



## **SIIA Submission to the National Telecommunications and Information Administration in Response to the AI Accountability Policy Request for Comment (RIN 0660-XC057)**

**June 12, 2023**

The Software & Information Industry Association (SIIA) appreciates the opportunity to provide feedback to the National Telecommunications and Information Administration (NTIA) on the Request for Comment on Artificial Intelligence (AI) Accountability Policy (the RFC).<sup>1</sup>

SIIA, a non-profit organization, is the principal trade association for the software and digital information industries. Our members include over 450 companies reflecting the broad and diverse landscape of digital content providers and users in academic publishing, education technology, and financial information, along with creators of software and platforms used by millions worldwide, and companies specializing in data analytics and information services. As the only association representing both those who develop and deploy these engines and those who create the information that feeds environments, SIIA is uniquely positioned to address questions around AI accountability and provide recommendations for the direction of U.S. policy that advances a values-based model of AI accountability.

Many of our members are thought leaders in advancing policies and procedures of responsible AI development and use. SIIA applauds NTIA for its focus on AI accountability – a cornerstone of responsible AI and AI innovation – and appreciates its thorough engagement with the vast literature on the increasingly important topic of AI accountability. We commend NTIA on identifying a robust set of essential questions that should be considered in developing and implementing AI accountability guidance and policy.

SIIA recommends that the administration view accountability and innovation as complementary, rather than oppositional, goals. Fostering greater AI accountability that is effective and tailored to the risks of AI systems will benefit U.S. innovation as a whole and raise the profile of the United States as a global leader in responsible AI.

Our submission begins by providing guidance on the definition and scope of AI accountability. We next provide thoughts on how the government can advance accountability through policy efforts, responding largely to questions 30-34 of the RFC. We believe that AI accountability requires the calibration of government-generated policy to the potential risks attendant to each AI system, and that such policy must establish guidelines for both the day-to-day operation of an AI system as well as its overall governance. Indeed, we cannot overemphasize the importance of this calibration, as accountability measures for an AI system

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<sup>1</sup> NTIA, AI Accountability Policy Request for Comment, RIN 0660–XC057 (Apr. 13, 2023) (<https://www.govinfo.gov/content/pkg/FR-2023-04-13/pdf/2023-07776.pdf>).

that presents a significant risk to an individual’s legal rights or to public safety, for example, should be more robust than an AI system used to filter spam or make movie recommendations. To this end, our submission advances an AI accountability policy blueprint that includes advancing government involvement in high-risk systems through sector-based guidance and oversight.

We conclude by addressing both the need for federal legislation that incorporates these elements, and how that legislation meshes with measures the U.S. government should undertake to advance AI accountability in the United States and internationally.

## **1. Defining and Scoping AI Accountability**

We believe that an agreed-upon definition of AI accountability is essential to the consistency, regulatory interoperability that fuels sound policy development and advances U.S. global leadership in this space.<sup>2</sup> As reflected in the sources relied on in this RFC, this term of art is subject to a variety of interpretations. The seeming lack of consensus makes policy development challenging. Is accountability the same as “trustworthy AI” or “responsible AI”? Does accountability include enforcement, liability, and redress?

The Organisation for Economic Cooperation and Development (OECD) AI Principles, adopted in 2019, have provided a foundation for efforts in the United States and globally to build concrete rules and guidelines for trustworthy AI. As stated in Principle 1.5, “Accountability,” “AI actors should be accountable for the proper functioning of AI systems and for the respect of the above principles, based on their roles, the context, and consistent with the state of art.”<sup>3</sup>

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<sup>2</sup> Accountability is a fundamental component of a larger set of policies and practices to advance trustworthy, responsible AI. See, e.g., NIST, Artificial Intelligence Risk Management Framework (AI RMF 1.0), NIST AI 100-1 (Jan. 2023), at 15 (<https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>).

