

Regulation and Risk Management of Artificial Intelligence and Machine Learning in Receivables Management

Presented by:

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Thursday, September 22, 2022

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Testimonial

I've been an RMAI member since 2001, and this year I earned the RMAI Certified Receivables Compliance Professional (CRCP) designation. The educational webinars I took to earn the CRCP designation were excellent and very informative. The presenters were all dynamic individuals and leaders in the collection industry. I was impressed with how they addressed timely topics affecting our legal collection workspace. **If you want to advance yourself or your business in the receivables management industry, I highly recommend the RMAI Receivables Management Certification Program.**

Russell L. London, Esq., LONDON & LONDON



Disclaimer

This information is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case.

Every effort has been made to assure this information is up-to-date. It is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

Any opinions expressed are the opinions of the speaker and not their organization or RMAI.



Today's Session

- What is Artificial Intelligence, Machine Learning, and Alternative Data?
- Legal and Regulatory Background
- Fair Lending/Equal Credit/Prohibitions on Discrimination
- Some Steps to be Prepared
 - RMAi Certification
 - Additional Considerations

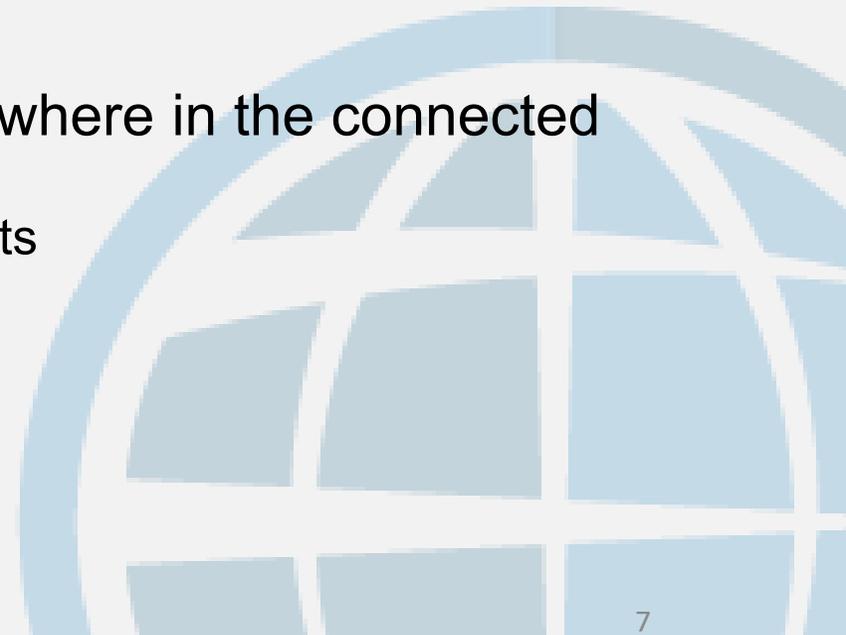


What is Artificial Intelligence, Machine Learning, and Alternative Data?



