

**Office of Science and Technology Policy (OSTP)
Request for Information on Regulatory Reform
on Artificial Intelligence**

**90 FR 46422 (Sept. 26, 2025)
Docket No. OSTP-TECH-2025-0067**

COMMENT FOR THE RECORD

October 27, 2025

NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet business models provide American consumers. Our mission is to make the internet safe for free enterprise and for free expression. NetChoice also works to promote the integrity and availability of the internet on a global stage, and we are engaged on issues in the states, in Washington, DC, and in international internet governance organizations.

We appreciate the opportunity to submit comments to the Office of Science and Technology Policy (OSTP) regarding this Request for Information on Regulatory Reform on Artificial Intelligence.

NetChoice is delighted that President Trump and his administration have demonstrated such a strong interest from the outset in “sustaining and enhancing America's AI dominance in order to promote human flourishing, economic competitiveness, and national security.”¹

We wholeheartedly applaud the White House's AI Action Plan, a long-overdue strategy that champions innovation and calls on dismantling the regulatory burdens threatening America's technological leadership. This plan rightly recognizes that the path to winning the global AI race is not through heavy-handed, top-down mandates but by unleashing the power of the American free market. It stands in stark relief to the European Union’s stifling, paranoid AI Act, which prioritizes precautionary bans and crushing compliance burdens over progress. European startups report that 45 percent of their tech costs are related to compliance and nearly two-thirds of

¹ 90 FR 9088; 2025-02305
<https://www.federalregister.gov/documents/2025/02/06/2025-02305/request-for-information-on-the-development-of-an-artificial-intelligence-ai-action-plan>

startups are delaying their AI plans in the face of regulatory uncertainty.² The United States simply cannot afford to replicate Europe’s compliance-driven ossification. Where Europe has chosen to once again export protectionist digital regulation that chokes innovation, the Trump plan rightly chooses to expand and export American technology and, with it, American principles.

Furthermore, the AI Action Plan correctly identifies the danger of a fractured, 50-state patchwork of AI laws. Such an approach creates impossible compliance burdens, drains resources, and ultimately hands a significant advantage to our global rivals. By prioritizing a consistent, light-touch national framework, the AI Action Plan provides the roadmap to the certainty and stability necessary for investment and growth. From unleashing energy resources for data centers to promoting the adoption of American AI systems around the world, this plan is a clear-eyed strategy to usher in a new golden age of American innovation, securing our economic future and national security for decades to come.

In furtherance of the AI Action Plan, the White House Office of Science and Technology Policy (OSTP) has issued a Request for Information (RFI) on “identifying existing Federal statutes, regulations, agency rules, guidance, forms, and administrative processes that unnecessarily hinder the development, deployment, and adoption of artificial intelligence (AI) technologies within the United States.”³ In response to this RFI, NetChoice offers the following specific recommendations and general policy guidance.

Lingering Biden-Era Policies of Concern

The Trump administration has been right to criticize the Biden administration for AI policies “that hinder[ed] AI innovation and impose[d] onerous and unnecessary government control over the development of AI.”⁴ With the Trump AI Action Plan, the administration has staked out a bold, innovation-first approach to AI that better reflects the history and character of American innovation and entrepreneurship. NetChoice praised the plan upon its release in July 2025:

“The difference between the Trump administration and Biden’s is effectively night and day. The Biden administration did everything it could to command and control the fledgling but critical sector. That is a failed model, evident in the lack of a serious tech sector of any kind in the

² “Unlocking Europe’s AI Potential in the Digital Decade 2025,” Amazon Web Services and Strand Partners. <https://www.unlockingeuropesaipotentia.com/breakingdownthebarriers>

³ 90 FR 46422; 2025-18737. <https://www.federalregister.gov/documents/2025/09/26/2025-18737/notice-of-request-for-information-regulatory-ref-orm-on-artificial-intelligence>

⁴ “Fact Sheet: President Donald J. Trump Takes Action to Enhance America’s AI Leadership,” The White House, January 23, 2025. <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-action-to-enhance-america-ai-leadership>

European Union and its tendency to rush to regulate anything that moves. The Trump AI Action Plan, by contrast, is focused on asking where the government can help the private sector, but otherwise, get out of the way.”

