

Banking and Finance Law Daily Wrap Up, FINANCIAL TECHNOLOGY —Biden issues Executive Order on artificial intelligence safety and security, (Oct. 31, 2023)

Banking and Finance Law Daily Wrap Up

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The order includes several directives for the Consumer Financial Protection Bureau.

President Joe Biden has released a new [Executive Order](#) to establish standards for artificial intelligence (AI) safety and security to protect consumers and workers. The “Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence” issues directives to over 20 federal agencies, including the Consumer Financial Protection Bureau, with implementation deadlines extending between 30 and 365 days. The CFPB is directed, along with the Federal Housing Finance Agency and the Department of Housing and Urban Development, to issue guidance on how fair-lending and housing laws will prevent discrimination by AI.

Executive Order. The purpose of the Executive Order is to harness “AI for justice, security, and opportunity for all.” Biden notes that his administration “places the highest urgency on governing the development and use of AI safely and responsibly, and is therefore advancing a coordinated, Federal Government-wide approach to doing so. The rapid speed at which AI capabilities are advancing compels the United States to lead in this moment for the sake of our security, economy, and society.”

The Executive Order directs the federal government and agencies to adhere to eight guiding principles and priorities, while also taking into account the views of “other agencies, industry, members of academia, civil society, labor unions, international allies and partners, and other relevant organizations.”

Consumer protection. The Executive Order notes that the federal government will continue to enforce existing consumer protection laws and principles, and enact additional safeguards against fraud, unintended bias, discrimination, and other harms from AI. “Such protections are especially important in critical fields like healthcare, financial services, education, housing, law, and transportation, where mistakes by or misuse of AI could harm patients, cost consumers or small businesses, or jeopardize safety or rights,” wrote Biden.

The CFPB, in collaboration with the FHFA, is directed to address discrimination and biases against protected groups in housing markets and consumer financial markets. Specifically, the order requires the agencies to evaluate their underwriting models for bias or disparities affecting protected groups; and evaluate automated collateral-valuation and appraisal processes in ways that minimize bias.

In addition, the CFPB and HUD are directed to issue guidance, within 180 days of the order, to combat unlawful discrimination enabled by automated or algorithmic tools used to make decisions about access to housing and in other real estate transactions, including the use of advertising through digital platforms. The order also requires guidance to be issued on the use of tenant screening systems, including how the use of data, such as criminal records, eviction records, and credit information, can lead to discriminatory outcomes.

“As powerful AI and machine learning continue to be integrated and used in various financial services, testing is critical to ensure these technologies do not further entrench systemic discrimination and other harm to consumers,” [said](#) Jennifer Chien, senior policy counsel for financial fairness at Consumer Reports. “We need clear standards and testing of AI tools across all industries to ensure consumers reap the potential benefits of AI without the serious risks that can come with these innovative technologies.”

Reaction. The reaction to Biden’s Executive Order was mixed, with most indicating that the order was a positive first step, but that more guidance on and regulation of AI is needed. “This is a massive step forward, but of course more is needed,” Sen. Chuck Schumer (D-NY) [said](#). “All executive orders are limited in what they can do, so it is now on Congress to augment, expand, and cement his massive start with legislation.”

Robert Weissman, president of Public Citizen, [agreed](#) with Schumer. “However, as much as the White House can do on its own, those measures are no substitute for agency regulation and legislative action,” he said. “Preventing the foreseeable and unforeseeable threats from AI requires agencies and Congress to take the baton from the White House and act now to shape the future of AI—rather than letting a handful of corporations determine our future, at potentially great peril.”

James Broughel, Competitive Enterprise Institute senior fellow, [believes](#) that Biden’s executive order is a regulatory approach that “has failed in the past. ... Now, rather than consider the novel problems AI presents—and whether the government or the private sector would be better at solving any particular problem that arises—the administration is pre-committing to feel-good regulatory ‘solutions’ that have no basis in science or evidence. This scattershot regulatory approach is unlikely to address the specific, legitimate concerns people have about the risks and benefits of artificial intelligence.”

Companies: Competitive Enterprise Institute; Consumer Reports; Public Citizen

RegulatoryActivity: CFPB CommunityDevelopment EqualCreditOpportunity FinancialStability FinTech GCNNews
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