Office of Information Technology Services
New York State Office for the Aging
Department of Corrections and Community Supervision
Department of Motor Vehicles
Department of Transportation

New York State Artificial Intelligence Governance

Report 2023-S-50 | April 2025

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability

Audit Highlights

Objective

To assess various New York State agencies' progress in establishing an appropriate artificial intelligence (AI) governance structure over the development and use of AI tools and systems. The audit covered the period from January 2019 through November 2024.

About the Program

AI-powered tools have an increasingly significant role in industry operations including agriculture, health care and medicine, manufacturing, transportation, and government, enabling entities to improve government operations. In recent years, the use of AI has rapidly gained popularity among public and private institutions. As AI has been growing and benefiting business, it is also giving rise to a host of unintended consequences.

AI systems create unique challenges in accountability as their inputs and operations are not always visible. Additionally, AI systems are frequently complex, making it oftentimes difficult to detect and respond to failures when they occur. Governance over AI systems, including transparency, should be established to promote accountability and responsible use of such systems. The U.S. Government Accountability Office noted that a lack of transparency reduces effective oversight in identifying errors, misuse, and bias. Therefore, it is essential to establish governance structures over AI to ensure that its use is transparent and accurate and does not generate harmful, unintended consequences.

New York State (NYS) and some of its agencies have been using AI to aid their operations. For example, the Department of Motor Vehicles (DMV) uses AI to power its facial recognition technology, improve highway safety, and deter identity fraud, and the Department of Corrections and Community Supervision (DOCCS) uses AI in its telephone system that allows incarcerated individuals to communicate with family and friends.

The Office of Information Technology Services (ITS) was established in 2012 to centralize IT services and develop technology services for State government. ITS provides statewide direction, directs IT Policy, and delivers centralized IT products and services that support the mission of the State. In January 2024, as directed by the Governor, ITS issued the Acceptable Use of Artificial Intelligence Technologies policy (AI Policy), providing guidelines and requirements for the acceptable use of AI technologies by State Entities (e.g., State Agencies).

Key Findings

NYS does not have an effective AI governance framework. While the AI Policy outlines certain requirements or recommendations for agencies to consider, it lacks adequate guidance and procedures on how these agencies can meet these expectations.

We judgmentally sampled four State agencies: Office for the Aging (NYSOFA), DOCCS, DMV, and the Department of Transportation (DOT). Based on our survey results, we found the AI governance at the four sampled agencies varies significantly. Some agencies have identified key risks and taken steps to address those risks, while others have not created any AI-specific policies or taken other steps toward effective AI governance. These incomplete approaches to AI governance do not ensure that the State's use of AI is transparent, accurate, and unbiased and avoids disparate impacts. For example, none of the agencies required or developed specific procedures to test AI systems in order to evaluate whether

outputs were accurate or biased. Several factors contributed to the inconsistent and inadequate AI governance and compliance with ITS' AI Policy, including lack of statewide guidance, poor identification of AI technology, and non-existent training.

Key Recommendations

To ITS:

- Amend the Acceptable Use of Artificial Intelligence Technologies policy and provide additional guidance or procedures to assist State Entities with adopting AI technologies.
- Coordinate with all State Entities to provide support in developing AI governance structures as necessary.
- Develop and coordinate statewide training to ensure key AI risks and risk management options are understood by appropriate staff.

To NYSOFA, DOCCS, DMV, and DOT:

- Review ITS' Acceptable Use of Artificial Intelligence Technologies policy to identify areas within the agency that need to be strengthened.
- Implement policies to create an effective AI governance structure.
- Coordinate with ITS on developing AI governance structures as necessary.

To DMV:

- Review the facial recognition system with ITS to determine compliance with ITS' Acceptable Use of Artificial Intelligence Technologies policy.

Office of the New York State Comptroller
Division of State Government Accountability

April 3, 2025

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Dear Mr. Rai, Acting Director Olsen, Commissioner Martuscello, Commissioner Dominguez, and Commissioner Schroeder:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *New York State Artificial Intelligence Governance*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
ITS	Office of Information Technology Services	*Auditee*
DMV	Department of Motor Vehicles	*Auditee*
DOCCS	Department of Corrections and Community Supervision	*Auditee*
DOT	Department of Transportation	*Auditee*
NYSOFA	New York State Office for the Aging	*Auditee*
AI	Artificial intelligence	*Key Term*
AI Policy	ITS' Acceptable Use of Artificial Intelligence Technologies policy	*Key Term*
GAO	U.S. Government Accountability Office	*Key Term*
GAO AI Framework	GAO's *Artificial Intelligence: An Accountability Framework for Federal Agencies and Other Entities*	*Key Term*
NIST	National Institute of Standards and Technology	*Key Term*
NIST AI Framework	NIST's *Artificial Intelligence Risk Management Framework*	*Key Term*

Background

What Is Artificial Intelligence?

Artificial intelligence (AI), as defined by New York State's Office of Information Technology Services (ITS), is a machine-based system that can—for a given set of human-defined objectives—make predictions, recommendations, or decisions influencing real or virtual environments. AI systems use machine and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inferences to formulate options for information or action. Machine learning has expanded the potential for AI systems and encompasses a range of technologies, including natural language processing, computer vision, predictive analytics, and robotics. AI is behind everyday technologies like video games, web searching, spam filtering, and voice recognition. With their ability to process and analyze large amounts of data, AI-powered tools have an increasingly significant role in industry operations including agriculture, health care and medicine, manufacturing, transportation, and government, enabling entities to improve government operations.

As use and sophistication of AI systems has been growing, they are also giving rise to a host of unintended consequences. As the U.S. Government Accountability Office (GAO) cautioned in its 2021 report on *Artificial Intelligence: An Accountability Framework for Federal Agencies and Other Entities* (GAO AI Framework), AI is inherently predisposed to reflect the limitations of the data it's trained on and thus "has the potential to amplify existing biases and concerns related to civil liberties, ethics, and social disparities." Distorted results can also have negative consequences for organizations that rely on the accuracy of AI-generated output to support decision-making.

Furthermore, AI systems create unique challenges in accountability as their inputs and operations are not always visible. According to the GAO, this lack of transparency reduces effective oversight in identifying errors, misuse, and bias. Additionally, AI systems are frequently complex, making it often difficult to detect and respond to these failures when they occur. Governance over AI systems should be established to promote accountability and responsible use of such systems.

> ***Such a [AI] system can be an opaque "black box," either because the inner workings of the software are inherently very difficult to understand, or because [AI system/software] vendors do not reveal them. This lack of transparency limits the ability of auditors and others to detect error or misuse and ensure equitable treatment of people affected by AI systems.***
>
> ***– GAO AI Framework***

As further emphasized by the National Institute of Standards and Technology (NIST) in its *Artificial Intelligence Risk Management Framework* report (NIST AI Framework), conscientious governance is a "continual and intrinsic requirement" for effective AI risk management. According to NIST, the documentation of governance structures and policies is key to improving transparency, human review processes, and accountability. NIST also assigns responsibility for governance and oversight to organizational management and senior leadership, as they are the authority for the organization where the AI system is designed, developed, or deployed.

Responsibility for New York State's AI Governance

ITS was established in 2012—the result of the State's efforts to consolidate State agencies' IT operations and streamline services. As the State's IT authority, ITS is responsible for providing statewide IT strategic direction, directing IT policy, and delivering centralized IT products and services that support the mission of the State.

In July 2019, NYS enacted a law to create a temporary commission to study and make determinations on laws, policies, restrictions, violations, and the impact of AI on State agencies. In addition, this commission would issue a report to elected officials including the Governor and certain ranking legislative officials. ITS officials stated that ITS was not involved with this commission. The law ultimately expired in December 2020 and no recommendations or other information was available on the websites of those elected officials.

