

**Calendar No. 192**118TH CONGRESS  
1ST SESSION**S. 1865****[Report No. 118–89]**

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.

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**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

AUGUST 22, 2023

Reported under authority of the order of the Senate of July 27, 2023, by Mr. PETERS, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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**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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

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

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

15 (3) **AUTOMATED SYSTEM.**—The term “auto-  
16 mated system”—

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

1           (B) does not include computational proc-  
 2           esses or infrastructure the function of which is  
 3           not directly related to influencing or deter-  
 4           mining the outcome of critical decisions.

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

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

12           (B) meaningfully affects access to, or the  
 13           cost, terms, or availability of—

14           (i) education and vocational training;

15           (ii) employment;

16           (iii) essential utilities, including elec-  
 17           tricity, heat, water, and internet;

18           (iv) transportation;

19           (v) any benefits or assistance under  
 20           any Federal public assistance program or  
 21           under any State or local public assistance  
 22           program financed in whole or in part with  
 23           Federal funds;

24           (vi) financial services, including access  
 25           to credit or insurance;

- 1                   (vii) asylum and immigration services;
- 2                   (viii) healthcare;
- 3                   (ix) housing, lodging, or public accom-
- 4                   modations; and
- 5                   (x) any other service, program, or op-
- 6                   portunity a determination about which
- 7                   would have a legal, material, or significant
- 8                   effect on the life of an individual, as deter-
- 9                   mined by the Director.

10           (5) DIRECTOR.—The term “Director” means

11           the Director of the Office of Management and Budget.

12           et.

13           (6) PLAIN LANGUAGE.—The term “plain lan-

14           guage” has the meaning given the term in section

15           1311(e)(3)(B) of the Patient Protection and Afford-

16           able Care Act (42 U.S.C. 18031(e)(3)(B)).

17           (7) TRANSPARENT AUTOMATED GOVERNANCE

18           GUIDANCE.—The term “transparent automated gov-

19           ernance guidance” means the guidance issued by the

20           Director pursuant to section 3(a).

21 **SEC. 3. TRANSPARENT AUTOMATED GOVERNANCE GUID-**

22 **ANCE.**

23           (a) IN GENERAL.—Not later than 180 days after the

24           date of enactment of this Act, the Director shall issue

25           guidance that—

1           (1) is consistent with relevant legal authorities  
2 relating to privacy, civil rights, and civil liberties  
3 protections; and

4           (2) requires agencies to provide disclosure and  
5 opportunity for appeal when using certain auto-  
6 mated systems and augmented critical decision pro-  
7 cesses.

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

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

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

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

1 action with such an automated system that they are  
2 interacting with such an automated system;

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

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

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

13 (7) the proper contents of the notice described  
14 in paragraph (6);

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

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

23 (10) with respect to critical decisions made by  
24 an augmented critical decision process, guidance for  
25 how agencies should provide individuals with the op-

1 portunity for an alternative review, as appropriate;  
2 by an individual working for or on behalf of the  
3 agency with respect to the critical decision, inde-  
4 pendent of the augmented critical decision process;  
5 and

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

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

16 (B) that the agency shall make accessible  
17 for use by the agency, the Comptroller General  
18 of the United States, and Congress.

19 (c) CONSULTATION.—In developing the transparent  
20 automated governance guidance, the Director shall solicit  
21 input from experts from—

22 (1) other agencies, including the National Insti-  
23 tute for Science and Technology, the Office of  
24 Science and Technology Policy, and the Government  
25 Accountability Office;

1           (2) academia;

2           (3) the private sector; and

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

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

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

18          **SEC. 4. AGENCY IMPLEMENTATION.**

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



1 (b) **COMPTROLLER GENERAL REPORT.**—Not later  
 2 than 2 years after the date of enactment of this Act, and  
 3 biannually thereafter, the Comptroller General of the  
 4 United States shall review agency compliance with this Act  
 5 and submit to the Committee on Homeland Security and  
 6 Governmental Affairs of the Senate and the Committee  
 7 on Oversight and Accountability of the House of Rep-  
 8 resentatives a report with findings and recommendations.

