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OFFICE OF MANAGEMENT AND BUDGET
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THE DIRECTOR

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M-23-04

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young 

SUBJECT: Establishment of Standard Application Process Requirements on Recognized Statistical Agencies and Units

The Confidential Information Protection and Statistical Efficiency Act (CIPSEA)¹ provides the Director of the Office of Management and Budget (OMB) the authority to designate agencies or organizational units as recognized statistical agencies and units (hereinafter “statistical agencies and units”).² CIPSEA requires statistical agencies and units to produce and disseminate relevant and timely statistical information, conduct credible and accurate statistical activities, conduct objective statistical activities, and protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses.³ CIPSEA requires the Director of OMB to establish a standard application process (SAP) that will be adopted by statistical agencies and units through which agencies, the Congressional Budget Office, State, local, Tribal, and territorial governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets accessed or acquired under CIPSEA by a statistical agency or unit for purposes of developing evidence.⁴

This memorandum establishes a SAP that fulfills this requirement and that OMB will also use to fulfill related statutory requirements. This memorandum addresses only the application procedures and does not alter any existing security requirements or practices relating to data access once an applicant has been approved.

Under the Paperwork Reduction Act (PRA), the duties of the Chief Statistician include carrying out statistical policy and coordination functions across the Federal statistical system, including coordinating the activities of the Federal statistical system to ensure the efficiency and

¹ First enacted in 2002, CIPSEA was reauthorized and expanded in Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Pub. L. No. 115-435, tit. III, 132 Stat. 5544 (Jan. 14, 2019). Throughout this memorandum, the term CIPSEA is used to mean CIPSEA 2002 as amended by the Evidence Act.

² 44 U.S.C. § 3562.

³ 44 U.S.C. § 3563(a).

⁴ *Id.* § 3583(a).

effectiveness of the system.⁵ In order to promote such efficiency and effectiveness, unless prohibited by law, this policy also applies to applications for access to confidential data assets accessed or acquired under authorities other than CIPSEA. Such a comprehensive approach will promote the goal of a single, standardized process by which those individuals or entities apply to access available confidential data assets accessed or acquired by statistical agencies and units.

Background

Data accessed or acquired by statistical agencies and units is vital for building evidence on conditions, characteristics, and behaviors concerning the whole of, or relevant groups or components within, the economy, society, or the natural environment and on the operations and outcomes of public programs and policies. This evidence can benefit the stakeholders in the programs, the broader public, and policymakers and program managers at the State, local, Tribal, territorial, and Federal levels. Some evidence may be built upon public versions of data that were initially collected under a confidentiality protection statute, but where disclosure limitation methods have been applied, such as removal of Personally Identifying Information (PII) and aggregation of information, to prevent the risk of disclosing the identities of individuals. However, some evidence-building activities require the use of confidential data, and such uses are to be conducted in a manner that maintains the confidentiality of the data and the public trust.

Statistical agencies have invested in secure ways to provide such access for many years. By contract or through a special agreement, a statistical agency or unit may allow approved individuals (hereinafter “agents”) to perform exclusively statistical activities on an approved project using confidential data, subject to appropriate control, supervision, and agreement to comply with all relevant legal provisions. CIPSEA authorizes data accessed or acquired by a statistical agency or unit to be shared with such agents and subjects such agents to the same fines and penalties for willful and unauthorized disclosures as statistical agency or unit employees and officers.⁶ Such arrangements have been used successfully in the past for the purpose of facilitating the generation of evidence. However, the process for an individual to become a designated agent often varies across Federal statistical agencies. Moreover, the trusted status that agents obtain from one agency may not transfer to another agency, requiring the potential duplication of costly and time-consuming clearance processes. The variety of applications and clearance procedures used across the Federal statistical system for confidential data access is a burden that impacts the ability of potential agents to generate evidence that could inform the efficiency of government policies and programs. Evidence-building opportunities will be enhanced, while maintaining data protections and ensuring appropriate use, by the design and construction of a SAP for access to confidential data.

In 2016, Congress established the Commission on Evidence-Based Policymaking (CEP) to explore how to increase the availability and use of evidence in the Federal Government while protecting privacy and confidentiality. In the September 7, 2017 report on its findings, the CEP provided a series of recommendations in response to their charge. As part of its findings, the CEP highlighted the heterogeneity in application processes for confidential data as an important

⁵ *Id.* § 3504(e).

⁶ *Id.* § 3572(e).

challenge for those seeking to access confidential data from multiple agencies to build evidence.⁷ The CEP further noted that inefficiencies in the confidential data access processes create administrative expenses and burdens on applicants that could impede federally-funded research. Congress sought to address these concerns through the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), which amended CIPSEA.

CIPSEA requires that each statistical agency or unit establish an identical application process, which includes not just the application form, but also the criteria for determining whether to grant an applicant access to the confidential data asset, timeframes for prompt determinations, an appeals process for adverse determinations, and reporting requirements for full transparency of the process. While the adoption of the SAP is required for statistical agencies and units recognized under CIPSEA, other agencies and organizational units within the Executive Branch are not required to participate but may benefit from the adoption of the SAP to accept applications for access to confidential data assets that they are able to make available for purposes of building evidence, and such participation furthers the Federal Government's ability to offer a seamless user experience to potential applicants, consistent with CEP's findings.

This memorandum establishes the SAP to be implemented by statistical agencies and units consistent with other portions of CIPSEA, and provides an avenue by which other agencies and units can voluntarily participate. It provides minimum requirements, such as for approval timeframes. Agencies are encouraged to exceed those requirements whenever possible. For the purposes of this policy, the application process begins with an applicant discovering a confidential data asset⁸ for which a participating agency is accepting applications to access for purposes of building evidence and generally ends with either the statistical agency's or unit's determination on whether or not to grant access. In the case of an adverse determination, the application process ends with the conclusion of an appeals process if the applicant elects to appeal the determination.

The SAP establishes a standardized process for applying to access available confidential data assets from a statistical agency or unit for evidence-building purposes.⁹ The SAP is not applicable to cases where the data user does not or is not seeking to have direct access to confidential data (*e.g.*, the data user is instead seeking public-use data assets, public-use microdata files, or secure web-based query systems that return non-confidential data). Internal agency projects and processes undertaken with Federal or non-Federal external collaborators—

⁷ The Promise of Evidence Based Policymaking, Report of the Commission on Evidence-Based Policymaking, *available at*:

<https://cybercemetery.unt.edu/archive/cep/20171002202953/https://www.cep.gov/content/dam/cep/report/cep-final-report.pdf> (September 7, 2017).

⁸ Confidential data assets covered by this policy may exist across multiple access tiers for accessing protected, restricted use data that will be established under the implementing regulations for 44 U.S.C. § 3582.

⁹ As defined in 44 U.S.C. § 3561, evidence is the broad concept of "information produced as a result of statistical activities conducted for a statistical purpose." Additional detail on the meaning of evidence is provided in Appendix A of OMB Memorandum M-19-23, Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance *available at*: <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf>, where the components of evidence may include foundational fact finding, policy analysis, program evaluation, and performance measurement. Thus, the SAP and its common application form are intended to serve a broad range of users and their statistical inquires, from basic research to applied analysis that is highly program specific.

carried out under a contract, interagency agreement, Memorandum of Understanding (MOU), or other miscellaneous agreement that creates an obligation between Federal agencies or with a non-Federal organization (*e.g.*, partnerships invoked through reimbursable, joint statistical project agreements)—also are not required to use the SAP Portal.¹⁰

Under the SAP, statistical agencies and units remain the stewards of their data assets and are responsible for facilitating approved access consistent with 44 U.S.C. § 3582 and associated regulation and guidance. As such, this policy does not establish or alter any requirements for a statistical agency or unit to accept applications for access to specific data assets; nor does it establish or alter statistical agency or unit requirements for the type of output (*e.g.*, tabular) that is acceptable within an application; nor does it establish or alter statistical agency or unit requirements for data access or distribution modes for confidential data that agents may use.

Applicability

The requirements in this memorandum apply to all statistical agencies and units currently recognized under 44 U.S.C. §§ 3561(11) and 3562.¹¹ At the time of the issuance of this memorandum, there are 16 such statistical agencies and units: Bureau of Economic Analysis (Department of Commerce); Bureau of Justice Statistics (Department of Justice); Bureau of Labor Statistics (Department of Labor); Bureau of Transportation Statistics (Department of Transportation); Census Bureau (Department of Commerce); Economic Research Service (Department of Agriculture); Energy Information Administration (Department of Energy); National Agricultural Statistics Service (Department of Agriculture); National Center for Education Statistics (Department of Education); National Center for Health Statistics (Department of Health and Human Services); National Center for Science and Engineering Statistics (National Science Foundation); Office of Research, Evaluation, and Statistics (Social Security Administration); Statistics of Income Division (Department of the Treasury); Microeconomic Surveys Unit (Board of Governors of the Federal Reserve System); Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health

¹⁰ In some cases, statistical agencies or units as a part of their standard operations may require an MOU between the researcher (or their organization) and the agency for the purpose of accessing the data, but this does not constitute a researcher-agency partnership for the purpose of determining whether the project is subject to the SAP.

