



TECHNET
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INNOVATION ECONOMY

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December 5, 2023

Office of Management and Budget
725 Seventeenth Street, NW
Washington, D.C. 20503

RE: Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence Draft Memorandum

To Whom It May Concern:

TechNet appreciates the opportunity to comment on the Office of Management and Budget's (OMB) draft memorandum titled "Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence (AI)." TechNet members make up many of our nation's leading AI developers, deployers, researchers, and users.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.2 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

Millions of Americans have been using AI for years to navigate traffic, search the internet, undertake research, conduct a spell check, vacuum their home, and discover new music. AI is also being used to predict severe weather more accurately, protect critical infrastructure, defend against cyber threats, and accelerate the development of new medical treatments, including life-saving vaccines and ways to detect earlier signs of cancer.

OMB's memorandum advances the impactful provisions in President Biden's recent Executive Order on "Safe, Secure, and Trustworthy Artificial Intelligence." This EO will bolster our workforce through investments in upskilling and training programs and our ability to attract and retain the world's best talent, policies TechNet has long championed. It will also lower the barrier to entry for AI research through the National AI Research Resource (NAIRR), strengthen our nation's cyber defenses, especially in the financial sector, and improve health care and education outcomes. We believe America must be the global leader in setting standards for the responsible development and deployment of AI. TechNet looks forward to working with the Biden Administration and Congress to ensure AI continues to deliver benefits for all Americans.

We appreciate that OMB's memorandum builds upon past efforts to properly inventory the federal government's use of AI. In December 2020, the prior Administration issued Executive Order 13960, providing guiding principles for federal agencies to follow in their development of AI methods and tools. Executive Order 13960 also ordered federal agencies

to annually “prepare an inventory of its non-classified and non-sensitive use cases of AI.”¹ Each agency produces a uniquely structured inventory. This presents difficulties in building a comprehensive picture of the federal government’s progress in utilizing artificial intelligence. To produce more fidelity in this area, TechNet consolidated the various annual inventories.² As of summer 2023, the federal government reported over 731 AI projects, 25% of which were undertaken by the Department of Energy, followed by the Department of Health and Human Services at 21%. AI is clearly already helping empower the U.S. government to better deliver essential services to the American public.

Forward-Looking Policies

We applaud the OMB for several insightful policies in this memorandum. These actions will help maintain the United States as the global AI development leader. We appreciate that part of Chief AI Officers’ (CAIO) responsibilities will include efforts to remove barriers to responsible AI deployment through ensuring adequate IT infrastructure, effective and consistent datasets, development of the federal AI workforce, and utilization of generative AI.

CAIOs are also charged with “advocating within their agency and to the public on the opportunities and benefits of AI to the agency’s mission.” Our international competitors are working quickly to overtake America’s lead in AI development; spending in China’s AI industry is expected to hit \$14.75 billion this year, accounting for about 10% of the world’s total.³ China also currently leads in AI adoption, with 58% of companies deploying AI and 30% considering integration. In comparison, the United States has less than half this adoption rate, with 25% of companies utilizing AI and 43% exploring its potential applications. CAIOs have an important role to play in building greater public trust and understanding of AI systems. The U.S. government should serve as a leader in novel deployments and innovation to drive the nation’s global technology leadership in both the private and public sectors.

TechNet supports the government in developing “AI Ready Data.” The federal government is one of the biggest producers of data in the world, and these important datasets are already fueling innovation in the public and private sectors. As we move to greater deployment of AI systems, ensuring this data is well-organized will allow these modern tools to deliver faster, cost-effective, and more accurate insights. We encourage OMB and other agencies to make datasets public when appropriate to increase AI research and development.

Existing Legal Protections

It is important to note that the use of AI in furtherance of unlawful behavior is already prohibited and actionable under existing laws, even in the absence of AI-specific regulation. For example, many existing anti-discrimination laws apply to AI models in important areas, including education, healthcare, employment, housing, financial services, policing and

¹ The federal database of AI use cases can be found here: <https://ai.gov/ai-use-cases/>

² TechNet’s consolidated report on “Artificial Intelligence and the Federal Government” can be found here: https://drive.google.com/file/d/1i-7Gg4Z1thcFnAZ3C6TDjovdZdGgDg_j/view?usp=sharing

³ Carreon, Miguel, and Michael De La Cruz. “According to IDC’S Forecast, China’s AI Market to Exceed US\$26 Billion by 2026, Hardware to Make Up 56% of Market.” International Data Corporation. May 18, 2023. <https://www.idc.com/getdoc.jsp?containerId=prAP50688623>.

criminal justice, and access to goods and services.⁴ We want to stress that agencies should utilize existing legal requirements when considering AI management practices and seek to build upon legal precedent for addressing this emerging technology.

Several federal leaders have stated their intent to use existing laws to regulate AI; for example, on April 25, the Consumer Financial Protection Bureau, the Department of Justice's Civil Rights Division, the Equal Employment Opportunity Commission, and the Federal Trade Commission issued a joint statement outlining how their existing enforcement authorities apply to automated systems.⁵ In addition, National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo has stated that she will "... apply the [National Labor Relations] Act to protect employees from intrusive electronic monitoring and automated management practices..."⁶ Additional oversight in these areas should not be unnecessarily duplicative or create inconsistent or conflicting standards.

The private sector must comply with existing legal requirements, including laws protecting privacy and preventing discrimination. The use of AI applications falls within the scope of these legal protections, and we encourage OMB to utilize existing legal frameworks and not create potentially duplicative regulations. Accordingly, TechNet members are designing, developing, deploying, and using AI technology cautiously and only after rigorously assessing the benefits and risks of implementation.