In January 2024, as directed by the Governor, ITS issued its Acceptable Use of Artificial Intelligence Technologies policy (AI Policy or Policy), providing guidelines and requirements for the acceptable use of AI technologies by State Entities (also referred to as "agencies" within this report). As defined in the AI Policy, a State Entity includes the agency itself as well as State employees and all third parties (e.g., local governments, consultants, vendors, contractors) that use or access any IT resource for which the agency or ITS has administrative responsibility, including systems managed or hosted by third parties on behalf of the agency or ITS. The AI Policy covers "all new and existing AI systems that are developed, used or procured by State Entities, that when used could directly impact the public."

The AI Policy establishes requirements for agencies to follow to ensure responsible AI use, such as performing risk assessments, ensuring human oversight, and documenting outcomes, decisions, and underlying methodologies. It also outlines ITS' responsibility for maintaining an inventory of AI systems in use, which, as the NIST AI Framework states, is a key aspect of AI governance because it provides a means to track what systems are in use and how they are used. The AI Policy, referring to itself as a tool to assist in the responsible adoption of AI technologies, refers agencies to the NIST AI Framework for additional support.

Audit Findings and Recommendations

Given the speed with which AI technology is evolving, it is critical that ITS adequately supports agencies in their use of AI systems to ensure protection against the plethora of potential risks. While ITS' AI Policy establishes requirements and recommendations for agencies in their use of AI, it does not provide adequate guidance on how to implement them. Compliance responsibilities can be especially challenging for agencies that may not have the internal resources or level of expertise necessary to develop strong AI controls over a wide range of complex risks. Furthermore, along with the lack of explicit details, weaknesses in the AI Policy language create the risk that agencies misunderstand which AI systems are subject to the AI Policy, misinterpret or otherwise minimize the risks, and fail to create sufficiently robust controls to prevent them.

Further, to assess the progress made in establishing AI governance, we selected a judgmental sample of four State agencies that have used or allowed the use of AI:

- New York State Office for the Aging (NYSOFA)
- Department of Corrections and Community Supervision (DOCCS)
- Department of Motor Vehicles (DMV)
- Department of Transportation (DOT)

Overall, the AI governance at these agencies varied significantly. Some agencies have identified key risks and taken steps to address those risks, while others have not created any AI-specific policies or taken other steps toward effective AI governance. These incomplete approaches to AI governance do not ensure that the State's use of AI is accurate, unbiased, and transparent and avoids disparate impacts. Further, none of the agencies either required or developed specific procedures to test its AI systems to evaluate whether outputs were accurate or biased. The agencies also varied in how long they have been using AI, with some agencies using AI for several years and others for the better part of a decade. Several factors contributed to the inconsistent and inadequate AI governance and compliance with ITS' AI Policy, including lack of statewide guidance, poor identification of AI technology, and non-existent training.

Disconnect Between ITS' Expectations and Agencies' Understanding of AI

There is currently a disconnect between ITS and State Entities in terms of AI knowledge and responsibilities. While the eight-page AI Policy—intended to assist State Entities in the responsible adoption of AI technologies—provides a brief overview of key concepts and establishes related requirements and recommendations for State Entities, it stops short of providing State Entities with detailed and specific guidance on how to implement them.

ITS officials pointed out that the AI Policy includes references to the NIST AI Framework for agencies to consult, and stated they believe that, together, the AI Policy and NIST AI Framework provide agencies with effective guidance. While the

links to the NIST AI Framework offer some support, ITS is not taking an active role in leading agencies' understanding of AI. There is a risk that agencies will develop their own understanding of AI risks and concepts based on their interpretation—which may not align with ITS' understanding—of the NIST AI Framework, which can threaten the responsible and ethical use of AI and create oversight challenges for ITS (such as agencies not appropriately identifying their AI use cases). There should be a bridge between the guidance outlined in the NIST AI Framework and agencies' understanding of AI. In response to these findings, ITS officials stated they expect to issue additional guidance on AI by March 2025—over a year since they initially released the AI Policy.

Furthermore, while ITS officials informed us that ITS has created multiple internal ITS working groups and an inter-agency AI working group, and joined public and private experts through the NYS Forum to discuss AI risks, potential policies and guidance, and training, ITS did not provide auditors with any agendas or meeting minutes from these working groups to detail and support these efforts. It is unclear what steps have been taken toward supplementing and supporting the AI Policy.

Significantly, we note that agencies in our sample generally acknowledged they are familiar with the AI Policy but are either awaiting further guidance or support from ITS in order to move forward with their own policies or were pursuing their own supplemental policies. It is clear that some agencies are eager for ITS to provide additional and more detailed guidance. ITS responded that, while ITS is the State's technology provider, ITS relies "upon the agencies using these technologies to define their own risk tolerances and business requirements." While agencies are domain experts, both the NIST and GAO AI Frameworks emphasize the importance of including multidisciplinary perspectives in developing AI governance.

ITS' AI Governance Policy

AI Risk Assessment

The AI Policy instructs that State Entities must perform a risk assessment that includes a review of all security, privacy, legal, reputational, and competency risks.

The AI Policy states that State Entities "should adopt applicable elements" of the NIST AI Framework to address the characteristics of trustworthy AI in regard to their AI risk assessments and management. However, the AI Policy does not address key steps such as how State Entities would process the risks stated, such as competency or bias risks, or who should receive and sign off on the risk assessments.

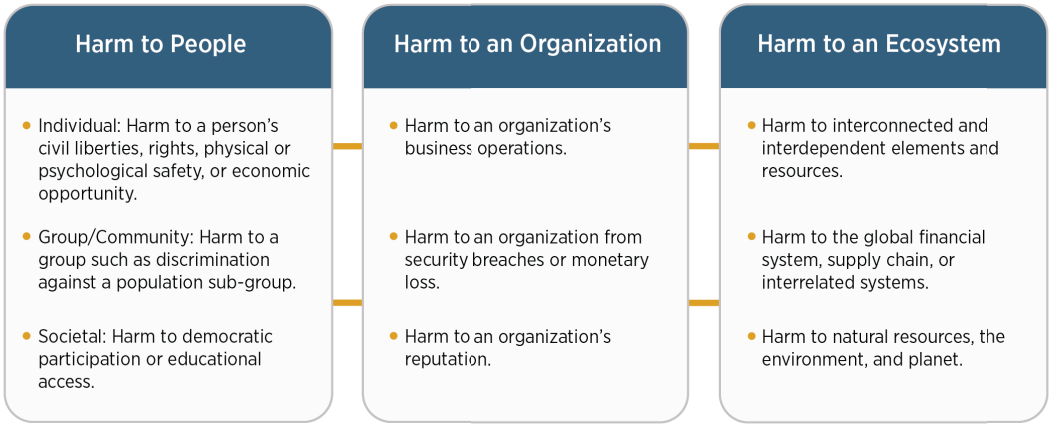
ITS officials stated that ITS conducts risk assessments of agencies to identify privacy and security risks associated with an AI system. However, ITS is unaware of the AI risk assessments agencies conduct on their own systems.

Furthermore, the AI Policy covers "all new and existing AI systems that are developed, used or procured by [State Entities]." While risk assessments are required for existing systems, ITS officials have not provided any explanation on how these assessments would be handled for existing AI systems whose risk assessments, if performed, did not likely address AI risks.

Bias Mitigation

Poorly managed, bias in AI can introduce enormous skew in AI-based decision-making—and as NIST pointed out, can cause harm to humans, industries, and large-scale systems (i.e., ecosystems).

Examples of Potential Harms Related to AI Systems



Source: NIST AI Framework 1.0

Given the inherent vulnerability of AI and the potential for harmful outcomes, the need for and commitment to bias management cannot be overstated. While the NIST and GAO go to lengths to identify how bias occurs and instill awareness of the harm that can occur, ITS does not take a similar authoritative stance. Rather, the AI Policy devotes only two sentences to the topic—"the use of AI systems should be fair and equitable … biases should be identified and remediated"—with no other guidance provided on how State Entities can identify or remediate biases. The AI Policy itself states biases "should be identified and remediated" but does not outright require State Entities to resolve or mitigate bias.

