

**THE LEGAL STRUCTURE FOR E-GOVERNMENT:
THE U.S. APPROACH**

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E-GOVERNMENT

- **A structure for effective e-gov't is a result of coordinated, mutually supportive legal requirements and policies with sufficient flexibility to be able to adapt to new circumstances and new technologies.**
- **In the U.S., e-gov't policies and legal requirements have been adopted by national & state gov'ts., as well as an increasing number of local (city and county) governments**
- **This presentation focuses on the Federal e-gov't policies & structure**



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PURPOSES OF FEDERAL E-GOVERNMENT LEGISLATION & REGULATIONS

- **Establish Mandate for E-Government**
- **Create Management Infrastructure**
- **Safeguard Security & Privacy**
- **Facilitate Electronic Transactions**
- **Broaden Access to E-Gov't**



MAJOR E-GOVERNMENT LEGISLATION

- **Paperwork Reduction Act of 1995**

http://www.cio.gov/files/s244_enr.txt

- **Information Technology Management Reform Act of 1996 (Clinger-Cohen Act)**

http://www.cio.gov/docs/s1124_en.htm

- **Government Paperwork Elimination Act (1998)**

<http://www.cio.gov/files/gpealaw.pdf>



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PAPERWORK REDUCTION ACT OF 1995

Assigns to Office of Management & Budget (“OMB”) responsibility for:

- **developing, coordinating and overseeing implementation of Federal information resources management & principles, standards & guidelines for Federal IT functions**
- **overseeing policies concerning privacy, security confidentiality and sharing of information & the acquisition and use of information technology**



PAPERWORK REDUCTION ACT OF 1995

(cont.)

OMB also required to:

- **periodically evaluate major Federal information systems**
- **promote the use of IT by the Federal Gov't to improve productivity and efficiency & to disseminate information to the public**



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PAPERWORK REDUCTION ACT OF 1995

(cont.)

Federal agencies are required to:

- **promote the use of IT**
- **implement & enforce Governmentwide IT standards**
- **assume responsibility & accountability for IT investments**
- **safeguard privacy & security**



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Information Technology Management Reform Act of 1996 (Clinger-Cohen Act)

- Requires Federal Executive Branch agencies to utilize performance and results based-management in their investment and utilization of IT**
- Creates the office of Chief Information Officer (CIO) for each Federal Executive Branch agency**
- Requires CIOs to manage the agency's IT and information resources &, among other things, to regularly assess the requirements established for agency personnel with respect to information resource management**



GOVERNMENT PAPERWORK ELIMINATION ACT

- **Requires Federal agencies, by October 21, 2003, to allow individuals or entities that deal with the agencies to submit information or transact with the agency electronically, to maintain records electronically, and to use electronic signatures (for non-procurement contracts), all “when practicable”**
- **Also specifies that electronic records submitted or maintained consistent with GPEA & electronic signatures will not be rendered unenforceable because they are in electronic form**



GOVERNMENT PAPERWORK ELIMINATION ACT

(cont.)

- **Implementation requires cost-benefit and risk analysis as to whether and how to convert particular type of transaction or filing to electronic version**

OMB Memorandum M-00-10, “OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act” (April 25, 2000)

<http://www.whitehouse.gov/omb/memoranda/m00-10.html>

OMB Appendix II to Circular A-130, “Implementation of the Government Paperwork Elimination Act” (Nov. 30, 2000)

http://www.cio.gov/docs/Appendix_II.htm

Legal Considerations in Designing & Implementing Electronic Processes: A Guide for Federal Agencies
U.S. Dept. of Justice (Nov. 28, 2000)

<http://www.cio.gov/docs/eprocess.htm>



OTHER SIGNIFICANT E-GOV'T POLICY STATEMENTS

Executive Order 13011, “Federal Information Technology” (July 16, 1996)

<http://www.cio.gov/docs/exo13011.html>

- **confirms commitment of Federal Gov't
to use of IT to improve performance
and reduce paperwork**
- **creates Federal CIO Council to serve as
principal interagency forum on IT
matters**



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OTHER SIGNIFICANT E-GOV'T POLICY STATEMENTS

(cont.)

OMB Circular No. A-130, “Management of Federal Information Resources”

http://www.cio.gov/docs/Recompiled_A-1301.htm

- sets forth goals for the management of Federal information resources, including free flow of information to the public, maintaining privacy of individual information and security of data
- establishes policy for agency information planning, collection, record management & distribution of information to public



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SECURITY

- **It is a federal crime to access a federal gov't computer without authorization**

18 U.S.C. § 1030.

- **Federal gov't agencies are required to take security precautions to safeguard electronic systems and information commensurate with the importance of the information and the degree of risk.**

OMB Circular No. A-130, “Management of Federal Information Resources”

<http://www.whitehouse.gov/omb/circulars/a130/a130trans4.html>



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SECURITY

(cont.)

