

118TH CONGRESS
1ST SESSION

S. 1865

To direct agencies to be transparent when using automated and augmented systems to interact with the public or make critical decisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2023

Mr. PETERS (for himself, Mr. BRAUN, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To direct agencies to be transparent when using automated and augmented systems to interact with the public or make critical decisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transparent Auto-
5 mated Governance Act” or the “TAG Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) AGENCY.—The term “agency” has the
2 meaning given the term in section 3502 of title 44,
3 United States Code.

4 (2) AUGMENTED CRITICAL DECISION PROC-
5 ESS.—The term “augmented critical decision proc-
6 ess” means the use by an agency, or by a third
7 party on behalf of the agency, of an automated sys-
8 tem to determine or substantially influence the out-
9 comes of critical decisions.

10 (3) AUTOMATED SYSTEM.—The term “auto-
11 mated system”—

12 (A) means a set of computational processes
13 derived from statistics or artificial intelligence
14 techniques, or that otherwise rely on data about
15 specific individuals or groups, to substantially
16 influence the outcome of critical decisions, in-
17 cluding computational processes that stand
18 alone or are embedded within another process,
19 system, or application, including paper-based
20 processes; and

21 (B) does not include computational proc-
22 esses or infrastructure the function of which is
23 not directly related to influencing or deter-
24 mining the outcome of critical decisions.

1 (4) CRITICAL DECISION.—The term “critical
2 decision” means an agency determination, including
3 the assignment of a score or classification, related to
4 the status, rights, property, or well-being of specific
5 individuals or groups, the outcome of which—

6 (A) is likely to meaningfully differ from
7 one individual or group to another; and

8 (B) meaningfully affects access to, or the
9 cost, terms, or availability of—

10 (i) education and vocational training;

11 (ii) employment;

12 (iii) essential utilities, including elec-
13 tricity, heat, water, and internet;

14 (iv) transportation;

15 (v) any benefits or assistance under
16 any Federal public assistance program or
17 under any State or local public assistance
18 program financed in whole or in part with
19 Federal funds;

20 (vi) financial services, including access
21 to credit or insurance;

22 (vii) asylum and immigration services;

23 (viii) healthcare;

24 (ix) housing, lodging, or public accom-
25 modations; and

1 (x) any other service, program, or op-
 2 portunity a determination about which
 3 would have a legal, material, or significant
 4 effect on the life of an individual, as deter-
 5 mined by the Director.

6 (5) DIRECTOR.—The term “Director” means
 7 the Director of the Office of Management and Budg-
 8 et.

9 (6) PLAIN LANGUAGE.—The term “plain lan-
 10 guage” has the meaning given the term in section
 11 1311(e)(3)(B) of the Patient Protection and Afford-
 12 able Care Act (42 U.S.C. 18031(e)(3)(B)).

13 (7) TRANSPARENT AUTOMATED GOVERNANCE
 14 GUIDANCE.—The term “transparent automated gov-
 15 ernance guidance” means the guidance issued by the
 16 Director pursuant to section 3(a).

17 **SEC. 3. TRANSPARENT AUTOMATED GOVERNANCE GUID-**
 18 **ANCE.**

19 (a) IN GENERAL.—Not later than 180 days after the
 20 date of enactment of this Act, the Director shall issue
 21 guidance that—

22 (1) is consistent with relevant legal authorities
 23 relating to privacy, civil rights, and civil liberties
 24 protections; and

1 (2) requires agencies to provide disclosure and
2 opportunity for appeal when using certain auto-
3 mated systems and augmented critical decision proc-
4 esses.