<sup>3</sup> OECD, Recommendation of the Council on Artificial Intelligence, OECD/LEGAL/0449 (May 21, 2019) (<https://legalinstruments.oecd.org/en/instruments/oecd-legal-0449>). OECD interpretive guidance distinguishes “accountability” from the related concepts of “responsibility” and “liability” in clarifying that “‘accountability’ refers to the expectation that organisations or individuals will ensure the proper functioning, throughout their lifecycle, of the AI systems that they design, develop, operate or deploy, in accordance with their roles and applicable regulatory frameworks, and for demonstrating this through their actions and decision-making process (for example, by providing documentation on key decisions throughout the AI system lifecycle or conducting or allowing auditing where justified).” OECD.AI Policy Observatory, “Accountability (Principle 1.5)” (<https://oecd.ai/en/dashboards/ai-principles/P9>). Guidance released by the OECD in 2023 makes a slight change, focusing on the actor’s “ability to act” rather than the “state of the art” (“AI actors [should] be accountable for the proper functioning of their AI systems in accordance with their role, context, and ability to act”). OECD, “Advancing accountability in AI: Governing and managing risks throughout the lifecycle for trustworthy AI,” Digital Economy Paper No. 349 (2023) (<https://doi.org/10.1787/2448f04b-en>).



Recently, the U.S. government and European Union (EU), through the Trade & Technology Council (TTC) dialogue, issued a new definition of AI accountability that builds on the OECD Principles.<sup>4</sup> It states:

“Accountability relates to an allocated responsibility. The responsibility can be based on regulation or agreement or through assignment as part of delegation. In a systems context, accountability refers to systems and/or actions that can be traced uniquely to a given entity. In a governance context, accountability refers to the obligation of an individual or organisation to account for its activities, to complete a deliverable or task, to accept the responsibility for those activities, deliverables or tasks, and to disclose the results in a transparent manner.”<sup>5</sup>

We believe that the TTC definition ought to serve as the operating definition of AI accountability. The TTC definition reflects the correct view that AI accountability is concerned with both system-level performance and with governance structures relevant to the development and deployment of AI systems (consistent with the approach taken by the U.S. Government Accountability Office (GAO) in its seminal June 2019 report on AI accountability).<sup>6</sup> It helpfully suggests that the field of AI accountability should be concerned with how to create and implement policies and procedures that advance responsible AI and AI accountability at both the system and governance level. While, unlike the OECD Principles, the TTC definition is grounded in the concept of responsibility, we believe this evolution is appropriate given the significant work on responsible AI over the past four years.

Notably, the TTC definition does not suggest that the field of AI accountability should extend to issues around legal liability or redress for injuries associated with the functioning of an AI system. This scoping limitation is critical for policy development around AI accountability. Consistent with OECD guidance, liability and redress are topics that, while important, go beyond the scope of AI accountability and should be dealt with separately.

As NTIA develops its guidance for the President and executive branch policymakers, we encourage NTIA to rely on the TTC definition. This will provide policymakers with a clear definition of “AI accountability” to scope and guide policy development.

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<sup>4</sup> EU-U.S. Terminology and Taxonomy for Artificial Intelligence, 1<sup>st</sup> Ed. (May 31, 2023) (<https://digital-strategy.ec.europa.eu/en/library/eu-us-terminology-and-taxonomy-artificial-intelligence>). The terms agreed to are intended to reflect “shared technical, socio-technical and values-based understanding of AI systems.”

<sup>5</sup> *Id.* at 24.

<sup>6</sup> GAO, “Artificial Intelligence: An Accountability Framework for Federal Agencies and Other Entities,” GAO–21–519SP (June 30, 2021) (<https://www.gao.gov/products/gao-21-519sp.pdf>).



## 2. Shaping Government Policy on AI Accountability

SIIA has long supported efforts by the federal government to advance proactive AI policy efforts.<sup>7</sup> We have called for use-based guardrails and tailored requirements for those AI systems that are likely to carry the highest risk to safety and rights. Since at least 2016, we have made clear that a host of existing laws apply equally to uses of AI as to other activities but that gaps remain that require attention to address AI accountability.<sup>8</sup>

SIIA believes that AI accountability is critical to advance values-based technological innovation. Many SIIA members have proven to be leaders in the AI accountability space. We encourage the government to continue its support for private-sector driven accountability measures while advancing additional measures to promote accountability across the AI ecosystem – especially in high-risk AI systems. This includes cultivating expertise within government and working collaboratively with industry, civil society, and academia.

