

Calendar No. 718

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-396

OPEN GOVERNMENT DATA ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2852

TO EXPAND THE GOVERNMENT'S USE AND ADMINISTRATION OF
DATA TO FACILITATE TRANSPARENCY, EFFECTIVE GOVERNANCE,
AND INNOVATION, AND FOR OTHER PURPOSES



DECEMBER 8, 2016.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2852]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2852) to expand the Government's use and administration of data to facilitate transparency, effective governance, and innovation, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 2852, the Open, Public, Electronic, and Necessary Government Data Act (or the "OPEN Government Data Act") is to better enable certain Federal Government data to be accessible and useable by the public. It would do so by setting a standard that data assets be maintained in an open format. An open format means the data assets are machine readable and not in a proprietary format or subject to licensing. The bill would require Federal agencies to maintain an inventory of data assets created, owned, or managed by the agency. The bill would also require data assets on the inventory that can be made publicly available. Finally, the bill strengthens the Federal Chief Information Officer's

(CIO) role in oversight of open data and information resources management policy.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Open data, or data that is made available to use without restrictions, has led to innovation in both the public and private sectors, supported economic growth, and helped to improve performance and transparency in government programs.¹ A prominent example can be found with the creation of “safety.data.gov,” which is a centralized resource for public safety information. In 2012 the Department of Transportation, in partnership with the Department of Justice, Department of Labor, and Consumer Product Safety Commission, launched safety.data.gov which includes information helpful to consumers such as recalls related to cars, household products, recreation products and others.²

According to the Government Accountability Office (GAO), some agencies are not adequately sharing or making their data on Federal spending easy to use.³ This lack of openness has led to problems of quality and completeness of the data presented.⁴ According to GAO, “a lack of government-wide data standards limits the ability to measure the cost and magnitude of federal investments and hampers efforts to share data across agencies to improve decision-making and oversight.”⁵

For example, in the GAO’s 2015 report on opportunities to reduce fragmentation, overlap and duplication, and achieve other financial benefits, GAO included examples of agencies potentially unnecessarily duplicating work because they failed to share information.⁶ In one instance, the Environmental Protection Agency and the Food and Drug Administration both inspected the same laboratories for “good laboratory practices.”⁷ Because the agencies did not share data, they may have been unaware that they were performing the same oversight function on the same facility. GAO recommended that they improve the quality of their data on inspections and develop a written agreement outlining how they plan to collaborate to remove the duplication and overlap in the process.⁸ In the case of software management, GAO found that only two agencies had effective management policies that reduced the number of unused software licenses. GAO recommended that those best

¹The White House, FACT SHEET: Data by the People, for the People—Eight Years of Progress Opening Government Data to Spur Innovation, Opportunity, & Economic Growth (Sept. 28, 2016), available at <https://www.whitehouse.gov/the-press-office/2016/09/28/fact-sheet-data-people-people-eight-years-progress-opening-government>.

²U.S. Department of Transportation, Kristen Baldwin, Associate Chief Information Officer for IT Policy Oversight, *Open Data at DOT—Case Study for Maturing Data Release Practices to Drive Innovation and Increase Accountability* (Jan. 8, 2013), available at <https://project-open-data.cio.gov/transportation-case-study>.

³See generally, GOV’T ACCOUNTABILITY OFFICE, GAO-14-476, DATA TRANSPARENCY OVERSIGHT NEEDED TO ADDRESS UNDERREPORTING AND INCONSISTENCIES ON FEDERAL WEBSITES (2014).

⁴GOV’T ACCOUNTABILITY OFFICE, GAO-15-241T, FEDERAL DATA TRANSPARENCY: EFFECTIVE IMPLEMENTATION OF THE DATA ACT WOULD HELP ADDRESS GOVERNMENT-WIDE MANAGEMENT CHALLENGES AND IMPROVE OVERSIGHT (2014).

⁵*Id.* at 2.

⁶See generally, GOV’T ACCOUNTABILITY OFFICE, GAO-15-404SP, 2015 ANNUAL REPORT: ADDITIONAL OPPORTUNITIES TO REDUCE FRAGMENTATION, OVERLAP, AND DUPLICATION AND ACHIEVE OTHER FINANCIAL BENEFITS (2015).

⁷GOV’T ACCOUNTABILITY OFFICE, GAO-1409289, PESTICIDE SAFETY: IMPROVEMENTS NEEDED IN EPA’S GOOD LABORATORY PRACTICES INSPECTION PROGRAM (2014).

⁸*Id.* at 51.

practices be shared with all agencies to improve software management Government-wide.⁹

Ensuring certain Government data assets are available to the public may also lead to more private sector innovation. For example, entrepreneurs used publicly available Federal Aviation Administration statistics combined with weather data from the National Weather Service to predict flight delays. The resulting application now helps the public make decisions on which flights to take and how much time to leave between connecting flights based on which flights are likely to be on time.¹⁰

The Obama Administration has issued several directives and memoranda in an effort to encourage agencies to open up their data.¹¹

However, these policies did not result in transparency of all data assets.¹² *Open Government Data: The Book* revealed that most of the data published as a result of the Administration's policies were already publicly available elsewhere.¹³ The major concern is that data assets that could be valuable to the public—administrative records and data assets relied on by the Government to make decisions—has not been posted publicly, despite OMB's direction to do so.¹⁴ Additionally, some of the data that have been posted publicly are not useful because they are posted in a proprietary format. The need is to both expose the data assets that have not been available and liberate the data assets that have been locked behind licensing and proprietary formats.

