Center for AI and Digital Policy

March 3, 2023

Miriam Vogel, Chair
National Artificial Intelligence Advisory Committee
National Institute of Standards and Technology
Department of Commerce
Washington, DC

Dear Ms. Vogel and the Members of the National AI Advisory Committee

We write to you regarding the recommendations to be made in the upcoming Report to the President of the United States on the governance of AI.[1] Our statement follows our October 2022 letter regarding the mandate of the NAIAC and the need for public participation in the development of the US national AI strategy.[2] In our statement today, we urge the NAIAC to include the following recommendations in the Report to the President:

(1) Carry forward and implement the President's recommendation to enact laws for the governance of AI that would promote algorithmic transparency and limit algorithmic bias
(2) Carry forward and implement the OSTP *Blueprint for an AI Bill of Rights*
(3) Implement the OECD AI Principles, already endorsed by the United States, so as to align US national AI policy with other democratic nations
(4) Ensure that the OMB moves forward the regulation for AI in federal agencies
(5) Adopt recommendations from the report ***AI and Democratic Values***

We also urge you again to ensure an open and inclusive process for the development of the Report, and to provide an opportunity for comment on the recommendations that you propose to make to the President regarding AI policies that could have far-reaching consequences for the American people.

Center for AI and Digital Policy

The Center for AI and Digital Policy (CAIDP) is an independent, non-profit organization, based in Washington, DC. We train advocates, practitioners, and researchers, and collaborate

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[1] *National Artificial Intelligence Initiative Act of 2020*:
https://www.congress.gov/116/crpt/hrpt617/CRPT-116hrpt617.pdf#page=1215.
[2] CAIDP Statement to the NAIAC (October 28, 2022),
https://www.caidp.org/app/download/8420970963/CAIDP-NAIAC-FACA-10282022.pdf?t=1673983270

with AI policy experts in over 60 countries.[3] CAIDP currently serves as an advisor on AI policy to the OECD, the Global Partnership on AI, the European Union, the Council of Europe, UNESCO, and other national and international organizations. We aim to promote a more fair, more just world where technology promotes broad social inclusion based on fundamental rights, democratic institutions, and the rule of law.

We have undertaken a detailed review of AI policies and practices around the world.[4] Following our review of the United States, we concluded in part:

> The US lacks a unified national policy on AI but President Biden, and his top advisors, has expressed support for AI aligned with democratic values. The United States has endorsed the OECD/G20 AI Principles. . . . The most recent Executive Order also establishes a process for public participation in the development of federal regulations on AI though the rulemaking has yet to occur. . . . The absence of a legal framework to implement AI safeguards and a federal agency to safeguard privacy also raises concerns about the ability of the US to monitor AI practices.[5]

Regarding the NAIAC, we have previously expressed concerns about (1) the failure to comply with the Federal Advisory Committee Act, (2) the decision to hire a private contractor to write the NAIAC recommendations, and (3) the failure to appoint an AI and Law Enforcement Subcommittee, as mandated by Congress.[6]

Those concerns remain. However, for the purposes of this statement, we will focus on the upcoming Report to the President and the recent developments that we ask you to incorporate in your recommendations.

1) Implement President Biden's AI Governance Recommendations

President Biden has already set out an important and necessary agenda for the governance of AI. He has called for new legislation to govern AI that would provide greater

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[3] Center for AI and Digital Policy (CAIDP), https://www.caidp.org/
[4] CAIDP, *AI and Democratic Values*, https://www.caidp.org/reports/aidv-2021/
[5] CAIDP, *AI and Democratic Values Report (2022)*, United States Country Report, https://www.caidp.org/resources/naiac/
[6] CAIDP Statement to the NAIAC (Oct. 28, 2022), https://www.caidp.org/app/download/8420970963/CAIDP-NAIAC-FACA-10282022.pdf

transparency and reduce the risk of algorithmic discrimination.[7] The President wrote that it was time to hold Big Tech companies accountable for the algorithms they use and called for bipartisan legislation to protect privacy, promote competition, and safeguard children.[8] The President also issued Executive Order 13985 to promote racial equity and support underserved communities through the federal government.[9] He specifically urged federal agencies to "prevent and remedy discrimination, including by protecting the public from algorithmic discrimination."

