

PUBLIC SUBMISSION

Received: May 29, 2025 Tracking No. mb9-xuvg-wyzf Comments Due: May 28, 2025 Submission Type: API
--

Docket: NSF-2025-OGC-0001
NITRD_FRDOC_0001

Comment On: NSF-2025-OGC-0001-0001
Request for Information: Development of a 2025 National Artificial Intelligence Research and Development Strategic Plan

Document: NSF-2025-OGC-0001-DRAFT-0281
Comment on FR Doc # 2025-07332

Submitter Information

Organization: Sanford Heisler Sharp McKnight, LLP

General Comment

See attached file(s)

Attachments

2025-05-28 Final Draft Fault Lines of Innovation Centering Platform Workers in AI RD



Sanford Heisler
Sharp McKnight, LLP
17 State St., 37th Floor
New York, NY 10004
Telephone: (646) 402-5650
Fax: (646) 402-5651
www.sanfordheisler.com

New York | Washington, DC | San Francisco | Palo Alto | Nashville | San Diego

May 29, 2025

VIA ONLINE SUBMISSION

Re: Docket ID No. NSF-2025-OGC-0001, Notice on Request for Information on the Development of a 2025 National Artificial Intelligence (AI) Research and Development (R&D) Strategic Plan

Sanford Heisler Sharp McKnight (hereinafter, the “Firm”) is a national plaintiffs’ side law firm with offices in New York, Washington, DC, California, and Tennessee. The Firm is committed to defending the rights of the working-class people and holding corporations accountable across a broad range of practice areas. These include discrimination and harassment; employment rights; executive representation; 401(k) mismanagement and violations of the Employee Retirement Income Security Act (“ERISA”); wage and hour laws; whistleblower law; Asian American litigation and finance; public interest litigation; and sexual violence, Title IX, and victims’ rights matters. We submit these comments to urge the 2025 National AI R&D Strategic Plan to center worker protections in all phases of federally funded Artificial Intelligence research, with particular attention to platform-based labor and algorithmic wage-setting environments.

Through our work, we have observed a rapid shift in the composition of the working class. While historically associated with blue-collar jobs, the modern working class now includes a growing number of independent contractors working through platform-based apps related to rideshare, delivery, and online freelancing.¹ Though these positions may appear entrepreneurial, they are often marked by low hourly pay, minimal job security, and a lack of meaningful ownership over the means of production, all of which place these workers squarely within the economic definition of the working class.²

This trend is also backed by concrete data. Between 2017 and 2021, the number of individuals reporting income from app-based employment tripled, with five million taxpayers disclosing such income to the Internal Revenue Service (“IRS”).³ A Brookings Institution report from April 2025 notes that AI has become central to managing the rising wave of independent work, allowing companies to automate hiring, task distribution, and wage-setting at scale. The report predicts that platform-based employment will continue to permeate the U.S. labor market as the workforce

¹ NATIONAL EMPLOYMENT LAW PROJECT, APP-BASED WORKERS SPEAK: STUDIES REVEAL ANXIETY, FRUSTRATION, AND A DESIRE FOR GOOD JOBS (2021), <https://www.nelp.org/insights-research/app-based-workers-speak-studies-reveal-anxiety-frustration-and-a-desire-for-good-jobs/>.

² AURELIA GLASS, WHAT POLICYMAKERS NEED TO KNOW ABOUT TODAY’S WORKING CLASS (2023), <https://www.americanprogress.org/article/what-policymakers-need-to-know-about-todays-working-class/>.

³ LORENA ROQUE, A FRAMEWORK FOR THE GIG ECONOMY: WHY WE MUST PROTECT WORKERS & HOLD CORPORATIONS ACCOUNTABLE 1 (2024), <https://www.clasp.org/publications/report/brief/framework-gig-economy-equity/>.

evolves.⁴

Data also shows that the rise of platform-based and AI-driven work has created rampant opportunities for employers to skirt applicable legal obligations, including overtime pay, paid leave, and anti-discrimination protections.⁵ This problem is compounded by the \$45 billion shortfall in reported self-employment income, as noted by the IRS—a consequence of widespread misclassification. The consequences are twofold: public finances suffer, and workers lose access to Social Security, employer-provided benefits, and essential workplace protections.⁶