### a. **Reset the narrative.**

There is a general perception that the United States has no AI governance regulations that promote AI accountability – that the United States is essentially on the far end of a spectrum opposite the approach now under deliberation in the EU. We do not ascribe to this view. There are, however, several areas where policy guidance and, potentially, new legislation or regulation would be beneficial to advance AI accountability.

However, there is a rich legal framework in the United States that already provides a baseline for AI accountability. We have a wealth of sector-specific laws at the federal and state levels that bear on AI accountability even in the absence of a comprehensive federal privacy law. Title VII is technology-neutral, as is the Fairness in Lending Act and other authorities.<sup>9</sup> Employment discrimination and redlining remain illegal. Credit bureaus are required to maintain

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<sup>7</sup> See, e.g., SIIA, Comments on Artificial Intelligence Export Competitiveness Submitted to the International Trade Association (Oct. 17, 2022) (<https://www.sii.net/wp-content/uploads/2022/10/SIIA-Comments-to-ITA-2022-0007.pdf>); SIIA, Comments on Study to Advance a More Productive Tech Economy Submitted to NIST (Feb. 14, 2022) (<https://www.sii.net/wp-content/uploads/2022/02/SIIA-Submission-for-NIST-Emerging-Tech-Study.pdf>); SIIA, Comments on Public and Private Sector Uses of Biometric Technologies Submitted to OSTP (Jan. 14, 2022) (<https://www.sii.net/wp-content/uploads/2022/01/SIIA-Submission-on-OSTP-Biometrics-RFI.pdf>); SIIA, “Ethical Principles for Artificial Intelligence and Data Analytics” (Sept. 15, 2017) (<https://history.sii.net/Portals/0/pdf/Policy/Ethical%20Principles%20for%20Artificial%20Intelligence%20and%20Data%20Analytics%20SIIA%20Issue%20Brief.pdf?ver=2017-11-06-160346-990>); SIIA, “Algorithmic Fairness” (Sept. 22, 2016) (<https://history.sii.net/Portals/0/pdf/Policy/Algorithmic%20Fairness%20Issue%20Brief.pdf>).

<sup>8</sup> See *id.*

<sup>9</sup> See generally SIIA, “Algorithmic Fairness” (Sept. 22, 2016) at 8-9 (<https://history.sii.net/Portals/0/pdf/Policy/Algorithmic%20Fairness%20Issue%20Brief.pdf>).



“maximum possible accuracy,” and will be using AI to maintain it. Nonetheless, the government will need both internal expertise and external cooperation to understand and guide the development and deployment of AI systems under existing law. And where the technology’s use clearly presents a unique and unmistakable obstacle to longstanding policy goals, additional regulation may be appropriate.

**b. Advance best practices in AI accountability while preserving the innovation environment.**

It is critical that all AI systems conform with best practices for testing, evaluation, validation, and verification (TEVV) processes across the AI lifecycle.<sup>10</sup> This includes documentation, risk assessments, and transparency measures, where appropriate, in a manner that protects trade secrets and other intellectual property. Accountability measures such as these improve the performance of AI systems, empower their users, and help to establish trust in AI systems designed to address key needs across our society.

As mentioned above, we view AI accountability as *complementary* to innovation, and many of our members at the forefront of AI have been leaders in advancing AI accountability practices.<sup>11</sup> The reason is simple: AI that generates the most accurate information, limits unintentional bias, and builds on reliable data will be most useful to governments, businesses, and consumers. SIIA members have developed internal governance and systems oversight procedures to advance accountability and mitigate the potential for unintended bias and other risks.

For most AI systems, self-assessments and increased transparency measures will provide the necessary accountability while avoiding undue burden on innovation and small and midsize businesses. While there is no doubt further work that must be done on AI accountability measures, there is growing consensus that accountability should reflect the need for a context-specific and risk-based assessment of AI systems and practices. In contrast, one-size-fits-all mandated accountability measures, including external audits and government pre-market approval, will create barriers that impede societal goals of advancing productive uses of AI and furthering U.S. innovation.

A robust literature on AI accountability has developed in the past several years as public, private, and academic research has proliferated. This literature provides a rich toolbox of systems and governance solutions to advance AI accountability. We are particularly pleased to

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<sup>10</sup> See, e.g., NIST AI RMF 1.0 at 9-10.

