December 5, 2023

Shalanda Young, Director
Executive Office of the President
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

RE: **ADVANCING GOVERNANCE, INNOVATION, AND RISK MANAGEMENT FOR AGENCY USE OF ARTIFICIAL INTELLIGENCE**

Dear Director Young,

The American Association of People with Disabilities (AAPD) is grateful for the opportunity to provide feedback on the Proposed Memorandum for the Heads of Executive Departments and Agencies on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence.

AAPD works to increase the political and economic power of people with disabilities. As a national disability-led and cross-disability rights organization, AAPD advocates for full civil rights for more than 60 million Americans with disabilities. We do this by promoting equal opportunity, economic power, independent living, and political participation. Since 1995, AAPD has worked tirelessly alongside disability advocates, government agencies, and corporate and nonprofit partners to advance the goals of the Americans with Disabilities Act (ADA) and to ensure that all Americans can benefit equally from the transformative power of technology.

AAPD applauds OMB's efforts to ensure that all federal agencies utilizing Artificial Intelligence (AI) do so in a way that complies with all relevant federal nondiscrimination and civil rights law. While AI has the potential to be a great tool for improving the way government agencies serve the public, it is critical that steps are taken to prevent the introduction of discriminatory prejudices and biases into AI platforms that then inform government hiring, procurement, and program administration.

AAPD firmly believes that efforts to utilize, manage, and govern the use of AI within the federal government should complement existing efforts for the federal government to be a model employer of people with disabilities and to advance diversity, equity, inclusion, and accessibility. It is in this spirit that AAPD strongly recommends that efforts to promote further innovation, governance and management of AI not only focus on minimizing harm and bias but strive to promote greater equity. Truly the most innovative technology is technology that improves

processes and makes systems more efficient and accessible while also creating opportunities and expanding what is possible for all Americans. People with disabilities have first-hand experience with technology that has the potential to promote equity. Remote work, more widely available captioning, and accessible design of the physical and virtual environments have all greatly expanded what's possible within education, employment, and community integration for disabled people. The same can be true for AI, especially if the federal government uses this pivotal moment not only to ensure these tools do not increase disparities where such disparities already exist but also use AI innovation, management, and governance to address long-standing inequities within federal agencies and government program administration.

With this goal in mind, AAPD strongly recommends that agencies and their CAIOs should hire or engage the expertise of disabled people with significant knowledge in disability rights and civil rights. A CAIO, and accompanying team, with an appreciation of the importance of the need for rights-based protections will enable the agency to identify how different AI systems impact disabled people. Further, disabled people most negatively impacted by AI systems are multiply-marginalized and have identities that often include other protected characteristics, for example disabled people of color and disabled women. Therefore, it is essential that staff working on innovation, governance, management, and assessment of AI tools understand the ways in which civil rights protections, and the very discrimination they seek to protect against, overlap and support one another. According to data from the National Science Foundation, people with disabilities are underrepresented in science, technology, engineering, and mathematics (STEM) fields. An explicit emphasis on disabled talent within efforts to build the federal government's AI workforce could not only begin to shift this broader employment trend, it could also catalyze the development of more inclusive and accessible STEM education within postsecondary and secondary schools. Given the rapidly evolving landscape of artificial intelligence, the federal government should use the tools already at its disposal to fill critical positions. This includes using the existing Schedule A hiring authority to hire qualified candidates and pulling job candidates from databases like the Workforce Recruitment Program.

In addition to advancing equity in hiring, the federal government must use this opportunity to promote the development of accessible technology. Recent research from WebAIM revealed that only about 3% of the top million webpages were fully compliant with the web content accessibility guidelines 2.0. It is essential that the accessibility of AI tools be a part of the values frameworks that define risk mitigation, governance, and innovation. Even with the most rigorous governance and bias mitigation strategies in place, risks and potential rights violations will persist from the very start if the tool is inaccessible.

In addition to this broad feedback, AAPD is pleased to offer feedback to OMB on the following questions:

1. The composition of Federal agencies varies significantly in ways that will shape the way they approach governance. An overarching Federal policy must account for differences in

an agency's size, organization, budget, mission, organic AI talent, and more. Are the roles, responsibilities, seniority, position, and reporting structures outlined for Chief AI Officers sufficiently flexible and achievable for the breadth of covered agencies?

While federal agencies' structures and resources vary greatly, all agencies have obligations to comply with Section 508 of the Rehabilitation Act (508) and make their electronic information and technology accessible to people with disabilities. Agencies of a range of sizes and a diversity of missions have 508 Coordinators otherwise known as IT Accessibility Program Managers. The work done to promote 508 compliance could serve as a roadmap for the ways agencies approach AI governance. The General Services Administration has developed a host of resources and technical assistance offerings that agencies can use when setting up or enhancing their 508 program, and a similar model could be used here. AAPD recommends that GSA staff with expertise in 508 coordination as well as leading 508 coordinators be consulted by entities like OMB and the White House as they work to provide guidance on AI governance.

2. What types of coordination mechanisms, either in the public or private sector, would be particularly effective for agencies to model in their establishment of an AI Governance Body? What are the benefits or drawbacks to having agencies establish a new body to perform AI governance versus updating the scope of an existing group (for example, agency bodies focused on privacy, IT, or data)?

