

RESPONSE TO HOUSE MAJORITY STAFF'S ARGUMENTS IN FAVOR OF FEPA EXECUTIVE SUMMARY

House Majority Staff has issued a two-page response¹ to various points made in opposition² to the Foundations for Evidence-Based Policymaking Act, or FEPA (HR 4174),³ which the House passed last week by voice vote without significant hearings or debate. Here is a point-by-point rebuttal of Majority Staff's claims. This page is an executive summary of that rebuttal.⁴

Claim: FEPA doesn't create a centralized data repository.

Rebuttal: FEPA moves toward the recommendation of the Commission on Evidence-Based Policymaking (Commission) to create a "National Secure Data Service" by 1) requiring each agency to create an evidence-building plan; 2) requiring the OMB Director to unify those plans across the entire federal government; 3) creating a "federal data catalog" and a "national data inventory"; and 4) requiring various councils to recommend how to vastly increase data linking and sharing among federal agencies, with states, and with public and private research entities.

Claim: FEPA doesn't authorize any new data collection or data analysis.

Rebuttal: Regardless of whether FEPA expressly authorizes new data collection, it 1) incentivizes agency heads to expand, not maintain or minimize, data collection; 2) creates new sources of data for agencies by allowing unfettered access to other agencies' data; 3) creates a process whereby public and private organizations can access non-public government data; 4) allows the OMB Director to expand the universe of statistical agencies and units; and 5) allows one person, the OMB director, to decide via post-enactment "guidance" what if any data will be exempt from sharing as too private or confidential.

Claim: FEPA "does not overturn an existing student unit record ban, which prohibits the establishment of a database with data on all students," so parents need not worry about their children's personally identifiable information (PII).

Rebuttal: FEPA doesn't overturn this ban – that will almost certainly come later. But its extensive data-linking and data-sharing mandates create a *de facto* national database, whereby the data stays "housed" within the collecting agency but can be accessed by all. Title III specifically authorizes data "accessed" by federal agencies to be shared. This will threaten the security of not only the student data already maintained by the U.S. Department of Education (USED), but also the data in the states' longitudinal data systems.

Claim: FEPA doesn't repeal CIPSEA but rather strengthens it.

Rebuttal: FEPA strengthens nothing. It merely reiterates the same penalties (fine and jail term) in existence since 2002 that have rarely or never been enforced. Worse, FEPA increases threats to privacy and data security by mandating increased access to confidential data and metadata and encouraging unlimited data-swapping with no provisions for data security.

Claim: FEPA "does not respond to the Commission's recommendations to repeal any ban on the collection or consolidation of data."

Rebuttal: FEPA directs agency heads to identify and report "any statutory or other restrictions to accessing relevant data . . ." Because the entire thrust of the bill is to use more and more data for "evidence-building," the inevitable next step will be to implement the Commission's recommendation of repealing these pesky statutory obstacles to acquiring "relevant" data.

Claim: FEPA will make better use of existing data.

Rebuttal: The federal government has reams of data showing the uselessness or harm of existing programs. When the government continues to fund those programs despite this data (see Head Start and manifestly ineffective programs under ESEA), there's no reason – none – to assume it will change its behavior with even more data. And FEPA doesn't even mention what is considered the gold standard of evaluation – the random-assignment model that would develop more unbiased data to provide better evidence. The bill thus initiates an Orwellian data structure for no apparent purpose.

¹ <https://drive.google.com/open?id=0B7epgdVXe0gKamNsTHhFN0RMX1FRSVVwSTh0QkdsLTVyTFRF>

² <http://missourieducationwatchdog.com/congress-suspending-the-rules-to-rush-through-bill-for-national-citizen-data-system-hr4174/> & <https://americanprinciplesproject.org/wp-content/uploads/CEP-one-pager-final-Nov-10.pdf>

³ <http://tinyurl.com/yxcf68dh>

⁴ See full rebuttal at: <http://bit.ly/2jo6icn>