ITS officials responded to us that further guidance is provided in the NIST AI Framework; however, no such direction is given to State Entities in the AI Policy. Furthermore, that ITS itself gives such short shrift to the issue could, in turn, cause agencies to minimize the importance of bias management in their operations.

Policy Exceptions

According to the AI Policy, where an agency's compliance with the Policy is not feasible or technically possible, or if deviation is necessary to support a business function, the agency must request an exception from ITS. ITS officials stated

that they have not yet established what an exception request would look like but are in the process of developing one. They added that they did want to allow for cases where an exception would be necessary. ITS officials provided the following hypothetical example: if an agency used a third-party AI system, they may not have access to certain system information if that information is proprietary. As a result, the agency may not be able to comply with certain aspects of the AI Policy and could request an exemption.

The AI Policy regarding exceptions stands in contrast to ITS' current Information Security Exception Policy, updated in October 2022. The Information Security Exception Policy explicitly details the exemption process and references the Exception Request Form that State Entities are required to complete. The Exception Request Form requires a State Entity to identify the risks of not following the policies and a proposed corrective or mitigation plan. It remains unclear as to whether any deviations that ITS grants under its AI Policy would allow a State Entity's system to avoid compliance with the entire Policy or just specific procedures within the Policy. Absent criteria for what a valid exception would include, it is unclear what ITS would and would not allow. ITS officials acknowledged these requirements and explained they also maintain another exemption policy, the Technology Exceptions policy, which has similar criteria, and stated that ITS would apply one or both policies to address any exception requests. However, this is not stated in the AI Policy.

Use of Confidential Information

The AI Policy states that State Entities must maintain awareness of how AI systems use confidential information to ensure such use complies with applicable laws, rules, regulations, notices, and policies. ITS officials stated that they expect to help agencies develop awareness on how to build privacy into the data life cycle through security, privacy, and enterprise assessments. Otherwise, however, it is not clear whether State Entities' existing policies are sufficient or if they are expected to develop new processes to achieve this awareness. Additionally, other than stating that all existing AI systems are required to comply with the AI Policy, ITS has provided no further guidance on the privacy control implications, if any, for existing systems where a privacy assessment was performed based on IT policies and requirements in effect prior to the AI Policy.

Further, there is conflicting information within the AI Policy regarding the use of confidential information, which can add to agencies' confusion, resulting in misinterpretation and inadvertent non-compliance. Under the "Privacy" section, the AI Policy states that policies and controls should be developed when an agency "identifies a need to use the AI system to process personally identifiable, confidential, or sensitive information" and that such information may be used when "necessary during the development and use [of] the AI system." However, the policy subsequently states that an example of inappropriate AI use would be "inputting personally identifiable, confidential, or sensitive information into an AI system where that AI system uses that information to build upon its model and/or may disclose that information to an unauthorized recipient."

In response, ITS officials stated that the example cited is related to machine learning (where computers learn and improve without being explicitly programmed) where the information may be disclosed to unauthorized recipients and is not intended to prohibit the use of such information in all instances. ITS should update the AI Policy to clarify.

Other AI Policy Issues

Ethics Officer

The AI Policy states that approval by a State Entity's leadership is required prior to adopting new AI systems. The policy specifically recommends the ethics officer's approval prior to a State Entity adopting a new AI system, but it does not explain how requiring approval from an ethics officer adequately addresses the ethical risks of AI or how the involvement of an ethics officer may mitigate such risks. Ethics officers provide a critical function for assisting State employees in navigating NYS ethics laws. These laws and corresponding regulations generally cover areas such as annual financial disclosures, outside activities, gifts, and honoraria. They do not specifically address the ethics or bias risks that are inherent to AI use (such as fairness and equality), and it is unclear how an ethics officer's responsibilities would align with evaluating those AI risks.

ITS officials agreed with the general responsibilities of ethics officers but stated that their responsibility extends to "maintaining the confidentiality of information state officials and employees gain as a matter of their employment." While this is true, the employee designated as the compliance officer, or employee responsible for ensuring that the agency complies with the provisions of the Public Officers Law Article 6-A, could also play a role implementing an agency's AI Policy (which can be the same individual but not necessarily so). The Public Officers Law Article 6-A, also referred to as the Personal Privacy Protection Law, requires agencies to maintain a system of records only with personal information that is relevant and necessary for an agency to accomplish its goals. The law also states that safeguards must be established to ensure the security of such records as well as establishing rules that govern the retention and timely disposal of records. Additionally, as part of the law, agencies are required to submit a privacy impact statement to the committee on open government that includes information related to the maintenance of their system of records and any rules and procedures established as required by the law. Furthermore, while these requirements address certain aspects of AI governance regarding data governance, the relevant provisions of the Personal Privacy Protection Law limit its scope to systems of records with personal information. However, agencies can deploy AI that does not use such information.

AI Policy Terms

Given the complexity of AI governance, particularly for agencies with less subject matter expertise, the use of consistent, clearly defined terms is essential to avoid any potential for misunderstanding. Several terms throughout the AI Policy can be better

defined or additional guidance can be provided to assist agencies in complying with the Policy.

The AI Policy identifies transparency as an important principle of AI governance, and states that "where members of the public interact directly with SE [State Entity] systems that use AI technology, the use of such AI technology should be disclosed by the SE [State Entity]." ITS officials further stated that such disclosure is a key privacy concept when an agency is using AI to process data. The AI Policy's definition of direct interaction is not fully explained. The AI Policy uses an AI-enabled chatbot as an example of direct interaction but does not comprehensively define what constitutes direct interaction. These definitions and examples matter, as the functionality of systems can vary and impact whether a system is disclosed to the public. Lacking more definitive guidelines, agencies might not be aware of other systems that constitute direct interaction and should have public disclosure.

In addition, the AI Policy uses the collective term "State Entities" to refer to entities that are required to comply, but also references "ITS supported agencies" without having defined it to distinguish it from "State Entities." ITS officials clarified that "ITS has authority to establish statewide technology policies for State agencies, as well as certain non-agencies such as SUNY, CUNY, boards, commissions, and certain public benefit corporations, which are collectively referred to as State Entities. However, not all State Entities receive IT services from ITS, such as SUNY and CUNY." For these entities, the AI Policy still generally applies, but they are not subject to ITS' engineering consultation—one of the main procedures that ITS officials stated would enable them to discover AI—which, as also discussed below, can result in risks related to producing a complete AI inventory.

ITS' Oversight of AI Systems

AI Inventory

As of February 2025, it has been over a year since ITS issued the AI Policy, and ITS is still developing a process to create an inventory of AI systems in use by State Entities, as the Policy requires. In lieu of a formal inventory process, officials stated that they can become aware of agencies' AI systems through their various service request processes, such as Plan to Procure requests and engineering consultation requests. According to officials, ITS will provide specific data points to State Entities to use as criteria for identifying AI systems and will rely on State Entities to disclose all of their AI systems. ITS officials told us they are currently piloting an AI inventory tool with five State agencies, none of which were agencies we sampled. ITS did not provide details on its inventory pilot.

However, we note that there is a risk that all AI use cases may not be identified as some may not require ITS involvement, and other use cases, such as those developed by an agency in-house, will only be identified if the State Entity appropriately reports AI use. Absent guidance, agencies may not know when to report a system. For example, NYSOFA was not aware that it was required to submit

a Plan to Procure request for an AI system to ITS for an enacted budget line item. As a result of our audit, NYSOFA reached out to ITS for guidance. Otherwise, ITS might not have become aware of the AI procurement.

