

Regulatory Alert

Regulatory Insights

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Executive Order: National Policy Framework for AI

KPMG Regulatory Insights:

- **National Standard:** Sets a national framework for AI policy that aims to replace multiple and divergent state approaches with a single federal approach.
- **Litigation Focus:** Directs DOJ to establish an AI Litigation Task Force to challenge state AI laws that conflict with the framework or federal authorities.
- **Funding Conditions:** Limits eligibility for specified broadband and discretionary grants to states that do not have or agree not to enforce "onerous" state AI laws.
- **Forward Look:** Expect legal battles as states and consumer advocacy groups push back on this order.
- **More to Come:** Initiates consideration of a federal reporting/disclosure standard for AI models and potential preemption of conflicting state requirements.

The Administration has issued an [executive order](#) entitled "Ensuring a National Policy Framework for Artificial Intelligence," which sets forth directives for the establishment of a federal policy framework for AI laws and regulations. Its stated goal is to limit regulatory fragmentation and reduce perceived "onerous and excessive" AI laws and regulations across the states, in favor of a "minimally burdensome national policy framework" that promotes innovation. The framework is also expected to ensure that "children are protected, censorship is prevented, copyrights are respected, and communities are safeguarded."

The executive order mandates:

1. Establishing an AI Litigation Task Force to challenge state AI laws that conflict with the federal policy
2. Evaluating state AI laws to identify laws that conflict with the federal policy
3. Setting policies to restrict grant funding in states with conflicting AI laws
4. Determining whether to adopt a federal reporting and disclosure standard that preempts conflicting state laws
5. Issuing a policy statement on the circumstances where a state law is preempted by the FTC Section 5 provisions

6. Preparing a legislative recommendation for a uniform federal AI policy framework

1. AI Litigation Task Force

Within 30 days, the Attorney General must:

- Establish an AI Litigation Task Force to challenge state AI laws inconsistent with the policy framework, including on grounds of preemption, interstate commerce, or other legal bases.
- Consult periodically with the Special Advisor for AI and Crypto, the Assistant to the President for Science and Technology, the Assistant to the President for Economic Policy, and the Assistant to the President and Counsel to the President regarding state laws that "warrant challenge."

2. Evaluate State AI Laws

Within 90 days, the Secretary of Commerce, in consultation with the Special Advisor for AI and Crypto, the Assistant to the President for Economic Policy, the Assistant to the

President for Science and Technology, and the Assistant to the President and Counsel to the President, must:

- Publish an evaluation of existing state AI laws that identifies:
 - “Onerous” laws that conflict with “a minimally burdensome national policy framework for AI”
 - Laws that should be referred to the DOJ AI Litigation Task Force
- At a minimum, identify laws that:
 - Require AI models to alter “truthful outputs”
 - May compel AI developers or deployers to disclose or report information in a way that violates the First Amendment or other provisions of the Constitution.

The evaluation may additionally identify state laws that promote AI innovation consistent with the national policy framework.

3. Restrictions on State Funding

Within 90 days, the Secretary of Commerce must:

- Issue a Policy Notice specifying conditions under which states may be eligible for remaining funding under the Broadband Equity Access and Deployment (BEAD) Program. The Policy Notice must:
 - Clarify that states with “onerous” AI laws are “ineligible for non-deployment funds,” to the maximum extent permitted by Federal law.
 - Describe how a fragmented state regulatory landscape for AI could undermine BEAD-funded deployments, impede growth of AI applications and conflict with BEAD’s mission.

Separately, executive departments and agencies, in consultation with the Special Advisor for AI and Crypto, must review discretionary grant programs and determine whether conditions can be imposed to limit funding by requiring states either not to enact AI laws conflicting with the policy or, if

such laws exist, to enter binding agreements not to enforce such laws during the funding performance period.

4. Federal Reporting and Disclosure

Within 90 days after the Commerce Department’s identification and evaluation of state AI laws, the Federal Communications Commission must, in consultation with the Special Advisor for AI and Crypto, initiate a proceeding to consider adopting a federal reporting and disclosure standard for AI models that preempts conflicting state laws.

5. Preemption of State Laws Mandating Deceptive Conduct

Within 90 days of the Executive Order, the Federal Trade Commission, in consultation with the Special Advisor for AI and Crypto, must issue a Policy Statement on Section 5 (unfair or deceptive acts or practices) as applied to AI models, including an explanation of the circumstances where state laws requiring changes to “truthful outputs” of AI models are preempted by the FTC’s Section 5 provisions affecting commerce.

6. Legislative Recommendation

The Special Advisor for AI and Crypto and the Assistant to the President for Science and Technology must prepare a legislative recommendation to establish a uniform federal AI policy framework that preempts state AI laws conflicting with the federal policy.

The recommendation “shall not” propose preempting otherwise lawful state AI laws related to:

- Child safety protections
- AI compute and data center infrastructure (except generally applicable permitting reforms)
- State government procurement and use of AI
- Other topics “as may be determined.”

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