

Date: December 5, 2023

To: Director Shalanda D. Young, U.S. Office of Management and Budget

Subject: Comment on OMB Draft Memorandum “Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence”

The Beeck Center for Social Impact + Innovation at Georgetown University invites the Office of Management and Budget (OMB) to consider the following recommendations to improve the guidance for federal agencies’ governance of artificial intelligence (AI) with a focus on improving the digital delivery of government programs. These recommendations are in response to the [Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence Draft Memorandum](#), hereinafter the “Draft Memorandum.”

1. The composition of Federal agencies varies significantly in ways that will shape the way they approach governance. An overarching Federal policy must account for differences in an agency's size, organization, budget, mission, organic AI talent, and more. Are the roles, responsibilities, seniority, position, and reporting structures outlined for Chief AI Officers sufficiently flexible and achievable for the breadth of covered agencies?

With regard to the designation of a chief AI officer (CAIO) role in every agency, we recommend that agencies consider the role of a CAIO in the context of existing agency executive roles that are responsible for related issue areas such as IT/chief technology officers (CTOs), chief information officers (CIOs), cybersecurity/chief information security officers (CISOs), or data/chief data officers (CDOs). Agencies should identify potential overlap with the new CAIO role alongside existing roles and responsibilities of agency executives, with a goal of streamlining and aligning the oversight of coordination, innovation, and risk management efforts regarding their agency’s use of AI. Agencies should also ensure that all executive roles involved in determining agency AI governance have sufficient resources and capacity. Specific recommendations are as follows:

Recommendation. OMB should clarify the overlapping responsibilities and points of coordination between appointed CAIOs and existing executives overseeing IT, data, or cybersecurity. This should include providing clear guidance regarding how each of these roles might merge AI-related responsibilities with those designated by other relevant federal guidance.¹ The Draft Memorandum provides appropriate guidance regarding the position and reporting structure of this role, especially that the CAIO must be positioned “highly enough to engage regularly with other agency leadership.” Certain measures can be more clearly articulated with regard to suggested points of collaboration between CAIOs and other officers, including but not limited to the following:

- a. With regard to coordinating agency use of AI:
 - i. CAIOs should coordinate with CDOs to support and coordinate agency involvement in AI standards-setting bodies and oversee the adoption of voluntary consensus industry standards for AI.
 - ii. The Draft Memorandum appropriately names the CAIO’s imperative to coordinate with the chief financial officer and chief human capital officer as officers within agencies to improve resourcing requirements and workforce skill sets for the acquisition of AI-capable talent.
- b. With regard to promoting AI innovation:
 - i. Agency CIOs oversee enterprise infrastructure governance and use and should be proactively involved in any changes to IT infrastructure that enable AI’s use within agencies. OMB should provide clearer guidance regarding the delineation of roles between CAIOs and CIOs to “identify and remove barriers to the responsible use of AI including through the advancement of AI-enabling enterprise infrastructure.”
- c. With regard to managing risks from the use of AI:
 - i. The CAIO should coordinate with chief procurement officers or equivalent roles to carry out mandated goals to “identify and manage risks from the use of AI” and “to establish and update processes to measure, monitor, and evaluate ongoing performance of AI applications and whether they are achieving intended objectives” in the purchase and management of AI technologies or tools. These functions are integral to procurement processes, and any new efforts to improve agency-wide risk management with regard to AI—or to measure performance—should be integrated with procurement protocols

¹ For example, the Foundations for Evidence-Based Policymaking Act of 2018. <https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>.

to ensure that vendors are beholden to agency-wide practices to support responsible AI innovation.

- ii. The CAIO should coordinate with the CDO to conduct risk assessments of agency AI applications, including by incorporating risk-assessment processes into any existing data-governance processes that require assessing privacy risk, bias, or any other relevant data-governance functions.
- iii. The Draft Memorandum appropriately identifies that the CAIO should be responsible for overseeing agency-specific lists of purposes for uses of AI that impact safety or rights.
- iv. OMB should review the CAIO role in 18 months to assess role functions, effectiveness, and staffing.

2. What types of coordination mechanisms, either in the public or private sector, would be particularly effective for agencies to model in their establishment of an AI Governance Body? What are the benefits or drawbacks to having agencies establishing a new body to perform AI governance versus updating the scope of an existing group (for example, agency bodies focused on privacy, IT, or data)?

