

January 17, 2024

Chairman James Comer  
Ranking Member Jamie Raskin  
U.S House Committee on Oversight and Accountability  
Subcommittee on Cybersecurity, Information Technology, and Government Innovation  
2157 Rayburn House Office Building  
Washington D.C. 20515

**Re: CAIDP Statement for the Record: “Toward an AI-Ready Workforce”**

Dear Chairman Comer, Ranking Member Raskin, and Members of the Committee,

We write to you regarding the upcoming hearing, “*Toward an AI-Ready Workforce*.”<sup>1</sup> We appreciate your active oversight on the risks and benefits of AI systems and work towards establishing standards of governance for AI. Merve Hickok, CAIDP President, testified at the first hearing<sup>2</sup> held by this Committee in March last year. She stated in her testimony: “AI systems determine people’s opportunities in life.”<sup>3</sup> We appreciate the significance of this hearing, and we commend the Committee’s leadership in addressing this critical agenda for the future of American livelihoods and the economy. Our recommendations to this Committee in brief are:

1. Exercise oversight to ensure the implementation of the Biden AI Executive Order 14110<sup>4</sup> and the implementation/issuance of the Guidance on Agency Use of AI by the Office of Management and Budget<sup>5</sup> (OMB)

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<sup>1</sup> House Committee on Oversight and Accountability, Sub-Committee on Cybersecurity, Information Technology, and Government Innovation, *Toward an AI-Ready Workforce*, (Jan. 17, 2024), <https://oversight.house.gov/hearing/toward-an-ai-ready-workforce/>

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

<sup>3</sup> Testimony and statement for the record of CAIDP President Merve Hickok, *Advances in AI: Are We Ready For a Tech Revolution?*, House Committee on Oversight and Accountability: Subcommittee on Cybersecurity, Information Technology, and Government Innovation (Mar. 8, 2023), [https://oversight.house.gov/wp-content/uploads/2023/03/MerveHickok\\_testimony\\_March-8th-2023.pdf](https://oversight.house.gov/wp-content/uploads/2023/03/MerveHickok_testimony_March-8th-2023.pdf). (“Hickok Testimony”)

<sup>4</sup> Executive Order 14110 of October 30, 2023, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, Federal Register Vol. 88, No. 210, pg. 75191-75226, <https://www.govinfo.gov/content/pkg/FR-2023-11-01/pdf/2023-24283.pdf> (“Biden AI Executive Order”)

<sup>5</sup> OMB, *Proposed Memorandum for the Heads of Executive Departments and Agencies*, (Nov. 2023), <https://ai.gov/wp-content/uploads/2023/11/AI-in-Government-Memo-Public-Comment.pdf>

2. Create guardrails through legislation to protect workers from AI harms and ensure that workers participate in AI-related decisions in the workplace

### **About CAIDP**

The Center for AI and Digital Policy (CAIDP) is an independent research organization based in Washington, D.C. We advise national governments and international organizations regarding artificial intelligence and digital policy.<sup>6</sup> CAIDP currently serves as an advisor on AI policy to the OECD, the European Union, the Council of Europe, G7, G20, UNESCO, and other national and international organizations. In April 2023, we released the third edition of our Artificial Intelligence and Democratic Values Index,<sup>7</sup> providing a comprehensive review of AI policies and practices in 75 countries.

### **CAIDP Recommendations**

Our recommendations are as follows:

1. ***Exercise oversight to ensure the implementation of AI Executive Order 14110 and issuance of the OMB Guidance on Agency Use of AI***

An analysis by the International Monetary Fund (IMF) published just this week found that "In advanced economies, about 60 percent of jobs may be impacted by AI. Roughly half the exposed jobs may benefit from AI integration, enhancing productivity. For the other half, AI applications may execute key tasks currently performed by humans, which could lower labor demand, leading to lower wages and reduced hiring. In the most extreme cases, some of these jobs may disappear."<sup>8</sup> The IMF cautions that "It is crucial for countries to establish comprehensive social safety nets and offer retraining programs for vulnerable workers. In doing so, we can make the AI transition more inclusive, protecting livelihoods and curbing inequality."<sup>9</sup>

The Pew Research Center in their report on exposure of U.S. workers to AI found that "In 2022, 19% of American workers were in jobs that are the most exposed to AI, in which the most

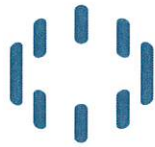
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<sup>6</sup> CAIDP, *CAIDP Statements*, <https://www.caidp.org/statements/>.