Congress has tried to make more data available to the public by passing legislation encouraging agencies to make Federal Government data more transparent. For example, the DATA Act, which was signed by President Obama on May 9, 2014, required Federal agencies to report additional financial and spending information of the Federal Government on a public website.¹⁵ Most importantly, the bill requires agencies to report the information using a common set of data standards to ensure comparability and usability.¹⁶

But while new laws have spurred openness with respect to some Federal data, S. 2852 would require, where not otherwise prohibited by law and to the extent practicable, data assets that the Federal Government owns or manages to be open—meaning the data assets are machine-readable and not in a proprietary format or subject to licensing. Importantly, data assets are not intended to include all data, but rather a collection of data elements or data sets that may be grouped together by an agency such as, for exam-

⁹*Id.* at 181.

¹⁰Joshua Tauberer, *Open Government Data: The Book*, Introduction (2nd ed. 2014), available at <https://opengovdata.io/2014/transparency-participation-collaboration>.

¹¹See Exec. Office of the President, Memorandum from President Barack Obama to the Heads of Executive Departments and Agencies (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment; Office of Mgmt. & Budget, Exec. Office of the President, M-10-06, *Open Government Directive (2009)*, available at <http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda/2010/m10-06.pdf>; Office of Mgmt. & Budget, Exec. Office of the President, M-13-13, *Open Data Policy—Managing Information As an Asset (2013)*, available at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf>.

¹²Joshua Tauberer, *Open Government Data: The Book*, Introduction (2d ed. 2014), available at <https://opengovdata.io/2014/transparency-participation-collaboration>.

¹³*Id.*

¹⁴*Id.*

¹⁵The Digital Accountability and Transparency Act, Pub. L. No. 113-101, §128 Stat. 1146 (2014).

¹⁶*Id.*

ple, data charts. Supporting guidance for the Obama Administration’s Open Data policy notes that data assets are to be identified by agencies and are specific to supporting the needs of the agency’s respective missions and responsibilities.¹⁷

The bill would also require agencies to develop an inventory that accounts for data assets created or maintained by an agency and to include in the inventory whether each data asset is public or nonpublic. This bill is intended to apply to new Government data collections.

The bill would require data assets in the inventory that can be public to be made publicly available. Posting these data assets is likely to reduce requests for information through the Freedom of Information Act because it makes the information immediately retrievable.

III. LEGISLATIVE HISTORY

S. 2852, the OPEN Government Data Act, was introduced on April 26, 2016, by Senators Brian Schatz (D–HI) and Ben Sasse (R–NE). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2852 at a business meeting on May 25, 2016. During the business meeting, Senator Sasse offered a substitute amendment that limited the data inventory and publication to the data assets to the extent practicable. The legislation, as modified by the Sasse substitute amendment, was adopted by voice vote en bloc. Members present for the vote were: Senators Johnson, McCain, Portman, Paul, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, Tester, Baldwin, Heitkamp, and Booker.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1 establishes the short title of the bill as the “Open, Public, Electronic, and Necessary Government Data Act,” or the “OPEN Government Data Act.”

Section 2 finds that Government data is valuable; maximizing its use spurs innovation; the Government has a responsibility to be transparent; when appropriate the Government’s data should be published in an open and electronic format; having an inventory of data will help agencies identify and reduce waste, increase efficiencies, and save taxpayer dollars; and that when appropriate, access to the Government’s data promotes innovation, scientific discovery, entrepreneurship, and education. This section also defines the term “agency.”

Section 3 clarifies that the bill does not require public disclosure of information prohibited from public release by the Freedom of Information Act.

Section 4 supplies definitions for the terms “data”, “data asset”, “enterprise data inventory”, “machine-readable”, “metadata”, “non-public data asset”, “open format”, “open government data”, “open license”, and “public data asset”.

Section 5 establishes a default position for the Federal Government that its data assets shall be published in a machine-readable open format and under an open license to the extent practicable

¹⁷The White House, Project Open Data: *Open Data Policy—Managing Information as an Asset*, <https://project-open-data.cio.gov/glossary/>, last visited Nov. 22, 2016.

and when not otherwise prohibited by law. This section also permits agencies to engage with other entities including nongovernmental organizations to explore opportunities to leverage agencies' public data assets in a manner that may provide for new opportunities for innovation in the public and private sectors.

Section 6 requires the Federal CIO to coordinate with offices within the OMB and other agencies in advising the Director on Federal information resources management policy.

This section also makes the Federal CIO responsible for overseeing the completeness and openness of each agency's data inventory, changes the name of the Office of Electronic Government (E-gov) to the Office of the Federal Chief Information Officer, and aligns the duties and responsibilities formerly undertaken by the E-gov Administrator to the Federal CIO.

Section 7 requires each agency's CIO to develop and maintain an inventory that accounts for any data asset created, collected, under the control or direction of or maintained by the agency after the effective date of this section. The data assets in the inventory include data assets used in any agency information system including program administration, statistical, and financial activity. It also includes data assets shared or maintained within or across agencies.

The information in the inventory must include an indicator of whether the data asset can be made public and a description of the data asset. The inventory of data assets that can be made available to the public must be posted to the data.gov web portal. This section also creates an ongoing requirement for agency CIOs to update the inventory within 90 days of new data assets being created or identified.

This section also creates a mechanism in which the head of the agency can waive the paperwork reduction requirements for low-burden, customer service collections.