¹¹ OMB's authority to designate statistical agencies and units comes from the 2002 CIPSEA, which had two subtitles. The primary actors in former subtitle A (now subtitle B) are the Recognized Statistical Agencies and Units permitted to use the strong confidentiality protections authorized in that subtitle. OMB's guidance implementing the law refers multiple times to the eligible statistical agencies as those "recognized" by OMB, either in a 1997 Confidentiality Order, or subsequently. The guidance also provides instructions for any additional agencies wishing to be "recognized" by OMB under former subtitle A (now subtitle B). The primary actors in former subtitle B (now subtitle C) are three specific statistical agencies, (the Bureau of Economic Analysis, the Bureau of Labor Statistics, and the Bureau of the Census) that are allowed by the law to share business data among themselves and are referred to as "Designated Statistical Agencies." Therefore, for the past two decades, "recognized" (under former subtitle A, now subtitle B) and "designated" (under former subtitle B, now subtitle C) statistical agencies had two distinct meanings under CIPSEA. In 2019, CIPSEA was updated and retained former subtitles A and B (now relabeled as subtitles B and C, respectively); however, it also used the word "designated" in elaborating OMB's responsibilities for recognizing statistical agencies in § 3562 (in new subtitle A). OMB believes the use of "designate" to describe both the longer list of recognized statistical agencies and the continuing list of three established by former subtitle B (now subtitle C) could be confusing. Therefore, for the remainder of this memorandum, OMB uses the word "recognized" to mean a statistical agency or unit that OMB designates under § 3562, and therefore subject to the responsibilities in 44 U.S.C. § 3563.

Services Administration (Department of Health and Human Services); and National Animal Health Monitoring System, Animal and Plant Health Inspection Service (Department of Agriculture).

In the future, if the Director of OMB designates an agency or organizational unit as a recognized statistical agency or unit, then it becomes subject to this memorandum and shall adopt the SAP.

Other Executive Branch agencies or units may, at their discretion, and with the concurrence of the Governance Board, utilize the SAP established in this memorandum to accept applications for access to confidential data for purposes of building evidence. When making use of the SAP to accept such proposals, other agencies must adopt and abide by the entirety of this memorandum for those data assets, including use of the SAP data catalog, common application, review criteria, timelines, appeals process, progress tracking, and reporting, with exceptions for any conflicting legal requirements, as allowed by Section 3 of this policy. Initial and continued use of the SAP by non-recognized statistical agencies and units remains at the agency's or unit's discretion, though initial participation requires the concurrence of the Governance Board.

Definitions

Agent. The term “agent” means an individual (A)(i) who is an employee of a private organization or a researcher affiliated with an institution of higher learning (including a person granted special sworn status by the Bureau of the Census under U.S.C. 13 § 23(c)), and with whom a contract or other agreement is executed, on a temporary basis, by an executive agency to perform exclusively statistical activities under the control and supervision of an officer or employee of that agency; (ii) who is working under the authority of a government entity with which a contract or other agreement is executed by an executive agency to perform exclusively statistical activities under the control of an officer or employee of that agency; (iii) who is a self-employed researcher, a consultant, a contractor, or an employee of a contractor, and with whom a contract or other agreement is executed by an executive agency to perform a statistical activity under the control of an officer or employee of that agency; or (iv) who is a contractor or an employee of a contractor, and who is engaged by the agency to design or maintain the systems for handling or storage of data received under this subchapter; and (B) who agrees in writing to comply with all provisions of law that affect information acquired by that agency.¹²

Commingled data. The term “commingled data” means data that have been enhanced or combined with data (*e.g.*, administrative data, survey or frame data, commercial data) from another agency, organizational unit, or entity outside the Executive Branch. Commingled data use and onward sharing is governed by a Memorandum of Understanding or other contractual arrangement outlining the permissions protocols to which the commingled data are subject (*i.e.*, additional approvals beyond the agency currently hosting the data) and entered into by the statistical agency or unit and the other data owners.

Confidentiality. The term “confidentiality” means a quality or condition accorded to information as an obligation not to disclose that information to an unauthorized party.¹³

¹² 44 U.S.C. § 3561(2).

¹³ *Id.* § 3563(d)(3).

Confidential data. The term “confidential data” means any information that is collected under a confidentiality pledge or other obligation necessitating the protection of those data from public disclosure.

Data asset. The term “data asset” means a collection of data elements or data sets that may be grouped together.¹⁴

Evidence. The term “evidence” means information produced as a result of statistical activities conducted for a statistical purpose.¹⁵

Linked Data. The term “linked data” means the data assets that result from joining two or more data assets across common elements.

Lead Agency. The term “lead agency” means the statistical agency or unit that will coordinate the review of an application that requests confidential data from multiple statistical agencies or units or that requests commingled data.

Nonstatistical purpose. The term “nonstatistical purpose” means the use of data in identifiable form for any purpose that is not a statistical purpose, including any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent and includes the disclosure under 5 U.S.C. § 552 of data that are acquired for exclusively statistical purposes under a pledge of confidentiality.¹⁶

Project Proposal. The term “project proposal” means a scope of statistical activities proposed by an applicant using confidential data.

Public Data Asset. The term “public data asset” means a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under 5 U.S.C. § 552.¹⁷

Recognized statistical agency or unit (or statistical agency or unit). The term “statistical agency or unit” means an agency or organizational unit of the Executive Branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes, as designated by the Director under 44 U.S.C. § 3562.¹⁸

Statistical purpose. The term “statistical purpose” means the description, estimation, or analysis of the characteristics of groups, without identifying individuals or organizations that comprise such groups; and includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes previously described.¹⁹

Statistical activities. The term “statistical activities” means the collection, compilation, processing, or analysis of data for the purpose of describing or making estimates concerning the whole, or relevant groups or components within, the economy, society, or the natural

¹⁴ *Id.* § 3502(17).

¹⁵ *Id.* § 3561(6).

¹⁶ *Id.* § 3561(8).

¹⁷ *Id.* § 3502(22).

¹⁸ *Id.* § 3561(11).

¹⁹ *Id.* § 3561(12).

environment; and includes the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames.²⁰

1 SAP Roles and Responsibilities

The roles and responsibilities of implementing and governing the SAP are shared across multiple bodies and organizations. These include OMB, the SAP Program Management Office (PMO), the Interagency Council on Statistical Policy (ICSP) chaired by the Chief Statistician of the United States, and statistical agencies and units. Each has a distinct set of roles and responsibilities in implementing, maintaining, and managing the SAP.

OMB has a pivotal role in the coordination and management of the U.S. Federal Statistical System, including housing the Chief Statistician of United States, and is given the responsibility of establishing the SAP by CIPSEA. OMB is responsible for developing and maintaining this policy, and ensuring the continued existence of a PMO to fulfill the roles and responsibilities described herein.

The ICSP will establish a Governance Board, which will serve as the executive steering committee and operate as a subcommittee of the ICSP, to oversee the SAP and coordinate the statistical agencies and units that are accepting applications through the SAP. The ICSP will develop a charter for the Governance Board, which will include each of the responsibilities articulated in this policy. It will determine the composition and structure of the Governance Board and may update the composition and structure as necessary. As the PMO implements the SAP, key decisions, as specified in this policy, require approval by the Governance Board²¹ as a representative of OMB and the statistical agencies and units utilizing the SAP. As the SAP is implemented and performance is observed over time, the Governance Board is responsible for identifying opportunities to improve the efficiency of the SAP, including through further standardization. In addition, the Governance Board is responsible for approving requests from non-statistical agencies or units to utilize the SAP for processing applications for access to confidential data assets. In support of this responsibility, the Governance Board will develop transparent criteria by which requests from non-statistical agencies or units will be reviewed. In carrying out its roles, the Governance Board will consult with the ICSP at least annually, and the ICSP has the option to create additional working groups to support specific actions related to the SAP, as needed. The Governance Board will also routinely consult with external stakeholders, including the user community, about potential improvements and updates to the SAP, as appropriate.

The role of the PMO is to implement, operate, and maintain the SAP as established in this memorandum. It is not to set policy. As such, the PMO is responsible for the development, operation, and maintenance of the SAP Portal and any additional technical services required to facilitate the SAP. The SAP Portal is the software implementation of the SAP and includes a web-based interface that facilitates data discovery and the application process specified in this policy. SAP implementation decisions for which the PMO must seek Governance Board approval are specified in this policy (*e.g.*, changes to the common application fields), however,

²⁰ *Id.* § 3561(10).

²¹ See Appendix A for a complete list of Governance Board responsibilities.

the PMO may seek input from the Governance Board on any issues related to the SAP. The PMO will facilitate all communication across agencies as outlined in this memorandum and as needed to operate the SAP. To the degree feasible, the PMO is encouraged to seek efficiencies by automating within the SAP Portal routine tasks delegated to the PMO by this policy.