<sup>7</sup> CAIDP, *Artificial Intelligence and Democratic Values* (2023), <https://www.caidp.org/reports/aidv-2022/>.

<sup>8</sup> IMF, *AI Will Transform the Global Economy. Let's Make Sure It Benefits Humanity*, Blog Post, (Jan. 14, 2024), <https://www.imf.org/en/Blogs/Articles/2024/01/14/ai-will-transform-the-global-economy-lets-make-sure-it-benefits-humanity>

<sup>9</sup> *Id.*



important activities may be either replaced or assisted by AI.”<sup>10</sup> On the issue of whether exposure to AI will lead to job losses, Pew opined that the results were inconclusive.

The Biden AI Executive Order at the outset recognizes that irresponsible use of AI could “displace and disempower workers”.<sup>11</sup> The “Supporting Workers”<sup>12</sup> section of the Order directs several actions including:

- i. A report by the Chairman of the Council of Economic Advisers on the labor-market effects of AI
- ii. A report by the Secretary of Labor analyzing the abilities of agencies to support workers displaced by the adoption of AI and other technological advancements.
- iii. To foster a diverse AI-ready workforce, the Director of NSF shall prioritize available resources to support AI-related education and AI-related workforce development through existing programs.

The most encompassing directive lies in Section 6(b), which directs the secretary of labor, working with other agencies and “outside entities, including labor unions and workers,” to develop “principles and best practices” to mitigate harms to employees’ well-being.<sup>13</sup> After the issuance of the Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence<sup>14</sup>, the Department of Labor has undertaken to develop principles and best practices for employers and AI developers that can be used to mitigate AI’s potential harms to employees’ well-being and maximize its potential benefits.<sup>15</sup> The DoL also organized listening sessions towards this objective.

This Committee should exercise oversight on the aforesaid agencies particularly the DoL to ensure protection measures including legislative proposals, social safety net, and other labor

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<sup>10</sup> Pew Research Center, *Which U.S. Workers Are More Exposed to AI on Their Jobs?*, Report, (Jul. 26, 2023), <https://www.pewresearch.org/social-trends/2023/07/26/which-u-s-workers-are-more-exposed-to-ai-on-their-jobs/>

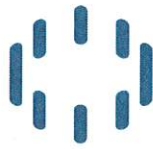
<sup>11</sup> The White House, *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, (Oct. 30, 2023), Sec. 1, Purpose, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>

<sup>12</sup> *Id.*, Section. 6

<sup>13</sup> Sorelle Friedler, Janet Haven, Brian J. Chen, *How the AI Executive Order and OMB Memo introduce accountability for artificial intelligence*, Brookings Commentary, (Nov. 16, 2023), <https://www.brookings.edu/articles/how-the-ai-executive-order-and-omb-memo-introduce-accountability-for-artificial-intelligence/> (“Brookings Commentary on AI EO and OMB Memo”)

<sup>14</sup> Executive Order 14110 of October 30, 2023, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, Federal Register Vol. 88, No. 210, pg. 75191-75226, <https://www.govinfo.gov/content/pkg/FR-2023-11-01/pdf/2023-24283.pdf>

<sup>15</sup> U.S. Department of Labor, *Making Artificial Intelligence Work for Workers*, Blog Post, (Dec. 04, 2023), <https://blog.dol.gov/2023/12/04/making-artificial-intelligence-work-for-workers>



market transition initiatives are carried out in accordance with the mandates in the Biden AI Executive Order.

US federal agencies are encouraged to develop and procure AI – but we cannot identify who in the public sector has the skills, we do not have the training or procurement guidance in place. CAIDP President, Merve Hickok in her testimony before this Committee stated, “We do not have the guardrails in place, the laws that we need, the public education, or the expertise in government to manage the consequences of the rapid changes that are now taking place.”<sup>16</sup>

The OMB had issued a notice for public comment<sup>17</sup> on its “Proposed Memorandum for the Heads of Executive Departments and Agencies: Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence” (“OMB Guidance”).<sup>18</sup> The OMB Guidance requires adherence to “minimum risk management practices” where AI is used to determine “the terms and conditions of employment” and considers AI systems that are used to make employment related decisions as “rights-impacting.” This broad definition positions the federal government, as the nation’s largest employer, to influence the use of AI systems within the workplace.<sup>19</sup>

This Committee should exercise oversight on the OMB as to when the proposed memo will be issued as final guidance for federal agencies and whether that would be completed within the 150-day timeline<sup>20</sup> mandated by the Biden AI Executive Order.

