

enforcing rules that harm competition in the industry in which board members participate.³ The Board's rule amendment and cease-and-desist letter harmed competition by impeding consumer access to a low-cost and convenient option for the treatment of malocclusion.

The state action defense is not applicable here. Active market participants control the Board. Therefore, for the Board's conduct to constitute state action, neutral state officials must actively supervise the Board's conduct. The State's supervision mechanisms must provide "realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests."⁴

Although the Board's rule amendment was reviewed by Alabama's Legislative Services Agency ("LSA"), that review did not satisfy the "constant requirements" of active supervision articulated by the Supreme Court.⁵ The LSA did not review the substance of the rule amendment, specifically whether the rule comports with clearly articulated state policy to displace competition.⁶ Additionally, the LSA lacked the authority to veto or modify the Board's decisions.⁷ Furthermore, the Board's cease-and-desist letter to SmileDirectClub did not receive any review by the LSA or any other state officials.

IV. Proposed Order

The proposed order seeks to remedy the Board's anticompetitive conduct by

³ See *N.C. Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 510–12 (2015).

⁴ *Patrick v. Burget*, 486 U.S. 94, 101 (1988).

⁵ See *N.C. Bd. of Dental Exam'rs*, 574 U.S. at 515 ("The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the mere potential for state supervision is not an adequate substitute for a decision by the State. Further, the state supervisor may not itself be an active market participant.") (internal citations and quotations omitted).

⁶ Instead, the LSA determined, without explanation, that the rule amendment "does not affect competition at all." See Exhibit A to Brief in Support of Motion to Dismiss (Memo to File from Paula M. Greene, Feb. 12, 2018) at 13, 15, *Leeds v. Board of Dental Examiners of Alabama*, No. 2:18-cv-01679, (N.D. Ala. Nov. 21, 2018), ECF No. 33. Because the LSA made this determination, it did not review whether the rule was made pursuant to a clearly articulated state policy. See Ala. Code § 41–22–22.1.

⁷ Alabama statutes provide a procedure by which certain Board action may be reviewed by the Alabama Legislature's Joint Committee on Administrative Regulation Review. See Ala. Code § 41–22–22.1. The Joint Committee did not review the actions at issue in this case.

requiring the Board to cease and desist from requiring on-site supervision by dentists when non-dentists perform intraoral scans on prospective patients.

Section II of the proposed order addresses the core of the Board's anticompetitive conduct. Paragraph II.A. orders the Board to cease and desist from requiring non-dentists affiliated with clear aligner platforms to maintain on-site dentist supervision when performing intraoral scanning. Paragraph II.B. prohibits the Board from impeding clear aligner platforms, or dental professionals affiliated with clear aligner platforms, from providing clear aligner therapy through remote treatment.

Section III requires the Board to provide notice of the proposed order to Board members and employees, and to certain dentists and clear aligner platforms. Section IV requires the Board to notify the Commission of any changes to its rules related to intraoral scanning or clear aligner platforms. Section IX provides that the Order will terminate 10 years from the date it is issued.

By direction of the Commission.

April J. Tabor,

Secretary.

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GENERAL SERVICES ADMINISTRATION

[Notice MY–2021–02; Docket No. 2021–0021; Sequence No. 1]

Office of Shared Solutions and Performance Improvement (OSSPI); Chief Data Officers Council (CDO); Request for Information on Behalf of the Federal Chief Data Officers Council

AGENCY: Chief Data Officers (CDO) Council, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The Federal CDO Council was established by the Foundations for Evidence-Based Policymaking Act (<https://www.congress.gov/bill/115th-congress/house-bill/4174/text>), which also requires all federal agencies to appoint a CDO. The Council's vision is to improve government mission achievement and increase the benefits to the Nation through improvement in the management, use, protection, dissemination, and generation of data in government decision-making and operations. The CDO Council is publishing this Request for Information (RFI) for the public to provide input on key questions to support the council's

mission and focus areas. Responses to this RFI will inform the Council's efforts and will be shared with the relevant groups in the Council.

DATES: We will consider comments received by November 15, 2021.

ADDRESSES: You should submit comments via the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments. All public comments received are subject to the Freedom of Information Act and will be posted in their entirety at [regulations.gov](https://www.regulations.gov), including any personal and/or business confidential information provided. Do not include any information you would not like to be made publicly available.

Written responses should not exceed six pages, inclusive of a one-page cover page as described below. Please respond concisely, in plain language, and specify which question(s) you are responding to in narrative format. You may also include links to online materials or interactive presentations but please ensure all links are publicly available. Each response should include:

- The name of the individual(s) and/or organization responding.
- A brief description of the responding individual(s) or organization's mission and/or areas of expertise.
- The section(s) (1, 2, 3, 4, 5 and/or 6) that your submission and materials are related to.
- A contact for questions or other follow-up on your response.

