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Center for AI and Digital Policy

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Deputy Director Shalanda Young
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Dear Deputy Director Shalanda Young,

We write to you, on behalf of the Center for AI and Digital Policy (CAIDP), regarding the need for the OMB to establish regulations for the use of AI by the federal agencies of the United States. These regulations are required by Executive Order 13960 and the AI in Government Act of 2020. Further delay by the OMB places at risk fundamental rights, public safety, and commitments that the United States has made to establish trustworthy AI.

Artificial Intelligence and Democratic Values

The Center for AI and Digital Policy is a global research organization established to advise national governments and international organizations on AI and digital policy. In 2020, CAIDP published the report *Artificial Intelligence and Democratic Values*, a comprehensive review of the AI policies and practices in 30 countries.[1]

Based on the report's findings, CAIDP made the following Recommendations:

1) Countries must establish national policies for AI that implement democratic values
2) Countries must ensure public participation in AI policymaking and create robust mechanisms for independent oversight of AI systems
3) Countries must guarantee fairness, accountability, and transparency in all AI systems
4) Countries must commit to these principles in the development, procurement, and implementation of AI systems for public services
5) Countries must halt the use of facial recognition for mass surveillance

These Recommendations – particularly Recommendation #4 concerning the deployment of AI for public services -- underscore the need for the OMB to act now to establish comprehensive regulations for AI. CAIDP supports many of the principles set out in the *Guidance for Regulation of Artificial Intelligence Applications,* issued by the OMB in November 2020, particularly regarding public trust, public participation, transparency, safety,

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[1] Artificial Intelligence and Democratic Values (CAIDP 2020), https://www.caidp.org/aidv-2020/

and fairness and non-discrimination.[2] We also note that the U.S. has endorsed these principles in the OECD Recommendation on AI and the G20 AI Principles.[3]

The OMB Should Begin the AI Rulemaking Now

It is time, however, to move beyond principles. Executive Order 13960[4] and the AI in Government Act of 2020[5] make clear that the OMB now has a legal obligation to seek public comment and establish regulations for the development and deployment of AI techniques by federal agencies. **The OMB should issue the government-wide memorandum and begin the formal rulemaking for the regulation of AI, as required by E.O. 13960 and the AI in Government Act.**

In particular, E.O. 13960 directed the OMB Director to "publicly post*," by June 2021*, "a roadmap for the policy guidance that OMB intends to create or revise to better support the use of AI consistent with this order," including "a schedule for engaging with the public and timelines for finalizing relevant policy guidance."[6] The Executive Order specifically required federal agencies to use AI consistent with "privacy, civil rights, and civil liberties" and in ways that are "sufficiently understandable" and "regularly tested," with agencies accountable for safeguarding their proper use and "disclosing relevant information regarding their use of AI to appropriate stakeholders, including the Congress and the public."[7]

Moreover, in Section 104 of the AI in Government Act of 2020, Congress directed the OMB to "issue a memorandum to the head of each agency" *by September 2021* that would:

1) "Inform the development of policies regarding the Federal acquisition and use" of AI,
2) "Recommend approaches to remove barriers" for AI use "while protecting civil liberties, civil rights, and economic and national security,"
3) "Identify best practices for identifying, assessing, and mitigating any discriminatory impact or bias" on the basis of federally protected categories "or any unintended consequence of the use of artificial intelligence," and
4) "Provide a template of the required contents of the agency plans" for achieving consistency with the Act.

Stressing the need to act expeditiously, Congress stated that "[to] help ensure public trust in the applications of artificial intelligence technologies, the Director [of the OMB] shall

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[2] OMB, *Guidance for Regulation of Artificial Intelligence Applications* (Nov. 17, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/11/M-21-06.pdf

[3] Michael Kratsios, *White House OSTP'S Michael Kratsios Keynote on AI Next Steps*, U.S. Mission to the OECD (May 21, 2019), https://usoecd.usmission.gov/white-house-ostps-michael-kratsios-keynote-on-ai-next-steps/.

[4] Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government, Exec. Order No. 13960, 85 Fed. Reg. 78,939 (Dec. 3, 2020), available at https://www.federalregister.gov/documents/2020/12/08/2020-27065/promoting-the-use-of-trustworthy-artificial-intelligence-in-the-federal-government.

[5] AI in Government Act of 2020, 40 U.S.C. §§ Pub. L. 116–260, 134 Stat. 2286 (2020).

[6] E.O. 13960, Sec. 4(b).

issue a draft version of the memorandum required under subsection (a) for public comment <u>not later than 180 days</u> after [the] date of enactment of this Act [Dec. 27, 2020]."[8]

Congress further required "<u>Not later than 180 days</u> after the date on which the Director issues the memorandum required under subsection (a) or an update to the memorandum required under subsection (d), the head of each agency shall submit to the Director and post on a publicly available page on the website of the agency— (1) a plan to achieve consistency with the memorandum; or (2) a written determination that the agency does not use and does not anticipate using artificial intelligence."[9]

Together, these provisions outline a comprehensive approach to help ensure public trust and confidence in the AI systems deployed by the federal government.

