develop uniform privacy and data stewardship policies based on best practices and uniform interpretations of federal privacy and data stewardship laws, regulations, policies, and other directives applicable to data received from states, as well as other non-federal sources.

C.   GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.

2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in December 2023. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult http://www.westgov.org/resolutions for the most current copy of a resolution and a list of all current WGA policy resolutions.

December 23, 2021

Advisory Committee on Data for Evidence Building
Washington, D.C.

Re: Comments for the Advisory Committee on Data for Evidence Building (86 FR 68465)

Dear Advisory Committee:

The Data Foundation is a non-profit organization that seeks to improve government and society by using data to inform public policymaking. Our Data Coalition Initiative operates as America's premier voice on data policy, advocating for responsible policies to make government data high-quality, accessible, and usable. The membership-based initiative facilitates a strong national data community and advocates for responsible policies to make government data high-quality, accessible, and usable. The Data Coalition's work unites the data communities that focus on data science, management, evaluation, statistics, and technology, including individuals in companies, nonprofit organizations, and academia.

Data for evidence building relies on the successful integration of data sharing, linkages, and privacy-enhancing techniques and technologies. The work this committee is doing is vital to ensure that these elements meet the needs of the data community and beyond. We appreciate the thoughtfulness taken during the deliberation phase of your work, look forward to your work in Year Two, and agree with areas of focus identified for your continued work.

With that in mind, the Data Coalition offers the following recommendations for areas of focus over the next year.

- **Work towards mutual inclusivity with other data sharing initiatives.**
  As the Committee works to understand how a National Secure Data Service (NSDS) could enhance the existing evidence-building ecosystem, several other initiatives are happening throughout the government that are faced with many of the same issues. In addition to legislative action on a NSDS, there is interest from Congress on data privacy and strengthening the data ecosystem. Additionally, executive branch initiatives, such as the National Artificial Intelligence Initiative are also exploring ways to improve data sharing. While these separate initiatives may have different target states, the underlying mechanisms that will help them succeed, such as data governance, should be mutually inclusive when possible. The Data Coalition Initiative encourages the Committee to look for ways to work collaboratively and collectively with these projects.

- **Compile relevant use-cases demonstrating the value of participating in a National Secure Data Service, addressing cultural resistance to data sharing.**

Policymakers and agency leaders would benefit from seeing concrete demonstrations of the value of data sharing and linkages. The Year One Report included Case-in-Point examples that helped to ground relevant concepts in real world applications. Taking the same approach to finding relevant use-cases will illuminate the value of data sharing projects, and help agency leaders understand how and when to deploy resources. These use-cases can focus on several aspects, but should keep in mind that several agencies will have cultural barriers to shifting to the presumption of openness contained within the Evidence Act. The Data Coalition recommends working with agencies to understand those barriers and compiling use-cases that address those concerns.

- **Develop guidance on how to meet funding and other resourcing needs**
  Most agencies do not have adequate resources in their CDO and Evaluation offices to fulfill the statutory requirements of the Evidence Act, let alone additional data and evaluation activities necessary to contribute to a National Secure Data Service. While the National Secure Data Service will require sustainable funding, agencies will need resources to implement data priorities. The Committee should develop guidance for agencies and the Office of Management and Budget, as well as Congress, for how to efficiently and effectively fund these efforts.

While there will be many questions about how to govern a fully operational National Secure Data Service, the steps that will be necessary to get there can not be underestimated. The Data Coalition encourages the Committee to consider giving some attention to this intermediate phase as well to ensure that the transformation to using data for evidence building is as seamless and effective as possible.

Thank you, and we look forward to the work you do in the upcoming year.

Sincerely,

Corinna Turbes
Managing Director, Data Coalition Initiative
Data Foundation

With the amount of concern toward the mainstream center point of idealism of what is problematic. We plainly lead our self ashtray.

With the thought of evidence , the location of collection of the evidence should be decide before it piles up in cases? Place of ownership be decide.

Example: Customer shopping in mall complex with multi store fronts whom is the responsible for data collected.

There is more situations .

 Liability of data?
Limits of data collection should be topic.

Is privacy intact with vague about the responsible amount to be aware of thoughts being retain in cache of data that is stored in bulk for review later data or sold. ?