

December 5, 2023

Clare Martorana
U.S. Federal Chief Information Officer and Administrator
Office of E-Government and Information Technology
Office of the Federal Chief Information Officer
Office of Management and Budget
Eisenhower Executive Office Building
17th Street and Pennsylvania Avenue, NW
Washington, DC 20504

Re: OMB–2023–0020; Request for Comments on Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence Draft Memorandum

Dear Administrator Martorana,

The American Council on Education (ACE) submits these comments in response to the “Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence Draft Memorandum.” This draft memorandum lays out the responsibilities of the federal agencies under recent legislation and the October 30, 2023, “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence” Executive Order in advancing “AI governance and innovation while managing risks from the use of AI, particularly those affecting the safety and rights of the public.”

ACE is the major coordinating body for the nation’s colleges and universities, representing over 1,600 colleges and universities, related associations, and other organizations in America and abroad. ACE is the only major higher education association to represent all types of U.S. accredited, degree-granting colleges and universities, public and private. Our members educate two out of every three postsecondary students attending accredited, degree-granting U.S. institutions. Given the diversity of our membership and the education mission of our members, our comments focus on the education-specific implications with an emphasis on the implementation of this memorandum at the U.S. Department of Education. We have also submitted comments to the United States Committee on Health, Education, Labor, and Pensions regarding the actions the committee and Congress may take regarding federal policy on AI in education.¹

Regarding this draft memorandum, OMB is requesting feedback on several specific questions. Below please find our responses.

Question #1 focuses on the creation and role of a Chief Artificial Intelligence Officer (CAIO). The draft memorandum states that the primary responsibility for a CAIO will be “coordinating

¹ <https://www.acenet.edu/Documents/Letter-Senate-AI-092023.pdf>

their agency’s use of AI, promoting AI innovation, managing risks from the use of AI, and carrying out the agency responsibilities.” For the U.S. Department of Education (ED), the CAIO will need to coordinate and work across the various offices within ED, including the office of Federal Student Aid (FSA), as well as the Office of Postsecondary Education (OPE). Therefore, the CAIO should be specifically charged with working across the various divisions at agencies, which at ED cover K-12, postsecondary, and vocational and technical education. This can be accomplished through the proposed Agency AI Governance Boards but will need to include representation across ED’s diverse divisions, as well as the relevant stakeholder communities. It will be important for the AI Governance Board at ED and other agencies to incorporate feedback and input from stakeholders as they move forward in creating and implementing AI policies and programs.

In regard to Question #4, about how agencies should take advantage of generative AI to improve agency missions or business operations, there are numerous ways AI could be used to improve customer service for federal student aid. These include identifying and granting public service loan forgiveness for qualified borrowers; identifying and working with qualifying individuals to apply for federal student aid (even before a Free Application for Federal Student Aid form is completed); and speeding up responses to inquiries for institutions and individuals at FSA. The development of a process in which a student, guided by an AI chatbot, is provided personalized information, directed to relevant resources, has questions answered, and receives prompts to initiate or complete various stages of their application process could have enormous benefits for low-income students, especially those with other external demands such as jobs or family responsibilities.

Question #5 asks if there are “use cases for presumed safety-impacting and rights-impacting AI” that should be included in the final memorandum. We are pleased that Section b (ii) “Purposes that are Presumed to be Right-Impacting” includes:

- E. In education, detecting student cheating or plagiarism, influencing admissions processes, monitoring students online or in virtual-reality, projecting student progress or outcomes, recommending disciplinary interventions, determining access to educational resources or programs, determining eligibility for student aid, or facilitating surveillance (whether online or in-person).

ED should work with the higher education community to provide guidance to institutions of higher education regarding these important issues, especially as it relates to eligibility for Title IV and other federal requirements on colleges and universities. It will be important for the ED Office for Civil Rights (OCR) to be involved in those conversations. In addition, institutions are exploring using AI to streamline, and in some cases remove, bias from some institutional processes, including the use of AI in the admissions process. In the admissions process, AI can perform initial screens of application materials to ensure that minimum requirements for admission are met before admissions personnel review them, saving countless hours of staff time. AI can also review large data sets, such as transcripts, that could reduce time and burden for institutions as part of complicated admissions decisions in areas such as transfer of credit. It will be important that any guidance coming from ED, or other agencies, does not limit or stifle innovation in these areas, which could result in discouraging first-generation and other under-represented students from pursuing postsecondary education.

To Question #7, what types of materials or resources would be most valuable to help agencies, as appropriate, incorporate the requirements and recommendations of this memorandum...”, the final memorandum from OMB should include directions, or at the very least encouragement, that agencies engage with the stakeholder community in developing and implementing policies and actions with AI. Specifically for ED, the higher education stakeholder community can share effective practices and institutional policies from a campus perspective, as well as providing input into how AI can be used to improve services at ED.

For question #8, “what kind of information should be made public about agencies’ use of AI in their annual use case inventory,” we believe it would be helpful to include information regarding whether AI had a substantial impact on speeding up responses to individual or institutional questions to ED, as well as how AI may be being applied beyond the Office of Federal Student Aid. For instance, if it is being used in the grant making process within OPE, or how it is being applied at FSA to support applications and disbursement of federal student aid.

We appreciate the proactive actions of OMB and the administration in encouraging the federal agencies to develop effective policies around AI. We look forward to continuing to engage with the administration on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Mitchell".

Ted Mitchell
President

Cc: Derrick Anderson, Senior Vice President, Education Futures