- **Annual program reviews, Inspector General reports, and OMB reports on security issues to Congress are required**

Government Information Security Reform Act

<http://www.cio.gov/docs/NDAA2001.htm>

OMB Memorandum M-01-08, “Guidance on Implementing the Government Information Security Reform Act” (January 16, 2001)

<http://www.whitehouse.gov/omb/memoranda/m01-08.pdf>



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PRIVACY

- **Federal agencies are required to protect individual's right to privacy when they collect personal information**

**Federal Privacy Act & OMB Circular A-130,
“Management of Federal Information Resources”
Transmittal Memorandum No. 4 (Nov. 30, 2000)**

http://www.cio.gov/docs/Recompiled_A-1301.htm

- **Federal agencies are required to disclose privacy policies on web sites; presumption is against use of “cookies”**

**OMB Memoranda MM-99-18 (June 2, 1999) &
MM-00-13 (June 22, 2000)**

<http://www.whitehouse.gov/omb/memoranda/m99-18.html>

<http://www.whitehouse.gov/omb/memoranda/m00-13.html>



FACILITATION OF ELECTRONIC TRANSACTIONS

- **Requirements for procurement by Federal agencies have been simplified for transactions at or below \$100,000 where the agency has developed and is utilizing certain e-commerce capabilities in its procurement processes. Certain public notice requirements are eliminated for transactions of \$250,000 or less if full e-commerce (FACNET) system is used for the procurement.**

Federal Acquisition Streamlining Act of 1994

<http://ec.msfc.nasa.gov/msfc/sat.html> (Summary of Act)



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FACILITATION OF ELECTRONIC TRANSACTIONS

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Electronic Signatures in Global and National Commerce Act (2000) (E-SIGN)

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_bills&docid=f:s761enr.txt.pdf

- **Permits (but does not require) electronic signatures in commercial contracts & recognizes their validity**
- **Applies to commercial contracts entered into by Fed. Gov't.; but permits gov't to impose additional authentication requirements for procurement contracts**

OMB Memorandum M-00-15, “OMB Guidance on Implementing the Electronic Signatures in Global and National Commerce Act” (Sept. 25, 2000)

<http://www.whitehouse.gov/omb/memoranda/m00-15.html>



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ACCESS

- **E-Rate for schools, libraries & rural health care providers**
- **Section 508 requirements for enabling disabled individuals to access IT equipment and the Internet**
- **Telecommunications Act of 1996**



ACCESS

E-Rate

- **Created by Section 254(h) of the Telecommunications Act of 1996**

<http://www.fcc.gov/Reports/tcom1996.pdf> (Telecom. Act)

http://www.fcc.gov/ccb/universal_service/fcc97157/97157pdf.html

(First FCC Report & Order, Universal Service)

http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1998/fcc98120.pdf

(Fourth FCC Report & Order, Universal Service)

- **Subsidizes Internet access by schools and libraries, and rural health care providers**
- **Funded out of Universal Service Fund (paid by telephone subscribers as part of phone bill)**



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ACCESS

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Section 508 of the Rehabilitation Act Amendments of 1998 <http://www.fcc.gov/DTF/section~1.html>

- **Implementing Rules issued by the U.S. Access Board on December 21, 2000 (effective June 21, 2001)**

<http://www.access-board.gov/sec508/508standards.htm>

- **Require that when U.S. Gov't dept's or agencies develop, procure, maintain, or use electronic and information technology, they must ensure that the technology is accessible to those with disabilities, unless an "undue burden" would thereby be imposed on the department or agency.**

ACCESS

(cont.)

Telecommunications Act of 1996

<http://www.fcc.gov/Reports/tcom1996.pdf>

- **In addition to e-rate program, Act requires competition in local phone markets, including mandatory resale to new entrants and unbundling of services by incumbent carriers**
- **Act has encouraged introduction of new carriers and new services, thus facilitating citizen/business access to e-gov't services**

APPENDIX

**For a sampling of state e-gov't policies see
California**

http://www.ss.ca.gov/executive/bj_tech_plan.htm

Utah

http://www.cio.state.ut.us/Docs/ITPolicy/digital_state.htm

Washington

<http://www.wa.gov/dis/e-gov/plan/>



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