We support OMB's mandate for AI Governance Bodies to meet no less than quarterly, and to be chaired by deputy secretaries and vice-chaired by CAIOs. Existing governance bodies like Data Governance Boards are not equipped to meet the standards laid out by the Draft Memorandum. According to OMB memo M-19-23 on the Evidence-Based Policymaking Act of 2018, Data Governance Bodies are required to be chaired by CDOs, which may not provide a sufficient level of agency executive oversight. Given these discrepancies, we recommend:

Recommendation. Build AI governance intentionally and strategically from the existing data-governance infrastructure and align with data privacy, risk assessment, open data, and other data-management practices that form the foundation of responsible AI innovation in government. There are a number of steps that OMB could take to ensure that the respective agency governance structures are working in coordination to embed shared AI governance responsibilities across the relevant bodies. OMB should align or clarify guidance to ensure that agencies are able to easily retrofit Data Governance Bodies or other similar governance structures to take on AI-governance responsibilities without significantly overhauling existing data-governance functions.

For example, OMB could provide guidance for agencies to align Data Governance Board meeting cadences and chairperson requirements to comply with required governance of AI, agencies could take clearer steps to integrate AI and data governance processes, including potentially combining CAIO and CDO governance boards completely or in areas of direct overlap, and/or include CAIOs as central stakeholders in data governance decision-making. This approach empowers both CDOs and CAIOs—including individuals potentially occupying both roles—to integrate AI governance into existing data-governance infrastructure and align it with current or updated data privacy, risk assessment, open data, and other data-management practices.

3. How can OMB best advance responsible AI innovation?

Responsible AI innovation involves the incorporation of new AI technologies into frameworks for data and technology governance that already serve to prioritize important facets of responsible AI—such as consent to use personal data, ability to opt out of data use, notification of misuse of data or cybersecurity risks, or transparency and accountability around data and technology use. Given the breadth of data and technology governance areas influenced by the use of AI, OMB should take a broader approach to collecting inventories of AI use cases. OMB should also provide clearer guidance for CAIOs and AI Governance Bodies on how to maintain pertinent data-governance and privacy work or policies as they work to remove barriers to the beneficial use of AI.

Recommendation. OMB needs stronger measures to ensure agencies actually disclose AI uses in their inventories. The public needs a clear understanding of which public-data agencies are using AI and in what manner it is being used. However, agencies are failing to disclose use cases in their current data inventories.² OMB should:

- a. Formalize the requirement of a single List of Record for the use case inventory that consolidates all agencies' submissions. That format should meet formatting requirements—such as publishing in a machine-readable format—and be regularly updated. The inventory must require disclosure of whether something is deemed

²A recent Stanford paper evaluating AI use case inventories found that nearly half of agencies failed to publicly issue AI use case inventories; those that did comply showed inconsistencies and gaps in coverage. Christie Lawrence, Isaac Cui & Daniel Ho, *The Bureaucratic Challenge to AI Governance: An Empirical Assessment of Implementation at U.S. Federal Agencies*, in PROCEEDINGS OF THE 2023 AAAI/ACM CONFERENCE ON AI, ETHICS, AND SOCIETY (2023), <https://dl.acm.org/doi/10.1145/3600211.3604701> (last visited Nov 1, 2023); CDT has found similar trends. Bowman Cooper, *Like Looking for a Needle in an AI-Stack*, CENTER FOR DEMOCRACY AND TECHNOLOGY (Jul. 21, 2023), <https://cdt.org/insights/like-looking-for-a-needle-in-an-ai-stack/> (last visited Nov 1, 2023)

- safety-or-rights impacting, and provide a brief explanation of why the agency determined an AI use case is not safety-or-right impacting.
- b. Include all AI uses covered by the memo in this List of Record. The Draft Memorandum now requires that the Department of Defense (DOD) report on particular AI uses that were previously exempt under the Advancing American AI Act. The information DOD reports should be included in the List of Record so that the public can have one clear, central repository.
 - c. Clarify to agencies that AI-use disclosure is mandatory. OMB gives too much leeway to agencies by allowing them to report uses “to the extent practicable and consistent with applicable law and government-wide guidance.” To guide agencies, OMB should interpret this language, which comes from the Advancing American AI Act, as a presumptive obligation to disclose.
 - d. Develop guidance to ensure agency personnel know how to classify use cases. Agency officials are often unable to recognize when their systems are AI uses.
 - e. Establish data-quality procedures and guidance for inventorying. As the Center for Democracy and Technology has found, “some use case summaries are so vague as to render them meaningless.” The problem is, like agencies complying with the Digital Accountability and Transparency Act (DATA) of 2014, [agency Offices of Inspector General](#) have found error rates and low quality submissions of spending records. GAO’s recommendations for compliance with the DATA Act are useful here too. OMB should:
 - i. Provide example language and more structured questions to agencies,
 - ii. Develop automated checks and controls in the submissions process, and
 - iii. Work with stakeholders to correct erroneous submissions.
 - f. Within the inventory, include documentation of an AI impact assessment, or otherwise document the department that conducted the assessment or agency official that signed off on it.
 - g. Support compliance by reinforcing that AI Use Inventories support agency goals—like management of data as a strategic asset and agency-wide risk management—and are not a burdensome task.

