

2. The 2020 Advisory Opinion Engendered Substantial Regulatory Uncertainty

In the months and years following issuance of the 2020 Advisory Opinion, it became increasingly evident that it failed to clarify the status of earned wage products under TILA and Regulation Z. Indeed, in 2023, the U.S. Government Accountability Office issued a report recommending that the CFPB clarify their status.¹⁷ This muddying of the waters flowed directly from the extreme narrowness of the opinion. Few if any of the products in the market at the time of or subsequent to issuance fit the mold outlined by the opinion. As a result, stakeholders were left to speculate about the CFPB's view about the credit status of the many products actually being offered.

Worse still, the 2020 Advisory Opinion has been widely cited in support of legal conclusions that it did not reach. For example, it has erroneously been cited for the general propositions that no-fee earned wage products are not credit,¹⁸ and that employer-partnered earned wage products are also not credit.¹⁹

In addition, some regulatory uncertainty may have resulted from the near-contemporaneous issuance of an "Approval Order" that gave one provider a temporary safe harbor from liability under TILA and Regulation Z with respect to a specific product that did not satisfy all the conditions that the 2020 Advisory Opinion identified as taking such a product outside the reach of TILA and Regulation Z.²⁰ The 2020

Advisory Opinion applied only to products that had all of the numerous characteristics identified above, including that they were free to consumers. In contrast, the Approval Order encompassed earned wage transactions in connection with which the consumer incurred fees.²¹ However, it was never of general interpretative applicability,²² and was terminated even before its temporary status expired.²³

II. Regulatory Matters

This is an advisory opinion issued under the CFPB's authority to interpret TILA and Regulation Z, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010, which authorizes guidance "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws. . . ." ²⁴ By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or section 112 imposing any liability would apply to any act done or omitted in good faith in conformity with this advisory opinion, notwithstanding that after such act or omission has occurred, the advisory opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.²⁵

The CFPB has determined that this advisory opinion would not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.²⁶

Pursuant to the Congressional Review Act,²⁷ the CFPB will submit a report containing this advisory opinion and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this advisory

opinion as not a "major rule" as defined by 5 U.S.C. 804(2).]

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 740, 742, 744, 748, 750, 762, 772, and 774

[Docket No. 250107–0002]

RIN 0694–XC112

Public Briefing on Framework for Artificial Intelligence Diffusion

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Notification of public briefing on regulatory action.

SUMMARY: On January 10, 2025, the Office of the Federal Register posted for public inspection a Bureau of Industry and Security (BIS) interim final rule: "Framework for Artificial Intelligence Diffusion" (RIN 0694–AJ90). This document announces that, on January 15, 2025, BIS will host a virtual public briefing on this rule. This document also provides details on the procedures for participating in the virtual public briefing.

DATES: *Virtual public briefing:* The virtual public briefing will be held on January 15, 2025. The public briefing will begin at 12 p.m. Eastern Standard Time (EST) and conclude at 1 p.m. EST.

Deadline to register: Register by 9 a.m. EST on January 15, 2025, for virtual participation.

ADDRESSES: To attend this event virtually, register at: <https://events.gcc.teams.microsoft.com/event/a0c17530-aae8-43e0-b64c-e2f9bafbbcf4@44cf3ec3-840c-4086-b7de-e3bc9a6c2db4>.

Recordkeeping: A summary of the briefing will be posted for the record at: <https://regulations.gov> under the regulations.gov ID for this notice (BIS–2025–0001).

FOR FURTHER INFORMATION CONTACT: For questions on this virtual public briefing, contact Hillary Hess, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by email: RPD2@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

¹⁷ U.S. Gov't Accountability Off., GAO–23–105536, Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity is Needed 36–37 (2023) (citing industry requests for clarification). The CFPB has acknowledged the need for clarification in this area. See, e.g., Letter from Rohit Chopra, Dir., Consumer Fin. Prot. Bureau, to Michael Clements, Dir. of Fin. Mkts. and Cmty. Inv., U.S. Gov't Accountability Off., (Feb. 13, 2023) in U.S. Gov't Accountability Off., GAO–23–105536, *supra*, at 51; Letter from Seth Frotman, Acting General Counsel, Consumer Fin. Prot. Bureau, to Beverly Brown Ruggia, N.J. Citizen Action, *et al.*, at 2 (Jan. 18, 2022).

¹⁸ See, e.g., Off. of the Att'y Gen., State of Ariz., Opinion No. I22–005 (Dec. 16, 2022), available at <https://www.azag.gov/sites/default/files/2022-12/I22-005.pdf>.

¹⁹ See, e.g., ZayZoon, Comment Letter on Cal. Dep't of Fin. Prot. and Innovation Notice of Proposed Rulemaking [PRO 01–21], at 4 (May 17, 2023), https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/08/46-PRO-01-21-ZayZoon-US-Inc.-5.17.23_Redacted.pdf; Innovative Payments Ass'n, Comment Letter on Cal. Dep't of Fin. Prot. and Innovation Notice of Proposed Rulemaking [PRO 01–21], at 4 (May 11, 2023), https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/08/10-PRO-01-21-Innovative-Payments-Association-5.11.23_Redacted.pdf.

²⁰ See Consumer Fin. Prot. Bureau, *Payactiv Approval Order*, at 5 (Dec. 30, 2020), <https://>

files.consumerfinance.gov/f/documents/cfpb_payactiv_approval_order_2020-12.pdf.

