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October 2, 2023

Submitted via email to TrustRegulation@omb.eop.gov

RE: Fundamental Responsibilities of Recognized Statistical Agencies and Units
Docket No. OMB–2023–0015

Richard L. Revesz
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

Dear Mr. Revesz,

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 community advocates for responsible policies to make government data high-quality, accessible, and usable. The Data Foundation supports the development and capacity of activities in federal agencies and the public sector that enable more evidence-informed decision-making.

An important part of that effort is focused on effective implementation of laws like the Foundations for Evidence-Based Policymaking Act (Evidence Act), including this required proposed rulemaking. The Data Foundation wholeheartedly supports the effort to enhance public trust in federal statistics through the proposed regulation outlined by the Office of Management and Budget (OMB). Trust in government data and statistics is crucial for informed decision-making across public and private sectors, and statistical agencies are a vital component of evidence-informed policymaking, and ultimately public trust in our country's democratic institutions.

The Data Foundation acknowledges and applauds the role that the federal statistical agencies have played in creating our country's current national data infrastructure. The data landscape has changed dramatically in recent years – by embracing new technologies while upholding rigorous methodologies, the statistical agencies continue to productively contribute to informing policymakers as well as the public. The leadership, innovation, and commitment from the federal statistical agencies to timely, accurate, objective, and confidential data are an essential part of realizing the vision of the Evidence Act to fully leverage government data assets and better serve the American public in the 21st century.

The Data Foundation's response provides broad thematic comments as well as specific recommendations on the proposed regulation, emphasizing the importance of clarity of purpose, collaboration, and innovation to achieve the goals of the Evidence Act and strengthen the federal statistical system. Our assessment of the proposed rulemaking was based on the criteria of how well it supports the vision of the Evidence Act and ensures the long-term sustainability of the federal statistical system, including the proposed rule's ability to fulfill the four fundamental responsibilities and provide leadership for the broader data infrastructure.

Overall, the proposed regulation is well crafted to preserve the autonomy and independence of the statistical agencies, and in general, the Data Foundation supports the effort and policy direction. However, the proposed regulation can also be strengthened and improved. Specifically, the Data Foundation urges OMB to more intently consider how the Evidence Act changed the landscape of federal data to facilitate

cooperation across data managers and users throughout the federal system, and to use this regulation as an opportunity to make meaningful future-oriented decisions that support innovation and collaboration led by the federal statistical agencies.

Clarify the relationship between statistics and public trust, and adjust the scope and expectations of this regulation accordingly.

Federal statistical agencies provide indispensable value when they are able to produce timely, accessible, high-quality data as a public good. Trustworthy federal data are a core component of effective government and informed decision-making. These data also allow society to interpret, debate, and apply analysis within democratic institutions and processes. As the public becomes familiar with and uses statistical data more frequently, the easier it will be for statistical agencies to continue to produce credible statistics with participation from the public. This mutually-reinforcing dynamic has informed how many statistical agencies have conducted their affairs for decades.

However, the power of information and data continues to change and the federal statistical system must recognize that it was never the only source of knowledge and is not the only source of data that informs public decision-making. With a complex information economy, fostering trust between federal statistical agencies and the public is multi-faceted and has certainly evolved beyond simply having independence. Therefore, the Data Foundation recommends a revised model for the federal statistical agencies' relationship with public trust that aligns with a modern theory of change, with specific attention to the practical and appropriate role of the federal statistical system.

The proposed rulemaking highlights the importance of public trust in federal statistics, emphasizing the value of statistics in guiding decisions across the public and private sectors and acknowledging the centrality of "public trust" in the foundation of statistical production programs (*§ 1321.1*). However, the rule does not delve into the meaning of "public trust." The Data Foundation strongly urges OMB to clearly articulate the precise, practical, and unique role the federal statistical agencies play in building and maintaining public trust. Producing accurate, objective, and transparent statistics is necessary but not sufficient for statistical agencies to build or maintain public trust.

In this context, the Data Foundation urges OMB to narrow and refine the role of federal statistical agencies in public trust. Clarifying the overall purpose of the regulation demonstrates acknowledgment of the new era of data demands and social context, and will allow for appropriately tailored guidance that provides a framework for concrete action and facilitates the implementation of effective policy measures.