Unfortunately, despite the great strides made thus far in course-correcting from the previous administration, a handful of Biden-era policies remain. Even if dormant and unenforced, these policies cast costly uncertainty onto a fledgling yet fast-moving and investment-intensive industry. Failing to address these items invites replication by state and foreign governments and resurrection by future administrations. The Trump administration should ensure the following policies are formally reviewed and, where appropriate, rescinded and replaced with policies grounded in the same principles as the AI Action Plan.

Biden Administration “Voluntary” AI Commitments

In September 2023, the Biden administration published a series of voluntary commitments “designed to advance a generative AI legal and policy regime [...] to remain in effect until regulations covering substantially the same issues come into force.”⁵ These commitments cover a range of issues, but are directionally similar to the Biden administration’s regulatory agenda for the sector and thus share many of the problems. Moreover, given the Biden administration’s rather aggressive stance towards the technology sector, demonstrated by significant shifts in antitrust policy,⁶ for example, the entire premise of “voluntary” commitments ignores the factual record of the federal government using its enormous leverage to compel corporate adoption of progressive policy priorities.

These commitments include vague and subjective terminology as well as efforts to address policy areas already covered by existing laws and regulations. For example, the commitments ask firms to address “societal risks, such as bias and discrimination[.]” What constitutes a societal risk is impossibly vague. In addition, as NetChoice articulated in our comments to OSTP in March 2025 as the AI Action Plan was being crafted, “Anti-discrimination laws including the Civil Rights Act, Fair Housing Act, and Americans with Disabilities Act prevents the use of any technology – including AI—for decisions about employment, lending, and housing that are biased or discriminatory. State-level consumer protection and civil rights laws also already apply to conduct that uses any technology, including AI.”⁷

⁵ U.S. House of Representatives. Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, “The Censorship-Industrial Complex: How Top Biden White House Officials Coerced Big Tech to Censor Americans, True Information, and Critics of the Biden Administration.” Interim Staff Report. Washington, DC, May 1, 2024.

<https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/09/Voluntary-AI-Commitments-September-2023.pdf>

⁶ Fred Ashton, “Biden’s Antitrust Autopsy,” American Action Forum, January 16, 2025.

<https://www.americanactionforum.org/insight/bidens-antitrust-autopsy/>

⁷ Patrick Hedger, Comment for the Record on OSTP RFI on an AI Action Plan, 90 Fed. Reg. 9088 (Feb. 6, 2025) Docket No. NSF_FRDOC_0001, NetChoice, March 14, 2025.

<https://netchoice.org/wp-content/uploads/2025/03/NetChoice-OSTP-AI-RFI-2025-Patrick-Hedger.pdf>

The voluntary commitments do not specify if subsequent “regulations covering substantially the same issues” are federal, state, or foreign. This all-but explicitly invites states and overseas governments to regulate in these areas, as policymakers will incorrectly assume these are areas that firms are addressing and that their regulations will merely be redundant.

While there are plenty of directionally sound concepts in the voluntary commitments, the Trump administration should rescind and revise these commitments to better align with the AI Action Plan and invite a fresh round of industry feedback and buy-in.

National Institute of Standards and Technology AI Risk Management Framework

The AI Action Plan correctly highlights the problem of a growing patchwork of “states with burdensome AI regulations[.]” The Plan also discusses the need for revisions to the National Institute of Standards and Technology (NIST) AI Risk Management Framework (RMF). These two issues are inherently linked, and fixing the latter will help deal with the former.