Human Oversight

Human oversight of AI systems is a core principle of AI governance. While the AI Policy requires State Entities to ensure human oversight of their AI systems and human decision-making, with the outcomes, decisions, and supporting methodologies documented appropriately, ITS does not have a process for monitoring their compliance. According to ITS officials, it is the State Entities themselves that are responsible for reviewing AI systems and ensuring compliance. ITS officials further stated that State Entities are responsible for identifying whether an AI system falls within the scope of the AI Policy and reporting that system to ITS. Consequently, ITS will only become aware of State Entities' compliance with human oversight of decision-making if they report their AI systems' processes. As discussed above, while ITS may learn of AI use through its service request processes, those processes currently do not appear to ensure there is appropriate human oversight over decision-making within an AI use case.

AI Governance at Sampled State Agencies

In order to assess New York's progress in establishing appropriate AI governance structures over the development and use of AI tools and systems, we selected a judgmental sample of four State agencies that have used or have allowed the use of AI—NYSOFA, DOCCS, DMV, and DOT—and developed a standard set of interview questions to determine how each of the selected agencies are governing their use and development of AI tools and systems.

- NYSOFA provides home and community-based programs that are designed to support and supplement informal care for older individuals to maximize their ability to age in their community and avoid higher levels of care and publicly financed care. NYSOFA has employed ElliQ, an AI companion—which is a proactive, voice-operated device that initiates conversations and remembers what users say. It is designed to foster independence and provide support for older individuals to help combat loneliness and social isolation. In 2023, 808 ElliQ units were shipped to 530 NYSOFA program participants. As a result of ElliQ's deployment, NYSOFA reported that, in 2023, there was a 95% reduction in loneliness among older adults using the platform.
- DOCCS's mission is to "improve public safety by providing a continuity of appropriate treatment services in safe and secure facilities where all incarcerated individuals' needs are addressed and they are prepared for release, followed by supportive services for all parolees under community supervision to facilitate a successful completion of their sentence." DOCCS established the Incarcerated Individual Telephone System to allow incarcerated individuals to communicate with a controlled list of family and friends. The system utilizes Investigator Pro, a voice biometric software, to validate the

voice of the incarcerated individual speaking through the phone and identify individuals who may be using someone else's personal identification number.

- As part of DMV's mission, since 2008, DMV has been using facial recognition technology to improve highway safety and deter identity fraud through its goal of "one driver, one license." DMV's facial recognition system enables DMV to compare a commercial driver license applicant's image against an existing file of facial images before issuing a new license. The system uses computer modeling to compare different measurements of an individual's face against the measurements of other photographs in the system and identify probability matches for human review. During the review, an investigator will review the images and other information to determine if the compared images are the same person.
- DOT oversees the State's complex transportation system and the ever-increasing need to coordinate the development of transportation with each mode serving its best purpose. Although DOT does not currently have any AI systems in use, it is currently piloting three AI systems. We selected a potential AI use case and met with the vendor to confirm that it used AI. Although the vendor told us AI was being used during an initial meeting, it later clarified that DOT's use case does not use AI. The vendor's engineers asserted that the way the vendor implements DOT's use case does not include AI. However, the vendor does use AI for other clients using the same computer programs and software. We concluded there is insufficient evidence to determine whether this use case used AI, as the vendor has the capability to use AI and does so for other clients.

To gain an understanding of each agency's governance over its use of AI, we developed survey questions from reviewing AI governance frameworks, including the GAO and NIST AI Frameworks, to identify key practices regarding accountability and responsible AI use. We also asked questions relevant to ITS' AI Policy. To assist the agencies in answering some of the interview questions, we identified a sample AI use case (i.e., an AI tool or system) to focus agency responses. In selecting the tool, we considered which agency was using the tool, type of AI function, and impact of the use case. Each sampled agency has used or is piloting AI within its programs. Certain responses from DOT were excluded from the audit findings, as there was insufficient evidence to determine if AI was part of the use case.

Overall, the AI governance at these agencies varied significantly. Some agencies have identified key risks and taken steps to address those risks, while others have not created any AI-specific policies or taken other steps toward effective AI governance. These agencies also varied in how long they have been using AI, with some agencies using AI for a couple of years and others for the better part of a decade. Several factors contributed to the inconsistent and inadequate AI governance and compliance with ITS' AI Policy, including lack of statewide guidance, poor identification of AI technology, and non-existent training.

General AI Policies and Procedures

We asked the sampled agencies about their AI policies, procedures, and risk management plans that have been published or are in development.

Three of the four sampled agencies have not independently established a specific definition of AI; rather, they refer to ITS' definition of AI. While NYSOFA acknowledges the AI Policy, initially NYSOFA had not established a definition, while DOCCS and DOT adopted the definition outlined in ITS' AI Policy. The remaining agency, DMV, developed its own definition for AI and published two DMV-specific AI policies. However, DMV's definition in its policies excludes its facial recognition system, effectively exempting this system from DMV's AI governance—which will be discussed later in greater detail. While ITS allows agencies to adopt their own AI policies, these additional policies must meet the requirements set by ITS.

NYSOFA, DOCCS, and DOT have not developed an AI governance structure to manage, operate, and oversee the implementation and use of AI systems. These agencies do not have documented policies and procedures related to:

- Developing and using AI systems, including how AI use is authorized
- Ensuring AI systems conform to the agency's stated values and principles and address bias and inaccuracies
- Involving stakeholders in the development and life cycle of AI systems to mitigate risks
- Requiring human oversight over the agency's AI systems, including those in development
- Monitoring the quality and reliability of data throughout its use, as it relates to AI (in addition, DMV does not have such a procedure)
- Managing the agency's AI life cycle to ensure the systems perform as intended, such as monitoring accuracy and bias over time

As discussed earlier, many provisions of ITS' AI Policy require agencies to take additional steps to create internal controls to ensure the goals of the Policy are ultimately achieved (i.e., protecting privacy; managing risk; and promoting accountability, safety, and equity). By not developing an effective governance structure, agencies are not effectively addressing the unique risks regarding their AI use.

Identifying AI Use

DMV officials told us they explicitly excluded their facial recognition system from their AI policies because they do not consider the facial recognition system to be AI—an understanding that is based on their experience with the system. As a result, they believe it is not subject to ITS' AI definition. However, DMV has not consulted with ITS, and ITS confirmed that no agency has requested an exception from the AI Policy.

DMV officials asserted they excluded their facial recognition system because it uses basic calculations and basic automation. However, this assertion oversimplifies the algorithms and deep learning used to create the facial recognition models. Additionally, ITS' AI definition explicitly considers computer vision—the ability for a system to derive meaningful information from digital images (i.e., visual input) and make recommendations based on that information—to be AI.

Furthermore, DMV's documentation of its facial recognition system did not provide enough detail to determine whether the system met ITS' definition of AI. However, based on our audit testing, we determined that the system is AI because it met ITS' definition, which includes: "perceive[s] real and virtual environments; abstract[s] such perceptions into models through analysis in an automated manner; and use[s] model inferences to formulate options for information or action." The vendor also told us it used AI, specifically deep learning and neural networks, to develop the model used by DMV. Furthermore, the software uses photos of individuals (perceives a real environment) by extracting their major features into analysis by their model (abstracts perceptions into model inferences through analysis) to create probability scores that the photos identify the same person (uses model inferences to formulate options for information or action). Notably, ITS' definition does not require automatic decisions to be made in order for a system to be considered AI—rather, that the analysis must be done in an automated manner.

AI Risk Management

We asked the sampled agencies questions related to each agency's AI risk management plan and how they assess AI-specific risks. While DMV has created policies regarding AI, including assessing AI risk, NYSOFA, DOCCS, and DOT have not developed a formal, written AI-specific risk management plan. However, both DOT and DMV have created internal AI committees to manage new and developing AI use cases.