Manual and Automated Systems

The memorandum mentions that agencies should review when AI systems should have "opt-out" options. We write to urge that any "opt-out" requirements for AI systems should be narrowly tailored to avoid undermining effective AI research and deployment. TechNet agrees that developers should thoroughly review their systems' resiliency and contingency considerations; however, requiring a "manual" version of all automated systems is neither technically feasible nor practical.

Requiring an overly broad "opt-out" feature to direct users to manual systems will ultimately discourage the development of trustworthy AI by disincentivizing AI research and deployment. If companies providing AI systems for the government are also required to offer a manual system in broad circumstances, there will be less of a compelling business case to innovate and develop advanced, responsible AI technologies. This, in turn, will depress American AI development when the stakes for global leadership in AI innovation are at their highest and could cause the United States to not only cede its role as the world's global technology leader but also provide a pathway for foreign adversaries to exceed U.S. capabilities. It also could lead to greater inefficiencies and costs for the American public,

⁴ Several existing enforcement statutes were outlined in the National AI Advisory Committee's Year One Report: *Civil Rights Act of 1964, Equal Educational Opportunities Act, Americans with Disabilities Act, Individuals with Disabilities in Education Act, Genetic Information Nondiscrimination Act, Immigration and Nationality Act's Anti-Discrimination Provision, Fair Housing Act, Equal Credit Opportunity Act, Violent Crime Control and Law Enforcement Act, and the Omnibus Crime Control and Safe Streets Act.*

⁵ Chopra, Rohit, Kristen Clarke, Charlotte Burrows, and Lina Khan. "JOINT STATEMENT ON ENFORCEMENT EFFORTS AGAINST DISCRIMINATION AND BIAS IN AUTOMATED SYSTEMS." FTC.Gov. April 25, 2023. <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/joint-statement-enforcement-efforts-against-discrimination-bias-automated-systems>.

⁶ Office of Public Affairs. "NLRB General Counsel Issues Memo on Unlawful Electronic Surveillance and Automated Management Practices." National Labor Relations Board. October 31, 2022. <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-issues-memo-on-unlawful-electronic-surveillance-and>.

increased cybersecurity risks, and hamper access to digital services. TechNet believes that requirements for manual alternatives should be based on the known risks of each use case.

Rights-Impacting AI

We have concerns that the memorandum's current definition of "Rights-Impacting AI" could encompass helpful and rights-neutral AI tools and use cases. The memorandum states that "Rights-Impacting AI" should include AI systems whose output is the basis for decisions that impact one's "access to critical resources or services, including healthcare, financial services, social services, transportation, non-deceptive information about goods and services, and government benefits or privileges." We urge agencies to instead of marking all AI deployments in an industry as "rights-impacting" to utilize a risk-based approach to the specific use case. For example, specific to financial services, we suggest instead tailoring the requirement to focus on known or rationally anticipated harms. Without this risk-based approach, very low-risk AI activity could be categorized as high-risk or "Rights-Impacting" and subject to overbroad requirements. Low-risk financial AI use cases could include:

- AI to categorize expenses for tax or other financial planning/budgeting purposes.
- AI to connect people to financial experts based on the consumer's financial/tax needs and the expert's areas of expertise.
- AI to "read" and extract data from financial forms so consumers don't have to enter data and minimize manual entry errors.

The memorandum also lists purposes that are "presumed to be rights-impacting" if an AI system is used to "control or meaningfully influence the outcomes of any of the following activities or decisions." We also urge that these purposes be reviewed considering the known risks instead of generalizing impacts on broad deployment contexts. We specifically want to draw attention to item G on this list, which includes AI use cases in the workplace. We believe it is important to underscore that AI is currently being deployed in the workforce to benefit employees, and we advise not broadly restricting this technology.

Automated systems are being deployed in workplaces across the country to help free employees from rote and inefficient tasks so they can focus on creative outputs. Several of our members utilize automated tools to assist with scheduling, which can ensure more experienced managers are on the same shift as new employees for mentoring, coordinating predictive maintenance for equipment, or when additional orders for needed supplies should go out. While a human could organize these services, by automating these operations, employees are able to make decisions more quickly and go about their workday in a more efficient manner. We are seeing that AI-driven tools enable larger, more integrated teams because entities can coordinate and collaborate more effectively. According to a study by MIT Sloan, employees that are empowered by AI feel more competent in their roles, more autonomous in their actions, and more connected to their work, colleagues, partners, and customers. Notably, only 8% of the global survey respondents were less satisfied with their jobs because of AI.⁷ When reviewing whether automated tools in the workplace are "Rights-Impacting," TechNet urges OMB and federal agencies to consider the broader context of these systems' impact on employees' well-being in their careers.

⁷ S. Ransbotham, D. Kiron, F. Candelon, S. Khodabandeh, and M. Chu, "Achieving Individual — and Organizational — Value With AI," *MIT Sloan Management Review* and Boston Consulting Group, November 2022

We also want to underscore that bias in human processes that impacts one's rights is well documented but can be difficult to spot until it is too late to correct. By contrast, TechNet members are developing AI systems that can detect and avoid or mitigate bias. TechNet members follow legal guidelines at all stages when developing, testing, and monitoring AI assessments, and in many cases, they test for group differences beyond those required by law.

Conclusion

We look forward to working with you on AI policy and appreciate the opportunity to discuss this innovative technology. We stand ready to serve as a resource to you in your examination of this important issue. Thank you for your consideration of our perspective.

Sincerely,

A handwritten signature in black ink, reading "Carl Haberman". The signature is written in a cursive, flowing style.

Executive Vice President and Corporate Secretary