



Response to the Notice of proposed rulemaking: Fundamental Responsibilities of Recognized Statistical Agencies and Units

October 2, 2023

The American Statistical Association (ASA) appreciates this opportunity to comment on the [Notice of proposed rulemaking: Fundamental Responsibilities of Recognized Statistical Agencies and Units](#). We enthusiastically applaud its goal to “promote public trust in the statistical agencies and units that produce Federal statistics” and endorse the opening statement of the preamble, “Public trust in Federal statistics is essential to their value and use in informing decisions across public and private sectors.” To that end, we commend OMB for the thoughtful, thorough, and effective work reflected in this proposed rule. We heartily urge its adoption in a timely manner with the ASA’s recommendations outlined below incorporated.

We organize our remarks into four sections: (I) General Comments and Support; (II) Unnecessary Components; (III) Improvements/Recommendations; (IV) Responses to Questions and Preferences for Options.

I. General Comments and Support

Reiterating, we fully endorse this proposed rule and urge its prompt adoption with all components intact and with our recommendations adopted. While we detail below strongly-recommended additional changes to further promote public trust in the federal statistical agencies and units, such changes should not be viewed as criticism of or lack of support for the proposed rule and all that it would accomplish. Indeed, its myriad provisions are a major advance for building trust in the statistical agencies and units. The proposed regulation is comprehensive and would successfully resolve many challenges experienced by the statistical agencies. It also provides clear guidance to parent agencies to enable, support, and facilitate statistical agencies or units in carrying out the responsibilities described.

Specifying all that we support in the proposed regulation would yield a long list; instead, we highlight here a couple of provisions we are particularly pleased to endorse:

1. We enthusiastically commend the spirit of collaboration that is encouraged throughout the proposed rule and its preamble for the Recognized Statistical Agencies and Units (RSAUs) and the parent agencies to fulfill the four responsibilities of the RSAUs. As noted, the “parent agencies play a key role in supporting the ability of the Recognized Statistical Agencies and Units to meet their responsibilities” and a collaborative relationship is essential for the success of the proposed rule’s objectives.

We strongly support the delegation of duties to either the Chief Statistician of the United States or the head of the RSAUs that are outlined throughout this document. The rationale is compellingly made in the following sentence from the preamble regarding objectivity: “The clear distinctions between the Recognized Statistical Agency or Unit and the parent agencies in this work facilitates public perception and also the reality of those decisions being made by the entity responsible for impartial, objective statistical data, and not by entities with other missions and responsibilities.”

II. Unnecessary Components

We did not identify any provisions that should not be included in the proposed rule and so state to reinforce our support for all provisions to be included in the final rule.

III. Improvements/Recommendations

We urge several additions or edits to further improve the effectiveness of this proposed rule. We group these recommendations into four (not necessarily mutually exclusive) categories: (A) RSAU professional autonomy; (B) parent agency interactions and responsibilities; (C) definitions; and (D) other.

A. RSAU autonomy

1. **Professional Autonomy or Independence:** A bedrock concept in the proposed rule is “professional autonomy”. Indeed, without a clear understanding of this concept, the rule could well fail to build a trusted statistical system, as individuals defined professional autonomy to meet their own specific needs. Unfortunately, the proposed rule fails to clearly define this key term unambiguously. We propose that the proposed rule be revised to include the excellent work on professional autonomy by the Interagency Council on Statistical Policy (ICSP).
 - a. ICSP membership unanimously adopted a statement on scientific integrity in 2012 and again in 2021 which defined the many dimensions of professional

autonomy or independence. In 2012, ICSP argued that the following were essential elements of professional independence:

- i. “Independence must include separation of the statistical agency from the parts of its department that are responsible for policy-making or law enforcement activities.
 - ii. Independence must include control over personnel actions, especially the selection and appointment of qualified professional staff, including senior executive career staff.
 - iii. Independence must include the statistical agency having authority for professional decisions over the scope, content, and frequency of data collected; analysis, or publishing of the information; authority to release statistical information without prior clearance; and adherence to predetermined schedules for public release of statistical information.
 - iv. Independence must also include the statistical agency's ability to control information technology systems used in collection, storage and dissemination of statistical information, since such control is essential for ensuring adherence to laws and regulations requiring appropriate protection of data collected under a promise of confidentiality.”
- b. ICSP renewed its effort to define professional autonomy in 2021. In addition to this reaffirmation, ICSP unanimously adopted clarifying language that responded to recent encroachments on professional autonomy: “Because the American government system functions through periodic political transitions and includes times where the Executive and Legislative branches stand at odds, it is critically vital for the Federal statistical system to remain independent of political and other non-statistical influences to meet the needs of all data users, both governmental and non-governmental. Without this independence, a sitting Executive or Legislative branch could undermine the policy work of future Executives and Legislatures by disrupting the historical collection of data. Since good policy making must be based on evidence, the disruption or denial of evidentiary data building by a sitting Executive or Legislature is an unacceptable interference in the authority and capability of duly elected future leaders. In short, the independent operations of agencies making up the Federal statistical system are paramount to the legitimate operation of American democracy.”
 - c. ASA strongly recommends that the proposed rule use these statements by the principal statistical organizations in more clearly defining what is meant by the concept of professional autonomy.

2. Funding and Staffing autonomy: Two prominent themes throughout the proposed rule are the need for the RSAUs to have control over their professional and statistical operations—which we will hereafter refer to as “professional autonomy”—and for them to be adequately resourced. It is very important to recognize that the resources made available to the RSAU’s include both funding and the authority to determine the levels,

deployment, and qualifications of the staff consistent with the funding to achieve their missions.

We therefore urge that both funding and staffing autonomy be explicitly included in the rule and its preamble and make the following recommendations to 1321.4(c) to achieve such autonomy:

For the heads of Recognized Statistical Agencies and Units to bear the responsibilities given to them under 44 U.S.C. 3563, they shall have the appropriate resources and control of those resources with respect to their statistical products and statistical information. Appropriate resources include both funding and the authority to determine the levels, deployment, and qualifications of the staff necessary to produce the statistical products and statistical information.

3. **Expand website branding to include products/reports:** Above we enthusiastically endorsed 1321.4(a) for RSAUs to have a website clearly branded with their name. We urge this be expanded to include all the agency's products and reports. For rationale, we cite the one provided for the website branding in the preamble: "Data users and providers (i.e., respondents to statistical collections, including individuals, households, businesses, and organizations) must be able to clearly and easily discern when they are receiving information from or providing information to a Recognized Statistical Agency or Unit."

In addition, to ensure the RSAU's control the website, we urge replacing "maintain" as follows:

1321.4(a): Each Recognized Statistical Agency or Unit shall develop and have control of ~~maintain~~ a website clearly branded with the name of the Recognized Statistical Agency or Unit to provide information to information providers, data users, and the general public.

4. Objectivity:

- a. In 1321.7(a)(2)(ii), we urge the addition of the underlined language such that it reads, "Making public releases available to all data users, including to the Parent Agency, at the same time with limited exceptions as allowable in OMB Statistical Policy Directives, in accordance with the scheduled release date".
 - b. In 1321.7(b)(5)(i), we urge the addition of the underlined language such that it reads, "The governance of its data, including its archiving". The confidentiality pledges that the RSAU's use in collection of the data do not have an expiration date and so the RSAUs have a responsibility to maintain the pledge when their data is archived.
5. **Confidentiality:** We wholeheartedly support confidentiality protection as a fundamental responsibility of RSAUs and one that parent agencies are obligated to support.

- a. Because timeliness, accuracy, and usability of data products are also fundamental responsibilities of RSAUs, we recommend an additional point be added to section 1321.8(a)(2) or as a separate subsection:
 - (7) Recognize that no non-trivial data sharing strategy eliminates all disclosure risk while also providing the greatest utility to the public, and that a careful balance must therefore be managed by the RSAU. Accordingly, RSAUs must take necessary steps to ensure, before implementation, that the confidentiality protection methods chosen by RSAUs take into account the overall purposes of the statistical product and the accuracy needed to achieve those purposes. The methods chosen also must not impair the timeliness of the statistical product.Such language would accord with recommendation 1.6 of the final report of the Advisory Committee on Data for Evidence Building¹ that: "OMB should adopt a risk-utility framework as the basis for standards on sensitivity levels, access tiers, and risk evaluations as part of the regulation on expanding secure access to CIPSEA data assets."
- b. In 1321.8(a)(2)(iv), we urge deletion of the phrase, "in collaboration with the relevant parent agency". The determination in that item on appropriate "agent status or direct assignment" for the purpose of ensuring "that confidential statistical data are not used for any nonstatistical purposes" should be solely in the charge of the RSAU. The phrase in question undermines the intent of 1321.8 as well as the RSAU professional autonomy. Parent agency involvement in personnel, contractor, and research access decisions would seriously limit agency autonomy and likely be unworkable practically.

