

April 24, 2023

Shalanda Young, Director  
Office on Management Budget  
725 17th St NW,  
Washington, DC 20503

Dear Director Young,

We write to you, on behalf of the Center for AI and Digital Policy (CAIDP), regarding the need for the OMB to establish regulations for the use of AI by federal agencies. We wrote to OMB on October 19, 2021, explaining the urgency of the matter.<sup>1</sup> Recent developments underscore the need for the OMB to begin the rulemaking process.

Congress recently held a hearing on AI that made clear the United States is not prepared for the AI revolution now underway. In closing remarks, Committee Chair Nancy Mace (R-SC) said, "I don't think we are ready for what is going to happen in a short period of time." Ranking Member Gerry Connolly (D-VA) said, "Given what we heard from Ms. Hickok and Dr. Madry about the need for some federal intervention, there have to be guidelines and guideposts so we are not facing profound issues later on."<sup>2</sup> In her testimony, CAIDP's Chairwoman Merve Hickok specifically pointed to the need for the OMB to issue the overdue guidelines. As Ms. Hickok explained:

We need The Office of Management and Budget to move forward the long-delayed rulemaking for the use of AI in federal agencies. There is still not a coordinated federal policy or an opportunity for public comment on proposed rules. We need Congress to establish rules to govern A.I. to protect our values and rights; enact legislation for AI governance, to promote algorithmic transparency and limit algorithmic bias; hold technology companies accountable for their actions.<sup>3</sup>

There are consequences to agency inaction. Ms. Hickok continued, "Internationally, we are losing AI-policy leadership. Domestically, Americans say they're more concerned than excited about AI."

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<sup>1</sup> 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). Available at <https://www.caidp.org/app/download/8350420263/CAIDP-OMB-Statement-19102021.pdf>

<sup>2</sup> House Committee on Oversight and Accountability Subcommittee on Cybersecurity, Information Technology, and Government Innovation. Hearing: Advances in AI: Are We Ready for a Tech Revolution? (March 8, 2023) <https://oversight.house.gov/hearing/advances-in-ai-are-we-ready-for-a-tech-revolution/>

<sup>3</sup> House Committee on Oversight and Accountability Subcommittee on Cybersecurity, Information Technology, and Government Innovation hearing on March 8, 2023. Testimony from Merve Hickok. Available at: [https://oversight.house.gov/wp-content/uploads/2023/03/Merve-Hickok\\_testimony\\_March-8th-2023.pdf](https://oversight.house.gov/wp-content/uploads/2023/03/Merve-Hickok_testimony_March-8th-2023.pdf)

**It is time now for the OMB to act.**

## **Background**

Executive Order 13960<sup>4</sup> and the AI in Government Act of 2020<sup>5</sup> make clear that the OMB has a legal obligation to seek public comment and establish regulations for the development and deployment of AI techniques by federal agencies. The E.O. 13960 directed the OMB Director to “publicly post,” *by June 2021*, “a roadmap for the policy guidance that OMB intends to create or revise to better support the use of AI consistent with this order,” including “a schedule for engaging with the public and timelines for finalizing relevant policy guidance.”<sup>6</sup> The Executive Order specifically required federal agencies to use AI consistent with “privacy, civil rights, and civil liberties” and in ways that are “sufficiently understandable” and “regularly tested,” with agencies accountable for safeguarding their proper use and “disclosing relevant information regarding their use of AI to appropriate stakeholders, including the Congress and the public.”<sup>7</sup>

In addition to the requirements of the E.O. 13960, in Section 104 of the AI in Government Act of 2020, Congress directed the OMB (in coordination with the Director of the Office of Science and Technology Policy in consultation with the Administrator and any other relevant agencies and key stakeholders) to “issue a memorandum to the head of each agency” *by September 2021* that would:

- 1) “Inform the development of policies regarding the Federal acquisition and use” of AI,
- 2) “Recommend approaches to remove barriers” for AI use “while protecting civil liberties, civil rights, and economic and national security,”
- 3) “Identify best practices for identifying, assessing, and mitigating any discriminatory impact or bias” on the basis of federally protected categories “or any unintended consequence of the use of artificial intelligence,” and
- 4) “Provide a template of the required contents of the agency plans” for achieving consistency with the Act.

Stressing the need to act expeditiously, Congress stated that “[to] help ensure public trust in the applications of artificial intelligence technologies, the Director [of the OMB] shall issue a draft version of the memorandum required under subsection (a) for public comment not later than 180 days after [the] date of enactment of this Act [Dec. 27, 2020].”<sup>8</sup> Congress further required “Not later than 180 days after the date on which the Director issues the memorandum required

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<sup>4</sup> Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government, Executive Order No. 13960, 85 Fed. Reg. 78,939 (Dec. 3, 2020). Available at <https://www.federalregister.gov/documents/2020/12/08/2020-27065/promoting-the-use-of-trustworthy-artificial-intelligence-in-the-federal-government>

<sup>5</sup> AI in Government Act of 2020, 40 U.S.C. §§ Pub. L. 116–260, 134 Stat. 2286 (2020)

<sup>6</sup> E.O. 13960, Sec. 4(b).

<sup>7</sup> E.O. 13960, Sec. 3(h)

<sup>8</sup> AI in Government Act of 2020, Sec. 104(b) (“Public Comment”)

under subsection (a) or an update to the memorandum required under subsection (d), the head of each agency shall submit to the Director and post on a publicly available page on the website of the agency— (1) a plan to achieve consistency with the memorandum; or (2) a written determination that the agency does not use and does not anticipate using artificial intelligence.”<sup>9</sup>

Together, these provisions outline a comprehensive approach to help ensure public trust and confidence in the AI systems deployed by the federal government.