OSTP correctly identifies problems with the NIST AI RMF and its references to vague and progressive policy priorities such as “Diversity, Equity, and Inclusion, and climate change,” for evaluation as well as other criteria that are not appropriate for the government to police, such as “misinformation.”⁸ The Action Plan instructs the Department of Commerce and NIST to begin revising the RMF. OSTP should ensure this process is underway or begins expeditiously, as state AI laws explicitly reference the RMF:

“California Governor Gavin Newsom issued an Executive Order on AI in September 2023 promoting responsible AI use across California public sector operations. Among other things, the order directs state agencies to develop guidelines for public sector procurement and uses of generative AI that are based on the AI RMF. California has since published its public sector generative AI guidelines, which draw materially on the concepts and principles found in the NIST AI RMF.

In the private sector, the California Safe and Secure Innovation for Frontier Artificial Intelligence Model Act [...] requires AI developers and operators of computing clusters to consider NIST guidance. Likewise, Colorado's Consumer Protections for Artificial Intelligence will require deployers of high-risk AI systems to implement a risk management policy and program that considers the AI RMF. Notably, Colorado's law accords organizations that comply with the AI RMF an affirmative defense to

⁸ U.S. Executive Office of the President, Office of Science and Technology Policy, “America's AI Action Plan,” Washington, DC, July 2025.
<https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>

regulatory enforcement [...] These developments highlight the growing trend of lawmakers looking to the NIST AI RMF as a standard for AI risk management.”⁹

With more states considering AI legislation in the upcoming state legislative cycle, ensuring the NIST AI RMF is consistent with the AI Action Plan is an imperative. In the absence of a moratorium on state-level AI regulation, such an effort to better align the NIST AI RMF with the Trump administration’s pro-innovation agenda has the potential to help mitigate regulatory fragmentation from existing and prospective state statutes. This approach would provide more consistency until a full federal framework can be adopted.

Other Regulatory Guidance From the Biden AI EO

On his first day in office, President Trump revoked dozens of Biden executive actions, including Executive Order (EO) 14110 of October 30, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence).¹⁰ While a welcome development, the Biden EO spawned numerous other policies prior to its demise. The status of many of these policies remains unclear.

For example, the EO instructed the Labor Department to “develop and publish principles and best practices” related to AI and worker well-being. While no-longer available on the Department of Labor’s website, the principles are available through the Data for Justice Project of the ACLU of Massachusetts.¹¹

While the document outlines a well-intentioned vision, it also suffers from significant vagueness and a reliance on principles that are already enshrined in existing law. The document's most definitive sections, such as those protecting against discrimination and upholding the right to organize, primarily reiterate long-standing legal obligations under bodies of law like the Civil Rights Act, the National Labor Relations Act, and the Fair Labor Standards Act. The Department of Labor should formally rescind this document, beyond simply removing it from the website, and make it clear that existing protections are technology-neutral.

The Labor principles are just one of several examples, but not an exhaustive list, of policy demands throughout the Biden EO that warrant review and potentially formal rescission and replacement:

⁹ Jonathan Tam, “United States: The growing importance of the NIST AI Risk Management Framework,” Baker Mackenzie, September 11, 2024. <https://insightplus.bakermckenzie.com/bm/investigations-compliance-ethics/united-states-the-growing-importance-of-the-nist-ai-risk-management-framework>

¹⁰ “Initial Rescissions of Harmful Executive Orders and Actions,” The White House, January 20, 2025. <https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/>

¹¹ Accessed at: https://data.aclum.org/storage/2025/01/DOL_www_dol_gov_general_AI-Principles.pdf