Despite not having a formal and specific AI risk management plan, DOCCS has addressed certain AI-related risks associated with its use of Investigator Pro through contract terms. The ITS AI Policy recommends agencies address how third parties are allowed to use data for model development. DOCCS' contract prevents the use, sharing, and selling of data unless agreed to by DOCCS and confirms all the inmate recordings are owned by DOCCS. However, without a risk management plan, other risks outlined in the ITS AI Policy are not addressed. For example, the contract does not specifically address bias mitigation, which may lead to false positive results and increased investigation. A representative of the vendor informed the audit team that any potential bias is addressed through a combination of predictive labeling and investigator identification; however, it is unclear how effective those measures are because DOCCS does not monitor or measure error rates.

DOT has established an AI working group that is responsible for developing use cases, reviewing and implementing policies, performing outreach, and evaluating the risks around the uses of AI. DOT is currently developing three AI use cases (a chatbot, a geolocation tool, and use of a large language model). The working group

first convened in June 2024 and discussed forming three possible subcommittees to oversee use cases, training and deployment, and risks. However, the working group has not yet produced policies and procedures or a risk management plan.

In conjunction with creating two AI policies in July 2024 (one focused on all AI use cases and another specific to generative AI), DMV has created an AI governance committee that is responsible for overseeing an AI inventory; reviewing and approving AI projects and initiatives; ensuring compliance with the NIST AI Framework; overseeing the risk assessment and mitigation processes for AI systems; and providing guidance on ethical considerations, additional policies, and best practices for AI use. Members of the AI governance committee include the Chief Information Officer, Chief Information Security Officer, Deputy Commissioner of Communications and Customer Service, and Assistant Director of Technology Transformation (respective designees are allowed). Following its first meeting in July 2024, the committee was drafting a frequently asked questions (FAQ) document to support DMV's AI policies.

DMV requires its AI governance committee to be responsible for overseeing AI risk management as specified in its overall AI policy, including identifying, assessing, and documenting risks related to bias, privacy, security, and accuracy; developing and implementing risk mitigation strategies; developing metrics to assess the technical aspects of AI systems; continuously monitoring AI systems; and establishing incident response procedures for addressing AI-related incidents. However, there is no delineation of the specific responsibilities for personnel or established procedures for satisfying the requirements. While DMV developed a draft FAQ to address some of these topics related to generative AI (which is a subset of overall AI), DMV does not have documented specifics for overall AI.

DMV officials responded that they have committee rules; however, we do not see notes or action items within the committee minutes that show rules were created or agreed upon.

Additionally, while DMV has conducted risk assessments on its AI systems, these risk assessments do not fully meet the criteria of DMV's own AI policy, which requires risk assessments to be conducted in accordance with the NIST AI Framework in addition to ITS' Information Security Risk Management policy. The risk assessments provided by DMV were instead conducted in accordance with NIST SP 800-30, which uses a security perspective. However, it does not address the same risks that the NIST AI Framework identifies. Requirements in ITS' Information Security Risk Management policy align with the standards established by NIST SP 800-30 and provide guidance to address information security risks. Regardless of the appropriateness of using NIST SP 800-30 for conducting risk assessments in compliance with ITS' Security Risk Management policy, according to DMV's own policy, risk assessments performed on AI systems need to use the NIST AI Framework to ensure AI-specific risks are addressed and the characteristics of trustworthy AI are met.

Inventory of AI Systems and Tools

We asked the sampled agencies questions related to developing an inventory of AI systems and tools and their compliance with the requirement as stated in ITS' AI Policy. While ITS has not provided guidance to agencies on how to report AI systems in use to ITS, governance over AI use and management of AI risks need to identify AI use and development. The NIST AI Framework explicitly identifies this as a core aspect of its Framework. In addition to identifying the AI systems, identifying the context and the data used by the AI systems are important components to understand the risks in the relevant contexts.

None of the sampled agencies maintain a formal inventory of AI systems, nor do they maintain an inventory of the data sources used by their AI systems. However, DMV and DOT provided an informal listing of AI they are currently developing and using. NYSOFA officials stated they were not sure if their use of ElliQ met the definition of AI, and DOCCS did not agree that its sampled tool used AI.

Furthermore, agencies are required under the Personal Privacy Protection Law to create privacy impact statements that, in part, identify where personal information (i.e., information about an individual) is included in datasets and which systems use that data. Privacy impact statements were requested from all four sampled agencies to identify whether they maintain an inventory of the data collected and used. Only two agencies, NYSOFA and DOT, provided such a statement that contained an inventory of applicable data sources they maintained. DMV did not provide its statement and officials explained that the sampled use case was not part of DMV's statement, as it did not create new systems of record. DOCCS did not provide its privacy statement and explained that, as a public safety agency, it is exempt from sharing a privacy impact statement. Furthermore, while these requirements address certain aspects of AI governance including data governance, the Personal Privacy Protection Law is limited in scope to systems of records with personal information. For example, agencies can deploy AI that does not use personal information. As a result, those systems would not have to be identified under the Personal Privacy Protection Law. Agencies should take care in reviewing existing requirements and ensuring whether they are suitable on their own or can be further incorporated under their own AI governance.

Human Oversight

We asked the sampled agencies questions related to requiring human oversight over their use of AI systems. ITS' AI Policy requires agencies to ensure that decisions that impact the public are not made without human oversight (i.e., human in the loop). Only DMV has created a written requirement requiring a human in the loop for decisions made by generative AI systems (other AI systems do not have a similar requirement).

Excluding DOT's sampled use case, two agencies' (DOCCS and DMV) sampled use cases, in practice, feature a human in the loop process. Each agency's tool will identify a potential match (e.g., the matches with the highest probability) and a

human must review the recommendation within the wider context and information available to them. NYSOFA's sampled use case does not have any human in the loop, as the ElliQ technology was given directly to seniors who independently interact with the device. NYSOFA officials stated that the quality of ElliQ's output (i.e., responses) is up to the interpretation of the user. NYSOFA officials provided auditors user satisfaction and overall feedback metrics indicating user satisfaction. In addition, NYSOFA officials explained they expect that the vendor ensures accuracy. However, the ElliQ contract does not identify accuracy as a vendor responsibility. It is unclear how NYSOFA ensures human oversight occurs within its use of ElliQ.

Monitoring of AI Systems

We asked the sampled agencies how they monitor the use of each AI system to ensure the systems are accurate and free of bias and meet their intended objectives. Excluding DOT's AI use case, none of the agencies' AI systems we sampled have been audited or reviewed. NYSOFA, DOCCS, DOT, and DMV have not conducted periodic audits or reviews of their AI systems to ensure systems are accurate and performing appropriately. Except for DMV, the remaining agencies do not require such reviews. Without monitoring of AI systems, these agencies have no assurance that the outcomes reported by such systems are accurate.

NYSOFA does not require periodic audits or reviews of its AI systems to ensure systems are accurate and performing appropriately. For ElliQ, NYSOFA officials stated that the agency compares outcome data received from ElliQ's vendor against the benchmarks within the ElliQ workplan; however, they have not conducted any audits or reviews of ElliQ to ensure that the device is accurate and performing appropriately. Thus, NYSOFA has no assurance that the outcomes reported by ElliQ are accurate. In addition, the quality of the data and its outputs to users (such as prompts and responses to seniors) produced by ElliQ are not reviewed for accuracy or bias by NYSOFA. For example, in the scenario where a client asks ElliQ for information, NYSOFA has not tested or evaluated whether ElliQ's responses are appropriate and accurate.

DOCCS does not use metrics to measure the performance of its AI systems, such as error rates for Investigator Pro. For example, while DOCCS can document or track when Investigator Pro accurately identified when someone other than the inmate used the inmate's credentials, this information is not aggregated for analysis to evaluate the system's performance.

DMV officials stated that they have metrics to measure the performance of their AI systems; however, the metrics provided are not specific to AI, such as measuring systems' trustworthiness and errors (i.e., false positive and false negative rates). While DMV has reviewed the impact of its facial recognition system on identifying individuals who should not receive a commercial driver's license, DMV does not create or track metrics such as accuracy (i.e., the number of individuals who are incorrectly labeled as a potential, likely match and whether individuals who should have been identified were not).