This section directs the Director of OMB to collaborate with the Office of Government Information Services and the Administrator of GSA to develop and maintain an online repository of tools, best practices, and schema standards to facilitate the adoption of open data practices.

This section directs the Director of OMB to electronically publish a report on agency performance and compliance with this act one year after enactment and every two years thereafter.

This section requires the Comptroller General of the United States to submit to Congress a report that identifies the value of information made available to the public as a result of the bill, whether it is valuable to expand the publicly available information to any other data assets, and the completeness of the Enterprise Data Inventory created by this bill.

Section 8 requires GSA to maintain the data.gov portal as the way to share open Government data with the public.

Section 9 requires the CIOs of executive agencies to manage the data inventories and establish standards for publishing and sharing data assets.

Section 10 directs that agencies report to Congress on quality, methods, effectiveness, and independence of the agency's evaluation research and analysis efforts three years after enactment. It also requires GAO to submit a report to Congress summarizing the agency reports to Congress and make recommendations on addi-

tional ways to improve agency use of open data for agency analyses and evaluations four years after the bill's enactment.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 5, 2016.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2852, the OPEN Government Data Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

S. 2852—OPEN Government Data Act

S. 2852 would direct federal agencies to publish all data they collect in an open format that can be used by any computer. Under the bill, the Office of Management and Budget would establish an inventory of all federal data sets and would direct the General Services Administration to maintain an online interface for all such data. In addition, S. 2852 would rename the Office of Electronic Government as the Office of the Federal Chief Financial Officer.

Information from selected agencies suggest that most of the provisions of the bill would codify Executive Order 13642 and other executive branch policies that set the framework for agencies to promote openness and interoperability in information management. That executive order requires agencies to standardize data sets and to make them publicly available. A website (www.data.gov) has been established to share this government information with the general public. CBO expects that implementing S. 2852 would have no significant effect on spending because agencies effectively are already working to implement the requirements of the bill.

The bill could affect direct spending by agencies not funded through annual appropriations; therefore pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would be negligible. Enacting S. 2852 would not affect revenues.

CBO estimates that enacting S. 2852 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2852 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 3—POWERS

* * * * *

SEC. 305. SYSTEMATIC AGENCY REVIEW OF OPERATIONS.

(a) * * *

(b) Under regulations prescribed and administered by the President, each agency shall review systematically the operations of each of its activities, functions, or organization units, on a continuing basis. *To the extent practicable, each agency shall use existing data to support such reviews if the data is accurate and complete.*

(c) The purpose of the reviews includes—

(1) determining the degree of efficiency and economy in the operation of the agency's activities, functions, or organization units;

(2) *determining the status of achieving the mission, goals, and objectives of the agency as described in the strategic plan of the agency published pursuant to section 306;*

[(2)] (3) identifying the units that are outstanding in those respects; and

[(3)] (4) identifying the employees whose personal efforts have caused their units to be outstanding in efficiency and economy of operations.

(d) *OPEN DATA COMPLIANCE REPORT.*—Not later than 1 year after the date of enactment of this subsection, and every 2 years thereafter, the Director of the Office of Management and Budget shall electronically publish a report on agency performance and compliance with the Open, Public, Electronic, and Necessary Government Data Act and the amendments made by that Act.

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart D—Pay and Allowance

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CHAPTER 53—PAY RATES AND SYSTEMS

* * * * *

Subchapter II—Executive Schedule Pay Rates

* * * * *

SEC. 5314. POSITIONS AT LEVEL III.

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * *

[Administrator of the Office of Electronic Government] *Federal Chief Information Officer.*

* * * * *

TITLE 10—ARMED FORCES

* * * * *

Subtitle A—General Military Law

* * * * *

PART IV—SERVICE, SUPPLY AND PROCUREMENT

* * * * *

CHAPTER 131—PLANNING AND COORDINATION

* * * * *

SEC. 2222. DEFENSE BUSINESS SYSTEMS: BUSINESS PROCESS RE-ENGINEERING; ENTERPRISE ARCHITECTURE; MANAGEMENT.

(a) * * *

* * * * *

- (i) * * *
- (1) * * *

* * * * *

(6) ENTERPRISE ARCHITECTURE.—The term “enterprise architecture” has the meaning given that term in [section 3601(4)] *section 3601(3)* of title 44.

* * * * *

TITLE 31—MONEY AND FINANCE

* * * * *

Subtitle I—General

* * * * *

CHAPTER 5—OFFICE OF MANAGEMENT AND BUDGET

* * * * *

Subchapter I—Organization

* * * * *

SEC. 507. [THE OFFICE OF ELECTRONIC GOVERNMENT] *THE OFFICE OF THE FEDERAL CHIEF INFORMATION OFFICER.*

* * * * *

**TITLE 40—PUBLIC BUILDINGS
PROPERTY AND WORKS**

* * * * *

**Subtitle I—Federal Property and
Administrative Services**

* * * * *

**CHAPTER 3—ORGANIZATION OF GENERAL SERVICES
ADMINISTRATION**

* * * * *

SEC. 305. ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.

The Administrator of General Services shall consult with the [Administrator of the Office of Electronic Government] *Federal Chief Information Officer* on programs undertaken by the General Services Administration to promote electronic Government and the efficient use of information technologies by Federal agencies.

* * * * *

Subtitle III—Information Technology Management

* * * * *

CHAPTER 113—RESPONSIBILITY FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

* * * * *

Subchapter I—Director of Office of Management And Budget

* * * * *

SEC. 11302. CAPITAL PLANNING AND INVESTMENT CONTROL.

