Policy Resolution 2021-02

Utilizing State Data in Federal Decision Making

A. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.   **GOVERNORS' MANAGEMENT DIRECTIVE**

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

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

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