DOT officials stated that DOT does not currently have metrics to measure the performance of its AI systems. However, DOT plans to identify and develop metrics to measure the performance of its AI use cases that are currently in development once they have been fully developed.

Agency Training

We asked the sampled agencies how they each train personnel on AI risk-related topics. None of the agencies we sampled have provided training to their personnel related to the risks of AI. Because ITS expects agencies to review and apply its AI Policy and applicable elements of the NIST AI Framework, training can be an important tool to support staff.

NYSOFA provides training to staff regarding the use of ElliQ; however, it does not provide training on the general risks of AI. NYSOFA officials stated that they do not have qualified staff to oversee AI. This includes not having identified an individual or group responsible for the design, implementation, use, and monitoring of AI systems or an individual or group that authorizes the use of AI systems.

DOCCS has not provided training to staff on the general risks of AI. Officials stated staff have been trained on the sampled AI use case, Investigator Pro—this training covers the use of the system but does not cover AI risks.

DMV's AI governance board discussed and DMV officials explained they are currently working on developing an AI training program. However, DMV has not provided training to agency staff on the general risks of AI.

DOT has advised staff not to use AI until established guidelines and developed policies are in place; however, we have not seen documentation of this directive and DOT has not provided training to staff on the general risks of AI.

Data Security and Privacy

We asked the sampled agencies questions related to the data created and collected by the sampled AI systems. Excluding DOT's sampled use case, the remaining three agencies stated their agencies document data use expectations within the contracts of the technologies they procure. However, we found a significant range in how agencies allow data that is created and collected by these sampled AI systems, ranging from explicit and clear restrictions on outside use and maintaining agency ownership to not addressing data ownership and relying on standard State contract language. While no agency has standard data use language that addresses this aspect of AI governance, DMV's AI governance committee started to develop standard contract language. Both the NIST's AI Framework and the GAO AI Framework consider how AI risks can, in part, be addressed during procurement.

NYSOFA stated that the developers of ElliQ own the performance metric data and recorded data from ElliQ. The vendor can use and access this data. NYSOFA officials did not know if the vendor was allowed to use the data to build or improve

other systems elsewhere, but stated that, as far as they knew, the vendor is only focusing on ElliQ. NYSOFA provided us with its contract for ElliQ and ElliQ's Privacy Policy; however, based on the information provided, it is unclear whether the information addresses what we asked.

DOCCS and DMV also do not have a written policy that requires data agreements covering all the AI tools they use or could use. However, both sampled use cases address data terms in their contracts. DOCCS' contract includes provisions related to data ownership and states that the vendor cannot sell, use, or share the data related to the Incarcerated Individual Telephone System (including Investigator Pro). Additionally, DMV's contract for its facial recognition software does contain provisions where the use of the data collected was only allowed for the purposes that the vendor was contracted to provide.

DOT does not require a specific AI data agreement regarding the use of data and how it could be used for future model development by vendors, such as using data to train current system models or train other models. However, in researching tools used by DOT to identify AI use, we did identify at least one contract where the use of the data collected was only allowed for the purposes that the vendor was contracted to provide.

Recommendations

To ITS:

1. Amend the Acceptable Use of Artificial Intelligence Technologies policy and provide additional guidance or procedures to assist State Entities with adopting AI technologies.
2. Coordinate with all State Entities to provide support in developing AI governance structures as necessary.
3. Develop and coordinate statewide training to ensure key AI risks and risk management options are understood by appropriate staff.

To NYSOFA, DOCCS, DMV, and DOT:

4. Review ITS' Acceptable Use of Artificial Intelligence Technologies policy to identify areas within the agency that need to be strengthened.
5. Implement policies to create an effective AI governance structure.
6. Coordinate with ITS on developing AI governance structures as necessary.

To DMV:

7. Review the facial recognition system with ITS to determine compliance with ITS' Acceptable Use of Artificial Intelligence Technologies policy.

Audit Scope, Objective, and Methodology

The objective of our audit was to assess various New York State agencies' progress in establishing an appropriate AI governance structure over the development and use of AI tools and systems. The audit covered the period from January 2019 through November 2024.

To accomplish our objective and assess related internal controls related to the State's progress in establishing an appropriate governance structure over the development and use of AI tools and systems, we reviewed ITS' policies and procedures related to AI and interviewed ITS personnel about the development and implementation of the AI Policy and the progress of any additional guidance and procedures.

We interviewed officials from the sampled agencies to gain an understanding of each agency's AI governance structure. We asked additional questions to determine how each agency's sampled use case functions within that governance structure. To formulate our survey questions, we reviewed AI governance frameworks including the NIST and GAO AI Frameworks to identify key practices to help ensure accountability and responsible AI use. For each sampled use case, we viewed vendor demonstrations and interviewed the vendor about the underlying technology. We also requested and reviewed documentation to support agency responses.

We used a non-statistical sampling approach to provide conclusions on our audit objectives and to test internal controls and compliance. However, because we used a non-statistical sampling approach for our testing, we cannot project the results to the respective populations. Our samples, which are discussed in detail in the body of our report, include:

- A judgmental sample of four of all State agencies that had payments within the Statewide Financial System based on whether an AI tool was in use and the type of AI tool to test for whether AI governance existed at our sampled agencies.
    - We also judgmentally selected a sample of one AI use case from each of the sampled State agencies to identify key practices to ensure accountability and responsible AI use. We selected cases that were actively in use, had public impact, and covered different functions throughout New York.

We obtained data from the Statewide Financial System, which is reviewed by KPMG during its annual audit of the State's annual comprehensive financial report. Based on their work, we have determined that the data from this system is sufficiently reliable for the purposes of this report.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of the selected agencies' oversight and administration of AI governance.

Reporting Requirements

We provided a draft copy of this report to ITS, NYSOFA, DOCCS, DMV, and DOT officials for their review and formal written comments. We considered their responses in preparing this final report and have included them in their entirety at the end of the report. ITS, NYOSFA, DOCCS, DMV, and DOT officials generally agreed with the recommendations and have indicated actions they have taken or plan to take to address them. Our responses to certain agencies' remarks are included in the report's State Comptroller's Comments, which are embedded in the agency responses.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Chief Information Officer of ITS; the Director of NYSOFA; and the Commissioners of DOCCS, DMV, and DOT shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments - ITS

KATHY HOCHUL
Governor

DRU RAI
NYS Chief Information Officer

Philip Boyd
Audit Supervisor
Office of the State Comptroller
Albany, New York 12236

February 10, 2025

Dear Philip Boyd:

The New York State Office of Information Technology Services ("ITS") has reviewed the Office of the State Comptroller (OSC) Draft Report 2023-S-50 titled *New York State Artificial Intelligence (AI) Governance*. ITS appreciates the effort of OSC in conducting this engagement and welcomes the opportunity to provide this response. ITS is deeply committed to the delivery of quality information technology (IT) services, policies, and standards across the State and joins OSC in its acknowledgment that appropriate AI governance is of paramount concern.

The ITS Acceptable Use of AI Policy, hereinafter referred to as the AI Policy, was created as a statewide framework to aid in AI implementation while highlighting the shared responsibilities in AI governance. With the policy as a foundation, ITS partners with State Entities (SEs) in AI implementation and governance on a routine basis though robust existing processes. While ITS plans to provide additional AI-specific guidance and support to SEs, ITS has dozens of technology and security policies that offer guidance to agencies on the responsible and secure implementation and use of technology, as well as operational processes established to meet agency-specific technology needs. Many of these long-established guidance documents are applicable to a technology solution that includes AI.

ITS submits the following response to the key recommendations specific to ITS contained in OSC's multi-agency draft report 2023-S-50 on New York State Artificial Intelligence Governance.