(a) * * *

(b) * * *

(c) * * *

(1) * * *

* * * * *

(4) RISK MANAGEMENT.—For each major information technology investment listed under paragraph (3)(A) that receives a high risk rating, as described in paragraph (3)(C), for 4 consecutive quarters—

(A) the Chief Information Officer of the covered agency and the program manager of the investment within the covered agency, in consultation with the [Administrator of the Office of Electronic Government] *Federal Chief Information Officer*, shall conduct a review of the investment that shall identify—

(i) * * *

(ii) * * *

(iii) * * *

(B) the [Administrator of the Office of Electronic Government] *Federal Chief Information Officer* shall communicate the results of the review under subparagraph (A) to—

(i) * * *

(ii) * * *

(iii) * * *

(C) in the case of a major information technology investment of the Department of Defense, the assessment required by subparagraph (A) may be accomplished in accordance with section 2445c of title 10, provided that the results of the review are provided to the [Administrator of the Office of Electronic Government] *Federal Chief Information Officer* upon request and to the committees identified in subsection (B); and

(D) * * *

* * * * *

SEC. 11315. AGENCY CHIEF INFORMATION OFFICER.

(a) * * *

(b) GENERAL RESPONSIBILITIES.—The Chief Information Officer of an executive agency is responsible for—

(1) providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that information technology is acquired and information resources are managed for the executive agency in a manner that implements the policies and procedures of this subtitle, consistent with chapter 35 of title 44 and the priorities established by the head of the executive agency;

(2) developing, maintaining, and facilitating the implementation of a sound, secure, and integrated information technology architecture for the executive agency[; and];

(3) promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency[.];

(4) *data asset management, format standardization, sharing of data, and publication of data;*

(5) *the compilation and publication of the Enterprise Data Inventory for the agency required under section 3523 of title 44;*

(6) *ensuring that agency data conforms with open data best practices;*

(7) *ensuring compliance with the requirements of subsections (b), (c), (d), and (f) of section 3506 of title 44;*

(8) *engaging agency employees, the public, and contractors in using open Government data and encourage collaborative approaches to improving data use;*

(9) *supporting the agency Performance Improvement Officer in generating data to support the function of the Performance Improvement Officer described in section 1124(a)(2) of title 31;*

(10) *reviewing the information technology infrastructure of the agency and the impact of such infrastructure on making data accessible to reduce barriers that inhibit data asset accessibility;*

(11) *ensuring that, to the extent practicable, the agency is maximizing its own use of data, including data generated by applications, devices, networks, and equipment owned by the Government and such use is not otherwise prohibited, to reduce costs, improve operations, and strengthen security and privacy protections; and*

(12) *identifying points of contact for roles and responsibilities related to open data use and implementation as required by the Director of the Office of Management and Budget.*

(c) * * *

(d) *ADDITIONAL DEFINITIONS.—In this section, the terms ‘data’, ‘data asset’, ‘Enterprise Data Inventory’, and ‘open Government data’ have the meanings given those terms in section 3502 of title 44.*

* * * * *

SEC. 11319. RESOURCES, PLANNING AND PORTFOLIO MANAGEMENT.

(a) * * *

(b) * * *

(c) INFORMATION TECHNOLOGY PORTFOLIO, PROGRAM, AND RESOURCE REVIEWS.—

(1) * * *

(2) * * *

(3) ANNUAL REVIEW.— The Chief Information Officer of each covered agency, in conjunction with the Chief Operating Officer or Deputy Secretary (or equivalent) of the covered agency and the [Administrator of the Office of Electronic Government] *Federal Chief Information Officer*, shall conduct an annual review of the information technology portfolio of the covered agency.

(4) APPLICABILITY TO THE DEPARTMENT OF DEFENSE.— In the case of the Department of Defense, processes established pursuant to this subsection shall apply only to the business systems information technology portfolio of the Department of Defense and not to national security systems as defined by section 11103(a) of this title. The annual review required by paragraph (3) shall be carried out by the Deputy Chief Management Officer of the Department of Defense (or any successor to such Officer), in consultation with the Chief Information Officer, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and other appropriate Department of Defense officials. The Secretary of Defense may designate an existing investment or management review process to fulfill the requirement for the annual review required by paragraph (3), in consultation with the [Administrator of the Office of Electronic Government] *Federal Chief Information Officer*.

(5) QUARTERLY REPORTS.—

(A) IN GENERAL.—The [Administrator of the Office of Electronic Government] *Federal Chief Information Officer* shall submit a quarterly report on the cost savings and reductions in duplicative information technology investments identified through the review required by paragraph (3) to—

- (i) the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate;
- (ii) the Committee on Oversight and Government Reform and the Committee on Appropriations of the House of Representatives; and
- (iii) upon a request by any committee of Congress, to that committee.