<sup>11</sup> See, e.g., Google, “A Policy Agenda for Responsible Progress in Artificial Intelligence” (May 2023) (<https://storage.googleapis.com/gweb-uniblog-publish-prod/do>); Meta, “Facebook’s five pillars of Responsible AI” (June 2021) (<https://ai.facebook.com/blog/facebook-five-pillars-of-responsible-ai/>); RELX, “Responsible Artificial Intelligence Principles at RELX” ([relx-responsible-ai-principles-0622.pdf](https://relx-responsible-ai-principles-0622.pdf)); Adobe, “Adobe’s Commitment to AI Ethics” (<https://www.adobe.com/content/dam/cc/en/ai-ethics/pdfs/Adobe-AI-Ethics-Principles.pdf>).



see deep engagement by government agencies.<sup>12</sup> In June 2021, for example, the Government Accountability Office (GAO) issued a seminal report, *Artificial Intelligence: An Accountability Framework for Federal Agencies and Other Entities*.<sup>13</sup> The GAO report provides a framework for accountability across four axes – governance, data, performance, and monitoring. More significantly, in January 2023, following an 18-month multi-stakeholder process, the National Institute of Standards and Technology (NIST) issued the first version of its AI Risk Management Framework (AI RMF).<sup>14</sup>

The NIST AI RMF reflects the most comprehensive framework by the U.S. government (and perhaps anywhere in the world) for identifying, assessing, and mitigating risks. It is the culmination of a multi-stakeholder, expert-driven, and transparent 18-month process. The RMF, the NIST AI Roadmap, and other resources at NIST’s Trustworthy & Responsible AI Center provide guidance on AI accountability measures. The value of these resources will only increase as NIST finalizes AI RMF Profiles based on key use cases.<sup>15</sup>

The work completed so far is hardly the end of the story, and there is much more to do to advance AI accountability measures around TEVV and the build-out of use-case profiles. However, NIST—as a non-regulatory agency grounded in science, expertise, and non-partisanship—is well positioned to continue to serve as a focal point for guidance on AI accountability and the value of different measures to address risks associated with the uses of different types of AI systems. We encourage NTIA to look at the NIST AI RMF and the broader work NIST is undertaking as the cornerstone of U.S. policy efforts to advance AI accountability.

Also critical to the foundation of robust AI accountability policy and guidance is the work of international technical standards organizations. Critical will be the forthcoming issuance of Standard 42001 (expected in August 2023) by Subcommittee 42 (SC 42) of Joint Technical Committee 1 of the International Organization for Standardization/International Electrotechnical Commission, which will provide technical standards for management of AI

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<sup>12</sup> See, e.g., NIST AI RMF 1.0; White House Office of Science and Technology Policy, “Blueprint for an AI Bill of Rights” (Oct. 2022) (<https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>); National Security Commission on Artificial Intelligence, “Key Considerations” (Apr. 2021) (<https://www.nscai.gov/wp-content/uploads/2021/07/Formatted-Key-Considerations.pdf>); see also UK Dept. for Science, Innovation & Tech., “A pro-innovation approach to AI regulation” (Mar. 29, 2023) (<https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper>).

<sup>13</sup> U.S. Government Accountability Office, “Artificial Intelligence: An Accountability Framework for Federal Agencies and Other Entities,” GAO–21–519SP (June 30, 2021) (<https://www.gao.gov/products/gao-21-519sp.pdf>).

<sup>14</sup> See NIST AI RMF 1.0.

<sup>15</sup> NIST, Trustworthy & Responsible AI Resource Center, “AI RMF Profiles” ([https://airc.nist.gov/AI\\_RM\\_F\\_Knowledge\\_Base/AI\\_RM\\_F/Core\\_And\\_Profiles/6-sec-profile](https://airc.nist.gov/AI_RM_F_Knowledge_Base/AI_RM_F/Core_And_Profiles/6-sec-profile)).



systems.<sup>16</sup> SC 42 has served as a focal point for developing international technical standards for AI systems in the areas of accountability, data quality, and governance.<sup>17</sup>

Lastly, we recommend attention to best practices that are being developed and improved in the private sector. We encourage the White House to use its unique convening power to convene experts from business, civil society, and academia to work towards best practices in AI accountability. We are pleased to see renewed engagement on this front. Development of a voluntary code of conduct could be a productive way to ensure that all entities in the private sector agree to baseline standards for AI accountability.