These are vital policy initiatives that fall clearly within the scope of the NAIAC Charter.[10] *At a minimum, we expect that the NAIAC will carry forward the recommendations previously made by the President regarding the need for new laws to govern AI, to promote equity, and to oppose algorithmic discrimination.* You have the opportunity in the Report to the President to provide specific guidance and recommendations to implement these policy goals.

2) **Implement the OSTP AI Bill of Rights**

The recommendations contained in the OSTP *AI Bill of Rights* should also be incorporated in the NAIAC Report. CAIDP has expressed strong support for the *AI Bill of Rights*.[11] We have called the *AI Bill of Rights* possibly the most significant AI policy initiative in the United States.[12] There are five specific recommendations in the *Blueprint AI Bill of Rights* that should be carried forward in the NAIAC Report to the President:

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[7] Joe Biden, *Republicans and Democrats, Unite Against Big Tech Abuses*, Wall Street Journal, Jan. 11, 2023 https://www.wsj.com/articles/unite-against-big-tech-abuses-social-media-privacy-competition-antitrust-children-algorithm-11673439411
[8] CAIDP Update 5.02, Jan 16, 2023, https://www.caidp.org/app/download/8435896763/CAIDP-Update_5.02.pdf
[9] The White House, *Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government*, Feb. 16, 2023 https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/
[10] National Advisory Committee Charter: https://www.ai.gov/wp-content/uploads/2021/09/84637-DOC-2021-Charter-NAIAC.pdf.
[11] Center for AI & Digital Policy (CAIDP), *Support the OSTP AI Bill of Rights*, https://www.caidp.org/statements/ostp/; Lorraine Kisselburgh & Marc Rotenberg, *Next Steps on the U.S. AI Bill of Rights*, The Washington Spectator (Nov. 2, 2021), https://washingtonspectator.org/ai-bill-of-rights/;
[12] Marc Rotenberg & Merve Hickok, *Artificial Intelligence and Democratic Values: Next Steps for the United States,* Council on Foreign Relations (Aug. 22, 2022), https://www.cfr.org/blog/artificial-intelligence-and-democratic-values-next-steps-united-states

- Safe and Effective Systems
- Algorithmic Discrimination Protections (Fairness and Equity)
- Data Privacy
- Notice and Explanation (Transparency)
- Human Alternatives, Consideration, and Fallback (Accountability)

These principles constitute "Fair AI Practice" and could provide the basis for a coherent national AI strategy.[13] We urge you to include a strong recommendation for legislative implementation of the AI Bill of Rights in your Report to the President.

3) Implement the OECD AI Principles

Regarding your responsibility to make recommendations regarding "Opportunities for international cooperation with strategic allies on artificial intelligence," we urge you to support US implementation of the OECD AI Principles, a global framework for AI that the US supported and has endorsed.[14] We believe the current work of the Trade and Technology Council (TTC) could move forward more effectively if the United States were to demonstrate stronger support for democratic values, rule of law, and fundamental rights on which the TTC is based. The present TTC focus on technical standards is far too narrow.

The NAIAC report to the President should make clear the need for alignment on legal and regulatory values for the transatlantic alliance.

4) *Begin the OMB Rulemaking on Artificial Intelligence*

Both Executive Order 13960 and the AI in Government Act of 2020 require the Office of Management Budget (OMB) to seek public comment regarding establishment of regulations for

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[13] Marc Rotenberg Fair AI Practices, Communications of the ACM (October 12, 2022), https://cacm.acm.org/blogs/blog-cacm/265535-fair-ai-practices/fulltext

[14] National Telecommunications and Information Administration (United States Department of Commerce), *U.S. Joins with OECD in Adopting Global AI Principles*, https://ntia.gov/blog/us-joins-oecd-adopting-global-ai-principles

the development and deployment of AI techniques by federal agencies.[15][16] In the AI in Government Act, Congress stressed the need to act expeditiously to help ensure public trust. Executive Order 13960 directed the OMB Director to "publicly post," **by June 2021**, "a roadmap for the policy guidance. CAIDP alerted OMB that "delay by the OMB places at risk fundamental rights, public safety, and commitments that the United States has made to establish trustworthy AI."[17]

The NAIAC report to the President should request prioritization of this very delayed rulemaking and urge OMB to uphold its responsibility.