Section 4: Ensuring the Safety and Security of AI Technology

- Secretary of Commerce (via NIST):
Within 270 days, establish guidelines and best practices for developing and deploying safe, secure, and trustworthy AI systems. This includes:
 - A companion resource to the AI Risk Management Framework for generative AI.
 - A companion resource to the Secure Software Development Framework for generative AI and dual-use foundation models.
 - Guidance and benchmarks for evaluating and auditing AI capabilities.
 - Appropriate guidelines for AI red-teaming tests.
 - Guidelines for assessing and managing the safety, security, and trustworthiness of dual-use foundation models.
- Secretary of Energy: Within 270 days, develop and implement a plan for developing the Department of Energy's AI model evaluation tools and testbeds.
- Heads of agencies with critical infrastructure authority & relevant Sector Risk Management Agencies (SRMAs): Within 90 days (and annually), provide the Secretary of Homeland Security an assessment of potential risks related to AI use in their respective critical infrastructure sectors.
- Secretary of Commerce: Within 240 days, submit a report identifying existing standards and practices, and the potential development of new standards and techniques, for authenticating digital content and detecting synthetic content.
- Secretary of Commerce: Within 180 days of submitting the report above, develop guidance on existing tools and practices for digital content authentication and synthetic content detection.
- Secretary of Commerce: Within 270 days, submit a report to the President on the risks and benefits of dual-use foundation models with widely available weights, including policy and regulatory recommendations.
- Assistant to the President for National Security Affairs & Assistant to the President and Deputy Chief of Staff for Policy: Within 270 days, develop and submit a proposed National Security Memorandum on AI.

Section 5: Promoting Innovation and Competition

- USPTO Director: Within 270 days, issue additional guidance on AI and Intellectual Property (IP), which could include updated guidance on patent eligibility.
- USPTO Director: Within 270 days (or 180 days after the U.S. Copyright Office publishes its AI study), issue recommendations to the President on potential executive actions relating to copyright and AI.
- Secretary of Homeland Security: Within 180 days, develop a training, analysis, and evaluation program to mitigate AI-related IP risks. This program shall include:

- Developing guidance and other appropriate resources to help private sector actors mitigate AI-related IP theft.
- President's Council of Advisors on Science and Technology: Within 180 days, submit a report on the potential role of AI in research aimed at major societal challenges.

Section 6: Supporting Workers

- Chairman of the Council of Economic Advisers: Within 180 days, prepare and submit a report to the President on the labor-market effects of AI.
- Secretary of Labor: Within 180 days, submit a report to the President analyzing agencies' abilities to support workers displaced by AI and identifying options, including potential legislative measures.

Section 7: Advancing Equity and Civil Rights

- Attorney General: Within 365 days, submit a report to the President addressing the use of AI in the criminal justice system. This report must:
 - Recommend best practices for law enforcement agencies, including safeguards and use limits for AI.
- Secretary of Health and Human Services (HHS): Within 180 days, publish a plan addressing the use of automated or algorithmic systems in the implementation of public benefits and services.
- Secretary of Agriculture: Within 180 days, issue guidance to public-benefits administrators on the use of automated or algorithmic systems.
- Secretary of Labor: Within 365 days, publish guidance for Federal contractors regarding nondiscrimination in hiring involving AI.
- Secretary of Housing and Urban Development: Within 180 days, issue additional guidance addressing the use of tenant screening systems and AI in advertising housing and real estate-related transactions.
- Director of the Consumer Financial Protection Bureau: Encouraged to issue additional guidance (same as above).

Section 8: Protecting Consumers, Patients, Passengers, and Students

- HHS AI Task Force: Within 365 days of its creation, develop a strategic plan on the responsible deployment and use of AI in the health and human services sector.
- Secretary of HHS: Within 180 days, direct HHS components to develop a strategy to determine if AI-enabled health technologies maintain appropriate quality, including the development of an AI assurance policy.
- Secretary of HHS: Within 365 days, develop a strategy for regulating the use of AI in drug-development processes.

- Secretary of Education: Within 365 days, develop resources, policies, and guidance regarding AI in education , including an "AI toolkit" for education leaders.

Section 9: Protecting Privacy

- Director of OMB: Issue new or updated guidance to agencies on implementing privacy provisions, informed by an RFI (no firm deadline specified).