## ***2. Create guardrails through legislation***

This Committee has considered a number of bills on AI, including amendment<sup>21</sup> of the Artificial Intelligence Training for the Acquisition Workforce Act (“AI Training Act”)<sup>22</sup> for expanding AI training within the executive branch. The Committee also considered the

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<sup>16</sup> Hickok Testimony

<sup>17</sup> Office of Management and Budget, *Request for Comments on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence Draft Memorandum*, 88 FR 75625, No. 2023-24269 (Nov. 3, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-11-03/pdf/2023-24269.pdf>

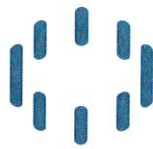
<sup>18</sup> Office of Management and Budget, *Proposed Memorandum for the Heads of Executive Departments and Agencies* (Nov. 2023), <https://ai.gov/wp-content/uploads/2023/11/AI-in-Government-Memo-Public-Comment.pdf>

<sup>19</sup> Brookings Commentary on AI EO and OMB Memo

<sup>20</sup> Sec. 10 Advancing Federal Government Use of AI

<sup>21</sup> H.R. 4503 –AI Training Expansion Act of 2023, 118<sup>th</sup> Congress (2023–2024), <https://www.congress.gov/118/bills/hr4503/BILLS-118hr4503ih.pdf>

<sup>22</sup> 41 USC §1703, [https://uscode.house.gov/view.xhtml?req=\(title:41%20section:1703%20edition:prelim\);](https://uscode.house.gov/view.xhtml?req=(title:41%20section:1703%20edition:prelim);) Public Law 117-207 (Oct. 17, 2022), <https://www.govinfo.gov/content/pkg/PLAW-117publ207/pdf/PLAW-117publ207.pdf>



Transparent Automated Governance Act (“TAG Act”)<sup>23</sup> to direct agencies to be transparent when using automated and augmented systems to interact with the public or make critical decisions.

CAIDP President Merve Hickok, an expert in AI in the workplace, has found that, “Algorithmic worker surveillance and productivity scoring tools powered by artificial intelligence (AI) are becoming prevalent and ubiquitous technologies in the workplace. These tools are applied across white and blue-collar jobs, and gig economy roles. In the absence of legal protections, and strong collective action capabilities, workers are in an imbalanced power position to challenge the practices of employers using these tools. Use of such tools undermines human dignity and human rights.”<sup>24</sup>

In all U.S. States, employers can legally surveil workers as long as it is within the scope of the work and business hours.<sup>25</sup> But worker surveillance and productivity scoring software undermine human rights, are based on faulty assumptions, negatively impact the dignity of workers, as well as their physical and mental health. The accelerated adoption of AI systems in the workplace demands an urgent re-examination of workplace privacy and protections from unreasonable and invasive AI surveillance. AI surveillance is an abuse of power towards people who are making a living. AI-based monitoring based on standard productivity or behavioral expectations may also negatively flag workers with disabilities or inadvertently disclose these disabilities to employers.

Employers are increasingly using automated systems with a wide range of employment matters.<sup>26</sup> Recent surveys have found that least 70 percent of companies and 99 percent of Fortune 500 companies are using automated tools, including those that are AI-based, in the hiring process.<sup>27</sup> A growing number of employers are turning to generative and predictive AI technologies, including in human resources functions.<sup>28</sup> Employers rely on AI-based tools to

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<sup>23</sup> H.R. 6886—Transparent Automated Governance Act or the TAG Act, 118<sup>th</sup> Congress (2023–2024), <https://www.congress.gov/118/bills/hr6886/BILLS-118hr6886ih.pdf>

<sup>24</sup> Merve Hickok and Nestor Maslej, *A policy primer and roadmap on AI worker surveillance and productivity scoring tools*, *AI Ethics*, Mar. 2023, Vol. 20: 1-15, <https://doi.org/10.1007%2Fs43681-023-00275-8>

<sup>25</sup> Workplace Fairness, *Surveillance at Work* (2023), <https://www.workplacefairness.org/workplace-surveillance/>.

<sup>26</sup> Olga Akselrod, “How Artificial Intelligence Can Deepen Racial and Economic Inequities,” American Civil Liberties Union, July 13, 2021, <https://www.aclu.org/news/privacy-technology/how-artificial-intelligence-can-deepen-racial-and-economic-inequities>.