Recommendation 1: Amend the Acceptable Use of Artificial Intelligence Technologies policy and provide additional guidance or procedures to assist State Entities with adopting AI technologies.

ITS acknowledges that AI is a constantly evolving technology such that the AI Policy and subsequent guidance materials will need continual reassessment and review. ITS is considering OSC's recommendations on areas of improvement in the AI Policy and where it can provide additional standards and guidance for State agencies considering use of AI. The AI Policy was first published in January 2024, always with the intent of additional guidance and procedures to be issued and all to be reviewed and revised on an ongoing basis. ITS is in the final stages of the first round of regular

updates to the AI Policy and intends to issue additional guidance materials by the end of Fiscal Year 25.

Recommendation 2: Coordinate with all State Entities to provide support in developing AI governance structures as necessary.

Collaboration with our partner State agencies is key to the ITS mission and mutual success. ITS seeks to constantly refine and improve upon its customer support and IT delivery model, and is currently working with State agencies to develop AI governance structures, assess technology solutions with and without AI capabilities, and beyond.

Recommendation 3: Develop and coordinate statewide training to ensure key AI risks and risk management options are understood by appropriate staff.

ITS has a robust training program for its employees with many opportunities to explore education and training related to AI, among other technology and security topics and general professional development. ITS employees have access to a comprehensive library of on-demand trainings relating to AI and collaborate with various IT and security membership organizations and partners that provide additional professional education programming on AI, among many other relevant topics. Using the knowledge and skills gained in these various training opportunities, ITS employees actively engage with the employees across the state workforce on AI governance and routinely share information learned through their training and expierence. Under Governor Hochul's direction and support, ITS is developing AI education and training resources that will be available to the ITS-supported state workforce and anticipates rolling that out in early 2025.

ITS appreciates the opportunity to review the draft report and provide a response. Please feel free to contact Jerry Nestleroad at Jerry.Nestleroad@its.ny.gov, or me at Michele.Jones@its.ny.gov with questions or feedback.

Sincerely,

Michele V. Jones, Esq.
Chief Risk and Privacy Officer

CC: Dru Rai, Chief Information Officer
Jennifer Lorenz, Executive Deputy Chief Information Officer
Marcy S. Stevens, Esq., Chief General Counsel

NEW YORK STATE OF OPPORTUNITY. Office for the Aging

KATHY HOCHUL
Governor

GREG OLSEN
Acting Director

February 11, 2025

Office of the New York State Comptroller
Division of State Government Accountability
Attention: Kenrick Sifontes, Audit Director
110 State Street, 11th Floor
Albany, New York 12236

Re: Audit Draft Report- 2023-S-50, Issued January 2025
New York State Artificial Intelligence Governance

Dear Mr. Sifontes,

NYSOFA has reviewed the Office of the State Comptroller's (OSC) above-referenced draft report relating to Audit Report Number 2023-S-50, titled: New York State Artificial Intelligence Governance. We concur with the audit findings and recommendations.

During the audit's opening conference on June 12, 2024, NYSOFA was informed that we were using an Artificial Intelligence (AI) product, and that there was a new (AI) policy that we needed to be in compliance with. Prior to that meeting, we were not aware of that policy, and advised your staff upon our review of the policy that it did not apply to our one AI related contractual arrangement.

State Comptroller's Comment – NYSOFA's AI companion meets the definition of AI per ITS' policy. NYSOFA could not provide sufficient explanation why its contractual arrangement would not be covered by this policy. As stated on page 7 of the audit report, the AI policy applies to "all new and existing AI systems that are developed, used or procured by State Entities, that when used could directly impact the public."

The draft audit identifies five (5) general findings:

(1) Disconnect Between ITS' Expectations and Agencies' Understanding of AI;
(2) ITS' AI Governance Policy;
(3) Other AI Policy Issues;
(4) ITS' Oversight of AI Systems; and
(5) AI Governance at Sampled State Agencies.

NYSOFA has reviewed these findings and has no comments beyond those referenced in the Audit Report.

The Draft Audit Recommendation to NYSOFA (Audit Recommendations #s 4-6):

(1) Review ITS' Acceptable Use of Artificial Intelligence Technologies policy to identify areas within the agency that need to be strengthened.
(2) Implement policies to create an effective AI governance structure.
(3) Coordinate with ITS on developing AI governance structures as necessary.

NYSOFA's Draft Audit Recommendation Response: We agree with these three recommendations going forward as the agency contemplates the use and procurement of AI products to assist in serving New York State's older adult population. We have initiated contact with ITS for information and assistance in pursuing these goals.

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Sincerely,

Greg Olsen
Acting Director
Greg.Olsen@aging.ny.gov

Agency Comments - DOCCS

NEW YORK STATE | Department of Corrections and Community Supervision

KATHY HOCHUL
Governor

DANIEL F. MARTUSCELLO III
Commissioner

February 10, 2025

Kenrick Sifontes
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236

RE: Draft Audit Report 2023-S-50, "New York State Artificial Intelligence Governance"

Dear Kenrick Sifontes:

This is in response to the draft audit report 2023-S-50, "New York State Artificial Intelligence Governance," which assessed various New York State Agencies' progress in establishing an appropriate artificial intelligence (AI) governance structure over the development and use of AI tools and systems.

Please see the following responses to the draft recommendations pertaining to the Department of Corrections and Community Supervision (DOCCS).

Recommendations:

To NYSOFA, DOCCS, DMV, and DOT:

Recommendation 4

OSC: Review ITS' Acceptable Use of Artificial Intelligence Technologies policy to identify areas within the agency that need to be strengthened.

DOCCS Response
DOCCS has reviewed the ITS' Acceptable Use of Artificial Intelligence Technologies policy and will share with Central Office Executives to identify areas within the agency where it is applicable and may need to be strengthened.

Recommendation 5

OSC: Implement policies to create an effective AI governance structure.

DOCCS Response
DOCCS will leverage the ITS' Acceptable Use of Artificial Intelligence Technologies policy and the findings of this audit to develop an effective AI governance structure.

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Recommendation 6

OSC: Coordinate with ITS on developing AI governance structures as necessary.

DOCCS Response
Once DOCCS develops a draft AI governance structure we will consult with NYS ITS for input on the draft prior to issuance of any such policy.

DOCCS would like to acknowledge the time and effort of all OSC employees who were involved with this audit and their desire to improve the Department's operation. The Department appreciates the opportunity to review and respond to the findings and recommendations for draft report 2023-S-50.

Sincerely,

Daniel F. Martuscello III
Commissioner

cc: Jaifa Collado, Executive Deputy Commissioner
Melissa Coolidge, Associate Commissioner/Chief of Staff to the Commissioner
Anne Marie McGrath, Deputy Commissioner, Strategic Planning & Population Management
Osbourne A. McKay, Deputy Commissioner for Correctional Industries, Compliance Standards, & Diversity
Jason Golub, Deputy Commissioner & Counsel
Denisha Goodman, Assistant Commissioner for Correctional Industries and Compliance Standards
Cal Whiting, Assistant Commissioner for Government Affairs
Muhammad Zamir, Director, Internal Audit Unit
Courtney Shepard, Director, Bureau of Internal Controls

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KATHY HOCHUL
Governor
MARK J.F. SCHROEDER
Commissioner
CHRISTIAN JACKSTADT
Executive Deputy Commissioner

February 7, 2025

Kenrick Sifontes, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street Albany, NY 12236

Re: DMV's Response to Draft Report - 2023-S-050, New York State AI Governance

Dear Kenrick Sifontes:

This letter is in response to the Office of the State Comptroller (OSC)'s Draft Report - 2023-S-050, New York State AI Governance.