B. Parent agency interactions and responsibilities

Other recommended changes are more specific in this section than the one above:

1. For the same reason we endorse the delegation of duties component in our first section, we strongly recommend the following:
 - o Change "may" to "shall" in 1321.4(d)(1):

Unless prohibited by statute, when a statute, regulation, or policy, authorizes any other agency official to make determinations directly affecting the ability of a Recognized Statistical Agencies or Unit to carry out the fundamental responsibilities, the authorized official ~~may~~ shall delegate that responsibility in writing to the head of the Recognized Statistical Agency or Unit.
 - o In in 1321.4(d)(3), add notification of the Chief Statistician of the United States: If the Recognized Statistical Agency or Unit determines that delegation is necessary to carry out its fundamental responsibilities, the Recognized Statistical

¹ <https://www.bea.gov/system/files/2022-10/acdeb-year-2-report.pdf>

Agency or Unit shall notify the head of the parent agency and the Chief Statistician of the United States.

- o Delete “may” in 1321.4(d)(4)(ii)

Ensure the decision is consistent with the government-wide application and interpretation of statistical laws and ~~may~~ consult with the Chief Statistician of the United States.

2. When requiring written agreements between RSAUs and parent agencies, include provisions for review and re-signing on a regular basis, not less than every five years, to ensure necessary updates and continued compliance with such agreements. We recommend the following (underlined) addition in Option B of 1321.4(c)(4):

Prior to making or renewing an award for services or software that will directly affect a Recognized Statistical Agency or Unit’s ability to meet the fundamental responsibilities, the relevant parent agency official shall consult with the head of the Recognized Statistical Agency or Unit . The agreement review and renewal shall be conducted on a regular basis, not to exceed once every five years, to ensure continued compliance and updates to such agreements, and thereby avoid binding actions and decisions that would conflict with the Recognized Statistical Agency or Unit’s ability to carry out its responsibilities.

3. In order to strengthen the position of the RSAUs to meet their responsibilities without interference, edit 1321.5(a) as follows:

Recognized Statistical Agencies and Units shall uphold the responsibility to produce and disseminate relevant and timely statistical information. Parent agencies shall enable, support, and facilitate Recognized Statistical Agencies and Units in carrying out their responsibility to produce and disseminate relevant and timely statistical information. Parent agencies shall support the Recognized Statistical Agencies’ and Units’ responsibility to ~~shall~~ determine what statistical products to disseminate, including in the context of the Standard Application Process required under 44 U.S.C. 3583; the content of their statistical products; and the timing of disseminations. The Parent Agency shall not conduct any review of statistical products prior to their release by Recognized Statistical Agencies and Units.

4. In order to strengthen the position of the RSAUs to meet their responsibilities without interference, edit 1321.6(b)(3) and (4), which is preceded by, “Each parent agency shall”, as follows:

(3) ~~Permit~~ Delegate to Recognized Statistical Agencies and Units the responsibility to determine ~~if whether~~ statistical disseminations, including related statistical press releases or publicity materials not containing policy

pronouncements, ~~are to~~ should be disseminated by or through a parent agency and, if so, ensure that statistical information attributable to the Recognized Statistical Agency or Unit disseminated by or through a parent agency is not altered in any way not authorized by the head of such Recognized Statistical Agency or Unit;

(4) Allow Recognized Statistical Agencies and Units to submit articles that do not address policy, management, or budget issues to refereed journals, present at professional conferences, and engage in peer review activities without requiring review or approval from outside of the Recognized Statistical Agency or Unit, unless such approval is required by law;

5. In 1321.6(b)(3) and (4), which follows “Each parent agency shall”, edit 1321.7(b)(1) and (2) as follows:

(1) Allow the publication of statistical products without requiring review or clearance of the content from offices or officials outside of the Recognized Statistical Agency or Unit, and allow Recognized Statistical Agencies and Units to respond to inquiries from external interested communities and stakeholders, including the media, the Congress, and others, about their statistical products in a manner that ensures appropriate consultation without the parent agency requiring review, approval, or edits to the response, unless responses to those inquiries include matters related to policy, budget, or management;