(B) * * *

* * * * *

TITLE 44—PUBLIC PRINTING AND DOCUMENTS

* * * * *

CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

* * * * *

Subchapter I—Federal Information Policy

Sec. 3501. Purposes

- Sec. 3502. Definitions
- Sec. 3503. Office of Information and Regulatory Affairs
- Sec. 3504. Authority and functions of Director
- Sec. 3505. Assignment of tasks and deadlines
- Sec. 3506. Federal agency responsibilities
- Sec. 3507. Public information collection activities; submission to Director; approval and delegation
- Sec. 3508. Determination of necessity for information; hearing
- Sec. 3509. Designation of central collection agency
- Sec. 3510. Cooperation of agencies in making information available
- Sec. 3511. Establishment and operation of Government Information Locator Service
- Sec. 3511A. Technology portal*
- Sec. 3512. Public protection
- Sec. 3513. Director review of agency activities; reporting; agency response
- Sec. 3514. Responsiveness to Congress
- Sec. 3515. Administrative powers
- Sec. 3516. Rules and regulations
- Sec. 3517. Consultation with other agencies and the public
- Sec. 3518. Effect on existing laws and regulations
- Sec. 3519. Access to information
- Sec. 3520. Establishment of task force on information collection and dissemination
- Sec. 3521. Authorization of appropriations
- Sec. 3522. Requirements for Federal data*
- Sec. 3523. Enterprise data inventory*
- Sec. 3531—Repealed. Pub. L. 113–283, § 2(a), Dec. 18, 2014, 128 Stat. 3073

* * * * *

SEC. 3502. DEFINITIONS.

(1) * * *

* * * * *

(13) the term “recordkeeping requirement” means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

- (A) retain such records;
- (B) notify third parties, the Federal Government, or the public of the existence of such records;
- (C) disclose such records to third parties, the Federal Government, or the public; or
- (D) report to third parties, the Federal Government, or the public regarding such records[; and];

(14) the term “penalty” includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit[.];

(15) the term ‘data’ means recorded information, regardless of form or the media on which the data is recorded;

(16) the term ‘data asset’ means a collection of data elements or data sets that may be grouped together;

(17) the term ‘Enterprise Data Inventory’ means the data inventory developed and maintained pursuant to section 3523;

(18) the term ‘machine-readable’ means a format in which information or data can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost;

(19) the term ‘metadata’ means structural or descriptive information about data such as content, format, source, rights, accuracy, provenance, frequency, periodicity, granularity, publisher or responsible party, contact information, method of collection, and other descriptions;

(20) the term ‘nonpublic data asset’—

(A) means a data asset that may not be made available to the public for privacy, security, confidentiality, regulation, or other reasons as determined by law; and

(B) includes data provided by contractors that is protected by contract, license, patent, trademark, copyright, confidentiality, regulation, or other restriction;

(21) the term ‘open format’ means a technical format based on an underlying open standard that is—

(A) not encumbered by restrictions that would impede use or reuse; and

(B) based on an underlying open standard that is maintained by a standards organization;

(22) the term ‘open Government data’ means a Federal Government public data asset that is—

(A) machine-readable;

(B) available in an open format; and

(C) part of the worldwide public domain or, if necessary, published with an open license;

(23) the term ‘open license’ means a legal guarantee applied to a data asset that is made available to the public that such data asset is made available—

(A) at no cost to the public; and

(B) with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting; and

(24) the term ‘public data asset’ means a collection of data elements or a data set maintained by the Government that—

(A) may be released; or

(B) has been released to the public in an open format and is discoverable through a search of Data.gov.

SEC. 3503. OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

(a) * * *

(b) * * *

(c) **COORDINATION OF FEDERAL INFORMATION RESOURCES MANAGEMENT POLICY.**—The Federal Chief Information Officer shall work in coordination with the Administrator of the Office of Information and Regulatory Affairs and with the heads of other offices within the Office of Management and Budget to oversee and advise the Director on Federal information resources management policy.

SEC. 3504. AUTHORITY AND FUNCTIONS OF DIRECTOR.

(a)

(1) The Director shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including burden reduction and service delivery to the public. In performing such oversight, the Director shall—

(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines【; and】;

(B) provide direction and oversee—

(i) the review and approval of the collection of information and the reduction of the information collection burden;

(ii) agency dissemination of and public access to information;

(iii) statistical activities;

(iv) records management activities;

(v) privacy, confidentiality, security, disclosure, and sharing of information; and

(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures【.】; and

(C) *issue standards for the Enterprise Data Inventory described in section 3523, including—*

(i) a requirement that the Enterprise Data Inventory include a compilation of metadata about agency data; and

(ii) criteria that the head of each agency shall use in determining whether to make a particular data asset publicly available in a manner that takes into account—

(I) the expectation of confidentiality associated with an individual data asset;

(II) security considerations, including the risk that information in an individual data asset in isolation does not pose a security risk but when combined with other available information may pose such a risk;

(III) the cost and value to the public of converting the data into a manner that could be understood and used by the public;

(IV) the expectation that all data that would otherwise be made available under section 552 of title 5 (commonly referred to as the ‘Freedom of Information Act’) be disclosed; and

(V) any other considerations that the Director determines to be relevant.

* * * * *

(h) With respect to Federal information technology, the Director shall—

(1) in consultation with the Director of the National Institute of Standards, *the Federal Chief Information Officer and Technology* and the Administrator of General Services—

* * * * *

(4) ensure, through the review of agency budget proposals, information resources management plans and other means—

(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

(B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

(C) *oversee the completeness of the Enterprise Data Inventory and the extent to which the agency is making all data collected and generated by the agency available to the public in accordance with section 3523;*

(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public; and

(6) *coordinate the development and review of Federal information resources management policy by the Administrator of the Office of Information and Regulatory Affairs and the Federal Chief Information Officer.*

SEC. 3506. FEDERAL AGENCY RESPONSIBILITIES.