Recommendation. Provide guidance for appropriate oversight of removal of barriers to the responsible use of AI. The Draft Memorandum encourages CAIOs to remove barriers to agencies’ use of AI by providing agencies with access to “high-performance computing infrastructure specialized for AI training and inference” with regard to IT infrastructure, and to “maximize appropriate access to

internal data and share data within the agency.” However, OMB should provide more specific guidance to include all enterprise IT infrastructure and large-scale data sources for AI technologies that may reasonably contribute to an agency's expansion of responsible use of AI, but that may not be considered “covered AI technologies” in the current guidance. By including foundational technology systems or tools that contribute data or technology for agency AI use, CAIOs will be empowered to provide oversight and input to help ensure that significant agency expenditures or contracts in IT procurements and data acquisitions will be in compliance with OMB guidance. We provide further recommendations on procurement in response to question seven below.

This may include:

- a. Conducting risk assessments to vet potential new AI technologies before receiving approval from the AI Governance Body to put out requests for proposals for enterprise IT infrastructure that would enable advanced computing using AI technology.
- b. Working with Data Governance Bodies to ensure that data sources are well-documented, high quality, and include information collected with the consent of represented individuals to be used in emerging AI experiments or new unvetted AI use cases.
- a. Prioritizing updates to cybersecurity infrastructure, including giving cybersecurity officials authority to allocate funds dedicated to improving use of AI toward long-term improvements to cybersecurity protections before seeking continuous authorizations for AI technologies.
- b. Ensuring that cybersecurity standards within agencies meet best practices set by the [NIST AI Risk Management Framework](#) pertaining to AI system security and resilience; for example, establishing red-teaming protocols and verifying that third party AI resources and personnel undergo security audits and screenings.
- c. Including guidance for reporting requirements to be delivered to the CAIO during the procurement process for new AI technologies to track performance measures that might affect agencies' compliance with OMB guidance on responsible AI innovation, including for generative AI technologies.
- d. Empowering the CAIO to stop procurement processes for AI technologies that are in non-compliance or unable to indicate future compliance with OMB guidance regarding AI.

Recommendation. Clarify how waivers to minimum practice requirements are established and potentially strengthen OMB's oversight of the waiver process.

As described in section 5 of the Draft Memorandum, all agencies that are not elements of the Intelligence Community must follow minimum practices to manage risks from AI uses determined to be safety- or rights-impacting. Section 5.c.iii introduces a waiver process by which an agency CAIO may waive one or more of the minimum requirements for a specific covered AI application or component. OMB should provide more clarity around and potentially strengthen this process. This may include:

- a. Clarifying which relevant officials should be engaged in the process of establishing a waiver, and clarifying which officials and bodies have decision-making power to grant a waiver. The text of the draft guidance appears to give agency CAIOs wide latitude in making waiver determinations, without clarifying how other entities and individuals should be engaged in that process.
- b. Establish clearer mechanisms for OMB to review, appeal, and potentially revoke waivers that agencies have granted for specific use cases.
- c. Consider establishing time periods within which waivers to minimum practice requirements must be reviewed and reassessed.
- d. When OMB issues detailed instructions to agencies to establish practices for inventorying use cases going forward, ensure that information about any granted waivers included in use case inventories provide detailed documentation about how and why a waiver was established.

4. **With adequate safeguards in place, how should agencies take advantage of generative AI to improve agency missions or business operations?**

Generative AI offers opportunities to increase efficiency, effectiveness, and equity of government services. But current AI offerings seldom are designed for government tasks, making the [translation of private tools](#) into public contexts sometimes difficult and complex. For example, generative AI is not always well-suited for engaging broadly with customers, especially in government contexts where trust and reliability are of the utmost importance. Generative AI is known for bringing in hallucinations, mistakes, or other communication errors that might create challenges for people who urgently need access to public benefits and services. However, generative AI, deployed for specific purposes or clearly denoted as an AI tool meant to serve a limited function, may help customers navigate government systems and support workers in the delivery of those programs.

