

## WHAT DOES A SECOND TRUMP ADMINISTRATION MEAN FOR AI REGULATION?

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On November 5, 2024, former President Donald Trump won the presidential election. In addition, Republicans won back control of the United States Senate and have retained control of the U.S. House of Representatives. Businesses, particularly those in technology, data, and artificial intelligence (“AI”) fields, are eager to understand what regulatory landscape may emerge in the coming years. AI is rapidly reshaping industries, and its regulatory future is a hot topic for businesses in sectors as diverse as health care, finance, and manufacturing.

Although much remains speculative at this stage, here are key areas that businesses should monitor as the Trump administration takes shape.

### Repeal of Executive Orders

President-Elect Trump has declared that he plans to dismantle the Biden administration’s regulatory framework on “day one,” including its AI policy framework. In addition, President-Elect Trump has aligned himself with technology leaders such as Elon Musk, whose companies would likely benefit from a deregulated landscape. Based on his campaign communications, President-Elect Trump may consider repealing or altering the following executive orders:

- **Executive Order 13960 (Promoting the Use of Trustworthy Artificial Intelligence)**

**in the Federal Government):** This 2020 order<sup>1</sup> created a framework for trustworthy AI use in federal agencies, promoting transparency, accountability, and fairness in the use and development of AI systems. Under a second Trump administration, this order could be reversed or relaxed, reducing the burden on federal agencies to adhere to specific AI ethical guidelines. For companies that rely on AI technologies, particularly those in government contracting, a second Trump administration may create a reduction in mandatory compliance with strict AI ethics and transparency requirements. Accordingly, companies may see faster development cycles for AI-related services being pushed to market. Firms involved in AI research and development may also see a more relaxed regulatory environment with fewer constraints on how they develop and deploy AI systems.

- **AI Accountability and Transparency Initiatives:** President Biden’s administration took steps to set AI-specific accountability and transparency standards, notably through the AI Bill of Rights<sup>2</sup> and guidance from the National Institute of Standards and Technology (“NIST”).<sup>3</sup> These frameworks promote fairness and non-discrimination in AI systems. A Trump administration may scale back these efforts or replace them with less prescriptive and more flexible guidelines that encourage self-regulation within the private sector.

### Reduced Federal Oversight on AI Ethics and Transparency

Unlike the Biden administration, which pushed for greater regulation on AI ethics (*e.g.*, the AI

Bill of Rights), a second Trump administration may favor voluntary industry standards, reducing the need for government-enforced ethical rules. This could impact the way AI developers and tech companies handle issues like algorithmic bias, transparency, and accountability. For example, some potential changes to AI enforcement may include:

- **Less Emphasis on Algorithmic Accountability:** The Biden administration introduced efforts such as the Blueprint for an AI Bill of Rights, which addresses concerns around algorithmic fairness, privacy, and discrimination in AI systems. Under a second Trump administration, the federal government would likely be less inclined to mandate transparency in AI systems, leaving it up to companies to self-regulate. This could reduce the administrative burden on businesses to ensure that their algorithms are “explainable” or bias-free, a key concern for industries such as finance, hiring, and health care. The lack of controls for explainability and bias could create both inaccurate and discriminatory results. Companies in sectors such as HR, fintech, and law enforcement—where AI’s impact on bias and fairness is often scrutinized—may face fewer regulatory requirements to demonstrate that their algorithms are free from bias or discriminatory outcomes.
- **AI Regulation via Industry Standards as Opposed to Federal Legislation:** President-Elect Trump’s second term would likely emphasize self-regulation through voluntary industry standards rather than creating new laws. Industry groups, such as the Partnership on AI<sup>4</sup> or the AI Now Institute,<sup>5</sup> may play a more prominent role in developing

guidelines for ethical AI use, with the federal government stepping back from direct enforcement. With less emphasis on transparency and ethics regulations, businesses could more quickly deploy AI technologies without the oversight typically seen in the European Union (*e.g.*, the EU’s Artificial Intelligence Act).<sup>6</sup> This would allow companies to experiment with AI solutions in areas like credit scoring, predictive policing, and hiring.

#### Impact on Business—Could State Legislators Take Regulatory Lead?

One of the key issues in AI regulation is the potential for state-level laws to conflict with federal guidelines. Although the next Trump administration would likely push for a lighter federal regulatory approach, states like California and New York may continue to create their own laws, particularly around AI privacy and fairness. This could lead to a patchwork regulatory environment similar to the state privacy law landscape. Currently, Colorado,<sup>7</sup> Utah,<sup>8</sup> and Tennessee<sup>9</sup> have enacted separate and independent legislation dealing with AI in different ways. State legislatures that object to the Trump administration’s handling of AI matters may react by passing their own legislation that creates regulatory obligations with respect to ethics, transparency, and utilization.

Companies developing AI technologies will need to stay apprised of state-specific regulations, especially in places like California, where the California Consumer Privacy Act and California Privacy Rights Act currently set algorithm restrictions on companies based on the nature of information processing. The Trump administration may also challenge states’ rights to impose stricter regulations on AI, leading to potential legal battles

over federal preemption. This could create additional uncertainty for businesses, which will need legal counsel to manage compliance risk.

### A Deregulated AI Landscape

The second Trump administration will likely continue to focus on deregulation and private-sector innovation. The removal or alteration of key executive orders—like those promoting AI ethics, transparency, and fairness—would reduce the regulatory burden on businesses, allowing for greater flexibility and faster deployment of AI technologies. However, states are not without power in this space. Companies should expect an increase in state regulatory efforts, and businesses should stay informed about the potential shifts at a state-by-state level. Likewise, AI business practices that otherwise constitute unfair or deceptive trade practices will continue to be policed both by the Federal Trade Commission and the plaintiffs’ bar. All in all, the next four years will likely bring regulatory change, but perhaps not the extinction that some commenters have speculated.

*The content of this article is intended to provide a general guide to the subject matter.*

### ENDNOTES:

<sup>1</sup> <https://www.federalregister.gov/documents/2020/12/08/2020-27065/promoting-the-use-of-trustworthy-artificial-intelligence-in-the-federal-government>.

<sup>2</sup> <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>.

<sup>3</sup> <https://www.nist.gov/itl/ai-risk-management-framework>.

<sup>4</sup> <https://partnershiponai.org/>.

<sup>5</sup> <https://ainowinstitute.org/>.

<sup>6</sup> <https://www.taftlaw.com/news-events/law-bulletins/eu-artificial-intelligence-regulations-take-effect-next-month/>.

<sup>7</sup> <https://www.taftlaw.com/news-events/law-bulletins/colorado-passes-artificial-intelligence-ai-regulatory-bill/>.

<sup>8</sup> <https://le.utah.gov/~2024/bills/static/SB0149.html>.

<sup>9</sup> <https://www.capitol.tn.gov/Bills/113/Bill/SB2096.pdf>.