Showdown: New Executive Order Puts Federal Government and States on a Collision Course Over AI Regulation

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On December 11, 2025, President Donald Trump signed an executive order (EO) seeking to limit states' regulation of artificial intelligence (AI) and to establish instead "a minimally burdensome national policy framework for AI." Trump's move creates significant uncertainty for states like California and Colorado, which have enacted comprehensive laws regulating AI and whose political leadership may be willing to challenge the administration. The EO cites Colorado as an example of a state with laws requiring developers "to embed ideological bias within models." The federal government may also target states that have passed AI laws focused on specific industries or uses of AI, such as New York, which passed laws on AI companions and algorithmic pricing. The EO creates even less certainty with respect to the enforcement of preexisting legal regimes, such as privacy and consumer protection, in a manner that could be seen to obstruct the president's policy and burden AI development. However, carve outs in the EO indicate that the administration will not block state efforts to pursue child safety, manage AI data center infrastructure, and accelerate state government procurement and use of AI.

In line with Trump's EO 14179 from earlier this year, "Removing Barriers to American Leadership in Artificial Intelligence," this latest EO argues that the growing patchwork of state laws threatens US technological leadership and economic competitiveness. The EO does not preempt the many state AI laws that have already been passed. However, it mobilizes federal officials and agencies to take action that may curtail state efforts to enforce their laws and regulate AI. These actions raise potentially wide-ranging ramifications for state governments, technology companies and companies deploying AI systems across sectors.

The EO comes on the heels of a prior attempt by the White House and some members of Congress to rein in state AI regulation. In May, the House of Representatives passed a 10-year moratorium on state AI laws as part of the One Big Beautiful Bill Act. However, the Senate struck the AI provision from the final version of the bill. Efforts to include a moratorium or preemption in the yearly must-pass National Defense Authorization Act also failed. This EO again brings to the fore the conflict between states' interest in regulating AI and the federal government's inability to develop and pass legislation on the topic.

In line with its national AI policy framework, the EO directs federal agencies and officials to:

- **Create an AI litigation task force:** The Justice Department must establish a task force within 30 days of the EO to challenge state AI laws. The EO directs the task force to challenge state AI laws "on grounds that such laws unconstitutionally regulate interstate commerce, are preempted by existing Federal regulations, or are otherwise unlawful."

- **Review state AI laws:** The Commerce Department must publish within 90 days of the EO an evaluation identifying "onerous" state AI laws that conflict with the national AI policy outlined in the EO and refer to the task force laws that should be challenged. This evaluation must include state AI 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." However, in a change from a draft version, the EO adds that the evaluation may identify state AI laws that promote innovation consistent with the EO's AI policy.

- **Restrict federal funding, particularly for broadband:** Within 90 days of the EO, the Commerce Department must publish a policy notice identifying conditions under which it may withhold federal broadband and infrastructure funds from states with AI laws that conflict with the EO's AI policy. Specifically, states that the administration find to have "onerous AI laws" on the books, as determined by the Commerce Department per above, will no longer be eligible to receive their "non-deployment funds" under the National Telecommunications and Information Administration-run Broadband Equity Access and Deployment (BEAD) Program. The BEAD program allocated funds to the states for broadband deployment and

nondeployment projects, with the infrastructure deployment portion of the program to be prioritized and take place first sequentially. Only after the states had accounted – and committed – funds for network connectivity to each unserved or underserved location within their jurisdictions could the states then plan to use the remaining funds for nondeployment initiatives. When the White House implemented the "Benefit of the Bargain" reforms to the BEAD program this past summer, the programmatic changes meant that states were required to consider the cost-efficiency of the proposed deployment project above all other criteria, thereby increasing the share of nondeployment funds left over for each state. States that have laws regulating AI now risk losing access to the millions of BEAD dollars that they may have already budgeted for nondeployment initiatives, such as digital literacy programs, telehealth, remote learning and affordability efforts. For example, Colorado, the sole state to be explicitly called out in the EO, is likely to be blocked from using the $405.9 million BEAD funds that would otherwise go toward telecom and broadband workforce programs that the state had originally planned for. The EO also directs other federal agencies to review whether any of their discretionary grant programs may be restricted for states enacting AI laws conflicting with the EO's AI policy.

- **Develop federal AI standards:** The Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) must review how their authorities preempt state AI laws.
    - Within 90 days of the EO, the FTC must publish a policy statement explaining how its authorities prohibiting "deceptive acts or practices affecting commerce" preempt state AI laws that "require alterations to the truthful outputs of AI models."
    - The FCC is given a longer timeline to act. Within 90 days of the Commerce Department publishing its state AI law evaluation, the FCC must start a process to determine "whether to adopt a Federal reporting and disclosure standard for AI models that preempts conflicting State laws."

- **Propose federal legislation, with key exceptions:** White House AI and crypto officials must draft a legislative proposal for "a uniform Federal policy framework for AI that preempts State AI laws that conflict with the policy set forth in this order." In a key change from the draft version, the EO carves out regulatory domains where the legislative proposal should not preempt state AI laws, including those related to child safety, AI data center infrastructure, state government procurement and use of AI, and "other topics as shall be determined."

Next steps

Prepare for upheaval as states and the federal government clash over AI regulation.

- In the short term, expect legal challenges. States and others may challenge the EO in court. In parallel, the federal government, following directives from the Justice Department's AI litigation task force, may challenge state AI laws in court. However, unless paused by a court or revoked by a state, AI compliance requirements under state law remain in place.

- In the medium to long term, federal AI standards may be coming. Legislative proposals from White House officials must still be passed by Congress to have the force of law. However, other federal agencies may act sooner to regulate AI. For example, companies should keep a close eye on FCC and FTC rules that may affect their reporting requirements or result in AI regulatory investigations.

Companies will need to walk and chew gum at the same time, tracking federal efforts to curtail state AI laws while remaining in compliance with state AI rules that stay on the books, especially in blue states. Whether operating as a developer or deployer of AI, companies may consider reviewing existing compliance programs and engaging with counsel to prepare for federal and state regulatory contingencies as the AI tumult continues.

As AI rules evolve, Cooley's AI team is here to help you stay ahead. Contact us to discuss how this executive order may affect your business strategy.

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