Regulatory Alert

Regulatory Insights

January 2024

AI Regulation: Cross-Agency Actions

KPMG Insights:

— ***Regulators Coming:*** *Using existing and expanding frameworks/guidance, expect the regulators to inquire/review AI development and use against evolving risk governance/management expectations.*

— ***Show Your Testing:*** *Anticipate additional levels of testing requirements, including in areas of security, safety, and consumer protection.*

— ***Expect to Report:*** *Evolving standards for regulatory communication/reporting will necessitate strong build of AI controls, robust risk assessment, and timely governance reviews and escalation.*

AI regulatory action continues to expand via proposed rules, requests for information/comment, guidance, and speeches. At the same time, regulators are clear that existing authorities and regulations can (and will) be applied to AI.

In keeping with the Administration's October 2023 Executive Order (EO) (14110) on safe, secure, and trustworthy AI (see KPMG's Regulatory Alerts, here and here, respectively), Federal agencies continued setting expanded rules and guidelines and sought additional information and comments to both better understand and supervise the widespread use of AI/GenAI as well as to consider possible future actions such as new or revised policies and rules.

An Administration "Fact Sheet" outlines recent actions related to the EO, notably including a new Department of Commerce requirement for developers of the most powerful AI systems (including potential dual-use foundation models, which may pose national security concerns) "to report vital information, especially AI safety test results" to the Secretary of Commerce. Key actions taken in late December and in 2024 to date in response to the EO and AI generally are included in the table. (See KPMG Regulatory Alert here for select AI-related actions between August and December 2023.)

Agency	AI Topic	Type of Action	Description
CFTC	AI Applications	Request for Comment	Issues a request for comment on the current and potential uses of AI in the derivatives markets the CFTC regulates as well as the implications of such use/adoption, including risk mitigation. Areas of interest include trading, data processing and analytics, risk management, compliance, books and records, systems development, cybersecurity and resilience, and customer interactions.
	Consumer Protection - AI-Related Risks	Customer Advisory	Releases Customer Advisory: AI Won't Turn Trading Bots into Money Machines, to alert investors to the risk of scams that promote "unreasonably high or guaranteed returns" using "AI-assisted technology" including bots, trade signal algorithms, crypto asset arbitrage algorithms.
DHS	Risks to Critical Infrastructure	Assessments	Receives assessment reports from nine agencies (including DOD, DOT, Treasury, HHS) regarding potential risks of the use of AI in critical infrastructure and ways to mitigate the risk.
DOC	Disclosures/ Reporting	Information collection	By means of the Defense Production Act, requires developers of the most powerful AI systems (including "potential dual-use foundation models") "to report vital information, especially AI safety test results" to the Secretary of Commerce.
	Security	Proposed rule	Issues a proposal requiring certain cloud providers (Infrastructure as a Service (IAAS) providers) to report to the Secretary of Commerce when certain clients train a large AI model with potential capabilities that could be used in malicious cyber-enabled activity.
DOJ	Anti-discrimination	Meeting	Convenes meeting with heads of federal civil rights offices to coordinate efforts to "prevent and address discrimination in the use of automated systems".
Federal Banking Agencies	Model Risk Management	Remarks	Offer perspectives, in remarks at an industry symposium, regarding development of responsible AI. Representatives from FRB, FDIC, OCC, and CFPB said they have statutory authority to regulate emerging technologies. Collectively, they say they will hold institutions accountably for the use of new technologies consistent with the expectations in existing model risk management guidance.
FTC	Competition/ Anti-Trust	Information collection	Issues orders to five big tech firms to disclose recent partnerships and investments involving generative AI companies and major cloud service providers.
	Consumer Protection	Summit	Conducts virtual summit on Artificial Intelligence discussing key developments in AI and ways to protect consumers and competition.
GSA	Emerging technology; cloud service offerings	Draft guidance	Issues a draft Emerging Technology Prioritization Framework that is intended to prioritize emerging technologies (ETs) for FedRAMP authorization and be applied to three generative AI interfaces discussed in the EO (chat interfaces, code generators and debugging tools, and image generators).
HHS	Evaluating AI Developments	Task Force	Created an AI task force to develop policies providing regulatory clarity and "catalyze AI innovation in healthcare".

NIST (DOC)	Systems Testing	RFI	Requests comment that will aid in developing guidelines for evaluating AI technologies and for conducting red-teaming tests; facilitate development of consensus-based standards; and provide testing environments for the evaluation of AI systems. (See KPMG Regulatory Alert here).
NSF	AI Research	Announcement	Launches the National Artificial Intelligence Research Resource (NAIRR) pilot, comprising eleven federal agencies and 25 private sector organizations that will provide advanced computing, datasets, model software, training, and user support to US-based researchers and educators. The pilot will run for two years. Releases the NAIRR Task Force final report in advance of the pilot.
OPM	AI Hiring	Announcement	To accelerate federal AI hiring, grants flexible hiring authorities to federal agencies for AI talent, as well as a pool hiring action allowing certain applicants to apply for roles at multiple agencies using one application.

For more information, please contact Amy Matsuo or Bryan McGowan.

Contact the author:
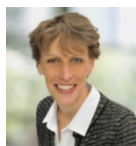
Amy Matsuo
Principal and National Leader
Regulatory Insights
amatsuo@kpmg.com

kpmg.com/socialme