Section 11: Strengthening American Leadership Abroad

- Secretary of Commerce: Within 270 days, establish a plan for global engagement on promoting and developing AI standards.
 - Within 180 days of establishing the plan, submit a report on priority actions taken.
- Secretary of State & Administrator of USAID: Within 365 days, publish an AI in Global Development Playbook.
- Secretary of State & Administrator of USAID: Within 365 days, develop a Global AI Research Agenda.

Biden's AI Diffusion Rule

The Biden administration sought to protect American national security interests through broad, stringent export controls on both AI chips and model weights under its AI Diffusion Rule. This approach failed to consider a simple truth about AI: “bigger AI systems, trained on more data and using more computational resources, tend to perform better.”¹² Thankfully, the Trump administration understands that winning the AI race against geopolitical adversaries such as China requires exporting or “diffusing” American technology. As White House AI Czar David Sacks explains: “I would define winning as the whole world consolidates around the American tech stack. They use American hardware in data centers that, again, are fundamentally powered by American technology.”¹³

To Mr. Sacks’ point, there are five distinct and critical advantages that diffusing AI systems provides American firms:

Access to Diverse Datasets: Expanding into new countries provides access to massive, new datasets reflecting different languages, cultures, nuances, and user behaviors. Training on a "US-only" or "English-only" dataset results in a model that is less accurate and less useful for a global audience.

¹² Veronika Samborska, “Scaling up: how increasing inputs has made artificial intelligence more capable,” Our World In Data, January 19, 2025. <https://ourworldindata.org/scaling-up-ai>

¹³ <https://x.com/DavidSacks/status/1929592692318650429>

Data Network Effects: As an AI product (like a search engine or social media app) enters a new market, it gains more users. These users generate more data, which is used to improve the AI model. The better model then attracts even more users, creating a self-reinforcing cycle or "flywheel" that is very difficult for smaller, local competitors to match.

Minimizing Latency: To provide a fast, responsive AI service (like a real-time chatbot or translation tool) to a user in Japan, a company cannot rely solely on a data center in Virginia. The physical distance creates a time lag, or latency, that ruins the user experience. Companies must build AI-scale datacenters globally to be close to their users.

Navigating Data Localization Laws: Most countries and regions have "data localization" or "data sovereignty" laws (the EU's GDPR amounts to "*de facto* localization requirements[.]"¹⁴). These rules mandate that data generated by their citizens must be stored and processed on servers physically located within that country's borders. To legally operate in these markets, companies have no choice but to build local data centers.

Setting Global Standards: From a geopolitical perspective, having American AI companies expand globally is a way to establish American technology and, crucially, governance standards (around safety, ethics, free speech, and use) as the global norm. This creates soft power and a technological sphere of influence and a counterweight to the expansion of companies from strategic rivals like China.

American firms must be able to swiftly harness these advantages, as independent assessments suggest China is rapidly closing a relatively small gap with the United States in terms of AI capabilities.¹⁵ The urgency here must translate to policy.

While the Trump administration has the correct assessment of AI diffusion, policy delay and uncertainty undermine its effectiveness. The Bureau of Industry and Security's (BIS) announcement of the rescission of the Biden administration's AI Diffusion Rule was a welcome

¹⁴ Satyajit Parekh, Stephen Reddin, Kayvaun Rowshankishm, Henning Soller, and Makin Strandell-Jansen, "Localization of data privacy regulations creates competitive opportunities," McKinsey & Company, June 30, 2022. <https://www.mckinsey.com/capabilities/risk-and-resilience/our-insights/localization-of-data-privacy-regulations-creates-competitive-opportunities#/>

¹⁵ Lennart Heim, "China's AI Models Are Closing the Gap—but America's Real Advantage Lies Elsewhere," RAND, May 2, 2025. <https://www.rand.org/pubs/commentary/2025/05/chinas-ai-models-are-closing-the-gap-but-americas-real.html> & "China narrows AI development gap with US, but remains behind in advanced chips: CLSA," South China Morning Post, September 10, 2025. <https://finance.yahoo.com/news/china-narrows-ai-development-gap-093000729.html>

and necessary first step.¹⁶ However, formal rescission and replacement of the rule with a framework that better aligns with the Trump administration's stance has yet to occur over five months later.