CAIDP fully supports the goals of public participation, anti-discrimination, and protection of civil rights and civil liberties established by E.O 13960 and the AI in Government Act. We urge the OMB to uphold its responsibility to start the AI rulemaking now.

<u>The OMB Should Follow the President's Lead and Establish Safeguards for Trustworthy AI.</u>

Further delay by the OMB places at risk the efforts of the United States to promote trustworthy AI among democratic allies. We call your attention to President Biden's recent speech to the United Nations General Assembly. President Biden said that the United States would work with democratic partners to ensure that AI advances "are used to lift people up, to solve problems, and advance human freedom — not to suppress dissent or target minority communities."[10] President Biden's speech at the UN followed his earlier remarks at the Munich Security Conference where he urged the G7 nations to stand up for democratic values and called for "rules that will govern the advance of technology and the norms of behavior in cyberspace, artificial intelligence, and biotechnology."[11]

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[8] AI in Government Act of 2020, Sec. 104(b) ("Public Comment").

[9] AI in Government Act of 2020, Sec. 104(c)("Plans").

[10] Joseph R. Biden, *Remarks by President Biden Before the 76th Session of the United Nations General Assembly*, The White House (Sep. 21, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/21/remarks-by-president-biden-before-the-76th-session-of-the-united-nations-general-assembly/. See also *Biden Addresses AI and Rule of Law at UN*, CAIDP Update 2.35 (Sept. 21, 2021), https://www.caidp.org/app/download/8344909063/CAIDP-Update-2.35.pdf

[11] The White House, Remarks by President Biden at the 2021 Virtual Munich Security Conference (Feb. 19, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/19/remarks-by-president-biden-at-the-2021-virtual-munich-security-conference/; See also *Speaking to G7 Leaders, President Biden Calls for AI Rules that "Lift People Up," CAIDP Update* 2.08 (Feb. 22, 2021), https://dukakis.org/center-for-ai-and-digital-policy/speaking-to-g7-leaders-president-biden-calls-for-ai-rules-that-lift-people-up/

In the recent Joint Statement by the EU-US Trade and Technology Council, trade negotiators for the United States committed "to foster responsible stewardship of trustworthy AI" and "to ensure that AI serves our societies and economies and that it is used in ways consistent with our common democratic values and human rights." Accordingly, the United States made clear its opposition to social scoring. The EU-US Joint Statement also emphasized the need to adopt "policy and regulatory measures."[12]

The President's top science advisors have also underscored the need for clear rules for AI. Dr. Eric Lander and Dr. Alondra Nelson stated this month that the U.S. "should clarify the rights and freedoms we expect data-driven technologies to respect," including the "right to know when and how AI is influencing a decision that affects your civil rights and civil liberties" and the "freedom from pervasive or discriminatory surveillance and monitoring."[13] They said that such rights could be protected by "the federal government refusing to buy software or technology products that fail to respect these rights" or "requiring federal contractors to use technologies that adhere to this 'bill of rights.'" The OSTP has begun to develop an AI "bill of rights" by issuing a public request for information about biometric data.[14]

Federal agencies need clear standards to ensure robust protection of democratic values for the use of AI. Following our review of the AI policies and practices in 30 countries, the Center concluded that governments must uphold high standards in the development, procurement, and implementation of AI systems for public services. The OMB must establish the AI regulations required by the Executive Order and the Act of Congress, and backed by the President, US trade negotiators, and the President's top science advisors.

Thank you for considering the views of CAIDP.

We look forward to the announcement that the OMB has begun a rulemaking on the use of AI by federal agencies.

Sincerely,

Marc Rotenberg
CAIDP President

Lorraine Kisselburgh, PhD
CAIDP Board Member

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[12] *U.S.-EU Trade and Technology Council Inaugural Joint Statement*, The White House (Sep. 29, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/29/u-s-eu-trade-and-technology-council-inaugural-joint-statement/. See also *EU-US Trade Council Advances AI Policy*, CAIDP Update 2.36 (Sept. 30, 2021), https://www.caidp.org/app/download/8346485163/CAIDP-Update-2.36.pdf.

[13] Eric Lander & Alondra Nelson, *Americans Need a Bill of Rights for an AI-Powered World*, Wired (Oct. 8, 2021), https://www.wired.com/story/opinion-bill-of-rights-artificial-intelligence/.

[14] Notice of Request for Information (RFI) on Public and Private Sector Uses of Biometric Technologies, 86 Fed. Reg. 56,300 (Oct. 8, 2021).

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