

# OMB issues first Trump 2.0-era requirements for federal agency AI procurement, use

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On April 3, the White House Office of Management and Budget ("OMB") released two memoranda with AI guidance and requirements for federal agencies, Memorandum M-25-21 (<https://bit.ly/42yUn0S>) on *Accelerating Federal Use of AI through Innovation, Governance, and Public Trust* ("OMB AI Use Memo") and Memorandum M-25-22 (<https://bit.ly/3RVWDdG>) on *Driving Efficient Acquisition of Artificial Intelligence in Government* ("OMB AI Procurement Memo").

According to the White House's fact sheet (<https://bit.ly/4jzOyqT>), the OMB AI Use and AI Procurement Memos (collectively, the "new OMB AI Memos"), which rescind and replace OMB memos on AI use (<https://bit.ly/3Y0uhmd>) and procurement (<https://bit.ly/4jfsa6G>) issued under President Biden's Executive Order 14110 ("Biden OMB AI Memos," <https://bit.ly/4himYOn>), shift U.S. AI policy to a "forward-leaning, pro-innovation, and pro-competition mindset" that will make agencies "more agile, cost-effective, and efficient."

The new OMB AI Memos implement President Trump's January 23 Executive Order 14179 (<https://bit.ly/4il7l8z>) on "Removing Barriers to American Leadership in Artificial Intelligence" (the "AI EO"), which directs the OMB to revise the Biden OMB AI Memos to make them consistent with the AI EO's policy of "sustain[ing] and enhance[ing] America's global AI dominance."

Overall, the new OMB AI Memos build on the frameworks established under President Trump's 2020 Executive Order 13960 (<https://bit.ly/42HzYXU>) on "Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government" and the Biden OMB AI Memos. This is consistent with the AI EO, which noted that the Administration would "revise" the Biden AI Memos "as necessary."

At the same time, the new OMB AI Memos include some significant differences from the Biden OMB's approach in the areas discussed below (as well as other areas).

## Scope & definitions

The OMB AI Use Memo applies to "new and existing AI that is developed, used, or acquired by or on behalf of covered

agencies," with certain exclusions for the Intelligence Community and the Department of Defense.

The memo defines "AI" by reference to Section 238(g) (<https://bit.ly/3YxJ9IU>) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019. Like the Biden OMB AI Memos, the OMB AI Use Memo states that "no system should be considered too simple to qualify as covered AI due to a lack of technical complexity."

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The OMB AI Procurement Memo applies to "AI systems or services that are acquired by or on behalf of covered agencies," excluding the Intelligence Community, and includes "data systems, software, applications, tools, or utilities" that are "established primarily" for researching, developing, or implementing AI or where an "AI capability" is integrated into another process, operational activity, or technology system.

The memo excludes AI that is "embedded" in "common commercial products" that are widely available for commercial use and have "substantial non-AI purposes or functionalities," along with AI "used incidentally by a contractor" during contract performance. In other words, the policies are targeted at software that is primarily used for its AI capabilities, rather than on software that happens to incorporate AI.

## Exemption for national security systems

Like the Biden OMB AI Memos, the new OMB AI Memos exclude AI used, or acquired for use, "as a component of a National Security System," as defined in 44 U.S.C. § 3552(b)(6) (<https://bit.ly/3Rna7iy>).

However, the Biden Administration issued a AI National Security Memorandum ("AI NSM," <https://bit.ly/44f7Ttp>) in 2024 to address the use of AI in national security systems, as required by the now-revoked Executive Order 14110 (<https://bit.ly/4himYOn>) on the "Safe, Secure, and Trustworthy Development and Use of AI."

By contrast, the new OMB AI Memos state that the use and acquisition of AI in national security systems will be governed by guidance issued by the Department of Defense. While the Biden AI NSM itself has yet to be revoked, the Trump Administration is likely to revoke or significantly revise the AI NSM to align it with President Trump's AI EO, as the AI NSM contains some of the same types of provisions that were altered in the OMB AI Memos.

### Governance & transparency requirements

The OMB AI Use Memo requires covered agencies, through their Chief AI Officers, to develop and publish "compliance plans" for achieving consistency with the memo; update internal IT, data, cybersecurity, and privacy policies; develop Generative AI policies with acceptable uses, safeguards, and oversight mechanisms; and update AI use case inventories on an annual basis.

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The OMB AI Use Memo also establishes heightened "minimum risk management practices" for "high-impact AI use cases," i.e., AI "with an output that serves as a principal basis for decisions or actions with legal, material, binding, or significant effect" on civil rights, civil liberties, privacy, access to critical life opportunities or government services, human health and safety, critical infrastructure or public safety, or strategic assets or resources.

Under the OMB AI Use Memo, covered agencies that deploy high-impact AI must (1) conduct pre-deployment testing and prepare risk mitigation plans, (2) complete pre-deployment AI impact assessments, (3) conduct ongoing monitoring, (4) ensure adequate training and oversight, (5) offer timely human review and opportunities to appeal for AI-enabled decisions, and (6) collect and incorporate feedback from end users and the public.

By contrast, the Biden OMB AI Use Memo established minimum risk management practices for "rights-impacting" and "safety-impacting" AI and imposed additional minimum risk management practices for rights-impacting AI that are absent from the OMB AI Use Memo, including identifying

and assessing "AI's impact on equity and fairness," mitigating algorithmic discrimination, and providing notice to negatively affected individuals, and providing mechanisms for opting out of AI-enabled decisions.