### **c. Apply a risk-based approach to scope AI accountability measures**

While SIIA supports the U.S. government’s role in advancing foundational policy measures to improve AI accountability, we recognize that, for the majority of AI systems, legislation or regulation would do more harm than good. It is critical for even low-risk AI systems to be developed and used responsibly, yet vague, overbroad, or unnecessarily burdensome regulations will inevitably hinder AI firms from innovating and render them incapable of keeping pace with foreign competitors, prevent small and midsize firms from competing with large technology companies, and hurt the ability of Americans to access technology that may positively impact their daily lives.

A growing consensus in the United States and the global AI policy community supports a risk-based approach to AI accountability to focus limited public resources, minimize compliance costs—especially on small and medium-sized businesses—and avoid stifling innovation. There is, however, no one-size-fits-all solution to address these systems and uses. Accountability measures should be grounded in the types of AI systems and should be proportionate to the potential risks associated with each system or the intended uses of those systems.

We encourage the U.S. government to take steps to develop and implement guardrails – beyond best practices – for high-risk systems and high-risk uses of AI. Yet determining what AI systems should be considered high-risk and what applications of non-high-risk systems should require further regulation is not well established. We believe that these two questions should be aligned, in most circumstances, and based on how AI systems are intended to be used.

In identifying high-risk AI systems as a threshold for supplemental AI accountability measures, such as more thorough assessments, transparency reports, and audits, the federal government should lean heavily on work already undertaken and in progress at NIST. However,

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<sup>16</sup> ISO/IEC JTC 1/SC 42, Artificial Intelligence Standards (<https://www.iso.org/committee/6794475/x/catalogue/p/0/u/1/w/0/d/0>).

<sup>17</sup> SC 42 is among several international technical standards organizations pursuing aligned approaches for AI management. In addition, organizations like the General Partnership on AI (<https://gpai.ai/>) are critical to advancing alignment reflecting multi-stakeholder approaches that will inform domestic and international alignment on AI development and use.

the NIST AI RMF does not define “high risk” and the proposed EU Artificial Intelligence Act, which would impose a regulatory regime on “high risk” systems, defines that term through a list of categories that are presumptively high risk.<sup>18</sup> As SIIA has explained to the EU, that broad-brush approach will necessarily lead to requirements on AI systems that fall within “high risk” categories but have a limited risk profile.<sup>19</sup>

We recommend endorsing a definition of “high risk” that would be calibrated, as described below, by agencies with the expertise and experience to oversee high risk systems and uses in different sectors. Google recently proposed a definition that we view as a good starting point: “Define ‘high-risk systems’ as those intended for use in applications that pose a material risk of significantly harming people or property or imperiling access to essential services.”<sup>20</sup>

#### **d. Cultivate Sector-Based Oversight of High-Risk AI Systems and Targeted Use-Based Restrictions**

Recognizing NTIA’s interest in identifying government policies that may go beyond encouraging voluntary measures, we strongly recommend a sector-based approach that delegates to the appropriate agencies the authority to identify the right mix of accountability measures that should apply to high-risk AI systems in those domains.

Accountability measures must be tailored to the specific AI systems at issue and the intended uses of those systems. This requires an understanding of how technology is and can be used in particular sectors, as well as expertise to undertake necessary oversight activities. In addition, it is the experts within each sector who can best provide tailored guidelines to determine which systems used in that sector should be considered high risk. Indeed, not every use of AI in the educational context will meet the definition of high-risk, even if as a general matter education is one of several areas that warrant extra care.

To identify relevant agencies, we recommend looking to the focus categories identified by Office of Science and Technology Policy (OSTP) in its Blueprint for an AI Bill of Rights, which highlights employment, education, housing, access to financial services, and criminal justice, as

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<sup>18</sup> European Commission, Proposal for an Artificial Intelligence Act (Apr. 2021), at Annex III (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0206>).

