

Congress of the United States
Washington, DC 20515

January 19, 2023

Director Arati Prabhakar
White House Office of Science and Technology Policy
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear Director Prabhakar,

We write to conduct oversight of the development and intent of the Office of Science and Technology Policy's ("OSTP") recently released "Blueprint for an AI Bill of Rights" ("the Blueprint").

The National AI Initiative Act of 2020 (P.L.116-283)¹ directed the National Institute of Standards and Technology ("NIST") to work through a consensus-driven, open, collaborative, and transparent process to create the AI Risk Management Framework ("the Framework"). The Framework will serve as a guide to incorporate trustworthiness considerations into the design, development, use and evaluation of AI products, services, and systems. The completed Framework is expected to be released in early 2023. We expect the Framework will serve as a critical tool for both industry and government to better mitigate risks associated with AI technologies, as laid out in the law.

Congress has historically worked in a bipartisan manner on AI policy, including through legislation that authorized NIST's work on the Framework, and the creation of the National AI Advisory Committee ("NAIAC").² Congress also passed the AI in Government Act in the 116th Congress requiring the United States Office of Management and Budget ("OMB") to issue AI guidance to federal agencies, and to create an AI Center of Excellence within the General Services Administration.³ Recently, Congress passed the AI Training Act in the 117th Congress to help train federal employees on the capabilities and risks of AI,⁴ and the Advancing American AI Act, to encourage agency AI-related programs and initiatives to enhance U.S. competitiveness by leveraging our nation's innovation and entrepreneurialism.⁵

These efforts have not only been bipartisan but involved buy-in from a vast number of stakeholders to create a broad national strategy that adequately considers the risks associated with the technology without stifling innovation. It is vital to our economic and national security

¹ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, PL 116-283, (DIVISION E, SEC. 5001).

² Id.

³ Consolidated Appropriations Act, 2021, PL 116-260, (DIVISION U, Title I).

⁴ Artificial Intelligence Training for the Acquisition Workforce Act, PL 117-207

⁵ James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, PL 117-263, (Title LXXII, Subtitle B)

that the United States maintains its leadership on responsible AI research, development, and standards, while encouraging adoption of AI technology that respects democratic values.

We are concerned that the release of the Blueprint, and subsequent public statements by OSTP,⁶ are sending stakeholders, the American public, and the international community, conflicting messages about U.S. federal AI policy. As a follow up to the call between our staffs and OSTP staff on December 14, 2022, we request written responses to the following questions so that the Committees may more completely understand how the Blueprint was created, and OSTP's intent regarding the adoption of this guidance by federal agencies, state and local governments, international standards bodies, and industry. We also request OSTP preserve all records and communications regarding the Blueprint.

Please provide written responses to the following questions no later than January 31, 2023.

1. Did OSTP coordinate with NIST in developing the Blueprint? If so, please detail when and in what manner such coordination occurred.
2. Did OSTP coordinate with the NAIAC in creating the Blueprint? If so, please detail when and in what manner such coordination occurred.
3. Did OSTP conduct an iterative multi-stakeholder process to develop the Blueprint? If so, please detail that process. If not, why not?
4. On October 8, 2021, OSTP released its Request for Information ("RFI") regarding the Blueprint. The RFI solely mentioned the use of AI in biometrics.⁷ Please provide the information and resources OSTP relied upon in developing the Blueprint outside the context of biometrics, including any written responses OSTP received outside the scope of biometrics.
5. Please provide a list of each of the solicitations for public comment that helped inform the Blueprint beyond the RFI on October 8, 2021.
6. Please describe the extent to which OSTP coordinated with any other federal agencies while developing the Blueprint. Is OSTP aware of any federal agency incorporating, or planning to incorporate, any of the Blueprint's guidelines into any AI-related recommendations currently being developed? If so, please list the agencies.

