

## CLIENT ALERT

### The Government's Momentum in Ensuring Dominance in AI Continues as OMB Issues Guidance for Regulation of AI Applications

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On November 17, 2020, the Office of Management Budget (OMB) issued Memorandum M-21-06, "[Guidance for Regulation of Artificial Intelligence Applications](#)" providing policy considerations for AI applications that are developed and deployed by the private sector.

The Memorandum notes that fostering innovation and growth in AI is the Government's top priority and thus agencies must avoid implementing policies or regulations that hamper these priorities. To that end, the Memorandum: (A) propounds ten principles that agencies should consider when determining whether regulation over AI capabilities are necessary; (B) identifies four non-regulatory actions that agencies can take outside the rulemaking process; and (C) addresses how to reduce barriers to the deployment and use of AI.

The ten principles that agencies should consider when formulating regulatory and non-regulatory AI approaches are: (1) Public Trust in AI; (2) Public Participation, including from industry; (3) Scientific Integrity and Information Quality; (4) Risk Assessment and Management; (5) Benefits and Costs; (6) Flexibility; (7) Fairness and Non-Discrimination; (8) Disclosure and Transparency; (9) Safety and Security; and (10) Interagency Coordination.

The Memorandum notes that agencies may find that regulation is unnecessary but that a non-regulatory approach may be warranted to address the risks of AI applications. The Memorandum provides examples of such approaches, including: (1) Sector-Specific Policy Guidance or Frameworks; (2) Pilot Programs and Experiments, including periodically informing industry and the public about emerging trends and changes; (3) Voluntary Consensus Standards, including involving the private sector and other stakeholders in the development of such standards; and (4) Voluntary Frameworks.

The Memorandum also addresses how to reduce barriers to the deployment and use of AI. The memo states that agencies can: (1) provide access to federal data and models for AI R&D; (2) communicate with the public about the benefits and risks of utilizing AI; (3) engage with the private sector regarding the development of voluntary consensus standards; and (4) engage in international regulatory cooperation.

Finally, the Memorandum requires agencies to submit a plan that identifies any regulations that govern the agency's use of AI applications and also to list and describe the agency's plan to regulate AI. Agency plans are due to OMB by May 17, 2021.

The key takeaway for federal government contractors is that the Government is making a big push with respect to AI governance and safety, and now is the time for industry to get involved through opportunities such as public-private working groups and notice and comment rulemaking. Doing so can help shape any regulatory or non-regulatory actions that may soon apply to industry's development and deployment of AI applications.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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