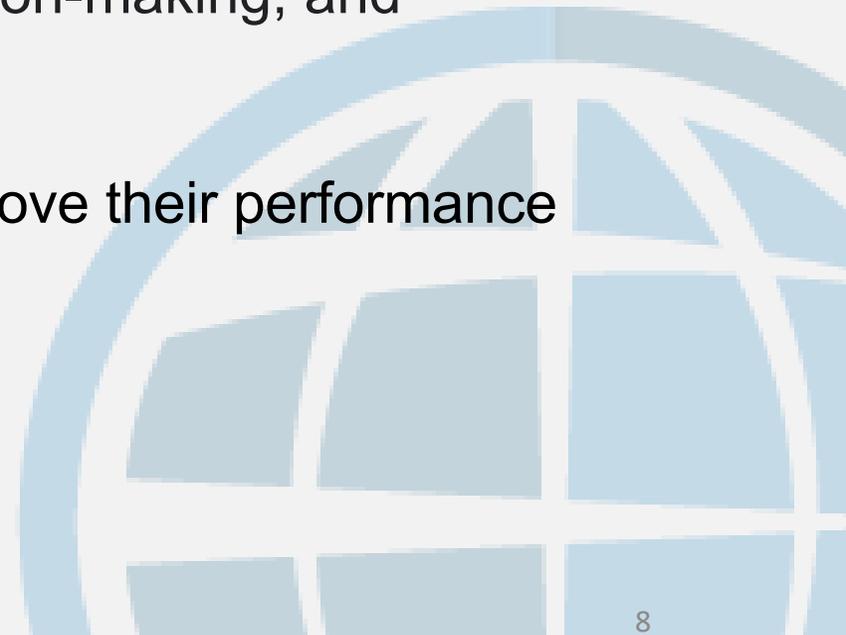
Introduction to AI and Machine Learning

- The mainstream use of artificial intelligence and machine learning in financial services is helping business enterprises to pull out actionable insights from large and complex datasets and deliver services.
- It comes in the form of deep learning technologies, autonomous processes, or smart robots.
- Artificial intelligence is making its presence felt everywhere in the connected world.
 - Chatbots, virtual assistants, and business intelligence bots
 - Targeted online advertising
 - Predictive analytics
 - Voice recognition
 - Pattern recognition



Artificial Intelligence and Machine Learning

- Financial institutions are exploring how best to leverage developments in AI and ML for credit decisioning and AML efforts.
 - **Artificial Intelligence (AI)** is a term used to address various technologies and systems able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.
 - **Machine learning (ML)** refers to algorithms that improve their performance through the sharing or analysis of pattern information.



Alternative Data

- Alternative data means information not typically found in the consumer's credit files of the nationwide consumer reporting agencies or customarily provided by consumers as part of applications for credit.
 - Examples of alternative data include information derived from a customer's social media activities, mobile device data, website data, and online browsing activity.
- Financial services industry is increasingly using alternative sources of data to streamline and improve credit underwriting, advertising and marketing, and more.
- Prudential banking regulators recognize that alternative data may be used in connection with fraud detection, credit underwriting, and account servicing and management.

Alternative Data (cont'd)

- U.S. banking regulators have **recognized that the use of alternative data “may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system** These innovations reflect the continuing evolution of automated underwriting and credit score modeling, offering the potential to lower the cost of credit and increase access to credit.”
[Interagency Statement on the Use of Alternative Data in Credit Underwriting](#)
- **Banking regulators have cautioned financial institutions to engage in “responsible use of such data,” and to ensure that any such use complies with applicable consumer protection laws and regulations.**

Legal and Regulatory Overview



Federal and State Laws

- Is there an overall AI-focused federal law?
- Federal Equal Credit Opportunity Act (“ECOA”) prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because the applicant receives public assistance.
 - State antidiscrimination laws contain similar provisions, but possibly additional protected classes.
- Federal Fair Credit Reporting Act (“FCRA”) requires:
 - Disclosures to potential employees, tenants, borrowers, and others regarding credit or background checks
 - Disclosures if the report will lead to an adverse action
 - investment Advisers Act
 - Enforcement re “robo-advisers” that make false statements about investment products and published misleading ads, violating federal Investment Advisers Act of 1940.
- FTC Act proscribes unfair methods of competition and unfair or deceptive commercial practices.
- Consumer Financial Protection Act prohibits unfair, deceptive, or abusive acts and practices by providers of consumer financial products or services and by those providing material services to them.
- State privacy and data security laws, including rights to be forgotten or not subject to an entire automated decision.