9 **SEC. 5. SUNSET.**

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

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Transparent Automated*  
 15 *Governance Act” or the “TAG Act”.*

16 **SEC. 2. DEFINITIONS.**

17 *In this Act:*

18 (1) **AGENCY.**—*The term “agency” has the mean-*  
 19 *ing given the term in section 3502 of title 44, United*  
 20 *States Code.*

21 (2) **ARTIFICIAL INTELLIGENCE.**—*The term “arti-*  
 22 *ficial intelligence” has the meaning given the term in*  
 23 *section 238(g) of the John S. McCain National De-*  
 24 *fense Authorization Act for Fiscal Year 2019 (10*  
 25 *U.S.C. note prec. 4061; Public Law 115–232).*

1           (3) *AUGMENTED CRITICAL DECISION PROCESS.*—  
2           *The term “augmented critical decision process” means*  
3           *the use by an agency, or by a third party on behalf*  
4           *of the agency, of an automated system to determine*  
5           *or substantially influence the outcomes of critical de-*  
6           *isions.*

7           (4) *AUTOMATED SYSTEM.*—*The term “automated*  
8           *system”*—

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

18                   (B) *does not include computational proc-*  
19                  *esses or infrastructure the function of which is*  
20                  *not directly related to influencing or determining*  
21                  *the outcome of critical decisions.*

22           (5) *CRITICAL DECISION.*—*The term “critical de-*  
23           *cision” means an agency determination, including the*  
24           *assignment of a score or classification, related to the*

1 *status, rights, property, or wellbeing of specific indi-*  
2 *viduals or groups, the outcome of which—*

3 *(A) is likely to meaningfully differ from one*  
4 *individual or group to another; and*

5 *(B) meaningfully affects access to, or the*  
6 *cost, terms, or availability of—*

7 *(i) education and vocational training;*

8 *(ii) employment;*

9 *(iii) essential utilities, including elec-*  
10 *tricity, heat, water, and internet;*

11 *(iv) transportation;*

12 *(v) any benefits or assistance under*  
13 *any Federal public assistance program or*  
14 *under any State or local public assistance*  
15 *program financed in whole or in part with*  
16 *Federal funds;*

17 *(vi) financial services, including access*  
18 *to credit or insurance;*

19 *(vii) asylum and immigration services;*

20 *(viii) healthcare;*

21 *(ix) housing, lodging, or public accom-*  
22 *modations; and*

23 *(x) any other service, program, or op-*  
24 *portunity a determination about which*  
25 *would have a legal, material, or significant*

1                   *effect on the life of an individual, as deter-*  
 2                   *mined by the Director.*

3                   (6) *DIRECTOR.*—*The term “Director” means the*  
 4                   *Director of the Office of Management and Budget.*

5                   (7) *PLAIN LANGUAGE.*—*The term “plain lan-*  
 6                   *guage” has the meaning given the term in section*  
 7                   *1311(e)(3)(B) of the Patient Protection and Afford-*  
 8                   *able Care Act (42 U.S.C. 18031(e)(3)(B)).*

9                   (8) *TRANSPARENT AUTOMATED GOVERNANCE*  
 10                  *GUIDANCE.*—*The term “transparent automated gov-*  
 11                  *ernance guidance” means the guidance issued by the*  
 12                  *Director pursuant to section 3(a).*

13 **SEC. 3. TRANSPARENT AUTOMATED GOVERNANCE GUID-**  
 14                   **ANCE.**

15                  (a) *IN GENERAL.*—*Not later than 270 days after the*  
 16                  *date of enactment of this Act, the Director shall issue guid-*  
 17                  *ance that—*

18                   (1) *is consistent with relevant legal authorities*  
 19                   *relating to privacy, civil rights, and civil liberties*  
 20                   *protections; and*

21                   (2) *requires agencies to provide disclosure and*  
 22                   *opportunity for appeal when using certain automated*  
 23                   *systems and augmented critical decision processes.*

24                  (b) *GUIDANCE.*—*The transparent automated govern-*  
 25                  *ance guidance issued under subsection (a) shall include—*

1           (1) *an identification by the Director of any ad-*  
2 *ditional services, programs, or opportunities relating*  
3 *to critical decisions described in section 2(5)(B)(x), if*  
4 *appropriate, for use by agencies with respect to the*  
5 *requirements under this Act;*

6           (2) *a list of automated systems that may be used*  
7 *in augmented critical decision processes, that, as de-*  
8 *termined by the Director, are not subject to the re-*  
9 *quirements of this Act;*

10          (3) *with respect to automated systems that con-*  
11 *tribute to augmented critical decision processes and*  
12 *interact with the public, guidance for how agencies*  
13 *shall design, develop, procure, or update those auto-*  
14 *mated systems to provide plain language notice to in-*  
15 *dividuals not later than the time and at the place of*  
16 *interaction with such an automated system that they*  
17 *are interacting with such an automated system;*