(2) Support the impartiality of Recognized Statistical Agencies and Units in their production and dissemination of statistical products by ensuring they are permitted to determine the methods for conducting statistical activities for statistical purposes and for reporting on the results of those activities. Unless prohibited by statute, when a statute, regulation, or policy authorizes any other agency official to make such determinations, that responsibility shall be delegated to the head of the Recognized Statistical Agency or Unit, as described in § 1321.4(b);

C. Definitions

1. 1321.1(y):

The term *statistical products* refers to any information dissemination products, including public-use microdata files, that are published or otherwise made available for public use that describe, estimate, forecast, or analyze the characteristics of groups, customarily without identifying the persons, organizations, or individual data observations that comprise such groups. Statistical products include (but are not limited to) general purpose tabulations, analyses, projections, forecasts, or other statistical reports whether published by the Statistical Agency or Unit or through some other mechanism.

Statistical products include products of any form, including both printed and electronic forms.

2. 1321.1(w): To allow for founding legislation of Recognized Statistical Agency or Unit to be rightfully considered "statistical law", amend the definition of statistical laws as follows:

The term statistical laws means 44 U.S.C. chapter 35, subchapter III, and other laws pertaining to the protection of information collected for statistical purposes as designated and documented by the Director of the Office of Management and Budget.

D. Other

We have several other recommendations that are not easily categorized like those above.

1. **Inclusion of Congress and Judicial Branch as key stakeholders to be consulted:** In § 1321.5 Relevance and timeliness, RSAUs are directed to consult with their parent agency. We urge Congressional and Judicial branch officials, as well as agencies other than the parent agency, to also be consulted because all are key stakeholders of federal statistical agencies, using the following language for 1321.5(b)(1)(i):.

Consult with ~~parent agency officials~~ of the parent agency, other executive agencies, Congress, and the Judicial Branch to assess and seek improvements to the relevance of its statistical products to users' needs and to inform the RSAUs about what statistical products to produce and disseminate.

We also urge additional language in the relevant part of the preamble:

Proposed § 1321.5(a) requires Recognized Statistical Agencies and Units to produce and disseminate relevant and timely statistical information and for the parent agencies to enable, support, and facilitate the activities necessary to carry out that responsibility. To carry out this responsibility, Recognized Statistical Agencies and Units must be able to determine what statistical products to disseminate and the timing of dissemination. Recognized Statistical Agencies and Units should engage with parent agencies, other executive agencies, Congress, and the Judicial Branch about what statistical products would be most valuable from their respective perspectives ~~of the parent agency~~ and prioritize consideration of how to address those needs.

... This regular and continued input from a broad range of users, including from officials in the parent agency, other executive agencies, Congress, and the Judicial Branch, is essential for determining data needs, and Recognized Statistical Agencies and Units must regularly and continually collaborate with other Federal agencies in order to promote a strong Federal Statistical System

- 2. Transparency and completeness in budget requests:** For cases where RSAUs receive funds through other sources, such as set-asides from other appropriations, we recommend that such funds and their sources be clearly identified with the budget request. In addition, if an agency's staffing level is determined through a separate agency account (as is the case for the Bureau of Justice Statistics, the National Center for Education Statistics, and the National Center for Science and Engineering Statistics), we urge that proposed staffing levels and any requested changes in those levels for the RSAU be included as part of the budget request. This may be best addressed in 1321.4(c)(1) as follows:

Each Recognized Statistical Agency or Unit shall produce a budget request specific to the Recognized Statistical Agency or Unit, that is fully compliant with the requirements of OMB Circular A-11, to be included independently (i.e., clearly presented as the request for the Recognized Statistical Agency or Unit with figures and justification specific to the Recognized Statistical Agency or Unit) as part of the highest organizational unit's annual budget submission and process, and participate directly, accompanied by the highest organizational unit as appropriate, in presenting their agency specific request to the Office of Management and Budget. In the cases where RSAUs also receive funds through other sources, such as set-asides, such funds and their sources shall be clearly stated with the budget request. Further, if an agency's staffing level is determined through a separate agency account, the staffing levels and the requested changes for the RSAU shall be included as part of the budget request.