Without the proper safeguards, the rise of AI-driven labor platforms threatens to deepen economic instability and regional inequality across the United States.⁷ AI systems are increasingly central to how labor is organized, managed, and compensated on digital platforms, replacing traditional employer oversight with opaque, automated decision-making. Workers are often left in the dark about how or why key employment decisions are made.⁸ Left unregulated, and operating under opaque platform algorithms, these AI tools are amplifying longstanding patterns of labor exploitation.⁹ Independent workers, who are often immigrants, people of color, and low-income individuals, are subjected to algorithmic surveillance, pay disparities, and automated termination with no explanation and limited opportunity for recourse.¹⁰

The federal government's AI R&D strategy must respond to this evolving reality. Worker-centric accountability, algorithmic transparency, and equity in design are essential to a just and sustainable AI-driven economy. An agenda that ignores the structural vulnerabilities of platform-based labor risks normalizing unstable, low-autonomy, algorithmically managed jobs as the default model of employment.

I. AI Use in Platform-Mediated Labor Markets and General Employment Practices

⁴ Arun Sundararajan, *Workforce Capacity Development and Occupational Transitions with Dignity*, BROOKINGS INSTITUTE, <https://www.brookings.edu/articles/workforce-capacity-development-and-occupational-transitions-with-dignity/>.

⁵ JOSH BIVENS & BEN ZIPPERER, UNBALANCED LABOR MARKET POWER IS WHAT MAKES TECHNOLOGY—including AI—THREATENING TO WORKERS 8 (2024), <https://www.epi.org/publication/ai-unbalanced-labor-markets/>.

⁶ PINAR ÇEBİ WILBER, PH.D., *Impact of Growing Gig Economy on Tax Policy*, 4 (2021).

⁷ Daron Acemoglu, *Harms of AI*, in THE OXFORD HANDBOOK OF AI GOVERNANCE 56, 19 (Justin B. Bullock et al. eds., 2024), <https://doi.org/10.1093/oxfordhdb/9780197579329.013.65>.

⁸ ALEXANDRA MATEESCU & AIHA NGUYEN, *Explainer: Algorithmic Management in the Workplace*, 1 (2019), <https://datasociety.net/library/explainer-algorithmic-management-in-the-workplace/>.

⁹ Nicol Turner Lee, *It's Time for an Updated Big Tech Civil Rights Regime*.

¹⁰ Risa Gelles-Watnick & Monica Anderson, *Racial and Ethnic Differences Stand out in the U.S. Gig Workforce*, PEW RESEARCH CENTER (Dec. 15, 2021), <https://www.pewresearch.org/short-reads/2021/12/15/racial-and-ethnic-differences-stand-out-in-the-u-s-gig-workforce/>.

In platform-mediated work environments, labor discipline has undergone a structural shift.¹¹ AI now governs the entire arc of the labor relationship: recruiting, assigning, scheduling, evaluating, compensating, and even terminating workers.¹² However, unlike traditional management structures, AI doesn't negotiate; it optimizes, often without explanation, accountability, or affect.

Under the model of “algorithmic management,” platforms have replaced human oversight with automated behavioral nudges, dynamic pay scales, and risk-shifting mechanisms that obscure employer responsibility.¹³ In this new system, workers are more often scored than directly supervised. Their compensation is increasingly determined by real-time algorithmic pay models, which adjust under opaque conditions that workers cannot easily see or contest.¹⁴ The consequences are striking. Nearly one-third (29%) of app-based workers earn less than their state minimum wage, and 19% report going hungry due to insufficient earnings.¹⁵ Over 40% of workers have been deactivated—effectively fired—by an algorithm within the past year. Even more alarming, 59% have accepted work they considered unsafe out of fear of deactivation or poor ratings.¹⁶

This emergent system also rests upon dubious legal classifications. By labeling millions of these workers as independent contractors, platforms attempt to shield themselves from nearly every foundational labor protection, including minimum wage, overtime pay, health insurance, collective bargaining rights, and anti-discrimination enforcement.¹⁷ The AI systems at the heart of these platforms wield extraordinary power over workers' livelihoods without being subject to basic audit and transparency standards. Algorithmic “auditors” are typically paid by the very companies they evaluate, incentivizing favorable outcomes rather than rigorous review.¹⁸

II. Legal and Policy Failures Highlighted by Litigation and Enforcement

Litigation and enforcement actions against companies like Lyft and Amazon underscore how algorithmic pay-setting and misclassification tactics undermine core labor standards. In 2024, the Department of Justice reached a \$2.1 million settlement with Lyft for deceptive driver-earnings claims¹⁹ while the FTC began wielding antitrust authority to challenge exploitative, data-driven employer practices.²⁰

¹¹ Acemoglu, *supra* note 7 at 22.