The PMO will support the Governance Board's stakeholder engagement efforts. The PMO will perform other duties as assigned by the Governance Board, which is the entity that reflects and communicates the interests, concerns, and views of ICSP agencies, with regard to implementing improvements to the SAP as allowed by this memorandum. The PMO will develop and submit required documents for SAP operation permission, which may include PRA Information Collection Request packages, System of Record Notices, IT system Authority to Operate applications, or Privacy Impact Assessments. Implementation decisions required to establish, transition to, and operate the SAP, as approved by the Governance Board, will be documented in implementation guidance, which will be maintained by the PMO. The implementation guidance will provide direction needed to operationalize the SAP established by this memorandum and must be consistent with the requirements of this memorandum.

In the case where development, operation, and maintenance activities related to the SAP Portal are performed by a contractor, the PMO will select the contractor, issue the contract, monitor contractor performance, and reissue new contracts as appropriate. To the extent feasible, contracts will be designed to enable future changes in the PMO and contractor as warranted, including ensuring that the SAP Portal, and its related software and documentation remain the property of the U.S. Government.

Statistical agencies and units are responsible for adopting the SAP established by this memorandum as the only means by which they accept applications for access to confidential data.

2 SAP Data Catalog

The process of applying for access to confidential data begins with an applicant identifying the data assets of interest for purposes of building evidence. Therefore, standardizing the application process necessitates a standardization of data discovery through the establishment of an SAP Data Catalog. The PMO is responsible for coordinating with participating agencies to establish and maintain the SAP Data Catalog as part of the SAP Portal.²²

To be effective as a resource for data discovery, the SAP Data Catalog should be easily available through the Internet and provide searchable metadata that (a) describe the basic characteristics and content of confidential data assets for which applicants can submit applications through the SAP, and (b) describe any requirements necessary to obtain access to a

²² The purpose and function of the SAP Data Catalog is distinct from the comprehensive data inventory that is required of each agency and the Federal data catalogue that the Administrator of General Services is required to maintain under 44 U.S.C. § 3511. The SAP Data Catalog facilitates discovery of confidential data assets that can be requested under the SAP and thus requires information specific to that situation. Agencies are encouraged to populate the SAP Data Catalog with information consistent with that found in agency data inventories. In developing and maintaining the SAP Data Catalog, the PMO will consult the schema used for the Federal data catalogue under § 3511 to align them to the extent feasible.

confidential data asset which may vary across confidential data assets and/or mode of access. The SAP Data Catalog is not a cross-agency warehouse or repository of data, but instead a repository of metadata describing the data assets potentially available pending approval of an application for access.²³ The metadata included in the SAP Data Catalog should contain or link to sufficient information to identify the contents, characteristics, and quality of individual data assets. Access to complete and accurate data documentation will aid potential applicants in assessing, prior to applying for access, whether a given confidential data asset is appropriate and of sufficient quality for their specific projects. As such, facilitating access to complete and accurate metadata is important for the efficiency of the SAP by reducing the chance that an individual applies for access to a confidential data asset that will not support the individual's specific project.

To serve this purpose, the SAP Data Catalog should provide core metadata that is standardized across agencies, identify the agency that curates the data, list requirements necessary to be granted access, and include links to the location of complete data documentation about the dataset. Metadata within the SAP Data Catalog should include key information that allows applicants to identify data assets (both confidential and public) that may potentially be useful for their research. Furthermore, to ensure transparency for potential applicants, the metadata should include the authorization levels (as defined in Section 4) that must be obtained or verified for approval of an application. If the statistical agency or unit is not accepting applications for access to the data asset on an ongoing basis, the metadata in the SAP Data Catalog must include up-to-date information about the time window during which applications will be accepted by the statistical agency or unit.

The set of core metadata most useful for the SAP Data Catalog may evolve over time. Therefore, this memorandum does not stipulate a specific set of fields for the metadata. Instead, the PMO will develop an initial metadata specification for approval by the Governance Board, which will be completed for each data asset listed in the SAP Data Catalog to the extent feasible. The PMO will work with statistical agencies and units to help complete metadata for data assets listed in the SAP Data Catalog and will develop and maintain within the SAP implementation guidance a schedule for timely revisions or updates to metadata. After the establishment of the initial metadata specification, the PMO may propose changes pending approval of the Governance Board.

The goal of metadata included within the SAP Data Catalog is to facilitate data discovery, ensure that potential applicants can easily find and access complete documentation on available data assets, and provide transparency as to the requirements necessary to obtain access to the data. The goal is not to have the SAP Data Catalog itself be a repository for extensive documentation on each data asset. Instead, the metadata included in the SAP Data Catalog shall, when possible, link to an agency website that provides the authoritative and complete data documentation on each data asset.

For the sake of efficiency, the SAP also requires that the SAP Data Catalog be complete. While the focus of the SAP is on providing a standardized process to apply for access to confidential data assets, the SAP Data Catalog should not be limited to confidential data assets

²³ It is recognized that some metadata needed for use of a confidential data asset (*e.g.*, non-public data documentation) may itself be confidential and not shared until a project and applicant are approved.

alone. If the catalog was constrained by omitting relevant public data assets, a potential applicant that identifies a confidential data asset as sufficient for the applicant's specific project may be unaware of a public version of the data asset that would also be sufficient for the specific project. This omission could lead to applications for confidential data that are not necessary. Such applications increase burden on the SAP and the agency that curates the confidential data as they review unnecessary applications and redirect applicants to a public data asset that would meet the applicant's needs. Therefore, the SAP Data Catalog should include information on all categories of data assets available that are potentially relevant to an applicant's needs:

1. confidential data assets, for which the applicant can apply for access;²⁴
2. public data assets derived from confidential data assets listed in the catalog;²⁵ and
3. linked data assets, which resulted from linking a confidential data asset to some other data asset and for which the applicant can apply for access.

The inclusion of such related data assets will help ensure that applicants are applying for access to the data asset that best meets the needs of their specific project and are able to identify public data assets that may be sufficient for their purpose. In addition, statistical agencies and units may include metadata for auxiliary data assets (*e.g.*, geographic codes, industry codes, crosswalks) in the SAP Data Catalog as they see fit to aid in the data discovery process. To help applicants navigate this system of related data assets listed in the catalog, it is important that the metadata includes ontological information that describes the relationships across data assets.

Therefore, to facilitate data discovery for the application process the following is established:

- a. The PMO will establish and maintain the SAP Data Catalog as part of the SAP Portal.
- b. To the extent feasible, statistical agencies and units shall establish and maintain SAP Data Catalog entries, with the requisite metadata, for all confidential data assets for which they accept applications. However, it is recognized that in special circumstances it may not be feasible to include metadata in the SAP Data Catalog for some data assets (*e.g.*, potential curated versions of administrative data). A statistical agency or unit may still accept an application through the SAP even if the requested data asset is not listed in the SAP Data Catalog.
- c. The SAP Data Catalog shall use a standard approach to include metadata for confidential data assets.
- d. The SAP Data Catalog shall use a standard approach to include metadata for public data assets derived from any of the confidential data assets included in the inventory, if available.
- e. The SAP Data Catalog shall use a standard approach to include metadata for all available linked data assets that include data from a confidential data asset included in the catalog and for which an applicant may apply for access.
- f. Subject to approval by the Governance Board, the PMO will establish and maintain a specification for metadata for all data assets included in the SAP Data Catalog. The

²⁴ Confidential data assets covered by this policy will exist across multiple tiers of protected and restricted use data being established under the implementing regulations for 44 U.S.C. § 3582 on tiered access.

²⁵ The intention is to include entries on public use files derived from confidential data assets listed in the catalog and not necessarily every tabulation produced from the confidential data asset and made publicly available.

metadata shall be sufficient for a potential applicant to identify the data asset's contents, locate detailed documentation for the data asset, understand requirements to obtain access, including the authorization level required, and the time window during which applications are being accepted if not on an ongoing basis. Any changes to the metadata specification after initial approval must receive approval from the Governance Board.

- g. The PMO, in consultation with statistical agencies and units and subject to Governance Board approval, will develop and maintain a schedule for timely revisions and updates to metadata in the SAP Data Catalog.

To ensure the completeness of the catalog, agencies are urged to reexamine their portfolios of data assets to ascertain if a version of a data asset, including a confidential data asset, could potentially be constructed and made available for purposes of building evidence (if only on a restricted-use basis).

