Priorities for Office of Management & Budget Memorandum on Advancing Governance, Innovation, and Risk Management for Agency Use of AI

A summary of key changes requested by: Center for Democracy & Technology; American Civil Liberties Union; Brennan Center for Justice; Center for American Progress; Data & Society; Electronic Privacy Information Center (EPIC); Leadership Conference on Civil & Human Rights; Legal Defense Fund; Upturn.

I. **Expand the Memo's scope** to ensure that algorithmic decision-making employed by federal agencies and in federally funded programs is safe and equitable.
    A. Clarify that "covered agencies" includes law enforcement and immigration agencies to avoid abuses of exceptions in the Memo for national security systems and "sensitive" law enforcement information (ACLU p.1-4)
    B. Reconsider exceptions for intelligence agencies and national security systems, including "dual-use" systems used for both national security purposes and other purposes. (ACLU p.4-6; Brennan Center p.1-3; EPIC p.31-34; LDF p. 16)
    C. Underscore that "covered AI" includes less advanced algorithmic systems that are already in use across the government and affecting rights and safety, and AI used within commercially available systems. (ACLU p.6-10; LDF p. 15; Data & Society p.18-19; CAP p.11)
    D. Extend the Memo's provisions to federally funded programs, and clarify that each Chief AI Officer is responsible for managing risks from their agency's *grantmaking* for AI uses, and for issuing guidance on awarding funding that may be used to implement AI. (ACLU p.10-12; CDT p.3; CAP p. 9; LDF p. 13)

II. **Reorganize & strengthen the Memo's transparency requirements** to support consistency, ease agency compliance, and achieve the EO and Guidance's stated transparency goals.
    A. Establish guidance, standards, and quality checks for the content and format of agencies' inventory disclosures, to ensure that for each AI use case, each agency in their inventory:
        1. Summarizes the AI's inputs and outputs; the agency's stated goal in using the system and methods for measuring the system's success; when the agency uses the system for a particular process; how long the agency plans to use it; which actors within the agency will use it. (CDT p.20-21; Data & Society p.20; EPIC p. 14-18; Leadership Conference p.5; CAP p.11)
        2. States whether or not the use case is rights- or safety-impacting with a brief justification; explains the basis and method for each waiver

exempting a rights- or safety-impacting use from minimum risk management practices. ([CDT p.22-23](); [EPIC p.14-18](); [CAP p.5]())

3. Includes detailed information on equity assessments and public consultation. ([CDT p.22-23](), [Data & Society p.20-22](), [EPIC p.14-18]())

4. Reports summary information about any systems excluded from the inventory. ([Data & Society p. 19]())

B. Clarify the circumstances and factors based on which permissible exceptions apply to agencies' reporting obligations; require agencies to submit detailed rationale and relevant documentation for invoking an exemption to public transparency requirements; narrowly apply the law enforcement privilege to federal law enforcement agencies' AI inventories; establish a classified annex for sensitive or classified use cases that cannot otherwise be reported in the AI inventory. ([CDT p.18-20](); [ACLU p.19-20](); [Brennan Center p.3-4](); [Leadership Conference p.4-5](); [LDF p. 15](); [Data & Society p. 19;]() [CAP p.11]())

C. Mandate the maintenance of a centralized, consolidated inventory capturing all agencies' AI use cases; make it available through programmatic means (like an API); create a mechanism for users to receive alerts on updates; maintain an archive so changes are visible over time. ([CDT p.21-22]())

D. To the greatest extent possible under existing laws, require agencies to make public all agency documentation, compliance plans, AI testing results, and AI impact assessments produced pursuant to the Memo. ([EPIC p.29-31]()).

E. Require agencies to provide equitable avenues for the public to submit feedback on AI uses and other determinations in the Memo, and for agencies to be responsive to public inquiries. ([CDT p.23-24](); [ACLU p.24-26](); [EPIC p.29-31]())

III. **Expand/clarify the lists of presumed rights- and safety-impacting use cases** that agencies must report.

A. Ensure all cases on the list of presumed rights-impacting systems remain on the list. ([CDT p.4](); [Data & Society p.3-11;]() [ACLU p.12-15](); [LDF p. 9]())

B. Include uses of AI in the immigration system, by public housing authorities, in ways that interfere with collective bargaining, worker organizing, union membership, or concerted activity ([CDT p.6](); [CAP p. 7]()); *see also* [ACLU p.4-6;]() [EPIC p.31-34](); [LDF p. 16]() (urging changes to covered agencies, national security and law enforcement exceptions).

