



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

July 7, 2023

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Ms. Stacy Murphy
Deputy Chief Operations Officer and Security Officer
Office of Science and Technology Policy (OSTP)
Executive Office of the President
1650 Pennsylvania Avenue NW
Washington, DC 20504

RE: Docket No. 2023-11346, Request for Information; National Priorities for Artificial Intelligence, 88 Fed. Reg. 34,194 (May 26, 2023)

Dear Ms. Murphy:

On behalf of the Office of the Chair of the Administrative Conference of the United States (ACUS), I offer the following comments in response to the above-referenced request for information (RFI).

ACUS is an independent, executive-branch agency charged by statute with making recommendations to the President, federal agencies, Congress, and the Judicial Conference of the United States to promote efficiency, participation, and fairness in rulemaking, adjudication, investigation, and other administrative processes. Recommendations are adopted by a 101-member Assembly. Members include representatives of federal agencies, leading scholars in the fields of administrative law and government, members of the practicing bar, and other experts in administrative procedure (5 U.S.C. § 591). Recommendations are available at www.acus.gov.

As federal agencies increasingly consider how they can use artificial intelligence (AI) to carry out their administrative functions, ACUS has been at the forefront of examining how they can do so effectively and responsibly. In developing a National AI Strategy, the Biden-Harris Administration may wish to consult ACUS resources available at www.acus.gov/ai. Of particular relevance is [Statement #20, Agency Use of Artificial Intelligence](#), which provides a blueprint for agencies to use when adopting or modifying AI systems and developing practices and procedures for their use. Other recommendations address specific applications of AI in agency processes.

How can AI be used to improve interactions between people and their government? How can the federal government effectively and responsibly leverage AI to improve federal services and missions?

AI is changing how federal agencies engage with the public, manage internal- and external-facing processes, and allocate resources. Advances in AI hold out the promise of lowering the cost of completing government tasks and improving the quality, consistency, and predictability of agencies' decisions. As addressed by ACUS, AI can help agencies manage large

volumes of public comments received during rulemakings;¹ improve the operation of high-volume adjudication programs;² assure the quality of their decisions in individual adjudications;³ make guidance more accessible to those who need it through chatbots and virtual assistances;⁴ and keep their regulations clear, current, and accurate.⁵

At the same time, agencies' uses of AI also raise concerns about the full or partial displacement of human decision making and discretion. As Statement #20 discusses in greater detail, ACUS has identified nine issues agencies should consider, in order to minimize the risk of unforeseen problems involving AI systems and promote public trust in their practices and procedures. They are: (1) transparency, (2) the identification of harmful biases, (3) technical capacity, (4) the development or procurement of AI systems, (5) the collection and use of data, (6) the protection of personal privacy, (7) data security, (8) the full or partial displacement of human decision making and discretion, and (8) oversight of AI systems.

How should the United States address the challenges that AI-generated content poses to participatory policymaking?

ACUS was established, in part, to “promote more effective public participation . . . in the rulemaking process.” As its recommendations reflect, technological advances have had a deep impact on participatory policymaking, especially by expanding the public’s access to agencies’ online rulemaking dockets and making it easier for the public to comment on proposed rules. ACUS has encouraged these developments. At the same time, in recent high-profile rulemakings, members of the public have submitted comments in new ways or in numbers that can challenge agencies’ current approaches to processing these comments or managing their online rulemaking dockets. The widespread adoption of AI, especially generative AI, may intensify this trend.

In Executive Order 14,094, *Modernizing Regulatory Review*, President Biden directed the Administrator of the Office of Information and Regulatory Affairs to consider “guidance or tools to address mass comments, computer-generated comments (such as those generated through [AI]), and falsely attributed comments.” In a memorandum, Administrator Revesz encouraged agencies to consider ACUS [Recommendation 2021-1, *Managing Mass, Computer-Generated, and Falsely Attributed Comments*](#), which identifies options and best practices.

¹ Admin. Conf. of the U.S., [Recommendation 2021-1, *Managing Mass, Computer-Generated, and Falsely Attributed Comments*](#), 86 Fed. Reg. 36,075 (July 8, 2021).

² Admin. Conf. of the U.S., [Recommendation 2018-3, *Electronic Case Management in Federal Administrative Adjudication*](#), 83 Fed. Reg. 30,686 (June 29, 2018).

³ Admin. Conf. of the U.S., [Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*](#), 87 Fed. Reg. 1722 (Jan. 12, 2022).

⁴ Admin. Conf. of the U.S., [Recommendation 2022-3, *Automated Legal Guidance*](#), 87 Fed. Reg. 39,798 (July 5, 2022).

