

RECOMMENDATIONS: Implementing the NIST AI RMF with a Rights-Respecting Approach

[The National Artificial Intelligence Advisory Committee \(NAIAC\)](#)

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RECOMMENDATIONS

Recommendation 1:

AI cannot be used in ways that violate civil rights. When applying the NIST AI RMF, federal agencies in areas implicating civil rights should therefore define the risk tolerance to meet that standard.

To the extent that the federal government plans to implement the NIST AI RMF, it needs to define its tolerance of risks as they may arise in particular use cases of AI. Given the fundamental, constitutive nature of civil rights to U.S. citizenship itself, any risk tolerance in areas potentially implicating people's civil rights must be set by agencies to an appropriate level to prioritize civil rights protections.

Pursuant to Title VI, agencies may not develop or fund AI systems that discriminate on the basis of race, color, or national origin, and many agencies are required to avoid discrimination on these and many other grounds in a wide set of contexts where AI may be deployed. Where the U.S. has the obligation to protect people's civil rights, e.g., in housing, criminal justice, employment, voting, and more, agencies defining their risk tolerance under the NIST AI RMF may adopt the best available technology (including, but not limited to, algorithms and data sets)¹ to minimize the risk of civil rights violations. Agencies may conclude, in certain cases, that the risk of civil rights violation is so substantial that the best available technology cannot meet their risk tolerance, and may elect to not use AI at all. A civil rights-protecting policy for AI also means that the federal government will use its enforcement powers to ensure that private actors are complying with federal civil rights laws.

Recommendation 2:

To operationalize a civil rights-protecting policy in applying the NIST AI RMF, federal agencies should first define what “algorithmic discrimination” and other automated system harms looks like within their jurisdiction.

To adopt a civil rights-protecting policy, federal agencies will need to define how algorithmic discrimination and similar harms manifest within their subject matter jurisdiction, offering particular examples and specific guidance. Agency guidance should accord with and build upon the Biden-Harris administration's definition of

¹ Frank Pasquale, “Data-Informed Duties in AI Development,” *Columbia Law Review*, vol. 119 (2019): 1917, https://columbialawreview.org/wp-content/uploads/2019/11/Pasquale-Data_informed_duties_in_AI_development.pdf.

“algorithmic discrimination.”² Similar to the April 2023 joint statement by the FTC, DOJ, EEOC, and CFPB on bias in automated systems,³ as well as the EEOC’s May 2023 Title VII guidance on AI,⁴ agencies need to define how AI and automated decision systems present risks to people’s civil rights in their specific jurisdictions, and they should offer guidance on how private actors can best mitigate those risks.

This Proposed Recommendation also supports the administration’s call for agencies to “prevent and remedy discrimination, including by protecting the public from algorithmic discrimination.”⁵

Recommendation 3:

After identifying how algorithmic discrimination arises within their jurisdiction, federal regulators must have the technical capacity to address and enforce against algorithmic discrimination and other AI harms.

In order to effectively execute a civil rights-protecting policy in the government’s application of the NIST AI RMF, agencies with regulatory authority pursuant to relevant civil rights statutes — e.g., the Civil Rights Act, Voting Rights Act, Fair Housing Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Equal Pay Act, and Americans with Disabilities Act — must have the technical capacity to affirmatively investigate algorithmic discrimination.

In addition to the increased budget and staffing necessary for effective enforcement,⁶ federal regulatory agencies should consider establishing a specialized office (within existing Offices of Civil Rights, where applicable) to support agency investigations and enforcement actions, policy and regulation, and public engagement relating to AI, automated decision systems, machine learning, and other technical systems. The FTC’s newly-launched Office of Technology is one potential model for these offices.⁷ They should be staffed by subject matter experts from a wide range of domain knowledge, including socio-technical researchers, ethicists, computer scientists, technologists, and lawyers.

² Executive Order 14091 of February 16, 2023, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” Code of Federal Regulations, title 3: 10825-10833,

<https://www.federalregister.gov/documents/2023/02/22/2023-03779/further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal>.

³ Lina Khan, “Joint Statement On Enforcement Efforts Against Discrimination And Bias In Automated Systems,” EEOC, CRT, FTC, and CFPB, April 25, 2023,

https://www.ftc.gov/system/files/ftc_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf.

⁴ “EEOC Releases New Resource on Artificial Intelligence and Title VII,” EEOC, May 18, 2023,

<https://www.eeoc.gov/newsroom/eeoc-releases-new-resource-artificial-intelligence-and-title-vii>.

⁵ Executive Order 14091, § 8(f).

⁶ Executive Order 14091, § 8(d).

⁷ “Office of Technology,” FTC, <https://www.ftc.gov/about-ftc/bureaus-offices/office-technology>.

CONTEXT

In its [Year 1 Report](#), NAIAC recommended that the White House, in order to “operationalize trustworthy AI governance,” “[s]upport public and private adoption of the NIST AI Risk Management Framework.” The Year 1 Report specifically recommended that the Biden-Harris administration “issue an executive order creating a pilot program directing at least three agencies to implement the AI RMF.

ABOUT NAIAC

The National Artificial Intelligence Advisory Committee (NAIAC) advises the President and the White House National AI Initiative Office (NAIIO) on the intersection of AI and innovation, competition, societal issues, the economy, law, international relations, and other areas that can and will be impacted by AI in the near and long term. Their work guides the U.S. government in leveraging AI in a uniquely American way — one that prioritizes democratic values and civil liberties, while also increasing opportunity.

NAIAC was established in April 2022 by the William M. (Mac) Thornberry National Defense Authorization Act. It first convened in May 2022. It consists of leading experts in AI across a wide range of domains, from industry to academia to civil society.

<https://www.ai.gov/naiac/>

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