¹² CENTER FOR LABOR AND A JUST ECONOMY, *Worker Power and Voice in the AI Response*, 19 5 (2024), <https://clje.law.harvard.edu/worker-power-and-voice-in-the-ai-response/>.

¹³ MATEESCU AND NGUYEN, *supra* note 8.

¹⁴ CENTER FOR LABOR AND A JUST ECONOMY, *supra* note 12 at 17.

¹⁵ ROQUE, *supra* note 3 at 5.

¹⁶ *Id.* at 8.

¹⁷ ADEWALE A. MAYE, DANIEL PEREZ, & MARGARET POYDOCK, MISCLASSIFYING WORKERS AS INDEPENDENT CONTRACTORS IS COSTLY FOR WORKERS AND STATES (2025), <https://www.epi.org/publication/misclassifying-workers-2025-update/>.

¹⁸ Alex Engler, *Auditing Employment Algorithms for Discrimination*, BROOKINGS INSTITUTE (Mar. 12, 2021), <https://www.brookings.edu/articles/auditing-employment-algorithms-for-discrimination/>.

¹⁹ *United States v. Lyft, Inc.*, (United States District Court for the Northern District of California 2024).

²⁰ FEDERAL TRADE COMMISSION, OFFICE OF PUBLIC AFFAIRS, FTC TAKES ACTION TO STOP LYFT FROM DECEIVING DRIVERS WITH MISLEADING EARNINGS CLAIMS (2024), <https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-takes-action-stop-lyft-deceiving-drivers-misleading-earnings-claims>.

The ongoing *Mobley v. Workday, Inc.*²¹ litigation is one of the first major class-action lawsuits in the United States to challenge algorithmic bias in applicant screening tools. The plaintiff, an African American man over the age of forty with a disability, alleges that Workday’s AI-driven software unlawfully discriminates against job applicants based on protected characteristics such as race, age, and disability, violating Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the ADEA, and the ADA Amendments Act of 2008 (ADAAA). Similarly, other notable cases, such as *The Atlanta Opera, Inc.*, reveal that many freelance workers are misclassified as independent contractors and thus excluded from federal protections.²² The National Labor Relations Board’s General Counsel has likewise warned that pervasive algorithmic surveillance can presumptively violate workers’ rights under the National Labor Relations Act (“NLRA”), signaling a regulatory shift toward tighter scrutiny of AI in labor contexts.²³ Together, these authorities underscore a broader crisis: the growing use of AI in employment raises a host of novel ways in which employers may violate labor protections, including anti-discrimination and wage and hour laws.

III. Integrating Worker Protections into AI R&D Frameworks

As several legal scholars have noted in the broader conversation around AI governance, commercial enterprises are structurally incentivized to prioritize profit over equity—and in the case of public companies, they are bound by a fiduciary duty to do so. This often involves maximizing engagement, minimizing labor costs, and automating managerial functions.²⁴ It falls to policymakers and regulatory frameworks to resist the deferential posture often granted to industry-led automation. AI research and development must be explicitly responsive to all employment structures that embed algorithmic systems into labor practices, particularly those that affect classification, compensation, surveillance, evaluation, and termination.²⁵

We therefore urge OSTP and NITRD to:

- **Fund and prioritize sociotechnical research** on the design, risks, and downstream harms of algorithmic management systems, including those used for dynamic wage-setting, performance scoring, and worker surveillance. This research must reflect the experiences of impacted workers and uncover not only technical failures, but also social, economic, and legal implications and consequences.²⁶
- **Mandate the use of robust Algorithmic Impact Assessments (“AIAs”)** in all federally funded projects related to labor technologies. These assessments should not be treated as procedural checklists or compliance exercises. Instead, drawing from legal scholarship, AIAs must function as institutional mechanisms to surface and redress harms, particularly

²¹ 3:23-cv-00770-RFL (N.D. Cal. filed Feb. 1, 2023)

²² *The Atlanta Opera, Inc.*, 372 NLRB 95 (National Labor Relations Board 2023).