⁵ Admin. Conf. of the U.S., [Recommendation 2023-3, *Using Algorithmic Tools in Retrospective Review of Agency Rules*](#), 88 Fed. Reg. 42,681 (July 3, 2023).

How can the federal government work with the private sector to ensure that procured AI systems include protections to safeguard people's rights and safety?

Decisions about whether to obtain an AI system can involve important trade-offs. Creating AI tools within an agency might yield tools that are better tailored to the agency's particular tasks and policy goals. Obtaining AI systems from private developers, by contrast, might allow an agency to acquire more sophisticated tools than they could design on their own, access those tools sooner, and save some of the up-front costs associated with developing the technical capacity needed to design AI systems. When agencies use tools from external sources, however, they might have less control over the tools' design, development, and oversight.

Regardless, agencies have a responsibility to protect people's rights and safety, by protecting privacy with respect to personally identifiable information, ensuring that their data are secure, ensuring that AI systems are trained on those data in a secure manner, making forecasts based on those data in a secure way, and otherwise operating in a secure manner. Agencies must also identify and mitigate harmful biases in AI systems, by staying up-to-date on algorithmic fairness and other developments in AI, ensuring that personnel that reflect various disciplines and relevant perspectives inspect AI systems and their decisions for indications of harmful bias, testing AI systems in environments resembling the ones in which they will be used, and making use of internal and external processes for evaluating the risks of harmful bias in AI systems and for identifying such bias.

To accomplish these objectives, agencies should be transparent and develop evaluation and oversight mechanisms for their AI systems, both for initial approval of an AI system and for regular oversight of the system. Agencies should also establish protocols for regularly evaluating AI systems throughout the systems' lifespans. All of these best practices, of course, require that agencies build up their technical capacity—internally or by other means.

How can federal agencies use shared pools of resources, expertise, and lessons learned to better leverage AI in government?

Agencies must have adequate technical capacity to use AI effectively and responsibly, but they do not always need to reinvent the wheel. In many cases, agencies can learn from each other to determine whether particular AI applications are beneficial and how to implement them effectively and responsibly. Within the General Services Administration, for example, the 18F office routinely partners with government agencies to help them build and buy technologies. Similarly, the United States Digital Service within the Executive Office of the President has a staff of technologists whose job is to help agencies build better technological tools. While the two entities have different approaches—18F acts more like an information intermediary and the Digital Service serves as an alternative source for information technology contracts—both could aid agencies with obtaining, developing, and using different AI techniques.

ACUS also serves as a clearinghouse for resources and expertise. Responding to agencies' need for guidance and more information, ACUS has undertaken numerous projects on the subject. ACUS also established the *Roundtable on Artificial Intelligence in Federal Agencies*, which offers a forum for agency officials to exchange information and best practices for using AI

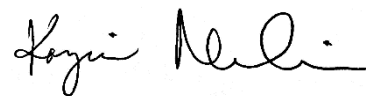
in rulemaking, adjudication, and other administrative processes. ACUS has hosted public forums on topics including government use of AI and technology-enabled public comments. And ACUS continues to work with policymakers and other experts inside and outside government to learn more and identify best practices for the effective and responsible use of AI by federal agencies.

ACUS's Office of the Chair thanks OSTP for the opportunity to provide comments to help update and inform U.S. national priorities and future actions on AI and welcomes any questions OSTP may have about ACUS materials on AI. Please have OSTP staff direct any questions to Kazia Nowacki, Attorney Advisor, at knowacki@acus.gov.

Sincerely,



Andrew Fois
Chair



Kazia Nowacki
Attorney Advisor

Resources: Statement #20, *Agency Use of Artificial Intelligence*, [86 Fed. Reg. 6616](#) (Jan. 22, 2021)
Recommendation 2021-1, *Managing Mass, Computer-Generated, and Falsely Attributed Comments*, [86 Fed. Reg. 36,075](#) (July 8, 2021)
Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, [87 Fed. Reg. 1722](#) (Jan. 12, 2022)
Recommendation 2022-3, *Automated Legal Guidance at Federal Agencies*, [87 Fed. Reg. 39,798](#) (July 5, 2022)
Recommendation 2023-3, *Using Algorithmic Tools in Retrospective Review of Agency Rules*, [88 Fed. Reg. 42,681](#) (July 3, 2023)

cc: Ms. Stephanie Tatham, ACUS Government Member
Office of Management and Budget

Mr. Tobias Dorsey, Liaison Representative to ACUS
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