

## **President Biden’s Executive Order on AI: Harnessing the Expertise of Agencies to Lasso the Bullish Artificial Intelligence Industry**

Luke Barcy

President Joe Biden’s October 30, 2023 “Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence”<sup>1</sup> has an expansive scope and touches on many of the intricacies and impacts of the growing Artificial Intelligence (AI) industry. The Executive Order calls upon several federal agencies to complete various tasks, many of which include gathering information and input to provide the President and Congress with a policy suggestion for promoting the growth or ameliorating the negative externalities of the AI industry.<sup>2</sup>

Still, critics claim the Executive Order should do more in terms of changing the law governing AI in an immediate sense, as the effects of AI’s integration into American society have already begun to take shape.<sup>3</sup> For example, the Fair Isaac Corporation (FICO) model of evaluating consumers’ credit scores has boasted of its usage of AI, but critics claim that the model uses data in such a way that negatively impacts people of color’s access to credit.<sup>4</sup> Given the immediate impact that such unfair practices make on Americans’ daily lives and financial conditions, critics urging more immediate action have ample reason to do so. And yet, while this Executive Order surely could have been more far-reaching and declarative, this more deliberate and thoughtful approach to regulating AI will yield dividends.

### **The Principles Underlying President Biden’s Approach Toward Artificial Intelligence**

President Biden’s Executive Order gets the regulatory ball rolling toward the AI industry, which has gone largely untouched, without making any injurious or rash legal decisions. The President laid out several substantial policy goals but showed prudence by tasking agencies with collecting and analyzing information to delineate effective ways to reach those policy goals. These policy goals are as follows:

- (1) Ensuring the safety, security, and trustworthiness of AI through developing evaluations, standards, and risk assessments;
- (2) Promoting responsible innovation, competition, and collaboration so that the U.S. can lead the world in unlocking AI’s potential benefits;
- (3) Ensuring that American workers benefit from AI through job training and education, while using collective bargaining to prevent abuses and unfair practices by employers;
- (4) Preventing discrimination and promoting equity by instituting regulatory policies consistent with civil rights principles;

---

<sup>1</sup> Exec. Order No. 14110, 88 Fed. Reg. 75191 (Nov. 1, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> Nicol Turner Lee et al., *Will the White House AI Executive Order deliver on its promises?*, BROOKINGS (Nov. 2, 2023), <https://www.brookings.edu/articles/will-the-white-house-ai-executive-order-deliver-on-its-promises/>, <https://perma.cc/T655-R95W>.

<sup>4</sup> *Id.*

- (5) Protecting consumers' interest through enforcement of laws against fraud, preventing biased use of AI, and lowering the process and expanding the availability of AI solutions protecting their privacy;
- (6) Safeguarding Americans' civil liberties by ensuring the collection, use, and retention of AI in data solutions is secure and that agencies develop privacy-enhancing technologies to protect privacy;
- (7) Managing the risks from the federal government's use of AI by securing the services of AI professionals who will ensure that federal government employees understand the benefits and risks of AI while modernizing the government's information technology infrastructure; and
- (8) Leading the global progress of AI by fostering the employment of AI technology abroad while also providing a framework for how to deal with the technology's risks.<sup>5</sup>

To put it more succinctly, these goals can generally be distilled into two:

- (1) Promote the growth of the AI industry in the United States to ensure the country has a strong economy and is at the forefront of technological progress and;
- (2) Ensure the growth of the AI industry does not uproot American society by degrading Americans' privacy and civil rights and causing massive layoffs.

These two goals are not inconsistent, but they require policymakers to thread new regulations through the very fabric of an industry that, by its nature, becomes increasingly opaque as it grows<sup>6</sup> – all while stimulating the growth of that industry. The duality of the President's approach makes sense. The growth of AI seems inevitable and beneficial in many ways. But, in affecting almost every aspect of American society, increased use and reliance on AI will also have unpredictable and negative effects as well. The President sought to take action but stopped short of making far-reaching laws and regulations through an Executive Order because regulating the AI industry effectively will first require investigation and analysis by experts in the several facets of society that AI will impact.

### **How Agencies Will Effectuate the President's Policy Goals**

By choosing to delegate to agencies' experts who can more effectively find the best ways of reaching the President's goals, the policies the President ultimately moves to implement will likely be more effective in remedying the concerning effects of the AI industry's growth. And, it should be easier to implement these policies in the future because they will carry the weight of experts' thoughtful recommendations rather than subject to derision as the knee-jerk responses of a lone executive. And, importantly, these experts do not lack guidance, they are responsible for

---

<sup>5</sup> Exec. Order No. 14110, 88 Fed. Reg. 75191 (Nov. 1, 2023).