The Data Foundation suggests OMB align with the framework presented by the Organisation for Economic Co-operation and Development's (OECD) Reinforcing Democracy Initiative as the basis for statistical agencies' role in building public trust.[1] Specifically, we recommend alignment with Pillar 2 of the Initiative, which focuses on strengthening representation, participation, and openness. The United States is a signatory to this OECD declaration, which states that providing timely, useful, reliable data and responding thoroughly to information requests builds opportunities for inclusive public participation. Such participation engenders active public support and trust. Agencies should focus on supplying high-quality data and information access to empower public engagement and discourse, fulfilling their practical role within the broader mission of constructing trust between the American public and democratic institutions. By having a more narrowed focus on strengthening representation, participation, and openness rather than the broad,

[1] Organisation for Economic Co-operation and Development. (2023). OECD Luxembourg Declaration and Action Plan: Enhancing Representation, Participation and Openness in Public Life. [PDF] Retrieved September 26, 2023, from https://www.oecd.org/governance/oecd-luxembourg-declaration-action-plan-enhancing-representation-participation-and-openness-in-public-life.pdf

more nebulous conceptualization of "public trust", federal statistical agencies will have more defined and concrete aims that can help inform strategic discussions about how to contribute to public trust.

Promote collaboration and coordination between key evidence and data officials to preserve the vision of the Evidence Act.
The Evidence Act has a fundamental goal to enhance the use of data and evidence in government decision-making while promoting a comprehensive perspective of federal data. Effective data management, sharing, protection, and use can lead to more efficient programs and policies, increased transparency, and greater accountability in government operations. This is achieved through recognizing and using data as a strategic asset, enabling cross-agency data governance, and ensuring responsible data privacy.

Effective collaboration among Evidence Act officials – Chief Data Officers (CDOs), Evaluation Officers (EOs), and Statistical Officials (SOs) – alongside other relevant officials like Performance Improvement Officers, Chief Information Officers, and Privacy Officers, in partnership with the federal statistical agencies, is pivotal in achieving the Evidence Act's vision. Within this framework, the federal statistical system plays a unique role, primarily concentrating on gathering, analyzing, and disseminating data for statistical and research purposes. CDOs, responsible for managing data assets, collaborate with statistical agencies to ensure efficient data use across the organization. EOs, tasked with evaluating program effectiveness, rely on this robust data for evidence-based decisions, creating a vital partnership. Each of these roles recognized by the Evidence Act must also coordinate with other key data and evidence leaders across government in order for the vision of the Evidence Act to become a reality.

CDOs, SOs, and EOs specifically share a dedication to maintaining data quality, accuracy, and the essential privacy safeguards that enhance data accuracy and validity and are required for evidence-informed decision-making. Collaboration can foster transparency and a commitment to data quality and evidence-informed practices as well as promote efficiency and cost savings by avoiding redundant data collection – a core tenet of the Evidence Act. However, as written, the proposed rule does not adequately acknowledge the critical role of collaboration between data and evidence officials in strengthening the statistical system, building public trust, and ultimately carrying out the vision of the Evidence Act.

While the proposed regulation references the value of using the Data Governance Boards established within agencies as a means of coordinating within agencies, the Data Foundation acknowledges the importance of relying on DGBs to coordinate *across* agencies as well to set more uniform standards and protocols when possible. As such, the Data Foundation recommends OMB re-evaluate the proposed regulation to consider how to create effective, multidirectional collaboration and coordination with other Evidence Act officials.

The relationship between the CDOs and statistical agencies, including the SOs, is particularly important to address in this proposed regulation. The responsibilities of the CDOs, which include purview over their respective agency's administrative data assets, have a practical impact on the ability of statistical agencies to be effective in accessing and using the agencies' data. Thus, the CDOs can exhibit substantial contributions to strengthening the federal statistical system with allowable data sharing and also in supporting the statistical system's goals for improving the quality of administrative data before data are acquired by a statistical agency under functional separation. In other words, meaningful, effective collaboration and coordination between the CDO and statistical agencies is critical as a strategy for reducing implementation costs, facilitating data access for administrative records, and improving the overall data infrastructure in government.

