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RE: Data Foundation Comments on Information Collection Request; National Assessment of Educational Progress (NAEP) 2026, OMB Control Number 1850-0928

The Data Foundation appreciates the opportunity to comment on this Information Collection Request concerning the National Assessment of Educational Progress (NAEP) 2026, and we commend the Department of Education for maintaining transparency under the Paperwork Reduction Act regarding changes to important federal data collection activities.

The Data Foundation is a non-profit, non-partisan organization based in Washington, D.C. that champions the use of open data and evidence-informed public policy to make society better for everyone. As a trusted authority on federal data policy, we conduct research, facilitate collaborative thought leadership, and promote advocacy programs that advance practical policies for the creation and use of accessible, trustworthy data. Our Data Coalition brings together diverse industry leaders and data experts dedicated to improving government, business, and society through responsible data practices.

For over a decade, the Data Foundation has been instrumental in advancing federal data legislation, including contributing to the passage of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), which reauthorized and strengthened the Confidential Information Protection and Statistical Efficiency Act (CIPSEA).

Concerns Regarding Removal of CIPSEA Protections

I write to express **concerns about the Education Department's decision to remove CIPSEA confidentiality protections from NAEP 2026**, as disclosed in the Information Collection Request. This change represents a departure from established federal statistical practice for NAEP, and appears inconsistent with both key principles established in the Federal Data Strategy developed during the first Trump Administration and aspects of the intent of the Evidence Act's CIPSEA reauthorization.

CIPSEA's Role in Federal Statistical Infrastructure

Reauthorized by Congress in 2018 with bipartisan support and signed into law by President Trump as part of the Foundations for Evidence-Based Policymaking Act (Evidence Act), CIPSEA 2018 establishes a robust confidentiality framework that aims to provide consistent statutory protection for information collected under a pledge of confidentiality for exclusively statistical purposes and statistical activities. CIPSEA also carries both significant criminal and civil penalties for violations – making it one of the strongest privacy laws in the world. These provisions were the direct outcome of recommendations provided to Congress and President Trump by the U.S. Commission on Evidence-Based Policymaking in 2017.

CIPSEA protections directly support several core principles from the existing Federal Data Strategy issued by OMB Director Russ Vought:

- **Principle 2 (Exercise Responsibility)**: "Practice effective data stewardship and governance. Employ sound data security practices, protect individual privacy, maintain promised confidentiality, and ensure appropriate access and use."
- **Principle 3 (Promote Transparency)**: "Articulate the purposes and uses of federal data to engender public trust."
- **Principle 8 (Monitor and Address Public Perceptions)**: "Regularly assess and address public confidence in the value, accuracy, objectivity, and privacy protection of federal data."

The 10-Year Federal Data Strategy explicitly recognizes that robust confidentiality protections are essential to:

- **Building and maintaining public trust** in federal data collection efforts
- **Ensuring data quality** by encouraging complete and accurate responses from participants who trust their information will be protected
- **Supporting evidence-informed policymaking** by providing decision-makers with reliable group-level knowledge
- **Maintaining the integrity** of the federal statistical system and government data activities

The removal of CIPSEA protections from NAEP 2026 raises questions about the application of these core principles that should be addressed, and creates a potentially concerning precedent that conflicts with the comprehensive data governance framework.

Specific Policy and Operational Concerns

1. **Precedent and System Integrity**: The removal of CIPSEA protections from a major federal statistical program signals a departure from established best practices and may encourage similar actions by other agencies, potentially further fragmenting the federal statistical system's approach to confidentiality. CIPSEA improves efficiency across the statistical system, in addition to other benefits.

2. **Mixed Data Assets**: The ICR indicates that the National Center for Education Statistics (NCES) at the Institute of Education Sciences (IES) previously collected NAEP data under CIPSEA protections. Creating a situation where some NAEP data enjoys CIPSEA protection while newer data does not – relying exclusively on mechanisms like ESRA – creates complex data management challenges and potential confusion for researchers and policymakers. In a single multi-year analysis of NAEP data, different privacy standards will need to be deployed in disclosure review processes, which will create additional cost and burden on researchers and agency staff alike.

3. **Federal Data Strategy Alignment**: The ICR provides minimal justification for a significant policy change, stating only that it resulted from "recent staffing changes." This approach conflicts with Federal Data Strategy Practice 12 ("Govern Data to Protect Confidentiality and Privacy"), which emphasizes ensuring "sufficient authorities, roles, organizational structures, policies, and resources in place to provide appropriate access to confidential data and to maintain public trust and safeguard privacy." The solution should be strengthening capacity to ensure protections are adequately enabled and sustained, rather than weakening data protections for the American people, particularly for sensitive data collections.

