Dr. Laurie Locascio
Under Secretary of Commerce for Standards and Technology
Director of the National Institute of Standards and Technology
100 Bureau Drive
Gaithersburg, MD 20899

February 2, 2024

Re: RFI Response: National Institute of Standards and Technology RFI on AI Executive order
[NIST–2023–0309]

Dear Dr. Locascio:

The AFL-CIO Technology Institute appreciates the opportunity to respond to the National
Institute of Standards and Technology (NIST)'s Request for Information on the Assignments
Under Sections 4.1, 4.5 and 11 of the Executive Order Concerning Artificial Intelligence (EO).
The AFL-CIO Technology Institute (TI) is an independent, non-partisan organization founded by
the AFL-CIO–a voluntary, democratic federation of 60 unions representing 12.5 million workers
in all regions and sectors of the economy and public service, including the federal government.
The core mission of the AFL-CIO Technology Institute is to ensure workers have a co-equal
voice in the technological changes sweeping across the workplace and society, that working
people are treated fairly and with respect, that hard work is rewarded with family-supporting
wages and benefits, and that workplaces are healthy and safe.

The AFL-CIO Technology Institute applauds NIST's wide-ranging efforts to support the safe,
secure and trustworthy development and deployment of AI. Standards for the use and
development of artificial intelligence (AI) have a profound impact on the daily lives of workers
and TI encourages NIST to include the voice of workers in determining those standards and
ensuring that AI technology empowers and benefits workers. This comment will focus on EO
14110 Sections 4.1(a)(i)(A) and (C) directing NIST to establish guidelines and best practices in
order to promote consensus industry standards in the development and deployment of safe,
secure, and trustworthy AI systems.

Industry standards must address the harms and risks workers face

When workers consider the impacts of AI on their workplace, they worry about being displaced
by technology, losing their autonomy or their livelihoods. What's more, they worry about losing
the human element of their work and the values animating their work. Journalists worry not just
about the journalism industry as a viable career but also about the future of objective, credible

writing and reporting in an information environment flooded with AI-generated content.[1] Healthcare workers worry about their autonomy and professional judgment but also about quality of care and patient outcomes in a world of automated insurance claims assessments and clinical decision-making algorithms.[2] Creative workers (including artists and actors) care not just about their ability to make a living from their own creative labors, but they care about everyone's rights over their voice, image, likeness, personhood, and intellectual property.[3]

Generative AI pose a particular threat to workers rights and labor standards. Employers introduce unsafe generative AI tools in many cases to cut labor costs, which chills and deters workers' exercise of their right to unionize under the National Labor Relations Act, as well as erodes service quality for consumers. Last year, eating disorder support center fired its call center workers two works after they unionized and replaced them with a generative AI chatbot.[4] The decades-old support hotline shot down entirely when it was discovered that the chatbot gave medically unsound advice.[5] Television and film actors right now have their digital likeness placed in video games to be seen by millions without their consent, knowledge, compensation or legal recourse.[6] Some ostensibly job-replacing generative AI applications actually rely on low-wage, precariously employed digital workers in low-wage countries.[7]

None of these negative impacts are inevitable–worker-centric governance frameworks and strong labor protections can help ensure a world where technological innovations augment American workers and jobs, making jobs safer and providing a better work-life balance. It is crucial that NIST's guidelines for AI risk management address these issues and include measures to mitigate harm to workers.

Industry standards must institutionalize a governance role for workers and unions in the design, development, deployment and assessment of AI systems

Worker and union consultation and consent must be incorporated into the entire lifecycle of AI systems, from R&D to design, deployment, and ongoing post-deployment assessments. Workers are the experts in their own work and should be consulted as such in the AI development and deployment process. In the context of NIST's Risk Management Framework (RMF) this means workers should be considered domain experts not just end users anytime an AI system impacts their work whether it's automating a task, algorithmically managing, surveilling them or augmenting their job.