²¹ See *id.*

²² See *id.* at 4 n.15.

²³ See Consumer Fin. Prot. Bureau, Order to Terminate Sandbox Approval Order (June 30, 2022), [cfpb_payactiv_termination_order_2022-06.pdf](https://cfpb.payactiv_termination_order_2022-06.pdf).

²⁴ 12 U.S.C. 5512(b)(1).

²⁵ 15 U.S.C. 1640(f).

²⁶ 44 U.S.C. 3501–3521.

²⁷ 5 U.S.C. 801–808.

Background

With the Framework for Artificial Intelligence Diffusion interim final rule, the Commerce Department's Bureau of Industry and Security (BIS) revises the Export Administration Regulations' (EAR) controls on advanced computing integrated circuits (ICs) and adds a new control on artificial intelligence (AI) model weights for certain advanced closed-weight dual-use AI models. In conjunction with the expansion of these controls, which BIS has determined are necessary to protect U.S. national security and foreign policy interests, BIS is adding new license exceptions and updating the Data Center Validated End User authorization to facilitate the export, reexport, and transfer (in-country) of advanced computing ICs to end users in destinations that do not raise national security or foreign policy concerns. Together, these changes will cultivate secure ecosystems for the responsible diffusion and use of AI and advanced computing ICs.

Public Briefing

On January 15, 2025, BIS will host a public briefing to address the details of this rule. The virtual public briefing will be held on January 15, 2025. The virtual public briefing will begin at 12 p.m. EST and conclude at 1 p.m. EST.

Procedure for Requesting Participation

To participate in the public meeting virtually, register at: <https://events.gcc.teams.microsoft.com/event/a0c17530-aae8-43e0-b64c-e2f9bafbbcf4@44cf3ec3-840c-4086-b7de-e3bc9a6c2db4> no later than 9 a.m. EST on January 15, 2025, for virtual participation. This web page will also display the agenda of the public meeting and any other necessary information.

Special Accommodations

For any special accommodation needs, please send an email to: rp2@bis.doc.gov.

Thea D. Rozman Kendler,

Assistant Secretary of Commerce for Export Administration.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[DOL Docket No. ETA-2020-0005]

Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications Under the H-2A Program; Ratification of Department's Actions

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Ratification.

SUMMARY: The Department of Labor is publishing notification of the Assistant Secretary for Employment and Training's ratification of the rule published December 16, 2021, titled *Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications Under the H-2A Program*.

DATES: This ratification was signed on January 10, 2025.

FOR FURTHER INFORMATION CONTACT: For further information regarding 20 CFR part 655, contact Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-5311, Washington, DC 20210, telephone: (202) 693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via Teletypewriter (TTY)/Telecommunications Device for the Deaf (TDD) by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627.

SUPPLEMENTARY INFORMATION:

I. Background

On May 6, 2021, the Department of Labor ("DOL" or "Department") issued a notice of proposed rulemaking ("NPRM") in the **Federal Register** ("FR") to amend its regulations regarding the adjudication of temporary and seasonal need for employers seeking herding or production of livestock on the range job opportunities under the H-2A program. See *Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications Under the H-2A Program*, 86 FR 24368 (May 6, 2021) ("NPRM"). The NPRM was open for public comment for 30 days until June 7, 2021. See *Adjudication of Temporary and Seasonal Need for Herding and*

Production of Livestock on the Range Applications Under the H-2A Program, 86 FR 71373, 71376 (Dec. 16, 2021) ("Final Rule"). On December 16, 2021, DOL published the Final Rule in the FR. See Final Rule, 86 FR 71373. The Final Rule went into effect on January 18, 2022. *Id.*

Since publication of the Final Rule, a question has been raised in litigation concerning whether a separate rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in the Non-Range Occupations in the United States*, 88 FR 12760 (Feb. 28, 2023), was approved by the Attorney General in consultation with the Secretary of Labor and the Secretary of Agriculture. 8 U.S.C. 1188, Statutory Note.¹ With respect to the Final Rule, prior to its issuance on December 16, 2021, the Final Rule was provided to the Departments of Homeland Security and Agriculture through the interagency review process prescribed by Executive Order 12866. Further, on December 31, 2024, the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of Agriculture, approved the Final Rule.

To resolve any possible uncertainty with respect to the Final Rule, the Department, through its Assistant Secretary for Employment and Training, is ratifying the Final Rule. Under established case law, an agency may, through ratification, "purge[] any residual taint or prejudice left over from" a potential defect in a prior governmental action.² The Department is issuing this ratification out of an abundance of caution, and this ratification is not a statement that the Final Rule is invalid absent this ratification.

II. Ratification

By virtue of the authority vested in the Secretary of Labor by law, including by the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* ("INA"), and as delegated to the Assistant Secretary for Employment and Training, 75 FR 66268, I am affirming and ratifying a prior action by Angela Hanks, Acting Assistant Secretary for Employment and Training. On December 16, 2021, the Employment and Training Administration published in the FR the Final Rule codifying amendments to the Department's

¹ Although this provision vests approval authority in the "Attorney General," the Secretary of Homeland Security now may exercise this authority. See 6 U.S.C. 202(3)-(4), 251, 271(b), 291, 551(d)(2), 557; 8 U.S.C. 1103(c) (2000).

² *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 13 (D.C. Cir. 2019).