By responding to the RFI, each participant (individual, team, or legal entity) warrants that they are the sole author or owner of, or has the right to use, any copyrightable works that the submission comprises, that the works are wholly original (or is an improved version of an existing work that the participant has sufficient rights to use and improve), and that the submission does not infringe any copyright or any other rights of any third party of which participant is aware.

By responding to the RFI, each participant (individual, team, or legal entity) consents to the contents of their submission being made available to all Federal agencies and their employees on an internal-to-government website accessible only to agency staff persons.

Participants will not be required to transfer their intellectual property rights to the CDO Council, but participants must grant to the Federal government a nonexclusive license to apply, share, and use the materials that are included in the submission. To participate in the RFI, each participant must warrant that there are no legal obstacles to providing

the above-referenced nonexclusive licenses of participant rights to the Federal government. Interested parties who respond to this RFI may be contacted for a follow-on strategic agency assessment dialogue, discussion or event.

FOR FURTHER INFORMATION CONTACT:

Issues regarding submission or questions can be sent to Ken Ambrose—phone number: 202–215–7330; or email: CDOCStaff@gsa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Federal CDO Council was established by the Foundations for Evidence-Based Policymaking Act (Pub. L. 115–435) which also requires all federal agencies to appoint a CDO. The Council's vision is to improve government mission achievement and increase the benefits to the Nation through improvement in the management, use, protection, dissemination, and generation of data in government decision-making and operations. The CDO Council has over 80 member CDOs from across the Federal government, as well as representatives from the Office of Management and Budget, and other key councils and committees. The CDO Council has working groups that focus on critical topics as well as committees that help Federal agencies connect and collaborate. The CDO Council also works with other interagency councils on data related topics and activities. The CDO Council engages with the public and private users of Government data to improve data practices and access to data assets.

The CDO Council has five statutory purposes:

- (1) Establish Governmentwide best practices for the use, protection, dissemination, and generation of data;
- (2) promote and encourage data sharing agreements between agencies;
- (3) identify ways in which agencies can improve upon the production of evidence for use in policymaking;
- (4) consult with the public and engage with private users of Government data and other stakeholders on how to improve access to data assets of the Federal Government; and
- (5) identify and evaluate new technology solutions for improving the collection and use of data.

Through this request for information (RFI), the CDOC seeks input, information, and recommendations from a broad array of public stakeholders on available methods, approaches, and tools that could assist in the CDOC's efforts. We anticipate that these

stakeholders may include academia, state/tribal/local governments, civil society groups, standards organizations, industry, and others. The CDOC will share responses to the RFI with the appropriate working groups and other stakeholders so that they can inform the work of the council. The council also anticipates preparing a review of the RFI comments that will be shared publicly.

Information and Key Questions

The CDO Council seeks input in the following areas:

Section 1: General

- Is the CDOC missing any critical aspects in our focus areas? Are there industry or academic trends that we need to be aware of?

Section 2: Data Skills and Workforce Development

The Federal CDO Council's Data Skills Working Group is chartered to help CDOs and their stakeholders improve the Federal government's data skills and data workforce development efforts, ultimately improving data acumen and closing data skills gaps.

- Early efforts on data skill development have focused on data science upskilling. When thinking about upskilling programs:
 - What are the roles and responsibilities and types of data acumen that make up a data driven organization?
 - What are the roles and responsibilities of an effective data team?
 - What upskilling programs exist for these roles?
 - How can upskilling programs support continuous learning and data driven decision making at all levels in an organization, including for organization leaders?
 - What are the key areas agencies should focus on to improve the data acumen of the Federal workforce, broadly?
 - How might we collaborate to incorporate public sector data and topics into data training curricula?
 - How can the Federal government attract and retain people with data skills? How can the Federal government help applicants understand the wide array of skills and roles that are needed?
 - How should federal agencies benchmark data management and analytics activities to support upskilling programs so that we can understand our progress, opportunities to improve, and identification of best practices? How can we support benchmarking and comparisons across agencies as well as with non-federal near peers?

Section 3: Data Inventory

The Federal CDO Council's Data Inventory Working Group is chartered to help CDOs improve the efficiency and effectiveness of their data inventory efforts. The group is working to better understand how agencies are using, and want to use, data inventories both internally and externally, thinking about how to harmonize across inventory standards (e.g., data.gov and geoplatform.gov), and more.