3 Common Application Form

CIPSEA requires statistical agencies and units to use a common application form available to accept requests for access to data assets.²⁶

To ensure that the application for access to non-public data assets is common across statistical agencies and units, the following is established:

- a. The PMO will develop and establish a common application form that applicants may use to apply for access to confidential data assets maintained by statistical agencies and units. The PMO will govern and control access to the SAP system for statistical agencies and units.
- b. The common application form will be the only application form that a statistical agency or unit may use for accepting applications for access to confidential data assets from individuals outside a statistical agency or unit.²⁷
- c. The PMO will coordinate across statistical agencies and units to develop the content of the common application form. The content of the application form should minimize the amount of information collected from applicants while providing the necessary information needed to assess the validity of application and the proposed evidence-building activity and include applicant contact information. Prior to implementation, the content of the common application form will be approved by the Governance Board.
- d. Any updates (*i.e.*, changes to, additions of, or deletion of data fields) to the common application form will be approved by the Governance Board prior to implementation by the PMO.
- e. The content of the common application form may only differ by statistical agencies or units if an agency or unit has a unique legal (or contractual) requirement for certain information to be provided in the application which would be burdensome to apply universally. The statistical agency or unit would need to notify the PMO of this legal requirement. The PMO would assess the feasibility and would send all feasible requests

²⁶ 44 U.S.C. § 3583(a).

²⁷ For a list of exceptions, see *Section 1 SAP Roles and Responsibilities*.

to the Governance Board for possible approval. If the Governance Board approves the request, the PMO will implement the request for a non-standard application field.

4 Process for Review and Disposition of Applications

Providing an applicant access to confidential data is a multi-dimensional risk management decision. Critical dimensions that warrant careful consideration within the application process are whether applicants can be placed in a trusted category to use the data in an appropriate manner; whether the data use is appropriate and consistent with current legal, policy, ethical, and other relevant restrictions including Federal cybersecurity requirements; whether there are disclosure risks in the data itself; whether the data access setting can limit unauthorized use; and whether the statistical results or outputs are non-disclosive.²⁸

The process of determining whether applicants should be granted access to confidential data for a particular evidence-building purpose requires a careful review of applications and applicants using criteria that consider the multi-dimensional nature of the risk management problem. In addition, applicants must successfully complete any additional requirements necessary for the statistical agency or unit to place them in a trusted category (*e.g.*, completing a data use agreement and requisite training). CIPSEA requires that there be a standardized process for determining whether to grant an applicant access to a confidential data asset for a particular evidence-building purpose.²⁹ This section of the memorandum establishes a common process, which includes assessment criteria for statistical agencies and units, that will standardize the approach for granting an applicant access to a confidential data asset.

When considering the process by which a user gains access to confidential data, it is helpful to distinguish between a stage at which a statistical agency or unit reviews the application and makes a determination, and a later stage at which the statistical agency or unit provides access to the data. Once received, an application will be reviewed by the statistical agency or unit against any applicable criteria established in Section 4.1 and Section 4.2 that require a determination. The criteria that explicitly require a determination by the statistical agency or unit include those established in Section 4.1 that assess the risk of the proposed project and its allowance under applicable statutes and regulations, as well as certain criteria established in Section 4.2 to ensure that the applicant can be placed in a trusted category which, depending on the data asset and mode of access requested, may include review of a security plan. Upon review, an application may receive a determination of “approve” or “reject.” Additionally, an application may receive a determination of “revise and resubmit,” whereby the applicant is given the opportunity to amend the application with additional information necessary for the statistical agency or unit to make a determination. If an application fails to receive a final determination (approve or reject) within the allotted time (including extensions), as established in Section 5, the

²⁸ Within the commonly referenced “five safes” framework these dimensions are labeled as “safe people,” “safe projects,” “safe data,” “safe settings,” and “safe outputs,” respectively, and are used to evaluate the level of risk associated with confidential data access. For more information on the five safes framework see Tanvi Desai et al., Univ. of Essex & Univ. of W. of England, Bristol, *Five Safes: designing data access for research*, Econ. Working Paper Series 1601 (2016), available at <https://www2.uwe.ac.uk/faculties/BBS/Documents/1601.pdf>.

²⁹ 44 U.S.C. § 3583(a)(3).

applicant may file an appeal for noncompliance with this memorandum as established in Section 6.2. Additionally, applicants have the option to withdraw applications at their discretion.

After a statistical agency or unit has made a positive determination, there may be additional activities that must be completed prior to the statistical agency or unit providing access to data. These include additional requirements necessary for the statistical agency or unit to place the applicant in a trusted category as detailed in Section 4.2 and which may include the applicant's successful completion of a background investigation, confidentiality training, and nondisclosure and data use agreements. In addition, a site inspection by the statistical agency or unit may be required to verify that elements of the security plan are in place, or receipt by the statistical agency or unit of user fees required for accessing data, when applicable.

Statistical agencies and units are responsible for coordinating internal reviews documenting findings and for communicating with the applicant using the SAP Portal. Statistical agencies and units shall reconsider a project proposal if an appeal is lodged by an applicant, as outlined in Section 6 Appeals Process. The PMO will establish and maintain functionality in the SAP Portal as needed to support the implementation of these review criteria and communication with the applicant.

To ensure that the review process is common across statistical agencies and units, the following roles and responsibilities are established:

Each statistical agency or unit must:

- Assess each application against the SAP common review criteria set forth in Sections 4.1 and 4.2 of this memorandum, and any applicable laws and regulations.
- Document within the SAP Portal the justification for the determination (*i.e.*, an approval, rejection, or revise and resubmit), noting any negative determination issues associated with the common review criteria (*i.e.*, instances where the application/request either has not adequately addressed a particular review criterion or cannot meet certain criteria after providing supporting material or narrative) or other legal requirements or limitations.
- Work with the applicant through the revise and resubmit process to support an acceptable application, if feasible, and be responsive to proposal iterations.
- To the extent feasible, make relevant information regarding applicant credentialing available to the PMO to facilitate reciprocity of applicant reviews across agencies.

The PMO will:

- Communicate to (and among, if appropriate) statistical agencies and units in a timely manner any updates or additional information the applicant provides subsequent to the initial application through the SAP Portal.
- Facilitate the reciprocity (*i.e.*, sharing and acceptance) of previously approved applicant authorization levels across SAP-participating agencies and propose to the Governance Board opportunities for enhancing reciprocity in the credentialing process to further reduce burden on the applicant and agencies and units.

- As applicable, coordinate and verify the necessary review criteria (*i.e.*, identification, investigations, training, and agreements) are achieved, or will be achieved, by applicants.
- Communicate to relevant agencies in a timely manner any updates or additional information the applicant provides to meet the review criteria through the SAP Portal.
- Facilitate applicant determinations, especially those involving multi-agency requests.

The Governance Board will:

- As needed, provide guidance to ensure a standardized approach for assessments under the SAP common review criteria, including the Maintaining Public Trust criterion in Section 4.1.
- Facilitate statistical agency and unit implementation of the SAP in concert with forthcoming regulations and guidance to be issued under 44 U.S.C. § 3582, including promoting best practices for data access and Statistical Disclosure Limitation (SDL) and aligning those with SAP approval levels, whether for single-agency or multi-agency applications.³⁰

4.1 SAP Common Criteria for Application Review

The quality of Federal statistics depends upon the reputation of the Federal statistical system, a system which relies upon the willingness of individuals or organizations to respond to statistical surveys as well as the willingness of Federal and external organizations to share their data with Federal statistical partners. Through pledges of confidentiality and compliance with Federal cybersecurity requirements, statistical agencies and units provide assurance to the public that information about individuals or organizations collected or maintained for exclusively statistical purposes will be held in confidence and only used for such purposes.³¹ The disclosure or non-statistical use of such data can harm public trust in the pledges of confidentiality and statistical agencies and units, which can adversely affect both the accuracy and completeness of Federal statistics and statistical analyses. Therefore, it is critical that statistical agencies and units ensure that confidential data collected or maintained for exclusively statistical purposes receive appropriate protection.

Thus, when assessing a proposed project's use of confidential data, statistical agencies and units must ensure that public trust and appropriate protections will be maintained. This means that the proposed use must be for an exclusive statistical purpose and conform to any statutory limitations that guide the use of those data. In addition, statistical agencies and units

³⁰ The PMO will facilitate the communication among agencies to arrive at an acceptable SDL strategy for multi-agency projects. SDL approaches for commingled data hosted at an agency may already be governed by the agreement or Memorandum of Understanding (or other contractual arrangement) under which the data were acquired. Guidance on sound SDL methods are outlined and described in Federal Committee on Statistical Methodology, *Data Protection Toolkit: Report and Resources on Statistical Disclosure Limitation Methodology and Tiered Data Access*, (formerly "Statistical Policy Working Paper #22") (rev. Jan. 2020), available at <https://nces.ed.gov/fcsm/dpt>.

³¹ See, e.g., the responsibility of each statistical agency or unit to "protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses" in 44 U.S.C. § 3563(a)(2)(D).

need to ensure that appropriate safeguards, including compliance with Federal cybersecurity requirements, are in place to avoid unauthorized disclosures (*e.g.*, specialized computing environments, disclosure limitation methods). Part of disclosure mitigation is ensuring the confidential data is in fact needed to meet the proposed objective and that the proposed objective is feasible given access to the confidential data. If the objective is not feasible even with access to the requested confidential data asset, then the disclosure risk associated with granting access would be unwarranted. Statistical agencies and units must also ensure that the proposed project's use of the confidential data will not otherwise erode public trust in a manner that could impede the accuracy and completeness of Federal statistics and statistical analyses.