Companies making multi-billion dollar investments in expanding and exporting the American AI stack overseas require greater certainty on this matter than unenforced rules and guidance documents. The Trump administration must prioritize and expedite the AI Diffusion Rule rescission and replacement process at BIS.

Settle Biden's Antitrust Cases Against Major AI Investors and Innovators

AI is a general purpose technology that will be developed and deployed by firms of all shapes and sizes. Like many technologies in their infancy, AI is resource-intensive, and early innovations have drawn heavily on the capital, data, and knowledge only the major technology companies can provide. Apple, Google, Meta, Amazon, and Microsoft have all developed and deployed AI services, invested in AI startups, and built data centers to fuel these AI systems. What these companies also have in common is that they are all either in active litigation or under investigation by European and American antitrust regulators.

These cases and investigations are enormous restraints on the ability of these firms to keep America on top of the AI race. Aside from the significant diversion of executive attention and company resources, the ultimate inhibiting factor is the uncertainty of being in the crosshairs of antitrust restrictions. This was particularly true given the Biden administration's radical, expansive approach to antitrust, which has shaped all of the current cases and investigations. Some of this approach has carried over to the current Federal Trade Commission (FTC) and Department of Justice (DOJ), which have continued many Biden-era antitrust cases.

Our tech leaders need look no further than the Biden DOJ's proposed remedies in *United States v. Google* to understand the existential risks to their AI portfolios posed by current cases and investigations. Per the Biden DOJ's filing, Google should be prevented "from owning or acquiring any investment or interest in any search or search text ad rival, search distributor, or rival query-based AI product or ads technology."¹⁷ This would have required Google to pull

¹⁶ U.S. Department of Commerce, Bureau of Industry and Security. "Department of Commerce Announces Rescission of Biden-Era Artificial Intelligence Diffusion Rule, Strengthens Chip-Related Export Controls." Press Release, May 12, 2025.
<https://media.bis.gov/press-release/department-commerce-announces-rescission-biden-era-artificial-intelligence-diffusion-rule-strengthens>

¹⁷ "Executive Summary of Plaintiffs' Proposed Final Judgment." Case 1:20-cv-03010-APM, Document 1062. United States District Court for the District of Columbia, Filed November 20, 2024.
<https://www.justice.gov/atr/media/1378046/>

funding from Anthropic, a competitive AI firm in which Google has invested \$3 billion, including a \$1 billion investment two days after President Trump's inauguration.¹⁸

Thankfully, the Trump administration DOJ revised the proposed remedies and removed this excessive and extraneous remedy request. However, even DOJ's revised remedies would still have prevented Google from tightly integrating its AI technology into its other products, via expansive restrictions on "self-preferencing." While the remedies would not have explicitly prevented Google from making AI investments, they would have denied Google and its customers much of the benefits of AI integration.

Fortunately, the court rejected these proposals.¹⁹ Judge Amit Mehta's remedies decision was profoundly shaped by the sudden and disruptive emergence of generative AI. He explicitly stated that "the emergence of GenAI changed the course of this case," acknowledging that new tools like ChatGPT and Perplexity represent a "nascent competitive threat" to Google.²⁰ This recognition that the market had been fundamentally altered by innovation is what led him to reject the DOJ's most aggressive remedies. This judicial reckoning should serve as a clear signal to the Trump administration: antitrust cases initiated years ago are based on market definitions that are now obsolete. Pursuing cases and remedies to a bygone era only threatens to hamstring the very American companies that are leading in the new, hyper-competitive AI landscape.