(a) * * *

(b) With respect to general information resources management, each agency shall—

(1) manage information resources to—

(A) reduce information collection burdens on the public;

(B) increase program efficiency and effectiveness; and

(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security by—

(i) *using open format for any new Government data asset created or obtained on the date that is 1 year after the date of enactment of this clause; and*

(ii) *to the extent practicable, encouraging the adoption of open form for all open Government data created or obtained before the date of enactment of this clause;*

* * * * *

(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this [subchapter, and] *subchapter and a review of each agency's Enterprise Data Inventory described in section 3523;*

(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training pro-

grams to educate agency program and management officials about information resources management[.]; and

(6) *in consultation with the Director, develop an open data plan as a part of the requirement for a strategic information resources management plan described in paragraph (2) that, at a minimum and to the extent practicable—*

(A) *requires the agency to develop processes and procedures that—*

(i) *require each new data collection mechanism to use an open format; and*

(ii) *allow the agency to collaborate with non-Government entities, researchers, businesses, and private citizens for the purpose of understanding how data users value and use open Government data;*

(B) *identifies and implements methods for collecting and analyzing digital information on data asset usage by users within and outside of the agency, including designating a point of contact within the agency to assist the public and to respond to quality issues, usability, recommendations for improvements, and complaints about adherence to open data requirements in accordance with subsection (d)(2);*

(C) *develops and implements a process to evaluate and improve the timeliness, completeness, accuracy, usefulness, and availability of open Government data;*

(D) *requires the agency to update the plan at an interval determined by the Director;*

(E) *includes requirements for meeting the goals of the agency open data plan including technology, training for employees, and implementing procurement standards, in accordance with existing law, that allow for the acquisition of innovative solutions from the public and private sector; and*

(F) *prohibits the dissemination and accidental disclosure of nonpublic data.*

(c) **[With respect to]** *Except as provided under subsection (j), with respect to the collection of information and the control of paperwork, each agency shall—*

* * * * *

(d) **With respect to information dissemination, each agency [shall]—**

(1) *shall ensure that the public has timely and equitable access to the agency’s public information, including ensuring such access through—*

(A) *encouraging a diversity of public and private [sources] sources and uses for information based on government public information;*

(B) *in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and*

(C) *agency dissemination of public information in an efficient, effective, and economical manner, including providing access to open Government data online;*

(2) *shall regularly solicit and consider public input on the agency’s information dissemination activities;*

(3) shall provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products[; and];

(4) may not, except where specifically authorized by statute—

(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

(B) restrict or regulate the use, resale, or redissemin- ation of public information by the public;

(C) charge fees or royalties for resale or redissemin- ation of public information; or

(D) establish user fees for public information that exceed the cost of dissemination[.];

(5) shall take the necessary precautions to ensure that the agency maintains the production and publication of data which are directly related to activities that protect the safety of human life or property, as identified by the open data plan of the agen- cy required by subsection (b)(6); and

(6) may engage the public in using open Government data and encourage collaboration by—

(A) publishing information on open Government data usage in regular, timely intervals, but not less than annu- ally;

(B) receiving public input regarding priorities for the analysis and disclosure of data to be published;

(C) assisting civil society groups and members of the pub- lic working to expand the use of open Government data; and

(D) hosting challenges, competitions, events, or other ini- tiatives designed to create additional value from open Gov- ernment data.

* * * * *

(j) COLLECTION OF INFORMATION EXCEPTION.—Notwithstanding subsection (c), an agency is not required to meet the requirements of paragraphs (2) and (3) of such subsection if—

(1) the waiver of those requirements is approved by the head of the agency;

(2) the collection of information is—

(A) online and electronic;

(B) voluntary and there is no perceived or actual tangible benefit to the provider of the information;

(C) of an extremely low burden that is typically com- pleted in 5 minutes or less; and

(D) focused on gathering input about the performance of, or public satisfaction with, an agency providing service; and

(3) the agency publishes representative summaries of the col- lection of information under subsection (c).

* * * * *

SEC. 3511A. TECHNOLOGY PORTAL.

(a) DATA.GOV REQUIRED.—The Administrator of General Services shall maintain a single public interface online as a point of entry dedicated to sharing open Government data with the public.

(b) *COORDINATION WITH AGENCIES.*—The Director of the Office of Management and Budget shall determine, after consultation with the head of each agency and the Administrator of General Services, the method to access any open Government data published through the interface described in subsection (a).

* * * * *

SEC. 3522. REQUIREMENTS FOR GOVERNMENT DATA.

(a) *MACHINE-READABLE DATA REQUIRED.*—Government data made available by an agency shall be published as machine-readable data.

(b) *OPEN BY DEFAULT.*—When not otherwise prohibited by law, and to the extent practicable, Government data shall—

- (1) be available in an open format; and
- (2) be available under open licenses.

(c) *OPEN LICENSE OR WORLDWIDE PUBLIC DOMAIN DEDICATION REQUIRED.*—When not otherwise prohibited by law, and to the extent practicable, Government data published by or for an agency shall be made available under an open license or, if not made available under an open license and appropriately released, shall be considered to be published as part of the worldwide public domain.

(d) *INNOVATION.*—Each agency may engage with nongovernmental organizations, citizens, non-profit organizations, colleges and universities, private and public companies, and other agencies to explore opportunities to leverage the agency's public data asset in a manner that may provide new opportunities for innovation in the public and private sectors in accordance with law and regulation.

SEC. 3523. ENTERPRISE DATA INVENTORY.

(a) *AGENCY DATA INVENTORY REQUIRED.*—

(1) *IN GENERAL.*—In order to develop a clear and comprehensive understanding of the data in the possession of an agency, the head of each agency, in consultation with the Director of the Office of Management and Budget, shall develop and maintain an enterprise data inventory (in this section referred to as the 'Enterprise Data Inventory') that accounts for any data asset created, collected, under the control or direction of, or maintained by the agency after the effective date of this section, with the ultimate goal of including all data, to the extent practicable.