### 'American-made AI' provisions

Acknowledging that the AI EO "recognizes the importance of American AI development to promote human flourishing, economic competitiveness, and national security," the OMB AI Procurement Memo states that "it is the policy of the United States to buy American and to maximize the use of AI products and services that are developed and produced in the United States."

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Similarly, the OMB AI Use Memo encourages covered agencies to "invest in the American AI marketplace" when pursuing AI acquisitions. These concepts were not emphasized as strongly in the Biden OMB AI Memos, although domestic preferencing in federal procurement has received bipartisan support.

### IP rights & use of government data

Like the Biden OMB AI Memos, the new OMB AI Memos place a strong emphasis on protections for IP rights and government data when procuring AI systems or services, including through required contractual terms.

However, the OMB AI Procurement Memo specifically requires covered agencies to review and update "agency processes" for the treatment of data ownership and IP rights in AI procurements, which should include (1) appropriately scoped licensing and IP rights, based on the intended use of AI, to avoid vendor lock-in (discussed below), (2) terms ensuring that "components necessary to operate and monitor the AI system or service" are available for the acquiring agency as long as necessary, (3) guidance to ensure that vendors collect and retain government data only when reasonably necessary under the contract, and (4) terms that permanently prohibit the use of non-public agency data in AI inputs, and resulting outputs, for training publicly or commercially available AI algorithms without agency consent.

The memo also calls on covered agencies to prioritize obtaining documentation from vendors that "facilitates transparency and explainability, and that ensures an adequate means of tracking performance and effectiveness for procured AI."

## Vendor lock-in provisions

Like their predecessors, the new OMB AI Memos also require covered agencies to promote competition and prevent vendor lock-in when procuring AI. The OMB AI Use Memo advises covered agencies to “adopt procurement practices that encourage competition to sustain a robust Federal AI marketplace,” including by “preferencing interoperable AI products and services.” The OMB AI Procurement Memo requires covered agencies to consider vendor lock-in at various points across the “AI acquisition lifecycle.”

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Specifically, covered agencies are encouraged to (1) consider vendor lock-in when assessing long-term cost-effectiveness during initial product demonstrations, (2) include provisions that reduce vendor lock-in risks, such as knowledge transfer, data and model portability, and licensing and pricing transparency requirements, in solicitations, (3) include terms to prevent vendor lock-in, such as the requirements above and terms that provide agencies with “rights to code and models produced in performance of a contract,” when selecting and awarding proposals, and (4) implementing terms relating to ongoing rights and access to data at the closeout of a contract to ensure that data can still be used by subsequent vendors.

## Performance-based contracting, market research, and commerciality

The OMB AI Procurement Memo strongly encourages covered agencies to use performance-based techniques to identify requirements and contract terms. The memo notes that using performance-based techniques will allow agencies to “understand and assess vendor claims about their proposed use of AI systems or services prior to the contract award, acquire AI capabilities that address their needs, and perform post-award monitoring.”

These performance-based techniques include encouraging: (1) statements of objectives and performance work statements, (2) quality assurance surveillance plans, and (3) contract incentives. The memo purports that these techniques will help agencies ensure its needs are being met by defining metrics, with the goal of providing agencies with more flexibility to acquire AI systems or services, helping agencies overcome

challenges in defining relevant performance metrics, and improving the performance and interoperability of AI systems and services.

Consistent with these principles, the OMB AI Procurement Memo also emphasizes the need for market research. These provisions, coupled with the memo’s emphasis on “innovative” and “efficient” acquisition and enhancing the competitive U.S. AI marketplace, suggest that the memo contemplates the use of commercial item contracting processes for the acquisition of AI systems and services to the maximum extent consistent with applicable laws and regulations. The memo notes that OMB will develop additional playbooks focused on the procurement of certain types of AI, including generative AI and AI-based biometrics.

Additionally, the memo directs the General Services Administration (“GSA”) to release AI procurement guides for the federal acquisition workforce that will address “acquisition authorities, approaches, and vehicles,” and to establish an online repository for agencies to share AI acquisition information and best practices, including language for standard AI contract clauses and negotiated costs.

## The role of NIST AI standards

In another sharp contrast to the Biden OMB AI Memos, the new OMB AI Memos lack any mention of the National Institute of Standards and Technology (“NIST”) or its recent and ongoing initiatives to develop AI performance and risk management standards.

For example, while both OMB AI Use Memos view the minimum risk management practices as an “initial baseline” for agencies, the Biden OMB AI Use Memo encouraged agencies to supplement the minimum requirements with best practices from NIST’s 2023 AI Risk Management Framework (<https://bit.ly/4cJhb1J>). By contrast, the new OMB AI Use Memo encourages covered agencies to “continue developing their own agency-specific practices” that build upon the minimum practices.

Similarly, while the Biden OMB AI Procurement Memo called on agencies to adapt NIST’s AI Risk Management Framework and Secure Software Development Framework when procuring AI, the new OMB AI Procurement Memo only instructs covered agencies to ensure that contracts comply with minimum risk management practices established in the OMB AI Use Memo.

The omission of NIST from the OMB AI Memos could suggest a less active role for NIST and the Department of Commerce in U.S. AI policy under the Trump Administration, or at least that agencies may have greater flexibility when considering whether to incorporate NIST standards.

At the same time, NIST has continued its work on AI standards, including the development of a Cyber AI Profile (<https://bit.ly/42OhxSo>), while its U.S. AI Safety Institute has continued to garner support from industry stakeholders.

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