Roll Back Biden's Hart-Scott-Rodino (HSR) Changes

Active cases and investigations are not the only antitrust measures keeping untold billions of dollars worth of AI investment on the sidelines.

Regulatory changes on proposed mergers and acquisitions (M&A) promulgated by the Biden administration have introduced enormous uncertainty. The Biden administration fundamentally reshaped Hart-Scott-Rodino (HSR) Act antitrust enforcement through a series of policy changes beginning in 2021. Under the leadership of then-FTC Chair Lina Khan and DOJ Antitrust Chief Jonathan Kanter, the agencies suspended early termination for straightforward mergers, issued warning letters about potential post-waiting period challenges, and significantly expanded information requests during merger reviews. These procedural changes make merger clearance more difficult, time-consuming, and uncertain for businesses.

¹⁸ Hayden Field, "Google agrees to new \$1 billion investment in Anthropic," CNBC, January 22, 2025. <https://www.cnbc.com/2025/01/22/google-agrees-to-new-1-billion-investment-in-anthropic.html>

¹⁹ Jay B. Sykes, "Federal Court Endorses Behavioral Remedies, Rejects Structural Relief, in Google Search Antitrust Litigation," Congressional Research Service, September 10, 2025. <https://www.congress.gov/crs-product/LSB11362>

²⁰ United States v. Google LLC, Nos. 20-cv-3010 (APM), 20-cv-3715 (APM) (D.D.C. Sept. 2, 2025), ECF No. 1436. https://storage.courtlistener.com/recap/gov.uscourts.dcd.223205/gov.uscourts.dcd.223205.1436.0_3.pdf

Substantively, the administration implemented new HSR reporting requirements covering labor market impacts, foreign subsidies, and previously unreported acquisitions. The FTC withdrew the 2020 Vertical Merger Guidelines, signaling skepticism toward vertical integration arguments, and in December 2023 the agencies issued updated merger guidelines that lowered market concentration thresholds and expanded the theories of competitive harm considered. These changes collectively created a more stringent merger review environment that reflected the Biden administration's broader commitment to aggressive antitrust enforcement.

While the current FTC and DOJ leadership has helpfully reversed course on early termination and warning letter policies, the Biden-era substantive changes to merger review have unfortunately been extended. NetChoice strongly opposed these HSR changes²¹ due to the threat posed to America's tech innovation ecosystem—the most dynamic in the world. By more than quadrupling paperwork requirements and adding an estimated \$350 million in filing costs, these changes create unnecessary burdens that discourage investments and delay capital flows. The success stories of acquisitions like Android, YouTube, and Instagram demonstrate how M&A fuels innovation that benefits consumers through improved products and services, often offered for free as many AI services are now.

The new HSR framework also improperly politicizes merger reviews by importing European-style informational requirements that give agencies excessive discretion to block mergers through endless delays. Unlike the streamlined US process that has fostered innovation for decades, these changes would push us toward the European model, where agencies conduct months-long reviews based on factors unrelated to competition. The empirical evidence is clear—such regulatory approaches lead to economic stagnation, not growth.

The FTC and DOJ have also maintained the Biden-era Merger Guidelines, which created more deference for agency staff to investigate and challenge mergers. These changes, taken together, particularly harm pro-competitive vertical mergers by requiring extensive information about supply chains, despite overwhelming evidence that vertical integration benefits consumers. Courts have consistently recognized these benefits, as seen in recent acquisition cases involving Meta-Within and Microsoft-Activision. The economic literature strongly supports this view, with multiple studies showing vertical mergers improve efficiency, innovation, and consumer welfare.

Ensuring a healthy level of M&A activity is critical for AI advancement because of the signal it sends to start-up investors and venture capitalists. Investors are unlikely to enter if they do not see a realistic path to exit with a profit. Initial public offerings (IPOs) are happening at later and larger points for independent firms, indicating a narrowing path for investor exit via IPO.²² The

²¹ Federal Trade Commission. Proposed Changes to HSR Premerger Notification Form: Comments of NetChoice. September 27, 2023.