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[1] Schleuss, Jon. NewsGuild-CWA. AI, Transparency, Explainability, Intellectual Property, & Copyright Jon Schleuss, President The NewsGuild-CWA November 29, 2023
[2] Castillo, Bonnie. National Nurses United. Written Statement for AI Insight Forum: Workforce Bonnie Castillo, RN, Executive Director, National Nurses United November 1st, 2023
[3] Crabtree-Ireland, Duncan. SAG-AFTRA.
https://www.schumer.senate.gov/imo/media/doc/DCI%20Schumer%20AI%20meeting.pdf
[4] Harper, Abbie. LaborNotes. A Union Busting Chatbot? Eating Disorders Nonprofit Puts the 'AI' in Retaliation May 04, 2023
[5] Aratani, Lauren. The Guardian, US eating disorder helpline takes down AI chatbot over harmful advice | Artificial intelligence (AI) Wed 31 May 2023
[6] Garrova, Robert. TheLAist. Striking Actor Says He Has Cautionary Tale About How Companies Might Use Performers' Digital Replicas July 19, 2023
[7] Sato, Mia. The Verge. An 'AI' fast food drive-thru is mostly just human workers in the Philippines Dec 8, 2023

When technology works for workers it makes the technology better. Unions have played a vital role in the innovation process for over a century. The formation of the International Brotherhood of Electrical Workers (IBEW) was born out of the unsafe working conditions facing the workers deploying the technological revolution of electrification of America.[8] IBEW effectively fought to make sure the technology was safer not just for those installing it but the Americans whose homes it powered.[9] The modern trade union movement began negotiating in earnest over technologies like robotics and automation in the 1970s and through collective bargaining agreements helped set the industry standard in American manufacturing that workers participate in the deciding when a new technology is introduced onto the shop floor.[10] Manufacturers learned it was good business to invest in the technology that their workers felt was right for the job.

We are now seeing unions fight worker surveillance[11]--a family of technologies and techniques that degrade job quality, infringe on a worker's right to organize, and force people to work faster and harder impacting health and safety.[12] Workers and unions need to have a voice in setting industry standards and ensuring that Generative AI and other AI technologies do not harm workers.

Some mechanisms and models that TI recommends for a enhancing worker voice throughout the development, deployment and governance include the following:

Engaging Workers in AI R&D

The collaboration between researchers at Carnegie Mellon University (CMU) and UNITE HERE, the nation's largest hospitality union serves as a model of how to include workers in AI development. Together they partnered with AI developers to develop worker-centered prototypes that preserve jobs, improve job quality and satisfaction, reduce technology-accelerating economic inequality, and highlight the lack of worker input in the adoption of automation in the hospitality industry.[13] UNITE HERE President D. Taylor explained CMU's worker-centered approach: "most people who develop technology for the service sector don't feel a need to engage with the people who use their products. We've found that CMU researchers take the voices of housekeepers, servers and other service sector workers seriously and are willing to engage with their concerns."[14]

Collective bargaining is key to timely, effective worker protection

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[8] History of IBEW – IBEW LU 68

[9] Schuler, Liz. AFL-CIO. Shuler's Speech at the AFL-CIO and Microsoft's New Tech-Labor Partnership Event. December 11, 2023

[10] Hoffman. UniGlobal. UNI GS Hoffman: We must make it possible for all workers to bargain on technology through lowering the obstacles to unionization November 11, 2023

[11] https://prospect.org/labor/2023-07-25-teamsters-historic-contract-ups/

[12] https://hbr.org/2022/10/monitoring-individual-employees-isnt-the-way-to-boost-productivity

[13] National Science Foundation. Division of Information & Intelligent Systems. "Upskilling workers and re-designing workplaces for the future of the hospitality industry." NSF Award Abstract No. 2128954. August 24, 2021.

[14] Markley. 2022.

Strong collective bargaining agreements on AI are a powerful tool in mitigating AI risks and harms. Historically, unions have helped provide a check against technological change that harms workers and working conditions and it is no different today. Labor unions not only protect workers but also the people they serve such as patients, students, the reading public, citizens and more. In addition, the terms set by unions through collective bargaining agreements offer models of transparency and accountability structures that are able to give end user feedback real weight. The scope of labor rights and collective bargaining with respect to AI systems, including automated worker surveillance and algorithmic management technologies, must be broadly construed and stringently protected.

The RFI asks about the "possibility for checks and controls before applications are presented forward for public consumption," TI would like to point to the many collective bargaining agreements our affiliates and other unions have accomplished just that.[15] There is a long history of unions negotiating around technological change in the workplace, including the right to information notification and consent, right to negotiate prior to implementation, and right to participate in decision-making processes regarding new technology.[16] To increase harm mitigation and accountability of workplace technologies, TI recommends that industry standards include labor-management partnership and labor neutrality towards worker organizing and unionization.[17]

Workers and labor unions must be centered within any AI accountability and trustworthiness regulations, guidelines, or frameworks across the development lifecycle

As NIST develops its guidance and benchmarks for evaluating and auditing AI capabilities, TI recommends that NIST treat worker impact as a guiding principle and litmus test for the efficacy and utility of the guidance. TI also recommends NIST identify workers and unions as required partners in their development of these guidelines and benchmarks.