Recommendation. Generative AI offers opportunities to improve the business operations and delivery of government programs. We believe the following examples offer use cases where generative AI, with appropriate safeguards and review, could be used to benefit agency staff and the public. We have included specific examples as they relate to the delivery of public benefits, where there is great need to improve equity and efficiency in delivery so that people receive the supports they are eligible for. These include:

1. Summarizing content

a. Summarizing content for agency staff, including guidance and other documents

Generative AI's capacity to quickly summarize information has previously been identified by the federal [government](#) and [state government](#), as a potential use case. This summarizing approach could be applied to summarize statutory code, government guidance, and other documents that would otherwise require significant human hours to review and synthesize. [Trust and accuracy concerns](#) around the content generative AI can produce (for example, generative AI tools can produce "[hallucinations](#)" or inaccurate content), mean that generative AI should be used as a time and resource saving tool, with any content produced by generative AI subsequently undergoing review by humans. Use of generative AI to summarize text and guidance could facilitate training of staff, or could support agencies preparing information for public-facing materials or customer service touchpoints.

b. Summarizing feedback from residents/end users

Generative AI might also be usefully deployed to summarize feedback and insights from interactions with residents or end users of government services. For example, in a November 2023 [report](#) on Generative AI use cases in government, the State of California pointed to the potential for generative AI to be used to summarize meetings, work, and public outreach documentation. Again, because accuracy can be an issue, such syntheses should be reviewed by humans, but could be used to save time and resources.

2. Transforming text content

a. Generating drafts of plain language content

An important [requirement](#) for federal agencies is communicating with the public in language that is clear and understandable. Generative AI tools could be used to help transform existing information into [plain language](#). While human review would still be necessary prior to publicly disseminating any text produced by a generative AI tool, transforming existing text into a plain language version could help save time for

agencies and enable government entities to provide more of an agency's content in plain language versions more quickly.

b. As translation improves, producing content in languages other than English

Generative AI tools may offer more accurate and adequate [translations](#) between languages than previously available machine translation tools, as well as offer [opportunities to train models](#) on specific dialects or population language needs. Currently, generative AI tools may [perform less well](#) for translations of underrepresented languages, and may introduce bias through their training data. In the future, if performance continues to improve, generative AI might be used to support government agencies in translating content into other languages, improving access to government information and services.

3. Policy review, format translation, and modeling

a. Identifying and summarizing agency rules that are “outmoded or redundant” or contain inaccuracies

As with the above examples of reviewing and summarizing content, generative AI tools could be used in [retrospective reviews of rules](#) to catch errors, redundancies, and conflicts. Generative AI is well suited to detecting patterns and differences in content for analysis, saving human hours in the original comparison between sources.

b. Translating agency rules, guidance, and policy into computer code

Currently, an immense amount of interpretation and duplicated effort occurs as software developers translate program policy and rules into computer code for digital systems, such as the public-facing website for a benefits application. Methods such as [rules as code](#) offer a way to standardize how rules are written in software. Generative AI could be trained on a [data framework](#) to translate the rules from their current English format to provide versions in plain language logic and computer code. It would be important for humans to review for accuracy in the translation. Using generative AI could speed this needed digital transformation, allow for easier implementation of updates and changes, create more public and government transparency on how rules operate within digital systems, increase efficiency by eliminating duplicative efforts among disparate levels of government and delivery organizations, and reduce the burden for public employees who are changed with administering and delivering benefits. Additionally, with rules now in code, there could be new pathways for policymakers, legislators, administrators, and the public to model and measure impacts of policy changes. For example, a generative AI tool could help model different scenarios for a rule change, and utilize de-identified

and/or create synthetic data to measure impact on a specific population or geography.

4. Accelerating the use of human-centered design systems and software development
 - a. Generative AI can be a powerful design and software development assistant, allowing for rapid prototyping of websites, forms, and other materials using design standards, such as the [U.S. Web Design System](#), to follow human-centered design patterns and utilize accessibility standards. Generative AI can allow designers and software developers to generate a multitude of options, and also quickly iterate on those options. It is important that the prototypes are evaluated with their end users to ensure they meet their needs. Additionally, generative AI may be well suited for helping governments [migrate legacy system code](#) and translate it into modern code languages.
5. Cybersecurity
 - a. Generative AI can be used to identify patterns that may be suspected cybersecurity attacks or vulnerabilities. Rather than [burdening end users](#), government agencies should use generative AI in cybersecurity approaches to detect and analyze patterns that may be suspicious activity and propose remedies.