Given this, the Data Foundation suggests that one responsibility of the Chief Statistician *(§ 1321.4(f))* should be to explicitly consult with the CDOs on an ongoing basis. Within agencies, SOs should also formally and frequently interact with CDOs to accomplish shared objectives. This type of coordination will

be essential, for example, when implementing future regulations related to the Presumption of Accessibility and for effectively coordinating a National Secure Data Service using CIPSEA authority.

Promote innovation to ensure the enduring health, sustainability, and autonomy of the statistical system.

As OMB considers the fundamental roles and responsibilities of the federal statistical system, the included provisions should safeguard the long-term health and sustainability of that system well into the future. This means carefully considering how to reaffirm these commitments in such a way that enables and encourages innovation. As the federal data ecosystem implements new data sharing mechanisms and demands for data for evidence-building increase, there are broader implications of such provisions that could potentially wall off the federal statistical system from the innovation and learning of the system's peers. Ensuring this proposed regulation is future-oriented rather than framed to address past demand will help the federal statistical system be prepared to continue leading in the federal data ecosystem.

One provision that reflects the need for continued evolution is the definition of "identifiable form" (*§ 1321.2(i)*). The proposed regulation defines "identifiable form" as any representation of information that permits the identity of the individual or entity to be reasonably inferred. The Data Foundation recommends that OMB consider clarifying to what degree statistical agencies are obligated to protect against even partial reidentification. Clarifying "identifiable form" in this way will shed light on ways in which federal statistical agencies can safely innovate with new methods as well as modernize data governance practices.

In another example, the current regulation's focus on federal statistical agencies' control over websites, logos, and press releases (*§1321.4(b)(2)*) demonstrates the implications of not leveraging the opportunity to take an ambitious, forward-leaning approach to defining the statistical agencies' roles and responsibilities. While these websites, logos, and press releases are important, they may not suffice for comprehensive communication with all stakeholders in a way that inclusively engages the public. As such, the Data Foundation recommends that discussions about websites, logos, and press releases be expanded in favor of a more comprehensive approach to the current communication challenges that exist for federal statistical agencies when providing information to information providers, data users, and the general public in an equitable way.

Further, though many provisions in the proposed regulation are essential to maintain the independence of the agencies and promote awareness and support in the statistical agencies' products, the proposed regulation must be crafted in such a way that it does not unintentionally introduce challenges for statistical agencies to adapt to the rapidly changing data landscape and emerging technologies.

The proposed requirement for separate statistical agency budget justifications (*§ 1321.4(c)(1) - (2)*) provides an example of the need for such careful consideration. The Data Foundation recognizes that producing a budget request to OMB and Congress can be perceived as a powerful tool to outline an agency's priorities, performance plans, performance metrics, and serve other goals related to promoting transparency and accountability. Such a provision may logically seem to elevate and strengthen agencies' abilities to control resources and make independent and objective decisions. However, altering budgetary practices may also have adverse consequences for the federal statistical system and present unintended limitations in statistical agencies' ability to leverage budget authorities effectively, ultimately inhibiting the system's ability to grow and innovate. For example, small agencies with unique needs may find it challenging to fit their specific requirements within the prescribed format or find they are unable to bear the additional administrative burden. This may deter smaller units from seeking recognition as a statistical agency or unit, preventing the growth of the statistical system in the future.

Such burdensome requirements on administrative tasks may also leave the statistical agencies vulnerable to political and policy decisions that adversely impact the objectivity and independence of the data collections and products statistical agencies are ultimately able to provide the public. Offices with resources allocated through Departmental funding decisions, such as the companion offices of the CDO and EO, may have greater flexibility to forge creative and innovative partnerships and allocate resources dynamically. This differentiation may lead to increased disparities between statistical agencies and their Evidence Act counterparts. Of significant note, the Advisory Committee on Data for Evidence Building considered whether to recommend stand-alone budget justifications for data and evidence activities and decided to not make this a recommendation among its dozens of priority recommendations.