C. Regularly review the lists for new additions; make clear the list is not exhaustive; provide examples to help agencies identify new cases. ([CDT p.4-5]()). Establish a process to add new presumed safety- or rights-impacting AI purposes, including a mechanism for the public to submit new purposes for consideration. ([CAP p. 5-6]())

D. Explicitly prohibit the adoption of AI uses that OMB determines are exceedingly risky or harmful, including emotion recognition, biometric categorization, social scoring, and one-to-many facial recognition. (EPIC p.7-8)

E. Maintain a list of AI use cases that agencies have decommissioned or otherwise deemed noncompliant with the Memo to inform future agencies decisions around AI development, procurement, and use. (EPIC p.18-19)

F. Provide the opportunity to the public to request AI use cases be designated as rights- or safety-impacting. (Leadership Conference, p.5)

G. Include AI's impact on people with disabilities in rights-impacting purposes given the unique vulnerabilities to AI. (CAP p. 7; Leadership Conference p.6)

IV. **Issue further guidance to agencies on identifying safety- and rights-impacting use cases, evaluating and mitigating risks of discrimination and other harms, and decommissioning AI use cases that pose unacceptable risks; tighten waiver process for minimum practices**.

A. Ensure that CAIOs have civil rights expertise, and that civil rights offices participate in decisions on waivers and the development of AI strategic plans. (LDF p.14, 16-17; Upturn p. 11)

B. Issue further guidance to agencies on how to recognize AI bias and other risks based on stakeholder input; stand up a cross-agency working group and name a point of contact in OMB for determining rights- and safety-impacting AI use cases. (CDT p.7-8; Leadership Conference p.5)

C. Provide further guidance on key bias issues: develop a standard for performing AI impact assessments within input from NIST; issue guidance on how to measure risk given lack of demographic data; consider mandating agencies search for "less discriminatory algorithms" or "non-discriminatory alternatives." (CDT p.8-11; CAP p. 6; LDF p. 11; Upturn p. 3-10)

D. Clarify the waiver process and other exceptions for minimum practices; establish strong presumption against waivers; establish key minimum practices can not be waived; establish high standards for bulk waiver requests; exercise oversight and review over waiver process; establish time limits on and annual reviews of waivers. (CDT p.12; Data & Society p.12-13; ACLU p.19-20; EPIC p.4-5, 14, 30; CAP p. 4-5; LDF p. 16; Upturn p. 10-11; Brennan Center p.6)

E. Publish an annual report analyzing the extent to which waivers are granted appropriately. (CDT p.23; Leadership Conference p.5, LDF p. 16; Brennan Center p.6)

V. **Expand and clarify the list of minimum practices required by the Memo.**

A. Add data privacy requirements, especially data minimization, to the Memo per the AI Bill of Rights. (Data & Society p.14-15; EPIC p.8-11; CAP p.3-4)

B. Add an explanation requirement to the Memo, per the AI Bill of Rights. (Data & Society p.15-16; ACLU p.20-23; EPIC p.14, 32-34; CAP p.2-3).

C. Include a requirement for agencies to document their justifications for their uses of AI systems *as compared to* non-AI alternatives. (CDT p.8; CAP p. 6; LDF p. 17)

D. Institute independent review procedures for agency AI use case determinations, including decisions to continue or discontinue use following the identification of new AI use case risks or negative impacts (EPIC p.18-19).

E. Clarify that public consultation must be conducted even if it is hard by removing "to the extent practicable" from that requirement. (Data & Society p.13-14)

F. Require certain minimum practices for all federal AI use cases, such as imposing rudimentary AI impact assessments when determining whether an AI use case is safety- or rights-impacting. (EPIC p.5-6; CAP p.4)

G. Provide further guidance on how agencies should manage the Memo's minimum practices alongside other related requirements like privacy impact assessments (PIAs). (EPIC p. 29-31; CAP p. 3)

VI. **Address procurement in the Memo and subsequent guidance.**

A. Guide agencies towards AI-specific procurement policies that provide for pre-award evaluation of AI vendors and post-award governance.

1. Provide a template questionnaire for market research and sample AI contract language or similar templates to assist agency procurement offices. (CDT p.15; EPIC p.19-20)

2. Empower agencies to test systems before purchase; increase staffing and training in procurement offices. (CDT p.16)

3. Advocate for reporting requirements corresponding with the AI RMF and AI Bill of Rights; publish oversight guide for acquisition. (CDT p.17)

4. Require Chief AI Officers to ensure all AI vendor contracts are consistent with civil rights laws. (CDT p.16)

5. Require that agencies procure an evaluation contract at the same time as a safety- or rights-impacting AI system contract. (Data & Society p.17)

6. Require federal guidance before enabling widespread deployment of generative AI in existing office productivity software. (CAP p. 8)

B. Ensure procurement guidance centers equity and aligns with EO 14091 Sec. 4(b) and EO 14110's equity principles, not solely EO 13960. (Data & Society p.16-17)

C. Adopt the minimum practices described in the Memo into the procurement guidance. (Data & Society p.17; LDF p. 13)

D. Clarify that the Memo applies to federal agencies' contractors; elevate prior requirements for agencies to report their regulatory authorities for AI under Executive Order 13859 and OMB guidance M-21-06. (CAP p. 9)

VII. Ensure that enforcement agencies are able to staff up as part of the National AI Talent Surge. (Data & Society p.2)

VIII. Support creation of an appropriately resourced external oversight mechanism modeled on the Privacy and Civil Liberties Oversight Board to serve as an additional check on agency use of AI. (Brennan Center p.7)