Insights: Alerts

Executive Order Seeks to Preempt Certain State AI Laws and Establish a National AI Framework - Initial Takeaways

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On December 11, 2025, President Trump issued an Executive Order titled *"Ensuring A National Policy Framework For Artificial Intelligence."* The Order seeks to limit State regulation of AI that would interfere with Section 2, which provides that, "it is the policy of the United States to sustain and enhance the United States' global AI dominance through a minimally burdensome national policy framework for AI."

Among other directives, the Order: (i) requires the Attorney General to challenge State AI laws that are inconsistent with Section 2; (ii) directs specified agencies and White House officials to evaluate and identify State laws that conflict with Section 2 and restrict federal grant funding to these states; and (iii) tasks the "Special Advisor for AI and Crypto and the Assistant to the President for Science and Technology [to] jointly prepare a legislative recommendation establishing a uniform Federal policy framework for AI that preempts State AI laws."

This Executive Order is the most recent in President Trump's efforts to shape AI policy, following the November 24, 2025, Executive Order titled *"Launching the Genesis Mission,"* and the July 23 release of *"America's AI Action Plan."* Given its breadth and the direct conflicts it presents with existing and prospective State laws, the Order's implementation is likely to face judicial challenges, as well as calls for Congress to overturn the Executive Order or, conversely, to advance the federal statutory framework governing artificial intelligence contemplated by the Order.

Below are initial takeaways regarding the implementation of the Executive Order.

Establishment of an AI Litigation Task Force to Challenge State AI Laws

Section 3 of the Order, titled *"AI Litigation Task Force,"* is notably direct. It requires the Attorney General, within 30 days, to "establish an AI Litigation Task Force (Task Force) whose sole responsibility shall be to challenge State AI laws inconsistent with the policy set forth in section 2 of this order." Those challenges may be brought on grounds that such laws unconstitutionally regulate interstate commerce, are preempted by existing federal regulations, or are otherwise unlawful in the Attorney General's judgment.

Publication of an Evaluation of State AI Laws

The Order requires that, within 90 days, the Secretary of Commerce, acting in consultation with several federal officials, including the Special Advisor for AI and Crypto, "publish an evaluation of existing State AI laws" identifying onerous laws that conflict with the policy set forth in Section 2, as well as laws that should be referred to the Task Force. The Order specifies that the evaluation must, at a minimum, "identify laws that require AI models to alter their truthful outputs, or that may compel AI developers or deployers to disclose or report information in a manner that would violate the First Amendment or any other provision of the Constitution." Conversely, the Order also authorizes the evaluation to identify State laws that promote AI innovation consistent with the policy, though the practical purpose and implications of this "good-actor" designation remain largely unclear.

Restricting Federal Funding to States with Laws that Conflict with the Executive Order

Section 5 of the Order, titled *"Restrictions on State Funding,"* outlines a potentially significant spending lever that conditions federal funding to States on their AI legislation.

Within 90 days, the Secretary of Commerce is directed to issue a policy notice governing State eligibility for remaining funds under the Broadband Equity, Access, and Deployment (BEAD) Program. Under that notice, States identified in the evaluation as having AI laws that conflict with Section 2 will be ineligible for non-deployment BEAD funds. Of potentially greater consequence, the Order further requires "all departments and agencies to assess their discretionary grant programs […] and determine whether agencies may condition such grants on States either not enacting an AI law that conflicts with the policy of this order […] or, for those States that have enacted such laws, on those States entering into a binding agreement with the relevant agency not to enforce any such laws during the performance period in which it receives the discretionary funding." Given the scale of federal grant funding to States, especially across sectors such as healthcare, energy, transportation, and infrastructure, this provision is likely to raise substantial concerns among State governments as well as individuals and entities that rely on this funding.

Establishing Federal Legislation to Implement a Uniform AI Policy Framework

The Order's directive to prepare a "legislative recommendation establishing a uniform Federal policy framework for AI that preempts State AI laws that conflict with the policy set forth in this order" is of particular importance. The framework would not preempt State AI laws concerning "(i) child safety protections; (ii) AI compute and data center infrastructure, other than generally applicable permitting reforms; (iii) State government procurement and use of AI; and (iv) other topics as shall be determined."

The Order correctly observes that the absence of a comprehensive federal AI framework has contributed to a growing patchwork of State-level regulation. However, while the Administration can propose such a framework, the development and enactment of preemptive AI legislation will ultimately rest with Congress. The process of developing and passing such legislation, particularly given the breadth of sectors impacted by AI, is likely to be complex, time-consuming, and politically challenging.

Next Steps

The response to this Executive Order by States, companies, and other affected entities is likely to be significant, and we will continue to provide additional alerts and updates addressing key aspects of the Order's implementation and the legal and policy responses it may generate. In the near term, stakeholders should closely monitor agency implementation, litigation developments, and related legislative activity.

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