(2) *CONTENTS.*—The Enterprise Data Inventory shall include each of the following:

(A) Data used in agency information systems, including program administration, statistical, and financial activity.

(B) Data shared or maintained across agency programs and bureaus.

(C) Data that are shared among agencies or created by more than 1 agency.

(D) A clear indication of all data that can be made publicly available under section 552 of title 5 (commonly referred to as the 'Freedom of Information Act').

(E) A description of whether the agency has determined that an individual data asset may be made publicly available and whether the data asset is currently available to the public.

(F) Non-public data.

(G) Government data generated by applications, devices, networks, and equipment, categorized by source type.

(b) PUBLIC AVAILABILITY.—The Chief Information Officer of each agency shall use the guidance provided by the Director issued pursuant to section 3504(a)(1)(C)(ii) to make public data included in the Enterprise Data Inventory publicly available in an open format and under an open license.

(c) NON-PUBLIC DATA.—Non-public data included in the Enterprise Data Inventory may be maintained in a non-public section of the inventory.

(d) AVAILABILITY OF ENTERPRISE DATA INVENTORY.—The Chief Information Officer of each agency—

(1) shall make the Enterprise Data Inventory available to the public on Data.gov;

(2) shall ensure that access to the Enterprise Data Inventory and the data contained therein is consistent with applicable law and regulation; and

(3) may implement paragraph (1) in a manner that maintains a non-public portion of the Enterprise Data Inventory.

(e) REGULAR UPDATES REQUIRED.—The Chief Information Officer of each agency shall—

(1) to the extent practicable, complete the Enterprise Data Inventory for the agency not later than 1 year after the date of enactment of this section; and

(2) add additional data to the Enterprise Data Inventory for the agency not later than 90 days after the date on which the data asset is created or identified.

(f) USE OF EXISTING RESOURCES.—When practicable, the Chief Information Officer of each agency shall use existing procedures and systems to compile and publish the Enterprise Data Inventory for the agency.

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TITLE 44—PUBLIC PRINTING AND DOCUMENTS

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CHAPTER 36—MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

§ 3601. Definitions

§ 3602. **[Office of Electronic Government]** *Office of the Federal Chief Information Officer*

§ 3603. Chief Information Officers Council

§ 3604. E-Government Fund

§ 3605. Program to encourage innovative solutions to enhance electronic Government services and processes

§ 3606. E-Government report

SEC. 3601. DEFINITIONS.

In this chapter, the definitions under section 3502 shall apply, and the term—

[(1) “Administrator” means the Administrator of the Office of Electronic Government established under section 3602;]

[(2)](1) “Council” means the Chief Information Officers Council established under section 3603;

[(3)](2) “electronic Government” means the use by the Government of web-based Internet applications and other information technologies, combined with processes that implement these technologies, to—

(A) enhance the access to and delivery of Government information and services to the public, other agencies, and other Government entities; or

(B) bring about improvements in Government operations that may include effectiveness, efficiency, service quality, or transformation;

[(4)](3) “enterprise architecture”—

(4) *Federal Chief Information Officer* means the Federal Chief Information Officer of the Office of the Federal Chief Information Officer established under section 3602;

* * * * *

SEC. 3602. OFFICE OF [ELECTRONIC GOVERNMENT] THE FEDERAL CHIEF INFORMATION OFFICER.

(a) There is established in the Office of Management and Budget an [Office of Electronic Government] *Office of the Federal Chief Information Officer*.

(b) There shall be at the head of the Office [an Administrator] a *Federal Chief Information Officer* who shall be appointed by the President.

(c) [The Administrator] *The Federal Chief Information Officer* shall assist the Director in carrying out—

(1) all functions under this chapter;

(2) all of the functions assigned to the Director under title II of the E-Government Act of 2002; and

(3) other electronic government initiatives, consistent with other statutes.

(d) [The Administrator] *The Federal Chief Information Officer* shall assist the Director and the Deputy Director for Management and work with the Administrator of the Office of Information and Regulatory Affairs in setting strategic direction for implementing electronic Government, under relevant statutes, including—

(1) chapter 35;

(2) subtitle III of title 40, United States Code;

(3) section 552a of title 5 (commonly referred to as the “Privacy Act”);

(4) the Government Paperwork Elimination Act (44 U.S.C. 3504 note); and

(5) the Federal Information Security Management Act of 2002.

(e) [The Administrator] *The Federal Chief Information Officer* shall work with the Administrator of the Office of Information and Regulatory Affairs and with other offices within the Office of Management and Budget to oversee implementation of electronic Government under this chapter, chapter 35, the E-Government Act of 2002, and other relevant statutes, in a manner consistent with law, relating to—

- (1) capital planning and investment control for information technology;
- (2) the development of enterprise architectures;
- (3) information security;
- (4) privacy;
- (5) access to, dissemination of, and preservation of Government information;
- (6) accessibility of information technology for persons with disabilities; and
- (7) other areas of electronic Government.

(f) Subject to requirements of this chapter, [the Administrator shall] *the Federal Chief Information Officer* shall assist the Director by performing electronic Government functions as follows:

(1) * * *

* * * * *

(16) Administer the [Office of Electronic Government] *the Office of the Federal Chief Information Officer* established under this section.