5) CAIDP's Recommendations From *AI and Democratic Values*

In addition to the previous AI policy initiatives of this administration, we also bring to your attention the recommendations for national governments included in our report ***Artificial Intelligence and Democratic Values***. Based on our review of national AI policies and practices, we recommend that countries:

1. Establish national policies for AI that implement democratic values
2. Ensure public participation in AI policymaking and also create robust mechanisms for independent oversight of AI systems
3. Guarantee fairness, accountability, and transparency in all AI systems
4. Commit to these principles in the development, procurement, and implementation of AI systems for public services
5. Halt the use of facial recognition for mass surveillance
6. Curtail the deployment of lethal autonomous weapons
7. Implement the UNESCO AI Recommendation
8. Establish a comprehensive, legally binding convention for AI

The United States has made progress on several of these goals. We urge you to incorporate these recommendations in your Report to the President.

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[15] Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government, Executive Order No. 13960, 85 Fed. Reg. 78,939 (Dec. 3, 2020). https://www.federalregister.gov/documents/2020/12/08/2020-27065/promoting-the-use-of-trustworthy-artificial-intelligence-in-the-federal-government.
[16] AI in Government Act of 2020, 40 U.S.C. §§ Pub. L. 116–260, 134 Stat. 2286
[17] CAIDP Statement to the US Office of Management and Budget on the Need to Establish Regulations for the Use of AI by Federal Agencies (Oct. 19, 2021)

Provide Opportunity for Public Comment on Draft Recommendations

Finally, we urge you, once again, to provide an opportunity for public comment on the Report to the President. This is not only the expectation of the Federal Advisory Committee Act but also a matter of good practice for all expert committees that are asked to provide advice on behalf of the American public. Even the National Security Commission on AI, which operated in violation of the Federal Committee Act for much of its life, provided an opportunity for public comment on the report it issued.

We also call your attention to the current practice of a sister organization – The National Artificial Intelligence Research Task Force (NAIRTFF) -- which has established specific procedures to ensure public participation in the recommendations it proposes to make to the President. As the AI Research Task Force explained:

> Concurrently with the publication of the interim report [to the President and Congress] the Task Force issued a **Request for Information (RFI)** to solicit public feedback on the Task Force's preliminary findings and recommendations outlined in the report, and particularly, on how the recommendations could be successfully implemented. The RFI was open for comments from May 25, 2022, through June 30, 2022, and generated 24 responses from academia, the private sector, and civil society. These responses are available **here**. In addition, the Task Force co-chairs hosted a public listening session on June 23, 2022 (announced in a **Federal Register Notice**) as an additional means for gathering public input.[18]

The NAIAC report to the president is a critical opportunity to address key concerns about the governance of AI. We urge you to (1) build on the administration's initiatives already underway (Laws to govern AI and an AI Bill of Rights), (2) remind the Administration of preexisting commitments (OMB rulemaking on AI), (3) make additional recommendations to align US AI policy with democratic nations (implement the OECD AI Principles), and (4) ensure meaningful public participation.

Please also note that this is a formal communication to a Federal Advisory Committee, copied to the Committee Liaison Officer and the Designated Federal Officer, and should be included in the NAIAC's records.

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[18] National Artificial Intelligence Research Task Force (NAIRTFF*), Interim Report and Request for Public Information*, https://www.ai.gov/nairrtf/

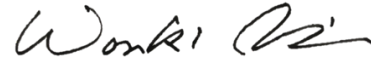Thank you for your attention to our recommendations.
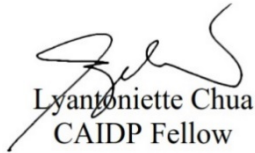
Sincerely yours,

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