<sup>19</sup> SIIA and European EdTech Alliance, Letter to B. Benifei and D. Tudorache (Feb. 9, 2023) (<https://www.siiia.net/wp-content/uploads/2023/02/SIIA-and-EEA-Letter-on-EU-AI-Act-9-Feb-2023.pdf>).

<sup>20</sup> Google, “A Policy Agenda for Responsible Progress in Artificial Intelligence” (May 2023), at 10 (<https://storage.googleapis.com/gweb-uniblog-publish-prod/do>).





well several bills introduced in Congress during the past two sessions, which highlight those areas as well as essential utilities, transportation, public benefits, and immigration.<sup>21</sup>

Several U.S. agencies have already begun to carry out exactly this sort of approach to AI accountability. The Food and Drug Administration (FDA) currently undertakes a regulatory review of AI/ML-enabled medical devices and requires that those devices be reviewed and authorized before they can be marketed.<sup>22</sup> The Federal Reserve, as the RFC notes, along with other financial regulators, have provided guidance on financial institutions' use of AI.<sup>23</sup> The EEOC is undertaking a process to provide accountability requirements to mitigate the potential for AI-based discrimination and bias.<sup>24</sup> And recently, the Department of Education issued recommendations on the use of AI for education and teaching.<sup>25</sup> Of these, the FDA model provides perhaps the most robust process to date for government oversight of high-risk AI systems.

We recommend increased attention to and expansion on this sector-based work for high-risk systems. AI accountability measures must be tailored to the AI systems at issue, focused on how those systems will be used and the risks attendant with use of systems in particular contexts. Agencies with oversight and regulatory responsibility for sectors most likely to involve high-risk AI systems should take the lead on identifying the appropriate accountability mechanisms. Balancing interests of transparency, accuracy, privacy, protection of individual rights, trade secret protection, and security will be essential to fashion the right approach to

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<sup>21</sup> See, e.g., S. 1865, Transparent Automated Governance Act (118th Cong.) (<https://www.congress.gov/bill/118th-congress/senate-bill/1865/text>) (identifying as a “critical decision” one that “meaningfully affects access to, or the cost, terms, or availability of” educational and vocational training, employment, essential utilities, transportation, public benefits, financial services, asylum and immigration services, healthcare, and housing).

<sup>22</sup> U.S. Food & Drug Admin., “Software as a Medical Device” (<https://www.fda.gov/medical-devices/digital-health-center-excellence/software-medical-device-samd>).

<sup>23</sup> See Board of Governors of the Federal Reserve System, Supervisory Guidance on Model Risk Management, Federal Reserve SR Letter 11–7 (Apr. 4, 2011) (<https://www.federalreserve.gov/supervisionreg/srletters/sr1107.htm>); U.S. Dept. of Treasury, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Bureau of Consumer Financial Protection, and National Credit Union Administration, Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning, 86 FR 16837 (Mar. 31, 2021) (<https://www.govinfo.gov/content/pkg/FR-2021-03-31/pdf/2021-06607.pdf>).

<sup>24</sup> U.S. Dept. of Justice, Consumer Financial Protection Board, Federal Trade Comm., Equal Employment Opp'y Comm., “Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems” (Apr. 25, 2023) ([https://www.ftc.gov/system/files/ftc\\_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf)).

<sup>25</sup> U.S. Dept. of Ed., Off. of Ed. Tech., “Artificial Intelligence and the Future of Teaching and Learning” (May 2023) (<https://www2.ed.gov/documents/ai-report/ai-report.pdf>).



accountability – and it’s the agencies closest to the AI systems’ uses that will be best positioned to identify the goals to balance.

Agencies should also undertake an assessment of whether there is a need for targeted use-based restrictions relating to high-risk AI systems. Such an assessment should evaluate the need for additional authorities, if any, to develop rules to guide how high-risk AI systems may be used.

We are encouraged by the ongoing NIST effort to create AI Profiles by sector and use and believe this effort will be instructive in identifying sectors most likely to have high-risk AI systems that warrant more proactive government guidance or action.