²³ NATIONAL LABOR RELATIONS BOARD, *NLRB General Counsel Issues Memo on Unlawful Electronic Surveillance and Automated Management Practices*, (2022), <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-issues-memo-on-unlawful-electronic-surveillance-and>.

²⁴ Olivier Sylvain, *Recovering Tech’s Humanity*, 119 COLUMBIA LAW REVIEW 252, 265 (2019).

²⁵ CENTER FOR LABOR AND A JUST ECONOMY, *supra* note 12 at 15.

²⁶ ROQUE, *supra* note 3 at 3.

in high-risk domains like employment, where algorithmic systems often replace human discretion without replacing legal accountability.²⁷

- **Mandate meaningful human oversight** over all high-impact algorithmic systems used in employment contexts. This oversight must go beyond token human-in-the-loop design; it must include trained personnel with decision-making authority, escalation protocols for affected workers, and access to grievance mechanisms in cases of algorithmic error, bias, or harm.²⁸
- **Align AI R&D investments with evolving Department of Labor and National Labor Relations Board guidance on worker classification.** AI tools must not be used to encode illegal misclassification or to automate managerial discretion in ways that obscure the employment relationship.²⁹ Federally funded research must advance systems that reinforce worker rights and legal obligations.

IV. Enhancing Accountability Through Federal Leverage

Federal funding decisions are a powerful tool to shape the trajectory of AI development and deployment. To ensure that public investments produce technologies that enhance labor protections and democratic values, the 2025 National AI R&D Strategic Plan must embed accountability safeguards from the outset. These safeguards should not be viewed as ancillary to innovation, but rather as essential design principles that shape the social utility, legal compliance, and long-term sustainability of AI systems.

We recommend that the following accountability mechanisms be integrated into the federal AI R&D funding lifecycle:

- **Labor-Rights Auditing and Red-Team Testing:** Federally supported AI research must include structured labor-rights audits and adversarial “red team” assessments that identify and stress-test the ways algorithmic tools may reproduce or intensify labor harms. These audits should examine not only technical performance, but also how systems impact wage fairness, worker autonomy, and the ability to contest employment-related decisions. Red-team exercises in particular are critical to uncovering emergent risks that traditional testing may overlook, especially in dynamic gig environments.³⁰
- **Mandatory Use of the NIST AI Risk Management Framework with Labor-Specific Provisions:** The NIST AI RMF offers a promising model for identifying and managing risks across the AI lifecycle.³¹ However, its application must be extended to explicitly include labor-specific harms, such as algorithmic wage disparities, surveillance-driven discipline, and opaque termination processes. Agencies should condition funding on demonstrable use of the framework in labor contexts and require documentation of how labor risks were assessed and mitigated.

²⁷ Andrew D. Selbst, *An Institutional View Of Algorithmic Impact Assessments*, 35 HARV. J.L. & TECH. 117-190 (2021).

²⁸ CENTER FOR LABOR AND A JUST ECONOMY, *supra* note 12 at 17.

²⁹ *Id.* at 15.

³⁰ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (US), ARTIFICIAL INTELLIGENCE RISK MANAGEMENT FRAMEWORK : GENERATIVE ARTIFICIAL INTELLIGENCE PROFILE 18 (2024), <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.600-1.pdf>.

³¹ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (US), *supra* note 30.

- **Cross-Agency Coordination and Enforcement Alignment:** Agencies with jurisdiction over employment and civil rights, including the Department of Labor (DOL), National Labor Relations Board (NLRB), and Equal Employment Opportunity Commission (EEOC), must work in concert to identify emerging harms, set enforcement priorities, and define clear compliance benchmarks for federally supported AI projects. Coordinated guidance should reflect evolving case law on misclassification and algorithmic bias and be regularly updated to address new forms of platform-mediated harms.³² This coordination can also inform grant requirements and establish review processes that proactively prevent labor abuses, rather than respond to them post hoc.