- 3. Under relevance,** edit 1321.5 (d)((1)(vi) as follows:
If needed after the schedule has been published, advise the Chief Statistician of the United States and publicly announce any change to the schedule as soon as possible and provide a detailed explanation for such change.
- 4. ASA Ethical Guidelines for Statistical Practice:** The ASA Ethical Guidelines for Statistical Practice were developed to set expectations for scientific integrity specifically within the domain of statistical practice. Rooted in standards of respect, fairness, transparency, and accountability, the guidelines complement the themes of trust, transparency, accountability, and scientific integrity. We recommend they be included following the description of "International Principles and Practices" in the discussion on p. 56712 that starts, "In addition to the related authorities for the work of Recognized Statistical Agencies and Units, other external entities—both domestic and international—have published their perspectives on how Recognized Statistical Agencies and Units should meet their missions to produce reliable, relevant, credible, and objective Federal statistics."

IV. Responses to Questions/Preference for Options

In this section, we address questions in the two sets of options included in the *Federal Register* Notice:

1. For its definition of parent agency, OMB poses questions about whether and how to create distinctions between agencies.

We find the definition of the parent agency to be confusing and potentially a deterrent to achieving stated objectives. As written the parent agency would seem to be the organization where the Statistical Agency is immediately located or hosted; however, for the most part, statistical agencies have Department-wide responsibilities. Several statistical organizations are located within a major agency within their respective Departments. Their responsibilities for providing data for other Department needs many times are not congruent with the hosting agency's internal priorities. This lack of congruence of priorities has led to substantial budget and staffing issues, which in turn has significantly hurt their ability to collect and disseminate needed and timely data for the Department. The parent agency should be the Department by default.

2. For the two 1321.4(c)(4) options, we urge option B be adopted because of the strength it provides the head of the RSAU, which is critical to promoting trust in the agency.
3. We commend the intention of compliance in 1321.9. Instead of the three options provided, we urge another option whereby the Office of Management and Budget creates a capability within the Office of the Chief Statistician of the United States to audit agency compliance with this regulation. This compliance function would conduct agency audits on the cycles specified in the rule, make findings that would be communicated to the agencies and their RSAU(s), and work with the RSAU budget staff within OMB to enforce the rule. OMB's central role in the enforcement of this rule is central to its success, since its budget functions provide ample incentive for better performance by agencies with respect to their RSAUs.
4. Regarding 1321.9, OMB asks whether this regulation provides "adequate accountability measures for Recognized Statistical Agencies and Units to ensure they are meeting their fundamental responsibilities", similarly for parent agencies.

We do not believe so. In particular, Section 1321.4(c)(2) specifies that if the parent agency identifies that its RSAU lacks sufficient resources to carry out the responsibilities in the proposed rule and the necessary resources cannot be made available, "the parent agency and the Recognized Statistical Agency or Unit must notify OMB within 60 days." Because parent agencies may have a different view of what constitutes necessary resources, the RSAU should have a role in identifying if resources are sufficient. Further, we urge a strong role for the Chief Statistician of the United States—and perhaps other entities—for determining whether an agency has adequate resources.

We further urge that objective criteria be developed, preferably with parent agency involvement, to evaluate whether an agency has sufficient resources to carry out its fundamental responsibilities. Such criteria will likely need to be adjusted for each RSAU. Possible criteria for evaluating whether an agency has sufficient FTE employees might

include, for example, the budget-to-staff ratio and the ratio of FTE contractors to staff. Other criteria will be needed to address the totality of the needed resources.

Lastly, in places such 1321.3(d)—where the draft regulation states the parent agency and the RSAU “shall discuss and determine the appropriateness of how to address such deviation, including determining where responsibility lies for compliance with other applicable laws and regulations”—it is ambiguous how such determinations will be resolved when the parent agency and the RSAU disagree or cannot reach an agreement. In such cases we recommend the Chief Statistician of the United States be tapped to mediate and empowered to make a final determination.

Summary

In short, thank you for the opportunity to comment on this important and very well-crafted proposed rule. We urge its prompt adoption with the recommendations above incorporated.

Any questions can be directed to ASA’s Director of Science Policy, Steve Pierson:

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