<sup>6</sup> Sylvia Lu, *Algorithmic Opacity, Private Accountability, and Corporate Social Disclosure in the Age of Artificial Intelligence*, 23 VAND. J. ENT. & TECH. L. 99, 115 (2020) (explaining that "Because the data structure of machine-learning algorithms continually evolves, the inner workings of algorithms are difficult to analyze, particularly in terms of how results are reached. For example, in a deep-learning algorithm, the neuron network is composed of layers of neurons working in a loose manner to reach a decision. Here, the algorithm's structure may be incomprehensible to human cognition").

specific orders, with deadlines, to figure out the most effective ways to achieve the specific policy goals the President made public through this Executive Order.<sup>7</sup>

For example, to ensure there is a workforce capable of bolstering the growth of the American AI industry, President Biden ordered the Secretary of Labor to collect public input regarding the need for more qualified labor in the AI industry and commanded the Secretary of Commerce to increase interest and participation in the semiconductor industry among workers in underserved communities.<sup>8</sup> To promote innovation and ensure greater clarity regarding AI and the creative works that it produces, the President requested that the Under Secretary of Commerce for Intellectual Property work with the Director of the United States Patent and Trademark Office to publish guidance and issue the President policy recommendations regarding copyrights and trademarks related to AI productions.<sup>9</sup>

These measures and the many others promoting clarity and development in the AI industry send the clear message that the U.S. Government understands the importance of the AI industry to the future of the American economy. They show that the Biden Administration intends to foster the growth of the industry. However, they acknowledge that this will be an effort that affects workers and businesses in a multitude of ways, and thus requires a nuanced and meticulous approach to distinct types of workers and industries. Here too, it becomes clear that it was wise for the President to task experts with divining intelligent solutions to the growth of AI.

The President took other measures to ensure that the growth of AI and its increasing use in everyday life does not fundamentally uproot American society. He ordered the Secretary of Labor to submit a report regarding how the federal government can best support people losing their jobs due to AI outsourcing.<sup>10</sup> He charged the Director of the Federal Housing Finance Agency and the Director of the Consumer Financial Protection Bureau to recommend policies for remedying how AI might have a discriminatory impact through its integration in underwriting models, appraisal processes, and other housing and real estate processes prone to incorporate historical and cultural biases.<sup>11</sup> Hopefully, by ordering our nation's foremost experts in the field to investigate this, the President, agencies, and Congress will have the information and well-formulated policies necessary to halt the discriminatory impacts of the aforementioned FICO model and similar financial analysis tools.

Several of the President's directives aim to promote equity and responsibility in the growth of the AI industry. The President demanded policy recommendations for creating opportunities to enter the AI industry among small businesses, including in regions of the country that are not currently tech hubs.<sup>12</sup> And, in another effort to prevent discriminatory use of AI by law enforcement and the courts, the President asked for a report and recommendations regarding AI's use in those contexts.<sup>13</sup>

## Conclusion

---

<sup>7</sup> Exec. Order No. 14110, 88 Fed. Reg. 75191 (Nov. 1, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

The scope of these directives proves further the complex and far-reaching impact of AI on society. They show the President's awareness of the fact that, in the present moment, it is difficult to anticipate the many ways in which AI will affect people, businesses, and culture. By ordering entire agencies to investigate these problems, both already realized and anticipated, the President seeks to devise a thorough and thoughtful approach to the continued integration of AI into our society.

If the President had instead made sweeping policy declarations, without the benefits and credibility that come from making such a broad and intensive inquiry, he would have risked creating ruinous policies that would not address all of the issues posed by AI nor solve the known issues posed by AI in an effective manner.

The Executive Order requires that agencies submit their policy recommendations to the President, or implement new policies themselves, within a year of the issuance of the Executive Order.<sup>14</sup> This is a reasonable timeline that will imbue agencies' efforts with a sense of urgency while signaling to the AI industry that regulations are forthcoming, without creating an unreasonable or unforeseeable burden on either agencies or AI industries.

Overall, this seems like an appropriate course of action that will bring much-needed regulation of the AI industry without putting the growth and utility of AI use in jeopardy. Over the next year, we must watch to see which policy recommendations agencies make, whether the President will be able to implement them, and if so, whether they are effective. However, any shortcomings in those policies will not be a result of the present administration's failure to take action nor its lack of recognition of the breadth of the impact AI will make on our society.

---

<sup>14</sup> *Id.*