<https://netchoice.org/netchoice-files-hsr-comments-to-ftc-rejecting-europeanization-of-american-antitrust/>

²² John Berlau and Josh Rutzick, “The 20-Year Experiment Holding America Back,” The Wall Street Journal, July 28, 2022.

prospect of a potential acquisition is therefore crucial for luring investment into AI startups. The Biden administration's HSR rule and merger guidelines changes, which are continuing to-date, threaten this dynamic.

Support a National Data Privacy and Security Law

Besides electrical power, what fuels AI is *data*. The strength of an AI model is directly correlated with the amount of data on which it is trained, and the additional data retrieved to generate responses.²³ Yet, what companies can and cannot do with the data they collect is a series of open questions, which for now begins with, “*Where are you located?*”

The US approach to data privacy regulation has evolved as a fragmented patchwork of state laws rather than a unified federal framework. This state-by-state approach creates significant challenges for businesses, which must navigate multiple, sometimes contradictory compliance requirements across different jurisdictions. Companies have to shoulder substantial regulatory costs as they track multiple standards, often requiring specialized legal teams. These burdens and costs are significant for large firms, but they are particularly difficult on startups and small firms.

Regulatory fragmentation also results in inconsistent protection for consumers, who receive different privacy protections depending on where they live. Definitions of personal data, consent requirements, and enforcement mechanisms vary widely between states like California, Virginia, and Colorado. This creates confusion for individuals about their rights, especially when data crosses state lines, and undermines the effectiveness of privacy protection as a whole.

The state patchwork further complicates international business operations and data transfers. Foreign companies must contend with multiple regulatory environments when operating in the US, creating potential conflicts with more comprehensive frameworks like Europe's GDPR. Many privacy advocates and business leaders alike argue that a single, comprehensive federal privacy law would address these issues by creating regulatory certainty, ensuring equal protection for all Americans, and simplifying compliance for businesses of all sizes.

NetChoice has drafted model legislation for a pro-innovation, national data privacy law to address the above issues.²⁴ The proposal creates several key consumer protections, including mandatory breach notifications when sensitive personal information is compromised, rights for consumers to access and request deletion of their personal information, and the ability to opt out of third-party data sales. The legislation defines various categories of protected information and

<https://www.wsj.com/articles/the-20-year-experiment-holding-the-u-s-back-sarbanes-oxley-corporate-reform-bush-e-entrepreneurs-investors-fraud-business-11659044813>

²³ Tal Roded and Peter Slattery, “What drives progress in AI? Trends in Data,” FutureTech, March 19, 2024.

<https://futuretech.mit.edu/news/what-drives-progress-in-ai-trends-in-data>

²⁴ Available at: <https://netchoice.org/wp-content/uploads/2021/11/Federal-Privacy-Law.pdf>

establishes clear requirements for covered entities—businesses handling data on more than 10,000 individuals. Enforcement authority is divided between the FTC (for commercial entities) and DOJ (for non-commercial entities), with state attorneys general also empowered to bring actions on behalf of their residents. Most importantly, the proposal includes a preemption clause that would supersede state privacy laws, creating a single national standard, while establishing a "safe harbor" provision allowing covered entities to demonstrate compliance through approved self-regulatory guidelines.

Thank you again for the opportunity to share our perspective on this critical issue. NetChoice respectfully asks the Office of Science and Technology Policy to consider this information, as well as that offered by our members, as any process moves forward as each of the issues raised here are part of construction or maintenance of an innovation ecosystem that will support the development of AI.

We look forward to continuing this important dialogue. As always we offer ourselves as a resource to discuss any of these issues with you in further detail, and appreciate the opportunity to provide our thoughts on this important matter.

Sincerely,
Patrick Hedger
Director of Policy
NetChoice²⁵

NetChoice is a trade association that works to protect free expression and promote free enterprise online.

²⁵ The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.