**e. Ensure Interagency Coordination of AI Accountability Oversight**

We recommend that the U.S. government identify an appropriate office or agency to oversee and coordinate activity across the Executive Branch. We recommend that this function be embedded in the National Artificial Intelligence Initiative Office (NAIIO), which is part of the Office of Science and Technology and the White House. NAIIO is best positioned to coordinate across federal agencies, address cross-cutting matters, provide guidance on implementing Administration policy, and liaise with the private sector and civil society. We are concerned that NAIIO is not sufficiently resourced to carry out this oversight function. We encourage the Administration to ensure that NAIIO has adequate funding and staff to lead U.S. government efforts on AI accountability.

**f. The Need for a Federal Law**

SIIA believes that there could be value in a federal law that provides a baseline structure for advancing AI accountability in line with the above guidance. The law would define “high-risk AI systems,” identify agencies with responsibility for building out targeted requirements for accountability in high-risk AI systems (and, if appropriate, developing targeted use-based restrictions), identify a central body to coordinate across the interagency, and codify NIST’s role in guiding the development of sector-based regulations. As noted above, a federal law along these contours should also direct agencies to undertake an assessment of existing authorities that cover important risks relating to the use of high-risk AI systems.<sup>26</sup>

Any federal law around AI accountability should preempt state law. States have been active in considering legislation that would mandate accountability measures for AI systems. As we have seen in the context of consumer privacy, where there is no comprehensive federal law, a patchwork of divergent state requirements has created challenges for industry, increased compliance costs, and increased uncertainty among consumers. AI is used in countless applications across the country and a patchwork of legal and policy frameworks will undermine public trust, suppress innovation, and hurt U.S. leadership on AI governance.

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<sup>26</sup> See *supra* note 24.



We note that most of the measures outlined in this submission could be accomplished without new legislation. However, agencies must have resources sufficient to upskill and hire qualified personnel to oversee AI accountability efforts. This will require congressional appropriations. We encourage the Administration to work collaboratively with Congress to secure necessary funding for agencies to advance AI accountability measures.

### **3. Advance innovation in AI accountability**

Further to the issue of resourcing, SIIA believes the United States cannot continue to be a leader in responsible AI without providing the necessary resources to support responsible innovation and advance the state of the art on AI accountability.

We encourage the government to support innovation in AI accountability by increasing funding for important initiatives. This includes funding NIST, the Department of Energy’s Science Division, and the National Science Foundation in accordance with the programs authorized in the CHIPS and Science Act. It also includes ensuring that NIST has adequate funds to continue to advance its work on the AI RMF. In addition, we encourage the government to fully fund the programs set out in the National AI Research Resource (NAIRR) Task Force report issued earlier this year.<sup>27</sup> The government can also lead the way in creating AI accountability certification programs to train personnel to augment the federal workforce.

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<sup>27</sup> National Artificial Intelligence Research Resource Task Force, “Strengthening and Democratizing the U.S. Artificial Intelligence Innovation Ecosystem” (Jan. 2023) (<https://www.ai.gov/wp-content/uploads/2023/01/NAIRR-TF-Final-Report-2023>).



#### **4. The U.S. Should Lead Internationally on AI Accountability**

In response to question 34, SIIA believes it is critical that AI accountability requirements and practices be aligned to a significant degree across international jurisdictions. SIIA has in the past recommended that officials in the United States and other countries develop guiding principles or standards to implement risk-based approaches to AI systems. These would explicitly build on the substantial work already undertaken on accountability to include measures around safety, security, trustworthiness, and bias.<sup>28</sup> Harmonization of requirements across jurisdictions will aid not only innovation in general but also the advancement of concrete guidelines for values-based AI. We are supportive of work underway at the OECD, within the TTC, and as part of the G7's new Hiroshima Process. We recommend that NTIA encourage this work to continue with a focus on high-risk systems in core areas.

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SIIA thanks NTIA for considering our views on AI accountability. We look forward to continuing engagement with NTIA as it develops its policy recommendations for the Administration.

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<sup>28</sup> See, e.g., SIIA, Comments on Artificial Intelligence Export Competitiveness Submitted to the International Trade Association (Oct. 17, 2022) (<https://www.siaa.net/wp-content/uploads/2022/10/SIIA-Comments-to-ITA-2022-0007.pdf>).