Workers are increasingly subject to AI tools in the workplace and must be treated as key stakeholders in any assessments of these technologies. No AI audit or impact assessment can be meaningful if it excludes the subjects of those tools. Workers subject to the AI tools are the ones experiencing their harms — from firings and disciplinary actions, workplace injuries, heightened stress levels, to illegal discrimination and violations of labor laws. These assessments must engage workers during the design, development, and deployment phase but also these assessments must continue with regular, periodic assessments after AI is deployed in the workplace when it has learned, evolved and changed with changing impacts on workers.

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[15] Writer Guild East. What We Won 2023
UNITE HERE 226. Tentative agreement reached between Culinary and Bartenders Union and Caesars Entertainment November 10, 2023
SAG-AFTRAhttps://www.sagaftra.org/sag-aftra-and-replica-studios-introduce-groundbreaking-ai-voice-agreement-ces January 9, 2024
[16] Mateescu, Alexandra. Explainer: Challenging Worker Datafication
[17]https://aflcio.org/press/releases/afl-cio-and-microsoft-announce-new-tech-labor-partnership-ai-and-future-workforce

Guidance and benchmarks for evaluating and auditing AI capabilities must include these worker considerations.

NIST should include labor impact assessments and recommendations to address negative impacts in its best practices for industry standards on safe, secure, and trustworthy AI systems

The rapid evolution and proliferation of generative AI has created an urgent need for frameworks to assess and manage its impact on jobs and work. As AI enters almost all sectors of work, we must ensure that its integration supports a fair and equitable labor market, where advancements in technology translate into benefits for all workers and people, rather than exacerbating economic inequalities and access gaps. The development of these assessments must involve direct consultation with workers and their union representatives in order to ensure that workers' rights and interests are adequately represented and safeguarded.

Industry standards for all organizations that develop and deploy AI tools, systems and processes, including the third party vendors who develop and market such tools, should be required to map, measure, manage and mitigate the risks of labor market impacts of the systems they develop or use. Current AI impact assessments largely overlook labor implications and most analysis of workforce impact are future projections not real time assessments. There is a pressing need for such assessment with older AI and automation-based disruptions to the workforce. The Bureau of Labor Statistics (BLS) report on "Assessing the Impact of New Technologies on the Labor Market" offers many useful insights on the state of the problem.[18] Not only is it vital to assess labor impact of generative AI, it is also vital to develop assessments with regards to the claims generative AI is making about what its tool can do. There is much concern that AI introduced as a labor cost saving measure will lead to a drop in quality of the goods and service. Such assessments would help make it clear when and where that is happening in the market.

Additional recommendations for AI governance:

- AI governance must include clear duties on AI developers and deployers and strong enforcement provisions.
- Developers and deployers must have an affirmative duty to audit and assess AI systems on an ongoing basis to ensure they remain compliant with laws and regulations as they evolve.
- Regulatory agencies must be resourced to enforce existing laws in the context of AI technologies and authorized to compel the necessary disclosures and technical changes.
- AI governance should require employers to minimize data collection on workers and provide workers with data privacy and data disclosure rights

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[18]BLS [Assessing the Impact of New Technologies on the Labor Market: Key Constructs, Gaps, and Data Collection Strategies for the Bureau of Labor Statistics](#)

- Workers must have a right to appeal materially adverse automatic determinations to human decision-makers.
- Procurement of automated worker surveillance, algorithmic management technologies, and other AI products must first demonstrate that it does no harm to workers or service quality.
- A just transition for impacted workers requires major commitments to workforce development programs and place-based job creation strategies anchored by labor organizations that offer injured workers a smooth pathway into high-quality union jobs in their own community.

The AFL-CIO Technology Institute stands firm in its commitment to protecting the rights and interests of workers. Collective bargaining between a union and the employer is the best way to address workplace-specific implications of these technologies and ensure that workers' rights are protected. NIST's guidance and best practices can help raise the floor and effectively empower workers. We urge NIST to consider these concerns in its AI guidelines and policies, ensuring that the rapid advancement of AI technology does not come at the cost of the workers who form the backbone of our country and economy.

Sincerely,

Amanda Ballantyne
Executive Director
AFL-CIO Technology Institute