Thank you for providing the draft audit report. We appreciate the effort and analysis that has gone into examining this important topic across New York State government. As evidenced in your draft report, DMV has quickly established itself as a statewide leader in the subject area of AI governance. Before addressing OSC's specific recommendations below, DMV believes it is important to clarify that it complied with all aspects of this audit and provided information to the audit team with full transparency. Further, DMV is in full compliance with the NYS ITS policy to the extent applicable to our agency.

We however disagree with certain statements and assumptions in the report. For example, OSC states that "none of the agencies either required or developed specific procedures to test its AI systems to evaluate whether outputs were accurate or biased," and that DMV specifically "does not have" … "documented policies and procedures related to…monitoring the quality and reliability of data throughout its use, as it relates to AI." DMV in fact has developed procedures to test its Document AI (DocAI) system, and has documented policies and procedures for training, testing and monitoring its performance to evaluate its accuracy. This was shared with the audit team.

State Comptroller's Comment – While the AI use case we selected for DMV was its facial recognition system, DMV officials also provided documentation for Document AI—*an AI tool that analyzes, classifies, and validates documents*. DMV provided us with an administration guide and DMV's risk assessment. However, this documentation did not contain procedures or processes the agency performed to test for accuracy or bias. On page 18 of the audit report, we recognized that DMV created requirements to test and monitor its AI tools; however, we also noted that DMV did not establish procedures to satisfy these requirements.

The OSC Report itself acknowledges and accurately describes jurisdiction and functions of DMV's AI Governance Committee, including "overseeing AI risk management", "identifying, assessing, and documenting risks related to bias, privacy, security, and accuracy", "developing and implementing risk mitigation strategies", "developing metrics to assess the technical aspects of AI systems", "monitoring AI systems", and "establishing incident response procedures for addressing AI-related incidents."

6 Empire State Plaza, Albany, NY 12228 | dmv.ny.gov

As to the report's references to DMV's facial recognition program, DMV has determined that the program does not fall under the definition of AI and is therefore excluded from DMV's AI governance process.

State Comptroller's Comment – DMV disagreed with our conclusion that its facial recognition tool is AI (see page 17 of the report, which details our conclusion). However, DMV did not provide any evidence to the contrary or show that it received an exemption from ITS.

Finally, as noted, DMV has AI policies, and an established AI governance committee and process. It reviews the DocAI system as it is being trained and tested before phases are implemented, and will audit when it has reached maturity, in accordance with industry standards.

Our responses to DMV's specific recommendations are as follows:

4. Review ITS' *Acceptable Use of Artificial Intelligence Technologies* policy to identify areas that need to be strengthened.

   Response: This was completed, and DMV developed its own, stricter policies. Careful review of NYS-P24-001 was paramount in DMV's establishment of its policies. DMV will continue to monitor any updates to the statewide policy for inclusion and/or further clarification in DMV policies whenever appropriate.

5. Implement policies to create an effective AI governance structure.

   Response: This was completed, and DMV has an effective AI governance structure. As expected, OSC has not identified any risks associated with bias, privacy, security, discrimination, or safety, in DMV's use of its single AI system.

   State Comptroller's Comment – DMV misunderstood the objective and methodology of the audit. Rather than a sole review of a single tool, we assessed DMV's overall AI governance structure and used a sample AI tool—its facial recognition system—to guide agency responses to some questions. DMV disagreed with our conclusion that its facial recognition tool is AI, but did not provide any evidence to the contrary or show that it received an exemption from ITS. Throughout the report, we identified gaps in DMV's AI governance related to AI risks and highlighted opportunities to address these risks, including coordinating with ITS when necessary (page 16), ensuring risk assessments address unique AI risks (page 18), training staff (page 21), and addressing data use and ownership (page 21).

   DMV will continue to refine its AI governance process and policies for continuous improvement to effectively guide and manage DMV's use of any AI solutions.

6. Coordinate with ITS on developing AI governance structures as necessary.

   Response: This is both complete and ongoing. DMV created an AI governance structure and issued internal AI policies, in accordance with ITS' AI policy. DMV further engaged ITS on a formal inventory process and training process. DMV will continue to align its AI governance structure with ITS' as needed.

7. Review the facial recognition system with ITS to determine compliance with ITS' AI Policy.

   Response: This was completed.

   State Comptroller's Comment – Contrary to DMV's assertion, we have no evidence that this occurred or that an exemption to the ITS AI policy was requested. As recommended, DMV should work with ITS to review its facial recognition technology.

ITS issued its AI policies in January 2024, and DMV has quickly established important governance and management of this emerging technology in short order. DMV is continually monitoring its single AI use case in DocAI and will continue to subject future use cases to its internal and ITS AI policies.

DMV provided the OSC audit team with all information and documentation requested throughout this engagement and is disappointed that much of that is inaccurately reflected, or not reflected at all, in this draft report.

State Comptroller's Comment – We reviewed all documentation provided by DMV. Moreover, our audit report reflects our conclusions drawn from the documentation provided and the results of our audit testing as detailed in the methodology section of the report.

That said, we sincerely appreciate the opportunity to respond to the draft report, and we will continue to lead in the area of AI governance.

Sincerely,

Christian Jackstadt
Executive Deputy Commissioner

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Agency Comments - DOT

NEW YORK STATE | Department of Transportation

KATHY HOCHUL
Governor

MARIE THERESE DOMINGUEZ
Commissioner

February 10, 2025

Kenrick Sifontes, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street - 11th Floor
Albany, NY 12236-0001

Re: Audit Draft Report - 2023-S-50, Issued January 10, 2025

Dear Mr. Sifontes:

The New York State Department of Transportation (NYSDOT) has reviewed the Office of the State Comptroller (OSC) Draft Report 2023-S-50 titled *New York State Artificial Intelligence (AI) Governance*. NYSDOT provides the following as responses to OSC's recommendations relevant to it.

NYSDOT Response to Recommendations:

OSC Recommendation (4): Review ITS' Acceptable Use of AI Technologies policy to identify areas within the agency that need to be strengthened.

> ***NYSDOT Response:*** *NYSDOT agrees with this recommendation. NYSDOT has reviewed the Information Technology Services (ITS) Policy and evaluated areas within the agency that are deserving of improvement regarding the use of AI. Moreover, NYSDOT has established an AI Committee which is tasked with the following, in consultation with ITS:*
>
> 1. *collecting, vetting, cataloging, and combining proposed AI use cases;*
> 2. *recommending appropriate use cases to the legal and cyber risk teams for review; these teams include assigned legal staff as well as the NYSDOT Chief Information Security Officer;*
> 3. *socializing, informing, and training NYSDOT staff on the responsible use of AI in general, and the abilities and limitations of particular AI solutions where appropriate.*

OSC Recommendation (5): Implement policies to create an effective AI governance structure.

> ***NYSDOT Response:*** *NYSDOT agrees with this recommendation. NYSDOT is currently creating an agency-specific AI Policy that will allow NYSDOT to manage, operate, and oversee the implementation of our AI technology. Among other things, the policy will outline agency and employee responsibilities around the safe and effective use of AI technology, the responsibilities of the NYSDOT AI Committee, and the workflows around implementation of AI solutions within NYSDOT. These workflows are designed to be compliant with the ITS AI Policy and expand upon the requirements stated therein. NYSDOT anticipates finalizing the*

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policy in spring of 2025.

OSC Recommendation (6): Coordinate with ITS on developing AI governance structures as necessary.

NYSDOT Response: *NYSDOT agrees with this recommendation. NYSDOT has already begun such coordination over the past six months. In particular, NYSDOT has:*

1. *interfaced with ITS while developing NYSDOT's draft AI Policy; and*
2. *invited members of the ITS dedicated team for NYSDOT to participate on the NYSDOT AI Committee.*

If you have any questions, please contact Chris Herald, Director of Internal Audit, at 518-457-1085.

Sincerely,

Erin Jaeger

Erin Jaeger
Assistant Commissioner – Administrative Services Division
Chief People Officer

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