Recommendation. Require cross-agency collaboration in developing guidance for the use of generative AI in public benefits. We recommend that OMB require the U.S. Department of Health and Human Services, the U.S. Department of Agriculture, and the U.S. Department of Labor to coordinate their guidance for programs such as Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Temporary Assistance for Needy Families (TANF), Medicaid, Children’s Health Insurance Program (CHIP), and Unemployment Insurance (UI). Benefits administering agencies should not have different guidance for the use of generative AI in public benefits delivery—both for the benefit of the public and for the state, local, tribal, and territorial governments that deliver these programs. A beneficiary of one program may likely be the beneficiary of another program, and should have a seamless, transparent experience across all programs. Increasingly, people seeking and receiving benefits are using digital systems that integrate programs that have separate federal funding streams, policies, and agencies (such as SNAP and Medicaid) into [single applications](#), accounts, and service points. As such, when federal agencies do not coordinate guidance, state, local, tribal, and territorial governments are required to interpret what is allowed and negotiate between and across agencies.

Recommendation. Provide guidance for how other automated, but non-generative technologies, such as robotic process automation, can work separately and in conjunction with generative AI to improve business operations.

The Draft Memorandum explicitly excludes “robotic process automation or other systems whose behavior is defined only by human-defined rules or that learn solely by repeating an observed practice exactly as it was conducted.” [Federal agencies](#) and [state agencies](#) are using approaches like robotic process automation, optical character recognition (OCR), and other types of automation in their operations and delivery of services. While we do not think these uses should be grouped with artificial intelligence use cases, we do recommend that the OMB direct agencies to provide coordinated guidance on uses of robotic process automation and other technologies to safely and equitably improve business operations.

7. What types of materials or resources would be most valuable to help agencies, as appropriate, incorporate the requirements and recommendations of this memorandum into relevant contracts?

Contracting for emerging technologies requires clearly communicated standards—both internal and external—to ensure that both vendors and procuring agencies are able to make informed decisions about the potential risks and opportunities of new tools on the market. Without specific attention to incorporating OMB guidance on AI into federal agencies’ existing procurement practices, agencies are at risk of taking fragmented approaches to procuring not only AI but also data services, enterprise IT, and privacy-preserving technologies that could serve to destabilize responsible procurement of data and technology writ large.

Recommendation. Develop and publish an “oversight guide” for reviewing agency acquisition activities. Building on the GAO’s [“Accountability Framework for Federal Agencies and Other Entities,”](#) OMB should develop an “oversight guide” with specific references to parts of the acquisition planning process where agencies should already be considering responsible AI principles. An oversight guide could be used by Congress, federal agency executives, inspectors general, civil society, and the public to better understand what types of questions to ask of federal government employees and federal contractors. Because structured oversight processes can help drive agencies toward better outcomes, having a shared understanding of what “good” looks like from an oversight perspective would be useful.³

³ How to Not Buy Magic: Updating Procurement Policies to Support the Federal Government’s Responsible Use of AI, Center for Democracy & Technology (Forthcoming).

Recommendation. Define “adequate performance” including by providing suggested documentation that vendors must submit to support performance measurement and evaluation for AI contracts. Suggested documentation for vendor reporting to meet requirements for adequate performance may include reporting on third-party data sources used in AI tool testing, development, or deployment, and documents that govern responsible data management practices to ensure that data sources are ethical and well-managed. “Adequate performance” should also include considerations for the following:

- a. With regard to promoting competition:
 - i. Incentivizing practices that protect data rights in third party source data, like collecting individual consent to access, use, or sell personal data; ability of individuals represented in third party data sources to opt out; cybersecurity protocols to ensure that data is safe and secure; collective or cooperative governance structures that allow for individuals to be represented in decision-making over access to personal data.
 - ii. Incorporating contract evaluation measures specific to AI that ensure responsible data governance, which could include innovating around public trustmarks or other certifications for AI vendors that use responsible data practices that increase the pool of competitive vendors who ensure that data rights are protected.
- b. With regard to maximizing the value of data for AI:
 - i. Ensuring that procuring agencies not only have “sufficient rights to data and any improvements to that data so as to avoid vendor lock-in and facilitate governments continued design, development, testing, and operation of AI,” but also have specific guidance from OMB to require mandatory reporting of source data or control over access to source data to ensure responsible data governance practices during the contract’s implementation.

Thank you for your time and consideration of these recommendations.

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