The aforementioned practices are consistent with the broad statutory responsibility that allows for many statistical agencies and units to collect data under a pledge of confidentiality.³² However, statistical agencies and units collect, maintain, and provide access to confidential data assets under multiple authorities. In addition, some confidential data assets maintained by statistical agencies and units include information that is not fully owned by the statistical agencies or units (*e.g.*, commingled data acquired through an agreement or other contractual vehicle). Similarly, some applications may propose to include in the analysis external data that are not maintained by a statistical agency or unit. All of these factors, when applicable to a request, must be considered by a statistical agency or unit when assessing whether to approve access to a confidential data asset for a proposed project. Specifically, statistical agencies and units must ensure the proposed use and disclosure is permissible under relevant laws and agreements, including potential legal restrictions on who may access the data (*e.g.*, citizenship requirements) and requirements in System of Records Notices. Statistical agencies and units retain the final authority to grant an applicant access to their data, including commingled data hosted elsewhere, unless that authority has otherwise been delegated by the statistical agency or unit.

To assess project proposals, statistical agencies and units will use the following standardized review criteria, as well as any other considerations where required by law or regulation, to determine the projects' suitability. Statistical agencies and units will review, confirm, and note deficiencies in requests for confidential data assets consistent with the following criteria:

- a. Statistical Purpose—Project proposals must have a statistical purpose (as opposed to a nonstatistical purpose).
- b. Allowed-Use—The data use described in the project proposal must be consistent with any restrictions on use of a specific data asset. These restrictions often stem from promises or commitments made to information providers, such as through a Privacy Act notice (*e.g.*, in a survey), an agreement such as a Memorandum of Understanding (*e.g.*, when administrative data are acquired from another government agency), or a contract (*e.g.*, when proprietary data are acquired from an external organization). The use must also align with uses permitted by statute. Two examples of allowed-use related scenarios that are grounds for proposal rejection are (1) appraisal by the responsible statistical agency or unit that the proposed project is inconsistent with any promise or commitment, or statutory provisions, under which the data were collected or acquired; or (2) an

³² *Id.*

applicant cannot show permission from a provider of external data that they propose to link to the confidential data asset for which access is being requested.

- c. Statistical Disclosure Limitation (SDL)—Consistent with any implementing regulation under 44 U.S.C. § 3582, and adhering to requirements to apply sound SDL methods, project proposals must be able to apply sound SDL approaches and techniques to the satisfaction of the agency or unit that minimize the risk of re-identification of individuals, organizations, or establishments to proposed statistical data information products (e.g., intermediate outputs or final outputs).³³ In addition to CIPSEA, additional legal or regulatory requirements for maintaining the confidentiality of responses may apply to agency-specific data collections. The common application form established in Section 3 shall require enough information about the proposed reporting of results or output to facilitate a robust review under the SDL criteria.
- d. Demonstrated Need—To justify the disclosure risk associated with access, project proposals must demonstrate that goals and objectives can only be met using confidential data assets, and that public data assets (where available) are insufficient to accomplish the project’s goals and objectives.
- e. Feasibility—To justify the disclosure risk associated with access and ensure the project’s statistical purpose can be realized, a project proposal’s goals and objectives must be achievable with the confidential data assets requested, considering the breadth of relevant constraints. Feasibility shall be considered with respect to the project design, the extent to which an agency is resourced to support the project, and the ability of the applicant to execute the project.
 - o Project Design—Assessing the feasibility of a project shall include consideration of methodology, technical aspects, physical requirements (e.g., the capability of the researcher’s computing environment to handle the purposed volume of data and the necessary Federal cybersecurity requirements), practicality (e.g., the availability of computing space in a data enclave), logistical requirements (e.g., whether the data assets can be physically co-located for analysis), and timeliness (e.g., whether the project can be executed within the available timeframe). Applicants must provide adequate background information on the proposed methodology to enable assessment.
 - o Agency/Unit Support—Assessing the feasibility of a project shall include consideration of whether the agency is able to adequately support the project. This shall include consideration of the physical requirements (e.g., whether the research can be hosted at the agency/unit), practicality (e.g., the adequacy of available technical or programming support), logistical requirements, timeliness (e.g., whether the requested data/extract/series can be prepared in time for the researcher), and other resource limitations.
 - o Applicant’s Ability—Assessing the feasibility of a project shall include consideration of whether the applicant has the ability to execute the proposed

³³ See, e.g., Office of Mgmt. & Budget, Exec. Office of the President, *Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units*, 79 Fed. Reg. 71,610 (Dec. 2, 2014), available at: <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>; Office of Mgmt. & Budget, Exec. Office of the President, *Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)*, 72 Fed. Reg. 33,362 (June 15, 2007), available at <https://www.govinfo.gov/content/pkg/FR-2007-06-15/pdf/E7-11542.pdf>.

project. This shall include a consideration of the applicant’s knowledge, skills, and capabilities. Applicants must provide adequate background information to enable assessment.

- f. **Maintaining Public Trust**—As required by 44 U.S.C. § 3563, and consistent with codes of practice for statistical agencies and units,³⁴ agencies must assess whether a project proposal supports their ability to maintain trust and credibility among data users and providers as well as to ensure public confidence is maintained.³⁵ Grounds for a project proposal to be denied access to confidential data include an appraisal by the statistical agency or unit that the proposed project may diminish or put at risk the agency’s ability to carry out its mission and/or collect data from the public and other data providers (*e.g.*, State, local, Tribal, or territorial governments or firms).

To ensure that review criteria remain standardized across statistical agencies and units, as required by CIPSEA, additional review criteria are only permissible when necessary to meet Agency or data asset specific legal or regulatory requirements. These may include:

- a. **Programmatic benefit**—Where required by law, project proposals must define contributions to the program under which the confidential data asset was collected. (For example, access to confidential Census Bureau Data may only be granted if the proposal provides a benefit to the Census Bureau’s Title 13 programs.)³⁶
- b. **Additional criteria**—Requests for confidential data assets may be assessed under additional criteria only if those criteria are deemed necessary based on a reasonable interpretation of the statutory authority or regulatory requirements applicable to the data collection or the statistical agency or unit.

4.2 SAP Common Criteria for Applicant Review

Reviewing an applicant for access to confidential data is an important part of the risk management decision process. The appropriate steps in determining whether to authorize access for an applicant will depend on key risk determinants, such as the mode by which the data will be accessed, and the disclosure risk associated with the data asset. This means that the appropriate review criteria to consider when reviewing an applicant will depend upon key characteristics of the request.

CIPSEA requires standardized criteria across statistical agencies and units for determining whether to grant an applicant the requested access.³⁷ To provide a standard set of criteria across statistical agencies and units, while also recognizing that the appropriate criteria necessary to place an applicant in a trusted category will vary across data assets and modes of

³⁴ See, *e.g.*, Statistical Policy Directive No. 1. 79 Fed. Reg. at 71,611–12 (describing principles guiding statistical agencies and units in the United States and abroad).

³⁵ Nat’l Acads. of Scis., Eng’g, and Med., *Principles and Practices for a Federal Statistical Agency* (Brian A. Harris-Kojetin & Constance F. Citro eds. 2021), available at <https://nap.nationalacademies.org/catalog/25885/principles-and-practices-for-a-federal-statistical-agency-seventh-edition>.

³⁶ See 13 U.S.C. § 23(c) (authorizing the Census Bureau to provide special sworn status to individuals who are assisting the Bureau in performing work authorized by Title 13); see also 42 U.S.C. § 242m(d) (limiting the use of NCHS confidential data to the purpose “for which it was supplied”).

³⁷ 44 U.S.C. § 3583(a).

data access, this memorandum establishes four “authorization levels.”³⁸ The required authorization level is determined by the statistical agency or unit, consistent with 44 U.S.C. § 3582 and associated guidance, and depends on the characteristics of the data assets in conjunction with the mode of access requested. Depending on the authorization level required, the applicant must meet the standard requirements for that given level. Across the authorization levels, there are four standardized criteria for applicants:

- a. Identification—Verification that the identity, position, institutional affiliation, and skill level of each applicant are consistent with the legal requirements for accessing the requested confidential data asset (*e.g.*, citizenship) and the feasibility criteria assessment in Section 4.1.³⁹
- b. Training—Active (versus expired) completion of data use, data stewardship, and confidentiality and cybersecurity training by the applicant (*i.e.*, both general training and specialized training required by certain agencies).
- c. Agreements—If required, active (versus expired) nondisclosure and institutional/cooperative data use agreements with requisite signatures. Necessary agreements may include an approved security plan, as applicable for the mode of access, which governs the security protocols the applicant will undertake when storing and using the data.
- d. Investigation—If required, active (versus expired) clearance of a background investigation (*e.g.*, National Agency Check with Inquiries (NACI) clearance or moderate background investigation (MBI) clearance).