The parent agencies' responsibility to provide resources to respective statistical agencies presents another opportunity for unintended negative impact to the statistical community. If statistical agencies fall behind in adopting innovative approaches and modernizing their data infrastructure, or the independence and objectivity that this regulation intends to bolster is compromised, the agencies may struggle to meet the increasing demands for data and evidence-building in an era where data-informed policymaking is paramount. However, the requirement that parent agencies be required to provide necessary resources to a statistical agency should the statistical agency fall short makes it unlikely parent agencies will cultivate favorable relationships with statistical agencies. This raises concerns that should an agency seek to gain recognized status as a statistical agency, parent agencies may be less inclined to support the effort. To this point, the Data Foundation recommends that OMB clarify the ways in which parent agencies can support statistical agencies in meeting resource shortages and consider alternative language for achieving this goal. The Data Foundation has significant concerns about the implications and potential impacts of this provision as written.

Consider alternative strategies for bolstering the federal statistical system.
The proposed rulemaking from OMB is a substantial contribution to improving the federal statistical system and, notwithstanding our suggestions, the Data Foundation generally supports the proposed rule. However, OMB must take additional steps to enable effective implementation of this proposed rulemaking and leverage broader direction from the Evidence Act and related laws like the National Secure Data Service Act, which provide a stronger future for the federal statistical system and secure data sharing across government. As such, the Data Foundation recommends the following two strategies to bolster the federal statistical system.

One, OMB should elevate the status of the Chief Statistician of the United States from a branch chief to a Deputy Associate Director. The Chief Statistician role can be administratively adjusted by OMB personnel and the OMB director. During the COVID-19 pandemic, OMB leadership allowed this position to remain vacant for years, allocating responsibility among other capable and dedicated federal executives. The federal statistical system's role in data infrastructure and OMB's leadership capacity is too central to not otherwise ensure the prioritization of this position moving forward.

Two, OMB should allocate additional staff resources at OMB to support the proper and effective implementation of the proposed rule and related responsibilities. Federal statistical agencies and parent agencies will need support in understanding and implementing key provisions, and the Data Foundation calls on OMB to prioritize effective resourcing just as it did for the implementation of the 2019 Federal Data Strategy. The proposed rule is nearly 5-years after enactment of the Evidence Act, with further rulemakings from OMB still needed to achieve the full vision of the Evidence Act. Now, with more activities requiring support, statistical and data policy capacity must be a priority at OMB.

Compliance Review
Lastly, the Data Foundation applauds the inclusion of the need for compliance review (*§ 1321.8*). The Data Foundation strongly recommends that OMB choose the statistical audit committee for compliance review.

Directing the Council for Inspector General Integrity and Efficiency to form a statistical audit committee seems to be the best option for balancing the need for specialized expertise in the statistical system, and its laws and regulations, consistency across the government, and unbiased judgment. The alternate options present various drawbacks. Individual agency Inspectors General may create variable standards in their review, and the Interagency Council on Statistical Policy, though equipped with the relevant expertise, would not be an objective third party reviewer.

In preparing a final rule, the Data Foundation strongly encourages OMB to consider additional strategies for bolstering public trust in federal data, and clearly communicating with the public what steps OMB will take to ensure this proposed rule and other provisions of the Evidence Act are fully implemented as directed by Congress and agreed to by the President.

Overall, the Data Foundation and the members of our Data Coalition appreciate OMB's continued efforts to enhance public trust in federal statistics. The Data Foundation applauds the publication of this priority draft regulation required by the Evidence Act. A final rule will provide key guidance for federal statistical agencies and parent agencies to effectively produce trusted statistical products that can advance the broader evidence ecosystem, inform better policies and programs, and ultimately strengthen the public's trust in federal data products.

As you know, the Data Foundation also hosted a public forum to gather additional feedback to support the public rulemaking. While many of those comments informed our feedback, we are also providing a full reference to the submissions we received to be incorporated in the record for OMB's use (Appendix).

The Data Foundation and our Data Coalition members look forward to the continued opportunities to work with OMB, the Chief Statistician, and the federal statistical agencies to advance our data infrastructure. I welcome the opportunity to further discuss these comments with you can be reached at corinna@datafoundation.org. Thank you for your consideration.

Sincerely,

Corinna Turbes
Policy Director
Data Foundation