- How do you find Federal data? Are there better ways to find Federal data?
- How can data inventories best support how you identify Federal data that is valuable for your own use cases? How could existing platforms (e.g., data.gov, geoplatform.gov) better support access to Federal data?
 - Early Federal efforts on data inventories were focused on cataloguing publicly available data, and facilitating search and discovery. When thinking about inventory use cases:
 - What are the most valuable use cases for data inventories to support non-Federal entities, including state and local governments, academia, and the private sector?
 - What are the most valuable use cases for Federal agency operations?
 - What are the most valuable use cases for Federal agency data analysts?
 - How well do current data inventory standards meet those use cases?
 - What is the best implementation of a data inventory you have seen? What are the characteristics that made it so successful?
 - To date, inventories have relied on manual work to generate and maintain metadata. What best practices and tools are available to automate and reduce the manual workload associated with inventories?

Section 4: Data Sharing

The Federal CDO Council Data Sharing Working Group is chartered to develop a comprehensive view of data sharing purposes across the Federal government, understanding the challenges surrounding data sharing, and recommending solutions that make sharing easier while preserving privacy and confidentiality.

- What best practices could statistical agencies and non-statistical agencies use to better partner? Please share success stories and what led to that success.
- What are effective ways for Federal programs to share programmatic data in ways that protect the privacy of individuals and organizations? Specifically:
 - What are models of developing and using privacy protecting identifiers?

○ What policies are needed to ensure that privacy protecting identifiers are effective?

• What are the premier examples of public or private sector entities that aggregate, integrate, and share information? Think of entities that operate on the scale of Federal agencies with broad and diverse missions. In addition, we are interested in entities that have moved beyond one-to-one data sharing to using standardized and automated data sharing controls.

○ For the premier entity, can you outline the policies, frameworks, strategies, organizational constructs, operational capabilities, and value creation model?

• How can the Federal government engage with private sector data providers in a way that maximizes the ability to use the data or data derivatives across multiple agencies? How might we achieve this while ensuring a viable business model for data providers?

Section 5: Value and Maturity

As agencies formulate their data strategies, they are constantly looking for ways to deliver and communicate value. There is broad awareness of the value of Federal data. However, there is not a consensus on how to measure the value of that data.

• What are meaningful approaches to defining the value of government data?

○ How can we define the value of data to different stakeholders or purposes? (e.g. government agencies in decision-making, performance management, and program evaluation, as well as to researchers, states, localities, private industry and the general public)

• What are the best practices and practical experiences for conducting useful, high integrity maturity assessments in large, distributed, and decentralized federal agencies—balancing overhead and burden with utility, coverage, and alignment against ongoing efforts to implement data strategies?

○ Can you describe an example where mission or business leaders have championed maturity assessments as core to transformation initiatives they championed, why they did so, and how they did it?

• What approaches or models exist to calculate the return on investment in data products, data governance, and data management?

• How can we raise awareness of the value of data governance and data management in support of achieving agency value?

○ What steps do we need to take in order to integrate a data governance

framework into the way of doing government business?

○ How should CDOs communicate progress on and value of data governance efforts?

Section 6: Ethics and Equity

The Federal Data Strategy, delivered in December 2019, recognized the importance of ethics in its founding principles. The Federal Data Strategy 2020 Action Plan required the development of a Data Ethics Framework that is intended to help agency employees, managers, and leaders make ethical decisions as they acquire, manage, and use data. The Framework and its Tenets are a “living” resource and are to be updated by the CDO Council and Interagency Council on Statistical Policy (ICSP) every 24 months to ensure the Framework remains current.

• How might the Federal Data Ethics Framework need to evolve to address racial equity and support for underserved communities? Does the Federal Data Ethics Framework sufficiently address concerns about the vulnerability of certain populations?

• Are there best practices for agencies to consider at the intersection of data ethics and diversity, equity, inclusion, and accessibility?

• How can we leverage Federal Data ethics to improve trust and transparency?

• What steps can the CDO Council and the ICSP take to ensure the Federal Data Ethics Framework serves as the foundation of partnerships between Federal agencies, academic and research partners, state, local, and tribal governments, community and advocacy groups, and other stakeholders?

• How might the Federal government encourage the adoption of the Federal Data Ethics Framework across the contractor, financial assistance communities, and other stakeholders?

Section 7: Technology

The Federal CDO Council is interested in better understanding the marketplace trends for both operational and analytic data management use cases.

• What frameworks should agencies use to evaluate their existing data infrastructure and to modernize technology with capabilities that break down organizational data silos and ensure the best available data is available?

○ What are the best examples of where you have seen this happen in the public and private sectors?

• Are advances in data management enabling new models for information sharing?

○ How are technologies evolving with new data management models?

○ What technology components are positioned to serve as the source for operationally authoritative data?

• Technology approaches go through a cycle of emphasizing integration of open source or commercial best of breed for targeted capabilities, or emphasis on integrated solutions or platforms with accompanying ecosystems.

○ Where are we in the cycle and why?

Ken Ambrose,

Senior Advisor CDO Council, Office of Shared Solutions and Performance Improvement, General Services Administration.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–222–17, CMS–10142 and CMS–10552]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency’s functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.