4. **Business and Research Community Impact**: Our Data Coalition members, including organizations that rely on federal statistical data for research, analysis, and decision-making, depend on consistent, high-quality data with clear confidentiality frameworks. The removal of CIPSEA protections introduces uncertainty that could affect how our stakeholders – and the education sector – use and trust NAEP data in the future, potentially hindering the innovation and commercialization goals outlined in Federal Data Strategy Practices 36 and 40, with which we agree.

5. **Transparency and Process Concerns**: The ICR justification provided for the change appears to conflict with Federal Data Strategy Principle 3 (Promote Transparency) and Practice 30 (Communicate Planned and Potential Uses of Data). The decision may also conflict with CIPSEA Sec. 3563 and the promulgated Public Trust Rule which designates that Parent Agencies should support statistical functions of statistical agencies like NCES to "protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses." The consequential decision of removing CIPSEA protections merits discussion in a detailed *Federal Register* Notice that delineates alternatives considered, and a thorough explanation. It is also noteworthy that under CIPSEA, the Chief Statistician of the United States – a role established under the Paperwork Reduction Act at OMB – designates agencies and units for the ability to deploy CIPSEA protections with guidance (see Sec 3562(a)).

Recommendations

The Data Foundation strongly recommends that NCES and IES:

1. **Maintain CIPSEA protections** for NAEP 2026, including by providing relevant staffing and capacity to implement the CIPSEA confidentiality safeguards within the entity that collects NAEP data.

2. **Develop a capacity-building plan** or a transition plan to maintain the specialized expertise required for CIPSEA implementation, including statistical disclosure limitation techniques and confidentiality protection protocols. Given recent reorganization and reallocation proposals, ensuring an aligned agency or institution can successfully

institute and implement CIPSEA safeguards is a relevant strategy for planning.

3. **Provide enhanced justification** for any decision to remove CIPSEA protections, including analysis of alternatives, impact assessment that includes risk of re-identification thresholds under the Evidence Act, and consultation with the broader data, evaluation and statistical communities.

4. **Ensure appropriate consistency** across NCES data collection programs that transitioned to implement strong CIPSEA confidentiality safeguards, to maintain the integrity of the federal statistical system and avoid creating a new patchwork of confidentiality protections.

5. **Meaningfully engage stakeholders,** including the research community, state education agencies, and Data Coalition members and industry experts who rely on NAEP data before making significant changes to confidentiality frameworks. While I appreciate the opportunity to provide comments on behalf of the data community about the proposed change, *Federal Register* notices are not an effective engagement strategy with the range of education data users.

Moving Forward

The Data Foundation recognizes the challenges facing federal statistical agencies in maintaining capacity and expertise with recent retirements and transitions over the last several years. However, we hope that a solution for NAEP can align with the Federal Data Strategy's comprehensive framework rather than weaken foundational confidentiality protections for key statistical data collections. Federal Data Strategy Practice 27 specifically calls for agencies to "Increase Capacity for Data Management and Analysis" by "investing in training, tools, communities, and other opportunities to expand capacity for critical data-related activities such as analysis and evaluation, data management, and privacy protection."

Instead of removing CIPSEA protections, the Data Foundation encourages NCES to work with Congress, OMB, and key stakeholders and data users to ensure adequate resources and capacity for implementing robust confidentiality protections. In other words, the federal government and elected leaders have an obligation to protect the information about the American people and businesses. Ensuring the core capacity and expertise is available is consistent with the Federal Data Strategy's emphasis on building sustainable data infrastructure and maintaining public trust.

As the Trump Administration continues to advance using data to make decisions and government efficiency initiatives, maintaining strong confidentiality protections while enabling responsible data must not be optional. Enabling privacy protections and data use simultaneously remains essential for concurrently supporting both government accountability and private sector innovation. The federal statistical system's credibility—and its ability to support goals for evidence-informed decision-making in our society—depends on consistent

application of these protections across major statistical data collection programs. This theme is also well established in the CIPSEA Public Trust Rule, directed by the Evidence Act.

The Data Foundation and our partners stand ready to work with the Department of Education and other decision-makers at the White House Office of Management and Budget and the Domestic Policy Council to identify solutions that maintain the availability, quality, and confidentiality of this national data asset.

Conclusion

The Data Foundation recognizes that robust confidentiality protections and responsible data use are not competing priorities but rather complementary imperatives that strengthen each other. Removing CIPSEA protections from NAEP 2026 risks undermining public trust, data quality, and the broader federal statistical system's integrity. Such a substantial decision merits engagement, discourse, and explanation.

The Data Foundation respectfully urges IES and NCES to reconsider the proposed decision to remove CIPSEA protections from NAEP 2026, and to maintain strong privacy protections while building the capacity necessary to sustain these important safeguards in the years ahead. The Data Foundation also calls on OMB to devise cost-effective solutions for protecting NCES's CIPSEA data capabilities.

I appreciate the Education Department's consideration of these comments and remain available to provide additional information or perspectives as needed.

Regards,

Nick Hart, Ph.D.
President and CEO
Data Foundation