⁶ *Unpacking the White House blueprint for an AI Bill of Rights*, BROOKINGS.EDU, (Dec. 5, 2022), available at <https://www.brookings.edu/events/unpacking-the-white-house-blueprint-for-an-ai-bill-of-rights/>.

⁷ Notice of Request for Information (RFI) on Public and Private Sector Uses of Biometric Technologies, 86 Fed. Reg. 56300 (Oct. 8, 2021).

7. OSTP describes the Blueprint as “non-binding” and notes it “does not constitute U.S. government policy.”⁸ Does OSTP intend to promote this Blueprint as a model for federal agencies, state, or local governments? If so, how?
8. Did OSTP consult with OMB when developing the Blueprint? If so, please detail when and in what manner such consultation occurred.
9. Does the Administration regard the Blueprint as meeting the statutory requirement for OMB to issue AI guidance to federal agencies pursuant to the *AI in Government Act*?⁹
 - a. If not, does the Administration consider Executive Order 13960¹⁰ to be the required guidance?
 - b. If not, does OSTP know when OMB plans to issue the guidance?
10. The Blueprint conflicts with the draft NIST Framework in numerous instances. For example, the Blueprint adopts a different definition of AI and different principles on trustworthy AI. How should Congress and the private sector interpret such conflicts?
11. The Blueprint relies in part on third-party audits to “ensure systems continue to be accountable and valid.”¹¹ However, unlike third-party privacy or cybersecurity audits, technical standards for third-party AI audits remain underdeveloped and are not widely accepted. What mechanism does OSTP intend for stakeholders to consider to “ensure systems continue to be accountable and valid” in the absence of consensus-driven, uniform, third-party AI auditing standards?
12. Although the NIST draft Framework classifies protection of intellectual property as a security consideration in the design, development, and deployment of AI, the Blueprint suggests adopting “limited waivers of confidentiality,”¹² which would extend to trade secrets, in the interest of oversight. Did OSTP consider this discrepancy in the creation of the Blueprint, and how does OSTP expect to resolve this conflict?
13. Does OSTP intend to solicit additional feedback on the Blueprint and incorporate stakeholder comments into a revised draft? If not, why not? If so, when should stakeholders expect that process to begin?
14. Please provide a list of stakeholders who reviewed the Blueprint prior its release, and any feedback OSTP received from stakeholders before release.

⁸*Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People*, WHITEHOUSE.GOV, (October 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>, pg. 2

⁹ Consolidated Appropriations Act, 2021. P.L. 116-260, (DIVISION U, SEC. 101).

¹⁰ Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government, E.O. 13960, (Dec. 3, 2020).

¹¹ Supra note 5, pg. 20.

¹² Supra note 5, pg. 51.

15. The Blueprint has been mentioned in international documents, including the joint statement between the U.S.-EU of the Trade and Technology Council on May 16, 2022.¹³ As the Blueprint does not represent international policy,¹⁴ please provide context on how OSTP and the Administration are discussing the Blueprint in international meetings and settings.
16. Please describe any policy goals OSTP had in mind when releasing the Blueprint. Is it the intent of the Administration to endorse the Blueprint as the position of the White House regarding AI legislation and policy? Is OSTP planning to use the Blueprint as a model to propose draft legislation or direct federal agencies to conduct rulemaking?
17. Please describe in detail any plans that OSTP has to promote the NIST AI Risk Management Framework before, during, and following its release. Additionally, please provide the Committees regular updates on these planned events and activities.

Thank you for your attention to this matter. We look forward to working with OSTP and the Administration on AI policy.

Sincerely,



Frank D. Lucas
Chairman
Committee on Science, Space, and Technology



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Zoe Lofgren, Ranking Member, Committee on Science, Space, and Technology

The Honorable Jamie Raskin, Ranking Member, Committee on Oversight and Accountability

¹³ U.S.-EU Joint Statement of the Trade and Technology Council, WHITEHOUSE.GOV, (October 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/05/TTC-US-text-Final-May-14.pdf>, pg. 9

¹⁴ Supra note 5, pg. 2