(17) Assist the Director in preparing the E-Government report established under section 3606.

(g) The Director shall ensure that the Office of Management and Budget, including [the Office of Electronic Government] *the Office of the Federal Chief Information Officer*, the Office of Information and Regulatory Affairs, and other relevant offices, have adequate staff and resources to properly fulfill all functions under the E-Government Act of 2002.

SEC. 3603. CHIEF INFORMATION OFFICERS COUNCIL.

(a) * * *

(b) The members of the Council shall be as follows:

(1) The Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council.

(2) [The Administrator of the Office of Electronic Government] *the Office of the Federal Chief Information Officer*.

* * * * *

(c)

(1) [The Administrator of the Office of Electronic Government] *The Federal Chief Information Officer* shall lead the activities of the Council on behalf of the Deputy Director for Management.

* * * * *

(f) The Council shall perform functions that include the following:

(1) Develop recommendations for the Director on Government information resources management policies and requirements.

(2) Share experiences, ideas, best practices, and innovative approaches related to information resources management.

(3) Assist [the Administrator] *the Federal Chief Information Officer* in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Government performance through the use of information technology.

* * * * *

(8) *Work with the Office of Government Information Services and the Director of the Office of Science and Technology Policy to promote data interoperability and comparability of data across the Government.*

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SEC. 3604. E-GOVERNMENT FUND.

- (a)
 - (1) There is established in the Treasury of the United States the E-Government Fund.
 - (2) The Fund shall be administered by the Administrator of the General Services Administration to support projects approved by the Director, assisted by **the Administrator of the Office of Electronic Government** *the Federal Chief Information Officer*, that enable the Federal Government to expand its ability, through the development and implementation of innovative uses of the Internet or other electronic methods, to conduct activities electronically.
- (b)
 - (1) The **Administrator** *Federal Chief Information Officer* shall—
 - (A) establish procedures for accepting and reviewing proposals for funding;
 - (B) consult with interagency councils, including the Chief Information Officers Council, the Chief Financial Officers Council, and other interagency management councils, in establishing procedures and reviewing proposals; and
 - (C) assist the Director in coordinating resources that agencies receive from the Fund with other resources available to agencies for similar purposes.
 - (2) When reviewing proposals and managing the Fund, the **Administrator** *Federal Chief Information Officer* shall observe and incorporate the following procedures:
 - (A) A project requiring substantial involvement or funding from an agency shall be approved by a senior official with agencywide authority on behalf of the head of the agency, who shall report directly to the head of the agency.
 - (B) Projects shall adhere to fundamental capital planning and investment control processes.
 - (C) Agencies shall identify in their proposals resource commitments from the agencies involved and how these resources would be coordinated with support from the Fund, and include plans for potential continuation of projects after all funds made available from the Fund are expended.
 - (D) After considering the recommendations of the interagency councils, the Director, assisted by the **Administrator** *Federal Chief Information Officer*, shall have final authority to determine which of the candidate projects shall be funded from the Fund.
 - (E) Agencies shall assess the results of funded projects.
- (c) In determining which proposals to recommend for funding, **the Administrator** *the Federal Chief Information Officer*—

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SEC. 3605. PROGRAM TO ENCOURAGE INNOVATIVE SOLUTIONS TO ENHANCE ELECTRONIC GOVERNMENT SERVICES AND PROCESSES.

(a) ESTABLISHMENT OF PROGRAM.—**[The Administrator]** *The Federal Chief Information Officer* shall establish and promote a Governmentwide program to encourage contractor innovation and excellence in facilitating the development and enhancement of electronic Government services and processes.

(b) ISSUANCE OF ANNOUNCEMENTS SEEKING INNOVATIVE SOLUTIONS.—Under the program**[, the Administrator,]**, *the Federal Chief Information Officer*, in consultation with the Council and the Administrator for Federal Procurement Policy, shall issue announcements seeking unique and innovative solutions to facilitate the development and enhancement of electronic Government services and processes**[.]; and**

(c) MULTIAGENCY TECHNICAL ASSISTANCE TEAM.—

(1) **[The Administrator]** *The Federal Chief Information Officer*, in consultation with the Council and the Administrator for Federal Procurement Policy, shall convene a multiagency technical assistance team to assist in screening **[proposals submitted to the Administrator]** *proposals submitted to the Federal Chief Information Officer* to provide unique and innovative solutions to facilitate the development and enhancement of electronic Government services and processes. The team shall be composed of employees of the agencies represented on the Council who have expertise in scientific and technical disciplines that would facilitate the assessment of the feasibility of the proposals.

(2) The technical assistance team shall—

(A) assess the feasibility, scientific and technical merits, and estimated cost of each proposal; and

(B) submit each proposal, and the assessment of the proposal, to **[the Administrator]** *the Federal Chief Information Officer*.

(3) The technical assistance team shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(4) After receiving proposals and assessments from the technical assistance team, **[the Administrator]** *the Federal Chief Information Officer* shall consider recommending appropriate proposals for funding under the E-Government Fund established under section 3604 or, if appropriate, forward the proposal and the assessment of it to the executive agency whose mission most coincides with the subject matter of the proposal.

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TITLE 50—WAR AND NATIONAL DEFENSE

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CHAPTER 44—NATIONAL SECURITY

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Subchapter III—Accountability for Intelligence Activities

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SEC. 3100. INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION.

(a) * * *

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(k) Definitions in this section:

(1) The term “enterprise architecture” has the meaning given that term in **[section 3601(4)]** *section 3601(3)* of title 44.

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