## Consequences of Delay by OMB

**The OMB should issue the government-wide memorandum and begin the formal rulemaking for the regulation of AI, as required by E.O. 13960 and the AI in Government Act.** The OMB must establish the AI regulations required by the Executive Order and the Act of Congress, and backed by the President, US trade negotiators, and the President’s top science advisors.

Further delay by the OMB **places at risk fundamental rights, public safety, and commitments that the United States has made to establish trustworthy AI.** Lack of guidance also puts federal agencies and their personnel at a capacity and capability disadvantage versus other countries and their public actors.

E.O. 13960 encourages agencies to benefit from AI and require them to “design, develop, acquire, and use AI in a manner that fosters public trust and confidence while protecting privacy, civil rights, civil liberties, and American values, consistent with applicable law and the goals of Executive Order 13859.”<sup>10</sup> Trustworthiness requires qualities such as “((a) lawful and respectful of our Nation’s values; (b) purposeful and performance-driven; (c) accurate, reliable, and effective; (d) safe, secure, and resilient; (e) understandable; (f) responsible and traceable; (g) regularly monitored; (h) transparent; and, (i) accountable)”<sup>11</sup> to be embedded in the AI systems.

**Without OMB guidance, agencies may not benefit from AI systems** which may “improve their operations, processes, and procedures; meet strategic goals; reduce costs; enhance oversight of the use of taxpayer funds; increase efficiency and mission effectiveness; improve quality of services; improve safety.”<sup>12</sup>

**Some AI systems, if not designed and governed in a trustworthy manner can create new risks and challenges, including discrimination, safety and cybersecurity.** When federal

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<sup>9</sup> Ibid

<sup>10</sup> E.O. 13960, Sec. 1

<sup>11</sup> E.O. 13960, Sec. 3

<sup>12</sup> Ibid

agencies develop or procure AI systems without AI-specific guidance, they might introduce new risks to the federal infrastructure.<sup>13</sup>

Federal agencies published their non-classified, non-sensitive AI use case inventories. are already using AI systems as per E.O. 13960.<sup>14</sup> Setting aside the questions of significant differences in quality and detail provided across agencies, the inventory shows that **federal agencies are already using a variety of AI systems and need clear standards to ensure robust protection of democratic values for the use of AI.**

As detailed above, AI in Government Act of 2020 requires OMB issue a memorandum regarding Federal acquisition and use of AI systems. As the Federal Government acknowledges, the U.S. federal government is “the world’s largest buyer of goods and services, and the success of the Federal acquisition system directly impacts the ability of agencies to meet their missions and the degree to which contracting can act as a catalyst to support critical public priorities.”<sup>15</sup>

**Without OMB guidance, federal agency practices in design, procurement and use of AI systems may be inconsistent across the government and not in alignment with the goals and orders of administrations.**

OMB rulemaking should also include an objective to update Federal Acquisition Regulation (FAR)<sup>16</sup> to ensure guidance is operationalized.

**Without such updates, the public and Congress cannot hold federal agencies accountable for procurement of AI systems and 1) alignment of policies and goals with the tools, 2) effective use of taxpayer funds, 3) alignment between administrative law and AI system design, 4) mission effectiveness, and 5) quality and safety of public services, and 6) dependency on major vendors.**

The [National AI Initiative](#)<sup>17</sup> aims for the US to become a world leader in the development and use of trustworthy AI systems in both public and private sectors. Many countries such as Canada<sup>18</sup> and United Kingdom<sup>19</sup> have already established mandatory guidelines and safeguards for design, procurement, and use of AI systems in the public sector. The U.S. government has also committed to OECD AI Principles<sup>20</sup>, and protection of democratic values and human rights

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<sup>13</sup> Merve Hickok (2022) Public procurement of artificial intelligence systems: new risks and future proofing. *AI & Society*. <https://doi.org/10.1007/s00146-022-01572-2>

<sup>14</sup> National AI Initiative Office. Agency Inventories of AI Use Cases. <https://www.ai.gov/ai-use-case-inventories/>

<sup>15</sup> Managing the Business of Government. Managing the Business of Government

<sup>16</sup> Federal Acquisition Regulation System. <https://www.acquisition.gov/far/part-1>

<sup>17</sup> National Artificial Intelligence Initiative. <https://www.ai.gov/about/>

<sup>18</sup> Government of Canada (2019) Algorithmic Impact Assessment. <https://open.canada.ca/aia-cia-js/?lang=en>

<sup>19</sup> United Kingdom Government (2020) Guidelines for AI Procurement <https://www.gov.uk/government/publications/guidelines-for-ai-procurement/guidelines-for-ai-procurement>

<sup>20</sup> OECD AI Principles (2019) <https://www.oecd.org/digital/artificial-intelligence/>

in its transatlantic collaboration with the European Union, and the U.S.-EU Trade and Technology Council (TTC).<sup>21</sup>

**It is now time for the OMB to begin the rulemaking for the use of AI in federal agencies.**

Thank you for your attention.



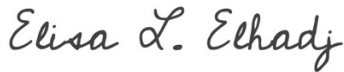
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<sup>21</sup> U.S.-EU Trade and Technology Council Inaugural Joint Statement (2021) <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/29/u-s-eu-trade-and-technology-council-inaugural-joint-statement/>