

Biden Executive Order on Artificial Intelligence

November 7, 2023

On October 30, 2023, President Biden issued an Executive Order, along with a summary Fact Sheet concerning the safe, secure, and trustworthy use of artificial intelligence (“AI”). The Order mandates various federal agencies to develop new rules and regulations reflective of the administration’s goals and key considerations as set forth in the Order. We expect a number of proposed rules and regulations surrounding the use of AI in nearly every industry in the coming months.

The Order stresses the need for new standards in AI safety and security, including:

- Requiring developers of AI systems to share safety test results and other data with the government;
- Testing prior to public release of AI software to ensure safety;
- Developing new standards for biological synthesis screening to protect against risks of using AI to engineer dangerous biological materials;
- Establishing an advanced cybersecurity program to develop AI tools to find and fix vulnerabilities in critical software; and
- Ordering the development of a national security memorandum that directs further actions on AI and security, to be developed by the National Security Council and White House Chief of Staff.

To safeguard the privacy of Americans, the Order sets the following goals:

- Prioritizing federal support for accelerating privacy-preserving techniques with AI systems;
- Strengthening privacy-preserving research and technologies, such as cryptographic tools that preserve individuals’ privacy, by funding a research coordination network to advance development;
- Evaluating how agencies collect and use commercially available information; and
- Developing guidelines for federal agencies to evaluate the effectiveness of privacy-preserving techniques, including those used in AI systems.

To advance equity within the use of AI, the Order states an intention to:

- Provide clear guidance to landlords, federal benefits programs, and federal contractors to keep AI algorithms from being used to exacerbate discrimination;
- Address algorithmic discrimination through training, technical assistance, and coordination between the Department of Justice and federal civil rights offices; and
- Develop best practices on the use of AI in sentencing, parole and probation, pretrial release and detention, risk assessments, surveillance, crime forecasting and predictive policing, and forensic analysis.

The Order sets forth the following goals concerning consumer, student, and patient privacy:

- Advancement of the responsible use of AI in healthcare and the development of affordable and life-saving drugs. The Department of Health and Human Services will establish a safety program to receive reports of—and act to

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remedy—harms or unsafe healthcare practices involving AI; and

- Shape AI's potential to transform education by creating resources to support educators deploying AI-enabled educational tools, such as personalized tutoring in schools.

As to the role of AI in the workplace, the Order states an intention to:

- Develop principles and best practices to mitigate the harms and maximize the benefits of AI for workers by addressing job displacement, labor standards, workplace equity, health, and safety, and data collection; and
- Produce a report on AI's potential labor-market impacts, and study and identify options for strengthening federal support for workers facing labor disruptions, including from AI.

The Order also seeks to ensure that the United States continues to lead the way in AI innovation and competition, domestically and internationally, through the following actions:

- Initiating a pilot of the National AI Research Resource—a tool that will provide AI researchers and students access to key AI resources and data—and expanded grants for AI research in vital areas like healthcare and climate change;
- Promoting a fair, open, and competitive AI ecosystem by providing small developers and entrepreneurs access to technical assistance and resources, helping small businesses commercialize AI breakthroughs, and encouraging the Federal Trade Commission to exercise its authority;
- Using existing authorities to expand the ability of highly skilled immigrants and nonimmigrants with expertise in critical areas to study, stay, and work in the United States by modernizing and streamlining visa criteria, interviews, and reviews; and
- Expanding bilateral, multilateral, and multistakeholder engagements, including internationally, to collaborate on AI. The State Department, in collaboration with the Commerce Department, is tasked with leading an effort to establish robust international frameworks for harnessing AI's benefits, managing its risks, and ensuring safety.

Finally, the Order sets forth goals related to the responsible government use of AI as follows:

- Issuance of guidance for agencies' use of AI, including clear standards to protect rights and safety, improve AI procurement, and strengthen AI deployment; and
- Acceleration of the rapid hiring of AI professionals as part of a government-wide AI talent surge led by the Office of Personnel Management, U.S. Digital Service, U.S. Digital Corps, and Presidential Innovation Fellowship.

We will continue to provide updates as proposed rules and regulations are promulgated in line with the Order. In the meantime, if you have any questions about the effects of the use of AI-driven tools in the workplace, please contact any member of Miller Canfield's Artificial Intelligence in Employment team, who are listed as authors of this alert.