AAPD recommends that agencies integrate AI governance into the scope of existing agency bodies focused on privacy, IT, data, and specifically IT accessibility. As referenced previously, Building on this agency knowledge of 508 implementation and coordination, when it exists, should be leveraged by the CAIO to understand the critical role accessibility plays in making certain AI tools can be used effectively by all disabled people. The establishment of a new body to enhance AI governance may also have benefits. Agency advisory committees comprised of external partners can be formed to support and complement the work done by federal agencies. These committees could be used to bring in expert perspective when such perspectives are limited within the federal government. Similarly, advisory committees of external partners can be formed to focus explicitly on specific topics, such as AI innovation in accessible transportation, while agency staff manage broader AI use and governance. When federal advisory committees are formed, careful consideration should be given to including disability rights expertise alongside other civil rights experts asked to serve in such a role.

3. How can OMB best advance responsible AI innovation?

Given the limitations of existing data sets and their reflection of the historic exclusion, segregation, and institutionalization experienced by people with disabilities, disabled people are often not accurately accounted for in data sets.. Without appropriate representation of disabled people in these data, AI tools can not be trusted to make accurate predictions about this population. Even when people with disabilities are included in data sets, users of AI tools must be mindful of how deeply rooted ableism is in our society today. Further, disabled people most

negatively impacted by AI systems are multiply-marginalized and have identities that often include other protected characteristics, for example, disabled people of color and disabled women and are even less represented in data sets than people with disabilities generally.

An additional complication comes from the heterogeneity of disability. There are currently at least 61 million disabled people in the United States, and this number grows daily. This group is comprised of people with developmental disabilities, intellectual disabilities, mobility disabilities, sensory disabilities, chronic health conditions, psychiatric disabilities. Even people with similar disability types have vastly different experiences and needs making a truly representative and informed data set difficult to attain. Many disabling conditions, such as rare diseases, occur small in number, making it even more difficult for AI systems to reflect the experiences of these people accurately. Often, different populations of disabled people do not have shared characteristics but are still bound together by the common experience of discrimination. For the OMB to best advance responsible AI innovation, it should require agencies to develop disability inclusion strategies with particular attention paid to including data on individuals with multiple marginalized identities to improve how AI tools perform.

The OMB guidance does a good job of requiring agencies to identify and discontinue using AI systems known to discriminate against populations with protected characteristics. Still, the government must improve the quality of the data it uses to harness the potential of these data-driven tools. Without taking affirmative steps to address the lack of representation in the data, the discrimination caused by these tools will continue to go unchecked, and disability and other groups under-represented in the data will continue to be left behind as the use of AI tools grows at a rapid pace.

5. Are there use cases for presumed safety-impacting and rights-impacting AI (Section 5 (b)) that should be included, removed, or revised? If so, why?

5(b)ii includes those areas where AI systems are known to compromise the rights of those in our society who have experienced a history of discrimination, which manifests in some of the AI tools federal agencies use. OMB is right to require agencies to stop using or revise these systems. Additionally, AAPD recommends that clarity be added to item i. B. of the safety impacting purposes to include human movements spurred by AI (such as a prompt generated by an AI tool) that may be broader than human robot teaming. AAPD also recommends noise emittance or sonic waves be added as a safety impacting purpose. This could be included in item i. C. or as a standalone item within the list. AAPD strongly suggests that the assessment of the accessibility of tools, services, designs for both physical and virtual environments, and communications be included in the list of purposes that are both safety and rights-impacting.

Within the list of purposes that are presumed to be rights-impacting, AAPD recommends the following changes and additions:

- Add to ii. D. intelligence and competency

- Add to ii G. workplace accommodations and supports as well as professional development
- Add a new item to address Decisions regarding institutionalization or placement into restrictive settings this could also be incorporated into point ii H, however decisions surrounding institutionalization are not limited to healthcare settings.
- Add a new item address Recommendations or decisions about adult welfare, whether an adult needs to be under a guardianship or conservatorship, whether an adult can continue living independently in their home, or assessments of abuse and neglect

This list should be periodically updated as the development and deployment of AI tools grow, and we must remain vigilant in monitoring the impact on disabled people, as it is inherently difficult for these data-driven tools to make accurate predictions about their needs and experiences in this heterogeneous population.

8. What kind of information should be made public about agencies' use of AI in their annual use case inventory?

Agencies should provide public information about the AI tools they are using to support internal agency functions as well as administer external agency programs. In addition to a public disclosure of these tools, an explanation of the design steps taken to ensure the accessibility of the AI system should be provided to the public. This must include people who use a visual language like ASL to communicate. Public notice should be provided to all users so they know how to report problems with the accessibility of the AI system or concerns regarding the bias of the AI system.

Agencies must also provide a readily accessible way for members of the public to register concern about the agency's use of AI and request alternative tactics or tools be used.

Thank you again for the opportunity to provide comment on OMB's proposed memorandum on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence. If you have any questions about these comments, please contact Michael Lewis, Vice President of Policy at (540)447-9438 or mlewis@aapd.com or AAPD President and CEO Maria Town at mtown@aapd.com.

Sincerely,

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