



## White House Policy on AI

James Czerniawski, Senior Policy Analyst in Tech and Innovation, Americans for Prosperity

Committee on Oversight and Accountability Subcommittee on Cybersecurity, Information Technology,  
and Government Innovation

U.S. House of Representatives

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Dear Chairwoman Mace,

Thank you for the opportunity to provide our view on the White House Policy on Artificial Intelligence (AI). AI is a rapidly evolving policy discussion, with the capability to not only influence, but completely transform numerous sectors of the American economy, including the government and how it operates. The Biden administration has been extremely active in this conversation, recently unveiling a broad and sweeping 100+ page executive order on the tech.<sup>1</sup> As we said when the executive order first came out, “In calling for such a broad expansion of government oversight, this administration risks hamstringing AI’s promise to improve our lives.”<sup>2</sup> The United States is leading the race to dominate in AI right now, but that position should not be taken for granted. The United States needs to pursue a policy that strengthens, not suffocates the development of this technology.

### The Biden Executive Order

The Executive Order has some good things in it. First, it correctly recognizes that there are already existing laws that could be applied to AI. Despite the claim of many, AI is not the wild west, and we do not need to rewrite the book every time a new technology comes around. Existing laws can apply to AI. Additionally, the EO correctly recognizes that the United States does not have the necessary labor force to meet the moment of the jobs that will be created from this emerging technology and seeks to streamline the immigration process. If the country wants to maintain its competitive edge, it should seek to bring the best and brightest minds to work on the technology here. Doing so will ensure that our

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<sup>1</sup> “FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence.” The White House, 30 Oct. 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/>

<sup>2</sup> “President Biden’s Executive Order on AI Reinforces His Administration’s Hostility toward Emerging Technology.” Americans for Prosperity, 30 Oct. 2023, <https://americansforprosperity.org/president-bidens-executive-order-on-ai-reinforces-his-administrations-hostility-toward-emerging-technology/#:~:text=%E2%80%9CPresident%20Biden's%20executive%20order%20on,innovation%20at%20Americans%20for%20Prosperity.>

companies continue their dominance in being some of the most innovative in the world and bring new innovations and benefits to Americans.

Unfortunately, the little good in the EO is undermined by some truly terrible provisions within the order. The executive order is couched in fear of this technology and seeks to empower the administrative state to control and constrain the growth of the technology rather than drive it. As R Street Institute's Adam Thierer put it, the executive order, "will accelerate bureaucratic micro-management of crucial technologies that we need to be promoting, not punishing, as we begin a global race with China and other nations for supremacy in next-generation information and computational capabilities."<sup>3</sup>

Furthermore, the Executive Order relies on a novel interpretation of the Defense Production Act (DPA). The DPA was enacted during the Korean War to expedite and prioritize government contracts, provide purchase guarantees, and reorient supply chains to satisfy critical needs in an emergency. It is fair to ask the question, "what is the emergency around AI?" The EO abuses the DPA to manipulate the procurement process and create new reporting requirements that will cover AI in new red tape. However, as Thomas Kimbrell and I pointed out in our op-ed in *The Hill*, "Biden treating AI as an emergency fabricates a never-ending crisis that transfers to the president major powers over the economy that are constitutionally reserved for Congress."<sup>4</sup>

This is overreach by the Biden administration and should serve as an opportunity for Congress to reassert its authority and role in setting policy, rather than allowing the President to abuse his executive emergency authorities. Americans for Prosperity Foundation recently filed FOIA requests to the Biden Administration seeking information about why they are invoking emergency powers to regulate AI.<sup>5</sup>

Additionally, the executive order calls on the Federal Trade Commission (FTC) to continue enforcing existing rules, and contemplate new ones for AI. The commission, led by Chairwoman Lina Khan, has been openly hostile to the tech sector, including in this emerging space. Back in July, the FTC announced an investigation into OpenAI, one of the leading AI companies in the country. While the investigation was predicated on consumer protection, it actually was about the FTC attempting to become the de facto AI regulator and digital speech regulator in trying to influence what user generated content was being put into the large language models being used by companies like OpenAI. As I wrote in the *New York Post* at the time, "...ChatGPT derives its intelligence from publicly available user-generated speech such as articles, e-books, and websites. And that's a problem for the FTC; the agency regulates competition, but a speech regulator it is most certainly not."<sup>6</sup>

### **Government's use of the tech**

AI can benefit not just the private sector, but the government too. Leveraging AI can improve government performance in some of its key functions. From automating routine tasks to helping better

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<sup>3</sup> Millard, Taylor. Experts Unpersuaded with AI Executive Order. 13 Nov. 2023, <https://dcjournal.com/not-much-intelligence-in-bidens-ai-executive-order-experts-say/>

<sup>4</sup> Thomas Kimbrell and James Czerniawski. "Fabricating an Artificial Emergency Isn't Intelligent." *The Hill*, 24 Nov. 2023, <https://thehill.com/opinion/congress-blog/4325977-fabricating-an-artificial-emergency-isnt-intelligent/>.

<sup>5</sup> "AFP Foundation Launches FOIA Investigation of Biden Overreach on AI." *Americans for Prosperity*, 14 Nov. 2023, <https://americansforprosperity.org/afp-foundation-launches-foia-investigation-of-biden-overreach-on-ai/>

<sup>6</sup> Czerniawski, James. "AI Interference Risks Robbing America of Economic Growth." *New York Post*, 22 July 2023, <https://nypost.com/2023/07/22/ai-interference-risks-robbing-america-of-economic-growth/>

inform government strategies to respond to disasters, AI can be an asset for the government in tackling the many issues on its plate. If the government is going to be using the technology, there needs to be guidance around how it will be using it to ensure the technology is not being abused or misused.

As part of the Consolidated Appropriations Act in 2021 signed into law on December 27<sup>th</sup> of 2020, the AI in Government Act required within 180 days of its passage for the Office of Management and Budget (OMB) to have a draft memorandum available for public comment produced to inform the development of processes for using AI technology, recommend approaches to removing barriers, and identifying best practices, with a final product done in 270 days.<sup>7</sup> However, the draft was only recently unveiled two days after the Biden Executive Order, making the final product over two and a half years late.<sup>8</sup> That is a significant delay in getting critical guidance in place to better prepare the government for use of this powerful technology. Those delays are costly and undermine the effectiveness of the U.S. to be a leader in this emerging area.

## **Conclusion**

Artificial Intelligence is a powerful tool and can help the government improve its ability to carry out its core functions in the coming years. Congress should look for opportunities to support, not stifle, this technology and its integration in both the private sector and the government. Additionally, Congress should seek to hold the administration accountable for abusing its emergency powers as an end around Congress to tackling this emerging technology. A light touch regulatory approach will ensure that AI technology will continue to innovate to meet the needs of consumers and businesses alike and power the nation forward into an economy where abundance is the rule rather than the exception.

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<sup>7</sup> Cuellar, Henry. "Text - H.R.133 - 116th Congress (2019-2020): Consolidated Appropriations Act, 2021." [Www.congress.gov](https://www.congress.gov/bill/116th-congress/house-bill/133/text), 27 Dec. 2020, <https://www.congress.gov/bill/116th-congress/house-bill/133/text>

<sup>8</sup> "OMB Releases Implementation Guidance Following President Biden's Executive Order on Artificial Intelligence | OMB." The White House, 1 Nov. 2023, <https://www.whitehouse.gov/omb/briefing-room/2023/11/01/omb-releases-implementation-guidance-following-president-bidens-executive-order-on-artificial-intelligence/>