

December 6, 2023

The Honorable Nancy Mace
Chairwoman, Subcommittee on Cybersecurity, Information Technology, and Government Innovation
House of Representatives

The Honorable Gerald E. Connolly
Ranking Member, Subcommittee on Cybersecurity, Information Technology, and Government Innovation
House of Representatives

Subject: **Comments for the hearing record: White House Policy on AI (December 6, 2023)**

Dear Chairwoman Mace and Ranking Member Connolly:

Thank you for holding a hearing titled “White House Policy on AI” examining the Administration’s recent Executive Order on AI (EO 14110) and the subsequent draft proposed guidance from the White House Office of Management and Budget (OMB). With these and other actions, the Biden Administration has substantially advanced the public discourse around how AI governance frameworks should be implemented, both in the public and private sectors. At the same time, the Administration’s initiatives, particularly the recent Executive Order, should be examined in the larger context of American competitiveness, innovation, and policymaking concerning AI.

As North America’s largest technology trade association, the Consumer Technology Association (CTA®) is the tech sector. Our members are the world’s leading innovators – from startups to global brands – helping support more than 18 million American jobs. CTA owns and produces CES® – the most influential tech event in the world. CTA is the trade association representing the more than 1000 companies in the U.S. technology industry. Eighty percent of CTA companies are small businesses and startups; others are among the world’s best-known brands. We provide members with policy advocacy, market research, technical education and standards development.

CTA is a leading voice on emerging technology issues, including AI, and their impact on the consumer technology industry. In September, CTA released a “National AI Policy and Regulatory Framework” (copy attached), consumer research on the level of awareness and interest regarding AI and its applications, and a voluntary consensus-based industry standard that identifies types of bias, sources of bias, and bias management practices for health care applications. CTA’s CEO Gary Shapiro recently participated in the Senate AI Insight Forum on Privacy and Liability.

Executive Order 14110

Upon its announcement, the Biden Administration’s recent EO raised several questions for us:

- Does the EO help, hinder or circumvent the legislative process?

- Does the EO diminish the role and contributions of the private sector, particularly in the area of standards development?
- Is reliance on the Defense Product Act valid justification for directives in the EO?
- Does the EO set the stage for AI model licensing, an approach for which there are significant concerns?
- Does the EO sufficiently uphold the NIST AI RMF?
- Is there policy continuity and compatibility from AI-related EOs issued in the previous administration to this latest AI-related EO of the current administration?

We applaud the EO's acknowledgement of AI's potential to address pressing challenges and enhance our prosperity, productivity, innovation, and security. It aims to establish a coherent framework for AI, recognizing the need to avoid overlapping efforts among government agencies. The EO also emphasizes the importance of attracting global talent to fuel ongoing U.S. economic growth and competitiveness, proposing changes that would boost high-skilled immigration.

We are concerned about the EO's support for expanded Federal Trade Commission regulatory authority over the AI ecosystem which could invite unwarranted interference with AI innovators and the nascent AI market. We also are concerned the EO leans towards a top-down control approach over existing industry initiatives. Despite leading AI companies voluntarily agreeing to AI safety protocols, the Administration invokes the Korean War-era Defense Production Act to compel companies to notify the government about training activities and results before releasing products to the public. This approach, in the words of technologist Adam Thierer, risks confining AI innovators in a "regulatory cage" that requires permission to innovate.

We also note the EO opens the door to regulations affecting all facets of AI use in healthcare, including research, drug and device safety, delivery, and financing. When combined, these new regulations could hinder smaller companies from developing AI-led tools in health care.

The top-down approach in the EO also extends to the development of government standards for cutting-edge AI models. This contrasts with the voluntary, market-driven industry standards model that has propelled American firms to leadership in nearly every global technology sector. Voluntary consensus standards are crafted by industry stakeholders who deeply understand the market's needs and consumer demands, and such standards allow rapid adaptation to changes in technology, consumer preferences, and market conditions.

OMB's draft proposed memorandum

CTA is submitting separate comments to OMB in response to their draft proposed memorandum for the heads of executive departments and agencies titled "Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence." Generally, we think OMB should advance a flexible, risk-based approach to AI governance. Doing otherwise may subject AI governance initiatives to the priorities of future administrations as federal agencies may encourage designs that focus on certain priorities and not the overall best methods for safe and trustworthy AI deployment.

CTA supports efforts the federal level in the United States to develop voluntary risk-based frameworks to address potential AI risks, while enabling stakeholders to maximize the benefits of this technology. In recent comments to NIST concerning the development of that agency's AI Risk Management Framework ("RMF"), CTA applauded the agency's work to create a flexible and voluntary risk management framework for managing AI risks, including those that may be implicated by the use of AI tools and systems. Indeed, CTA's National AI Policy Framework calls for all companies developing AI to adopt and implement the AI RMF as a means of mitigating and managing AI risks.

Because the AI Guidelines are likely to be viewed as an important benchmarking tool for private entities developing their own responsible AI governance policies, CTA agrees with OMB's endorsement of the NIST AI RMF as a landmark voluntary and suitable risk framework that will drive organizations to adopt risk mitigation practices that will lead to trustworthy and responsible AI. The AI RMF achieves an appropriate balance of ensuring trustworthy AI systems while providing organizations the necessary flexibility to adopt practices best suited for their specific circumstances.

The OMB should also encourage sharing of federal data, as appropriate, to ensure that both public and private AI applications and systems are able to access reliable data sets to train and create sufficiently robust and safe AI applications. The OMB should consider allowing agencies to utilize a more fine-grained multi-factor risk-based assessment, led by an agency's chief AI officer, to classify rights-impacting AI applications on a case-by-case and use-case specific basis, rather than adopting a one-size-fits-all list of use cases. Along similar lines, OMB's list of minimum practices for safety- and rights-impacting AI may be overly prescriptive. Rather than prescribe a list of specific minimum requirements, the OMB should consider articulating acceptable governance principles that can be utilized by each agency on a case-by-case basis.

OMB's guidance will likely influence the private sector as well, and it will have a substantial impact on areas that intersect with the deployment of AI systems, including information technology, security, privacy, civil rights and civil liberties, customer experience, and workforce management. The AI ecosystem deployed by federal agencies will only thrive if developed and deployed responsibly with an eye toward practical requirements and expectations for responsible AI development.

Thank you for your examination of recent AI policy initiatives at the federal level. CTA believes AI holds great promise in addressing some of the biggest challenges in society, and we look forward to continuing to work with Congress to support U.S. leadership on innovation-friendly AI policy.

Respectfully submitted,

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