In addition to the above, we urge OSTP and NITRD to pilot a federally funded algorithmic bias auditing initiative specifically focused on gig and platform labor environments. This initiative would fund the development and deployment of open-access auditing tools that can detect and quantify discriminatory outcomes in algorithmic management systems, including pay setting, task assignment, and performance evaluation. Importantly, such tools must be designed in collaboration with impacted workers, civil rights organizations, and technical researchers to ensure they are technically rigorous and contextually relevant. These audits could be conducted by independent evaluators and supported through a publicly accessible repository of findings to foster transparency and improvement.

Through these layered safeguards, including funding conditions, auditing infrastructure, cross-agency enforcement, and public-private research collaboration, the federal government can ensure that AI innovations developed with taxpayer dollars uphold the dignity, rights, and economic security of all workers. Embedding these accountability structures into the research pipeline will mitigate risk and catalyze a new model of socially responsive innovation that aligns with the broader goals of fairness, trust, and national competitiveness.

V. Whistleblower Protections and Internal Accountability

AI systems that mediate employment decisions require safeguards not only against external bias, but also against the internal silencing of dissent. Federal AI R&D investments should include robust whistleblower protection programs that empower technical experts, independent contractors, and other insiders to safely report algorithmic abuse, discrimination, or unlawful practices. Just as whistleblowers have exposed financial fraud and public health violations, they can serve as early warning signals for emerging AI-related harm before such issues become widespread, irreversible, and capable of undermining public confidence in the integrity of the system. Ensuring accountability is critical to building a strong and credible AI governance model. We strongly suggest that R&D guidance incorporate whistleblower policies that encourage safe internal escalation and disclosures of wrongdoing. Supporting a culture of ethical development and internal accountability is also essential to garner public trust.

VI. Framing and Competitive Positioning

Ethical labor practices are central to the country's positioning in national competitiveness and innovation. Federal leadership in research and development can help shape market incentives by

³² Selbst, *supra* note 27 at 153.

modeling AI governance that actively includes the workforce, especially those in nontraditional or on-demand roles. As gig and contract labor become foundational to our service and logistics infrastructure, ensuring protections for these workers is critical to maintaining long-term economic resilience and democratic legitimacy. By embedding inclusive, workforce-centered principles into AI governance, the United States can position itself as a global leader in innovation and a model for strong and sustained democratic governance in the AI race—a once-in-revolution opportunity to shape standards that other nations will aspire to follow.

As the National Artificial Intelligence Advisory Committee noted, trustworthy AI cannot be achieved without transparency, accountability, and redress mechanisms—core pillars of public trust and global competitiveness.³³ The U.S. has an opportunity to lead in developing “worker-safe AI” by distinguishing its approach from surveillance-heavy or labor-exploitative models elsewhere. Just as the European Union’s AI Act frames trustworthiness as essential to AI uptake, the U.S. can set a new standard for democratic innovation in labor technology.

Conclusion

AI R&D policy must confront the structural power imbalances embedded in algorithmic labor platforms. As platform-mediated work becomes foundational to core sectors of the U.S. economy, federally funded AI research cannot remain agnostic to its social and legal consequences. By embedding robust labor protections, enforceable transparency mandates, whistleblower channels, and participatory design processes into the 2025 National AI R&D Strategic Plan, the federal government has the opportunity to lead in technological innovation and to set a global standard for fair and accountable AI in the workplace. This is a critical juncture: The decisions made now will shape whether AI serves to deepen inequality or to reinforce the dignity, rights, and value of all workers.

* * * *

This document is approved for public dissemination. The document contains no business, proprietary, or confidential information. Document contents may be reused by the government in developing the 2025 National AI R&D Strategic Plan and associated documents without attribution.

Respectfully Submitted,

Jeremy Heisler
John McKnight
Alec Konstantin
Danya Rangachar
Elise Hasseltine
Sanford Heisler Sharp McKnight

³³ NATIONAL ARTIFICIAL INTELLIGENCE ADVISORY COMMITTEE, NATIONAL ARTIFICIAL INTELLIGENCE ADVISORY COMMITTEE — YEAR 1 REPORT (2023), <https://www.ai.gov/wp-content/uploads/2023/05/NAIAC-Report-Year1.pdf>.