An applicant will need to meet one or more of these criteria depending upon the authorization level required for their request. Table 1 summarizes the four standardized authorization levels and the criteria for each level. While the appropriate authorization level for a given proposal is determined by the statistical agencies and units, these four authorization levels are generally consistent with current practices at statistical agencies and units and are driven by the type of data and mode of data access. Therefore, in general, this memorandum does not require statistical agencies and units to adopt new authorization levels, but to conform existing practices to the authorization framework specified in this memorandum.

1. Authorization level 1 requires verification of the applicant’s identity and completion of training.
2. Authorization level 2 has the additional requirement of a non-disclosure or other agreement(s) to be completed.

³⁸ Public data assets, by definition, do not require an approved authorization level. This policy does not define authorization levels for data categorized as FISMA high since statistical agencies and units do not currently maintain such data assets.

³⁹ Approaches to identity verification may differ across agencies and units; strategies may include verifying that a Federal ID is current or active, accepting notarized affidavits of identity, or employer affiliation. Applicants’ resumes, or similar information, are useful in determining skill level and help to inform whether it is feasible that the applicant can carry out the proposed project. Applicants’ citizenship status may also be relevant for access to some data assets. In cases where access to confidential data is indirect, such as through a secure web-based query system, identity verification may not be required. Where identity verification is required, it would likely be simplified.

3. Authorization level 3 is consistent with non-sensitive low-risk positions and requires a tier 1 investigation, including an NACI, based on Federal Investigative Standards in addition to a review against the other criteria.⁴⁰
4. Authorization level 4 is consistent with non-sensitive moderate-risk positions and requires a tier 2 investigation, including an MBI based on Federal Investigative Standards in addition to a review against the other criteria.⁴¹

The authorization levels are not necessarily tied to a specific mode of data access. Data assets with different disclosure risks can be determined to require different authorization levels even though the mode of data access is the same. However, the authorization levels are generally consistent with current practices for given modes of data access. For example, authorization level 1 is usually associated with indirect access to confidential data using a secure web-based query system. Authorization level 2 is usually associated with licensing agreements or sometimes virtual data enclaves. Authorization level 4 is consistent with practices at the Federal Statistical Research Data Centers. These examples are provided to show consistency between the standardized authorization levels and current practice for applicant reviews. However, these modes of data access do not have a one-to-one correspondence with the authorization levels. The determination of appropriate authorization level for a given data asset and mode of data access is determined by the statistical agency or unit, unless otherwise specified by law, including any requirements under forthcoming implementing regulations to be issued under 44 U.S.C. § 3582, or by another organizational unit, in the case that the statistical agency or unit is not the data owner and the required authorization level is specified in a data use agreement.

Authorization Level 1 is included for completeness in showing the different sets of criteria that may be required for accessing data beyond public use files. This more complete set of Authorization Levels also helps better align the SAP with tiered access protocols used by statistical agencies and units and which may be expanded through implementing regulations under § 3582. However, requests for direct access to confidential data that would be subject to the SAP would require an Authorization Level of 2 or higher.

Table 1: Applicant Review Criteria by Authorization Level

	Authorization Level 1	Authorization Level 2	Authorization Level 3	Authorization Level 4
Identification	X	X	X	X
Training	X	X	X	X
Agreements		X	X	X

⁴⁰ U.S. Office of Pers. Mgmt., Notice No. 15-03, *Implementation of Federal Investigative Standards for Tier 1 and Tier 2 Investigations* (Nov. 4, 2014) available at <https://www.dcsa.mil/Portals/91/Documents/pv/GovHRSec/FINs/FY15/fin-15-03.pdf>.

⁴¹ *Id.*

The standardization of authorization levels has the potential to significantly reduce the review burden to both applicants and statistical agencies and units. Because there are standard criteria for placing applicants in a trusted category, there is the potential for reciprocity across statistical agencies and units for applicants that have established a given authorization level. As a first step, this memorandum is standardizing investigations, when required, based on Federal Investigative Standards and investigations agreed to under Executive Order 13764 a).⁴² This standardization provides for reciprocity in the most burdensome component and is consistent with reciprocity provided to equivalent investigations for applicants to public trust positions. An applicant that cleared an investigation to obtain authorization level of 3 or 4 with one statistical agency or unit should not have to be subjected to a redundant investigation during the time the original authorization is still active.

To the extent feasible and appropriate, the PMO will assist in the coordination and review of an applicant's credentials to further facilitate reciprocity and reduce duplication across statistical agencies and units. The Governance Board will assist the PMO in identifying, over time, opportunities that support further reciprocity of credentialing to improve the efficiency of applicant reviews for authorization. For example, the Governance Board should work with the PMO to develop and standardize data stewardship training and other documents (*e.g.*, institutional, cooperative, data use, and nondisclosure agreements) across statistical agencies and units to allow for reciprocity of active training and documents that may have been previously undertaken or signed to reduce duplicative trainings for applicants. Within 12 months of this memorandum being established, the Governance Board will submit a report to the Director of OMB with recommendations that would further facilitate the sharing and acceptance of applicant's completed credentialing requirements across statistical agencies and units to reduce unnecessary duplication that is a burden to both applicants and agencies.

5 Timeframes for Determination

CIPSEA requires that the timeframes used when determining whether to grant an applicant access to a confidential data asset are standardized across statistical agencies and units.⁴³ Statistical agencies and units will assess project proposals and applicants in a timely fashion. Statistical agencies and units' progress will be tracked by the SAP Portal managed by the PMO. When a statistical agency or unit fails to register a determination or to request an

⁴² Exec. Order No. 13764, *Amending the Civil Service Rules, Executive Order 13488, and Executive Order 13467 To Modernize the Executive Branch-Wide Governance Structure and Processes for Security Clearances, Suitability and Fitness for Employment, and Credentialing, and Related Matters*, 82 Fed. Reg. 8115 (Jan. 23, 2017) available at <https://www.govinfo.gov/content/pkg/FR-2017-01-23/pdf/2017-01623.pdf>. See also the description of the Consolidated Adjudication Services that incorporate the standards at the Defense Counterintelligence and Security Agency. *Consolidated Adjudication Services (CAS) Overview*, Defense Counterintel. & Sec. Agency, <https://www.dcsa.mil/mc/pv/adjudications/> (last visited Dec. 6, 2022).

⁴³ 44 U.S.C. § 3583(a)(4).

extension in the required timeframe, the PMO will notify the Statistical Official for the statistical agency or unit.

The timeframes established in this memorandum are applicable only to the explicit determinations by a statistical agency or unit with respect to an application and do not apply beyond the review of the application or determinations required outside the statistical agency or unit. As such, the timeframes do not include additional steps in the application process that may be necessary for applicants to be granted the requested Authorization Level, including training, finalization of agreements, and background investigations (if required) as established in Section 4.2. Obtaining access to the data after approval of an application and completion of all Authorization Level requirements may be subject to additional practical and logistical considerations, including the potential of a waitlist if the agency has limited resources to supply access that are exceeded by the demand from approved applications.

While prompt review of applications is important for facilitating the timely building of evidence, in some cases, particularly for complex multi-agency projects, it is understandable that the review may take additional time.⁴⁴ Therefore, this memorandum provides for a longer review time in the case of projects requiring multi-agency reviews. In all cases, statistical agencies or units are given the opportunity to request extensions for their review with an accompanying justification to the Governance Board. It is expected that more complex projects involving a greater number of data assets or involving more statistical agencies or units may require longer review times and the extension framework provides the flexibility for these cases where the required review time is difficult to generalize and forecast.

For some projects, portions of the review process are outside the jurisdiction of the statistical agencies and units. For example, some confidential data assets are commingled datasets that include data from parties outside of the Executive Branch (*e.g.*, Census Bureau data commingled with data acquired from state and local governments). In such cases, the external parties may require review of the application; these arrangements are outlined in a data acquisition agreement or other contractual vehicle and are coordinated by the host agency with which the commingled data reside. Similarly, gaining approval for some access suitability levels requires review by other agencies. As such, some exemptions to a strict timeframe are required.

To ensure that the timeframes for determinations are identical across statistical agencies and units, the following is established:

- a. An application involving review by a single agency shall take that agency no more than 12 weeks to review and submit a final determination (*i.e.*, approve or reject). Statistical agencies and units that are able to make determinations prior to reaching the 12-week time limit are encouraged to make determinations as promptly as possible. The time frame for a determination excludes the time in which proposals are in a revise and resubmit status, during which applicants are revising their application. Applicants should work with the agency during revise and resubmit periods to address any issues identified or to further develop their proposal. A 12-week period allows agencies and units the opportunity to work with applicants to

⁴⁴ A project requesting confidential data assets where multiple agencies or units are required to review the application is referred to as a “multi-agency” project.