18          (4) *the proper contents of the notice described in*  
19 *paragraph (3);*

20          (5) *examples of what the notice described in*  
21 *paragraph (3) could look like in practice;*

22          (6) *with respect to augmented critical decision*  
23 *processes, guidance for how agencies shall provide*  
24 *plain language notice to individuals not later than*  
25 *the time a critical decision is issued to an individual*

1        *that a critical decision concerning the individual was*  
2        *made using an augmented critical decision process;*

3            *(7) the proper contents of the notice described in*  
4        *paragraph (6);*

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

7            *(9) guidance for how agencies shall establish an*  
8        *appeals process for critical decisions made by an aug-*  
9        *mented critical decision process in which an indi-*  
10       *vidual is harmed as a direct result of the use of an*  
11       *automated system in the augmented critical decision*  
12       *process;*

13           *(10) with respect to critical decisions made by*  
14       *an augmented critical decision process, guidance for*  
15       *how agencies should provide individuals with the op-*  
16       *portunity for an alternative review, as appropriate,*  
17       *by an individual working for or on behalf of the agen-*  
18       *cy with respect to the critical decision, independent of*  
19       *the augmented critical decision process; and*

20           *(11) criteria for information that each agency is*  
21       *required to track and collect relating to issues that*  
22       *arise during the use of augmented critical decision*  
23       *processes—*

24                    *(A) to ensure that the information collected*  
25                    *can be used to determine whether each automated*

1           *system and augmented critical decision process*  
2           *covered by this Act is accurate, reliable, and, to*  
3           *the greatest extent practicable, explainable; and*

4                   *(B) that the agency shall make accessible for*  
5           *use by the agency, the Comptroller General of the*  
6           *United States, and Congress.*

7           *(c) PUBLIC COMMENT.—Not later than 180 days after*  
8           *the date of enactment of this Act, the Director shall make*  
9           *a preliminary version of the transparent automated govern-*  
10          *ance guidance available for public comment for a period*  
11          *of 30 days.*

12          *(d) CONSULTATION.—In developing the transparent*  
13          *automated governance guidance, the Director shall consider*  
14          *soliciting input from—*

15                   *(1) the Government Accountability Office;*

16                   *(2) the General Services Administration, includ-*  
17                   *ing on the topic of user experience;*

18                   *(3) the private sector; and*

19                   *(4) the nonprofit sector, including experts in pri-*  
20                   *vacy, civil rights, and civil liberties.*

21          *(e) ARTIFICIAL INTELLIGENCE GUIDANCE.—The guid-*  
22          *ance required by section 104 of the AI in Government Act*  
23          *of 2020 (40 U.S.C. 11301 note) may be used to satisfy the*  
24          *requirement for the transparent automated governance*  
25          *guidance with respect to relevant automated systems and*

1 *augmented critical decision processes, or a subset thereof,*  
2 *if such guidance addresses each requirement under sub-*  
3 *section (b) of this section with respect to the automated sys-*  
4 *tem or augmented critical decision process.*

5 (f) *UPDATES.*—*Not later than 2 years after the date*  
6 *on which the Director issues the transparent automated gov-*  
7 *ernance guidance, and biennially thereafter, the Director*  
8 *shall issue updates to the guidance.*

9 **SEC. 4. AGENCY IMPLEMENTATION.**

10 (a) *AGENCY IMPLEMENTATION OF TRANSPARENT*  
11 *AUTOMATED GOVERNANCE GUIDANCE.*—*Not later than 270*  
12 *days after the date on which the Director issues the trans-*  
13 *parent automated governance guidance, the head of each*  
14 *agency shall implement the transparent automated govern-*  
15 *ance guidance to the extent that implementation does not*  
16 *require rulemaking.*

17 (b) *COMPTROLLER GENERAL REPORT.*—*Not later than*  
18 *2 years after the date of enactment of this Act, and bian-*  
19 *nually thereafter, the Comptroller General of the United*  
20 *States shall review agency compliance with this Act and*  
21 *submit to the Committee on Homeland Security and Gov-*  
22 *ernmental Affairs of the Senate and the Committee on Over-*  
23 *sight and Accountability of the House of Representatives*  
24 *a report with findings and recommendations.*



1 **SEC. 5. SUNSET.**

2       *Beginning on the date that is 10 years after the date*  
3 *of enactment of this Act, this Act shall have no force or*  
4 *effect.*

Calendar No. 192

118<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 1865**

[Report No. 118-89]

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**A BILL**

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AUGUST 22, 2023

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