<sup>27</sup> Olga Akselrod, “How Artificial Intelligence Might Prevent You From Getting Hired,” American Civil Liberties Union, August 23, 2023, <https://www.aclu.org/news/racial-justice/how-artificial-intelligence-might-prevent-you-from-getting-hired>.

<sup>28</sup> Littler Mendelson, *AI in the Workplace*, September 2023, [https://www.littler.com/files/2023\\_littler\\_ai\\_employer\\_survey\\_report.pdf](https://www.littler.com/files/2023_littler_ai_employer_survey_report.pdf).

target job advertisements, recruit applicants, train employees, and make or assist in hiring decisions.<sup>29</sup>

The “Principles and Policy” section of the Biden AI Executive Order directs that:

“The responsible development and use of AI require a commitment to supporting American workers. As AI creates new jobs and industries, all workers need a seat at the table, including through collective bargaining, to ensure that they benefit from these opportunities... In the workplace itself, AI should not be deployed in ways that undermine rights, worsen job quality, encourage undue worker surveillance, lessen market competition, introduce new health and safety risks, or cause harmful labor-force disruptions...”<sup>30</sup>

In May 2023, prior to issuance of the AI Executive Order, the EEOC issued new guidance on preventing discrimination against job seekers and workers.<sup>31</sup> The guidance advises employers to assess the impact of AI selection tools on employment decisions and whether there is adverse impact.<sup>32</sup> The EEOC guidelines recommend that employers verify that their AI tools do not result in “substantially” lower selection results for individuals who have protected characteristics.<sup>33</sup>

CAIDP has previously advised the EEOC to consider the impact of algorithmic systems in the workplace as a top priority for Fiscal years 2023-2027.<sup>34</sup> We echo our commendation here of the EEOC’s expansion of the “vulnerable” and “underserved” groups to include additional categories of workers.<sup>35</sup> NIST’s guidance states that employers should consider and manage biases throughout the development and implementation processes, including the three major categories of AI bias: systemic, computation and statistical, and human-cognitive.<sup>36</sup>

President Biden’s Executive Order on “Safe, Secure, and Trustworthy Artificial Intelligence” directs AI workplace impact assessments and principles “to mitigate the harms and

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<sup>29</sup> Akselrod, “How Artificial Intelligence Might Prevent You From Getting Hired.”

<sup>30</sup> Section 2 (c)

<sup>31</sup> U.S. Equal Opportunity Commission, “Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence.”

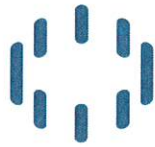
<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> CAIDP, *Comments of the Center for AI and Digital Policy (CAIDP.ORG) to The U.S. Equal Employment Opportunity Commission (EEOC) Draft Strategic Enforcement Plan Docket number: EEOC-2022-0006*, <https://www.caidp.org/statements/> (February 8, 2023).

<sup>35</sup> *Id.*

<sup>36</sup> NIST, “Artificial Intelligence Risk Management Framework.”



maximize the benefits of AI for workers by addressing job displacement; labor standards; workplace equity, health, and safety; and data collection.”<sup>37</sup>

Voluntary risk management frameworks and federal agency guidance is not a substitute for legislation in protecting workers from the pervasive impacts of AI systems. AI based workplace surveillance tools and systems infringe upon the human rights and wellbeing of workers. As AFL-CIO President stated, “the interests of working people must be Congress’ North Star.”<sup>38</sup>

We need federal legislation that mandates algorithmic transparency and accountability. Specifically, we need legal mandates on ex-ante involvement of workers in AI-related decisions, co-governance of AI systems deployed in the workplace, protection of worker data, and enhanced labor protections.

Thank you for your consideration of our views. We ask that this statement be included in the hearing record. We would be pleased to provide you and your staff with additional information.

Sincerely yours,

Marc Rotenberg  
CAIDP Executive Director

Merve Hickok  
CAIDP President

Christabel Randolph  
Law Fellow

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<sup>37</sup> *FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence*, The White House (Oct. 30, 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>38</sup> Liz Shuler, *Labor Movement Poised to Lead AI Revolution to Harness Better Future for Workers*, AFL-CIO (Sept. 13, 2023), <https://aflcio.org/press/releases/labor-movement-poised-lead-ai-revolution-harness-better-future-workers>.