- provide successive revisions. If after 12 weeks under agency review the proposal remains unacceptable, agencies and units must make a final determination or file for an extension to avoid noncompliance with the requirements of this memorandum. When agencies and units fail to make a final determination within the given timeframe, and an extension is not granted, the PMO will notify the Statistical Official for the statistical agency or unit, as well as OMB.
- b. An application involving review by multiple statistical agencies or units shall require no more than 24 weeks for review and submission of a final determination, and where practicable statistical agencies or units shall undertake their reviews concurrently.⁴⁵ This includes the case of commingled data, where onward sharing of the data is controlled by contractual agreement and requires the review of the original data owner. Statistical agencies and units retain the final authority to grant an applicant access to their data, including commingled data hosted elsewhere, unless that authority has otherwise been delegated by the statistical agency or unit. For operational purposes, these multi-agency reviews will be coordinated by a “lead” agency (the agency hosting the data in the case of commingled data, or otherwise as determined in coordination with the PMO). Likewise, when a final determination is not made within the given timeframe, and an extension is not granted, the PMO will notify the relevant Statistical Officials, as well as OMB.
 - c. By default, the review period will commence when an agency receives an application through the SAP portal. In cases where statistical agencies or units find it necessary to establish application windows, the review period will commence when the application is received during an open application window in the case of a single agency review. To accommodate application windows, the SAP Portal should allow applicants to complete an application at any time but hold the application until the application window opens, at which point the SAP Portal will submit it to the statistical agency or unit on behalf of the applicant. To ensure the presence of conflicting application windows does not prohibit multi-agency applications, the review period for all applications requiring the review of multiple statistical agencies or units shall commence once an application is submitted through the SAP Portal. Within 1 year, the Governance Board will work with statistical agencies and units that find the use of application windows necessary to coordinate and standardize the duration and timing of windows.
 - d. Upon the request of a statistical agency or unit, accompanied by a written justification submitted to the SAP Portal, an initial extension period of 6 weeks will be implemented by the PMO.
 - e. Extension requests and written justifications will be shared with the Governance Board for awareness, on a frequency to be determined by the Governance Board. Subsequent requests for additional extensions relating to the same application will be reviewed and approved by the Governance Board.
 - f. The project review timeframes above do not apply to applications that request access to confidential data assets commingled with data that are either not owned, or are only co-owned, by a statistical agency or unit and that require approval from third

⁴⁵ In the case of comingled data, review order among the agencies or entities involved will adhere to the protocol outlined in the data acquisition agreement governing the comingled data, if specified.

parties not subject to this memorandum (*e.g.*, State, local, Tribal, and territorial government agencies).

- g. Applicants may elect to withdraw their application at any time. If a statistical agency or unit has not received any communication through the SAP Portal for 6 months after a revise and resubmit was requested, the application will be considered withdrawn. The PMO will provide applicants notices as the withdrawal deadline approaches and provide an opportunity for applicants to signal continued interest in keeping the application open.

As the SAP is implemented over time, the Governance Board will regularly review the timeframes required in practice and, if appropriate, may update the specific timeframes in Sections 5.a and 5.b. For example, as the efficiencies of a standardized process are realized, these timeframes may be shortened. In addition, the Governance Board will use the regular reviews to inform resource adequacy.

6 Appeals Processes

The SAP is to include a standardized appeal process that applicants may utilize to appeal adverse determinations and alleged noncompliance with this memorandum.⁴⁶

6.1 Appeals Process for Applications

CIPSEA requires that there is a standardized appeal process that applicants may utilize to petition adverse determinations.⁴⁷ Statistical agencies and units, as the data owners or managers, are responsible for maintaining the trust of data providers. As such, statistical agencies and units are responsible for the determination of whether to designate agents to perform statistical activities with confidential data they own, and for respecting the determinations of external data owners in cases where statistical agencies or units manage access to confidential data assets owned by external parties under an agreement that requires approval prior to facilitating access. Therefore, an appeals process, which considers revising an adverse determination for access, must reside within the statistical agency or unit that owns or manages the data for which the applicant is requesting access.

Appeals for adverse determinations are limited to decisions under the control of the statistical agencies or units that have made the adverse determinations. For example, if statutory requirements limit access to U.S. citizens, applicants may not appeal an adverse determination made on those grounds if they are in fact not a U.S. citizen. In the case where an appeal is submitted for a decision not under the control of the statistical agency or unit, the statistical agency or unit may return an adverse determination for the appeal without further assessment.

Applicants may provide new information to support the appeal. However, the appeals process is not an additional revise and resubmit and therefore, in filing an appeal, an applicant may not revise the application, including the study design, data assets requested, variables requested, and proposed outputs to be reported. In the case where an applicant would like to

⁴⁶ 44 U.S.C. § 3583(a).

⁴⁷ *Id.* § 3583(a)(5).

revise an application associated with an adverse determination, the applicant must submit the revision as a new application.

To ensure that the appeals process is standardized across statistical agencies and units, the following is established:

- a. Applicants may file one appeal for an adverse determination under the control of one or more statistical agencies or units. If an appeal is submitted on grounds that are outside the control of the statistical agencies or units, the statistical agencies or units may return an adverse determination on the appeal without further assessment but shall, through the SAP Portal, provide an explanation as to why the grounds of the appeal are outside the control of the statistical agency or unit.
- b. The PMO will ensure that applicants can file an appeal through the SAP Portal within 30 days of an initial adverse determination of their application. Through the SAP Portal, applicants filing an appeal must specify in writing the specific grounds for the appeal. In addition, the applicant shall have the ability to upload new information in the SAP Portal to support their appeal; however, applicants will not be allowed to revise their application as part of the appeals process.
- c. Each statistical agency or unit will appoint and maintain an appeals body of three senior agency officials with appropriate expertise to adjudicate confidential data requests with adverse determinations (*i.e.*, rejections) that are appealed. The appeals body shall be chaired by the Statistical Official for the statistical agency or unit, or a delegate.
- d. Upon receipt of an appeal, the appeals body of the statistical agency or unit shall consider the application, supporting information, and findings of the initial review, using the standard review criteria established in Section 4. The appeals body must reach consensus in the event that the disposition of the appeal is to overturn the initial rejection. The appeals body must submit its decision and justification to the SAP Portal.
- e. Statistical agencies and units must communicate the result of the appeal to applicants via the SAP Portal within 8 weeks of the appeal request submission.
- f. The PMO will facilitate efforts to reach agreement between agencies when there is disagreement on the approval of multi-agency appeals related to operational feasibility, though ultimately all statistical agencies and units involved in a multi-agency request must approve the application for it to proceed.
- g. When agencies and units fail to register an appeal determination within the given timeframe, the PMO will notify the Statistical Official for the statistical agency or unit, as well as OMB.
- h. The Governance Board will identify patterns and pursue solutions to operational- or resource-related barriers which prevent statistical agencies or units from approving applications.

6.2 Appeals Process for Noncompliance with this Memorandum

CIPSEA further requires that there is a standardized appeal process that applicants may utilize to petition alleged noncompliance with this memorandum.⁴⁸ As noted in Section 6.1, statistical agencies and units are responsible for the final disposition of an application. An

⁴⁸ *Id.*

adverse determination for an application by a statistical agency or unit does not by itself imply noncompliance with the requirements of this memorandum, and the process established in Section 6.1 provides for appealing such decisions. Noncompliance with the requirements of this memorandum is a failure to implement the SAP. Issues of noncompliance may include, but are not limited to, failure to use the common application form established in Section 3 when required, failure to adhere to the timeframes and extension process in Section 5, or failure to provide progress tracking and communications as required by Section 7.

For appeals regarding an allegation of noncompliance by a statistical agency or unit with this memorandum the following is established:

- a. The PMO will ensure the SAP Portal allows for applicants or potential applicants to file an appeal for alleged noncompliance with the requirements of this memorandum by submitting information believed to demonstrate the alleged noncompliance.
- b. The PMO will, to the extent feasible, gather any additional information relevant to the appeal and submit that along with the initial appeal to OMB for assessment.
- c. OMB shall work with the statistical agency or unit to achieve compliance in the event that OMB determines there has been noncompliance with the requirements of this memorandum.

7 Progress Tracking, Communication, and Reporting

CIPSEA requires the SAP to include standards for transparency and to make the specific information publicly available.⁴⁹ In addition, the SAP should provide applicants with sufficient information to ensure that they are able to track the progress of their application as it moves through the review process. There is substantial, but not exact, overlap in the information needed to address both requirements. This section establishes requirements that provide appropriate transparency to the public about the SAP and allow applicants to track the status of their application.