5 (b) GUIDANCE.—The transparent automated govern-
6 ance guidance issued under subsection (a) shall include—

7 (1) an identification by the Director of any ad-
8 ditional services, programs, or opportunities relating
9 to critical decisions described in section 2(4)(B)(x),
10 if appropriate, for use by agencies with respect to
11 the requirements under this Act;

12 (2) a list of automated systems that may be
13 used in augmented critical decision processes, that,
14 as determined by the Director, are not subject to the
15 requirements of this Act;

16 (3) with respect to automated systems that con-
17 tribute to augmented critical decision processes and
18 interact with the public, guidance for how agencies
19 shall design, develop, or update those automated sys-
20 tems to provide plain language notice to individuals
21 not later than the time and at the place of inter-
22 action with such an automated system that they are
23 interacting with such an automated system;

24 (4) the proper contents of the notice described
25 in paragraph (3);

1 (5) examples of what the notice described in
2 paragraph (3) could look like in practice;

3 (6) with respect to augmented critical decision
4 processes, guidance for how agencies shall provide
5 plain language notice to individuals not later than
6 the time a critical decision is issued to an individual
7 that a critical decision concerning the individual was
8 made using an augmented critical decision process;

9 (7) the proper contents of the notice described
10 in paragraph (6);

11 (8) examples of what the notice described in
12 paragraph (6) could look like in practice;

13 (9) guidance for how agencies shall establish an
14 appeals process for critical decisions made by an
15 augmented critical decision process in which an indi-
16 vidual is harmed as a direct result of the use of an
17 automated system in the augmented critical decision
18 process;

19 (10) with respect to critical decisions made by
20 an augmented critical decision process, guidance for
21 how agencies should provide individuals with the op-
22 portunity for an alternative review, as appropriate,
23 by an individual working for or on behalf of the
24 agency with respect to the critical decision, inde-

1 pendent of the augmented critical decision process;
2 and

3 (11) criteria for information that each agency is
4 required to track and collect relating to issues that
5 arise during the use of augmented critical decision
6 processes—

7 (A) to ensure that the information col-
8 lected can be used to determine whether each
9 automated system and augmented critical deci-
10 sion process covered by this Act is accurate, re-
11 liable, and, to the greatest extent practicable,
12 explainable; and

13 (B) that the agency shall make accessible
14 for use by the agency, the Comptroller General
15 of the United States, and Congress.

16 (c) CONSULTATION.—In developing the transparent
17 automated governance guidance, the Director shall solicit
18 input from experts from—

19 (1) other agencies, including the National Insti-
20 tute for Science and Technology, the Office of
21 Science and Technology Policy, and the Government
22 Accountability Office;

23 (2) academia;

24 (3) the private sector; and

1 (4) the nonprofit sector, including experts in
2 civil rights and civil liberties.

3 (d) **ARTIFICIAL INTELLIGENCE GUIDANCE.**—The
4 guidance required by section 104 of the AI in Government
5 Act of 2020 (40 U.S.C. 11301 note) may be used to sat-
6 isfy the requirement for the transparent automated gov-
7 ernance guidance with respect to relevant automated sys-
8 tems and augmented critical decision processes, or a sub-
9 set thereof, if such guidance addresses each requirement
10 under subsection (b) of this section with respect to the
11 automated system or augmented critical decision process.

12 (e) **UPDATES.**—Not later than 2 years after the date
13 on which the Director issues the transparent automated
14 governance guidance, and biennially thereafter, the Direc-
15 tor shall issue updates to the guidance.

16 **SEC. 4. AGENCY IMPLEMENTATION.**

17 (a) **AGENCY IMPLEMENTATION OF TRANSPARENT**
18 **AUTOMATED GOVERNANCE GUIDANCE.**—Not later than
19 270 days after the date on which the Director issues the
20 transparent automated governance guidance, the head of
21 each agency shall implement the transparent automated
22 governance guidance to the extent that implementation
23 does not require rulemaking.

24 (b) **COMPTROLLER GENERAL REPORT.**—Not later
25 than 2 years after the date of enactment of this Act, and

1 biannually thereafter, the Comptroller General of the
2 United States shall review agency compliance with this Act
3 and submit to the Committee on Homeland Security and
4 Governmental Affairs of the Senate and the Committee
5 on Oversight and Accountability of the House of Rep-
6 resentatives a report with findings and recommendations.

7 **SEC. 5. SUNSET.**

8 Beginning on the date that is 10 years after the date
9 of enactment of this Act, this Act shall have no force or
10 effect.

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