7.1 Progress Tracking and Communication

To ensure that applicants can track the progress of their application for access to confidential data assets in a standard manner across statistical agencies and units, the following is established:

- a. Through the SAP Portal and through electronic communication, applicants shall have access to tracking information that, at a minimum, includes the current status of the application, the dates each prior step was completed, and the timeframes for completion of each remaining step.
- b. The minimum set of SAP steps to be tracked and reported to the applicant shall include:
 1. application submission to the SAP Portal;
 2. confirmation of receipt of the application by the agency that maintains the requested data asset, or the lead agency in the case of a multi-agency request;

⁴⁹ *Id.* § 3583(a)(6).

3. current status of the application review, including whether the application is under review with the agency or with the applicant as a revise and resubmit;
4. application review determination, and in the case of an adverse determination of the project, a written justification of the reasons for rejection;
5. submission of an appeal regarding an adverse determination of a proposal or applicant; and
6. appeal determination, and in the case of an adverse determination of the appeal, a written justification of the reasons for rejection.

7.2 Public Reporting

CIPSEA requires that the standard application process provide the public with information on each application received, the status of each application, the determination made for each application, and any other information, as appropriate, to ensure the transparency of the process.⁵⁰ This requires a determination as to the set of information that should be publicly reported for each application to ensure full transparency.

Appropriate transparency for this process requires providing the public with an understanding of who is accessing confidential data as a result of applications processed through the SAP, what data are being accessed, why the data are being accessed, when the data are being accessed, and how the data are being accessed. Answers to these questions are consistent with the information an applicant needs to provide when requesting access to a confidential data asset. Specifically, these questions can be answered with the project title and abstract, principal investigator and other persons requesting access, data assets for which access is being requested, start and end year of a project, and information of the anticipated method of access.⁵¹

CIPSEA requires the current status of each application to be reported, in addition to the final determination. Therefore, reporting will begin when an application is received and will continue as an application goes through the review process. To ensure transparency of process and provide the public with information in a standard manner across statistical agencies and units, the following is established:

- a. Upon the receipt of each application, at a minimum, the statistical agencies or units involved, the requested data assets, the project proposed duration (where applicable), and the requested method of access, along with a unique identifier, will be reported by the PMO to the public through the SAP Portal.

⁵⁰ *Id.* § 3583(a).

⁵¹ An example of similar reporting already conducted within the Federal statistical system is the practice implemented by the Bureau of the Census to provide the public with information on Federal Statistical Research Data Center (FSRDC) projects that solely use Census Bureau confidential data assets. See <https://www.census.gov/about/adrm/fsrdc/about/ongoing-projects.html> for a detailed view of the FSRDC information the Census Bureau publishes. The information provided includes the unique identifier, title, abstract, FSRDC location, principal investigator, project start year (and end year, where applicable), researchers, and requested data assets.

- b. The current status of each application, based on the most recent step of the SAP completed (as established in Section 7.1), will be reported by the PMO through the SAP Portal.
- c. For each application, the final determination must be reported by the PMO through the SAP Portal. In the event of an adverse determination, public reporting should occur only when the appeals process has been exhausted or an appeal was not filed within the allowable timeframe, and a description of the rationale for the rejection must be reported. The reported rationale is not equivalent to the written justification established in Section 4 but should clearly identify the review criteria for which the application was found to be deficient.
- d. Once the application process is completed and a favorable determination is made, the title, abstract, approval date and proposed duration of the project, and the name of the principal investigator and other persons requesting access must be reported by the PMO to the public through the SAP Portal.
- e. Information reported for each application must not include any protected and confidential information or any such other information that is prevented from being publicly shared by any applicable law.
- f. Aggregate statistics on applications in progress and determinations by fiscal year for each requested data asset, along with aggregate statistics on the duration of the application review process, must be reported by the PMO to the public through the SAP Portal.
- g. The Governance Board may elect to expand the set of information reported to the public, but it must be implemented consistently across all statistical agencies and units using the SAP.
- h. The Governance Board will use aggregate statistics on the duration of the application review process and determinations from the PMO to assess resource adequacy.

8 Application Amendments

Over the course of a project there can be reason to amend an approved application (*e.g.*, changes in the individuals on the application, updated methodologies, extension of the project's timeframe). Applications to amend an existing project should benefit from the same standardization, protocols, and timeframes established in this memorandum. Therefore, the SAP Portal shall allow applicants the opportunity to apply for amendments to approved applications. It is the responsibility of the applicant to submit amendment applications through the SAP Portal, which will then be reviewed by the statistical agency or unit according to this memorandum. In addition to the review criteria established in Section 4, when reviewing an amendment application, agencies may consider whether the proposed updates are outside the scope of an amendment and require a new application.

The SAP establishes the standardized review process for applicants associated with an approved project and, therefore, amendments associated with adding individuals to a project shall go through the SAP. This will also facilitate reciprocity in the credentialing of those individuals, which may improve the efficiency of adding previously credentialed individuals to

an existing application or in reviewing future application on which they are applicants. The removal of an individual from an approved application shall also go through the SAP. These changes have bearing on the SAP and the required public reporting of approved applications for the purpose of transparency.

Public reporting, as established in Section 7.2, includes information on the approval date and proposed duration of a project to provide transparency as to the time during which data may be accessed. To maintain accurate public reporting of this information, requests to extend the duration of projects should be submitted as amendments through the SAP.

Some changes to approved applications may fall under the activity of project management and not require the applicant to apply for an amendment. The PMO, in consultation with statistical agencies and units, will develop and maintain within the SAP implementation guidance guidelines for what changes to an approved project require the applicant to apply for an amendment. Prior to incorporation into the SAP implementation guidance, new or amended guidelines will be approved by the Governance Board.

For application amendments the following is established:

- a. The PMO will ensure the SAP Portal allows an applicant of approved application to apply for an amendment to their application.
- b. The review of a proposed amendment will be subject to the common review criteria in Section 4, timeframes in Section 5, and appeals processes in Section 6.
- c. In reviewing a proposed amendment, a statistical agency or unit may make the determination that the scope of the proposed amendment requires the submission of an application for a new proposed project.
- d. The PMO will ensure that the SAP Portal updates the publicly reported information for approved projects, as appropriate, if an amendment is approved.
- e. The PMO, in consultation with statistical agencies and units and subject to Governance Board approval, will develop and maintain standards for application changes that require an applicant to apply for an amendment through the SAP.

APPENDIX A: CONSOLIDATED LIST OF GOVERNANCE BOARD RESPONSIBILITIES

The following list is taken from individual sections of the memorandum, consolidated here to provide a single comprehensive list of responsibilities for the Standard Application Process (SAP) Governance Board.

Overview

The overall responsibility of the Governance Board is to oversee the SAP and coordinate the statistical agencies and units that are accepting applications through the SAP, as a representative of the statistical agencies and units utilizing the SAP.

Consistent with this memorandum, the Governance Board is responsible for carrying out the following responsibilities:

- Observing overall performance and identifying opportunities to improve the efficiency of the SAP, including through:
 - Further standardization.
 - Regularly reviewing the timeframes required and updating the specific timeframes in Sections 5.a and 5.b.
 - Regularly reviewing aggregate statistics on the duration of the application review process and determinations from the PMO to assess resource adequacy.
 - Identifying opportunities that support further reciprocity of credentialing to improve the efficiency of applicant reviews for authorization.
 - Identifying patterns and pursue solutions to operational- or resource-related barriers which prevent statistical agencies or units from approving applications.
- Developing transparent criteria by which requests from non-statistical agencies or units to utilize the SAP will be reviewed.
- Approving requests from non-statistical agencies or units to utilize the SAP for processing applications for access to confidential data assets.
- Consulting with the ICSP, including about whether the ICSP should create additional working groups to support specific SAP actions.
- Consulting regularly with external stakeholders, including the user community, about potential improvements and updates to the SAP, as appropriate.
- Approving initial metadata specifications for the SAP Data Catalog, and any subsequent changes.
- Approving the content of the initial common application form and any subsequent changes prior to submission by the PMO to OMB for PRA approval.
- Coordinating and standardizing the duration and timing of review windows among agencies that find the use of application windows necessary.
- Determining the frequency with which the PMO should share with the Governance Board statistical agency and unit extension requests and accompanying written justifications.
- Approving any statistical agency and unit requests for additional extensions relating to the same application.
- As needed, providing guidance to ensure a standardized approach for assessments under the SAP common review criteria, including the Maintaining Public Trust criterion in Section 4.1.

- Within 12 months of the issuance of this memorandum, submitting a report to the Director of OMB on recommendations that would further facilitate the sharing and acceptance of an applicant's completed credentialing requirements across statistical agencies and units to reduce unnecessary duplication that is a burden to both applicants and agencies.
- Facilitating statistical agency and unit implementation of the SAP in concert with forthcoming regulations and guidance to be issued under 44 U.S.C. § 3582, including promoting best practices for data access and Statistical Disclosure Limitation (SDL) and aligning those with SAP approval levels, whether for single-agency or multi-agency applications.
- Expanding, as appropriate, the set of information reported to the public.
- Assigning other duties to the PMO as needed to carry out this the requirements of this memorandum.