Federal Legislative Proposals

The Algorithmic Accountability Act (H.R. 6580) and related bills would:

- Require covered persons to assess impact of certain automated decision systems on accuracy, fairness, bias, discrimination, privacy, and security
- Correct problems discovered through impact assessments

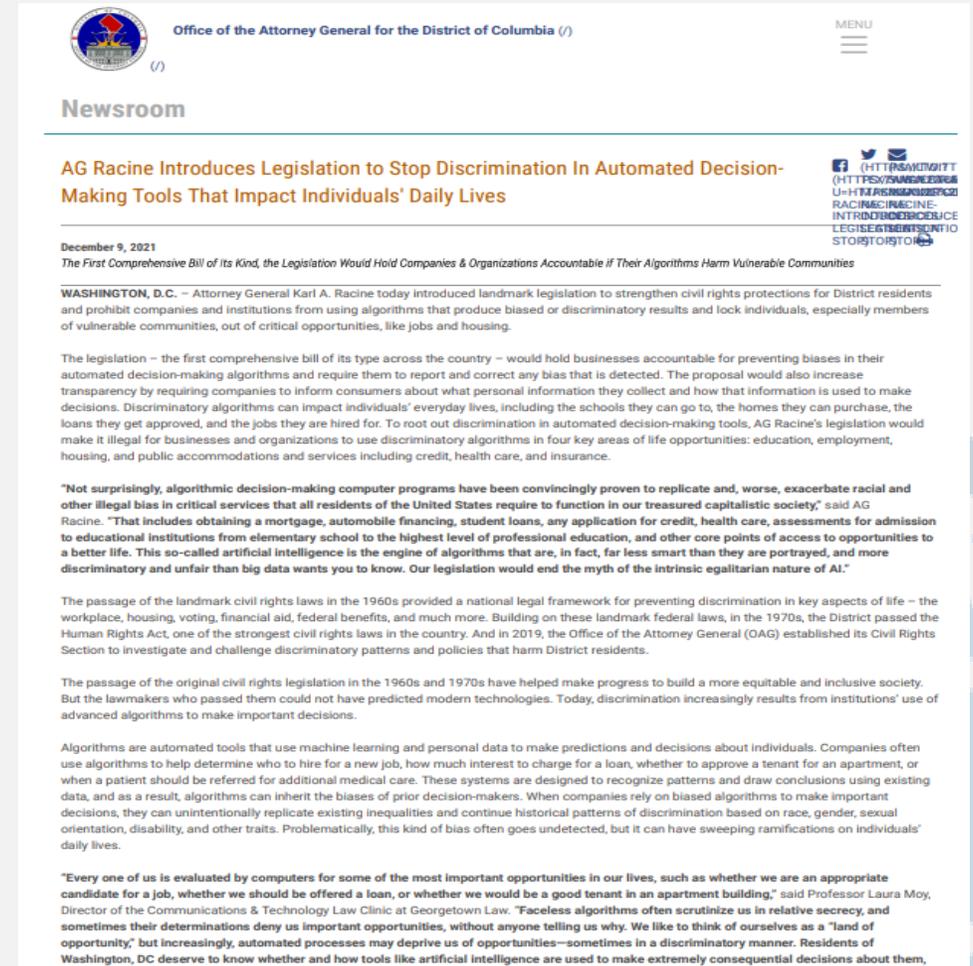
The Algorithmic Justice and Online Platform Transparency Act (H.R. 3611) and related bills would:

- Prohibit algorithms that discriminate based on protected characteristics or otherwise harm users
- Require online platforms to take reasonable steps to ensure algorithms achieve their intended purposes
- Mandate disclosures to users, recordkeeping, and reporting



Additional Proposals

- DC “Stop Discrimination by Algorithms Act of 2021”
 - Bill would prohibit users of algorithmic decision-making in a discriminatory manner and would require corresponding notices to individuals whose personal information is used in certain algorithms to determine employment, housing, healthcare and financial lending.
 - Hearing on 9/22/22 at Noon ET.



Office of the Attorney General for the District of Columbia (/)

Newsroom

AG Racine Introduces Legislation to Stop Discrimination In Automated Decision-Making Tools That Impact Individuals' Daily Lives

December 9, 2021
The First Comprehensive Bill of Its Kind, the Legislation Would Hold Companies & Organizations Accountable if Their Algorithms Harm Vulnerable Communities

WASHINGTON, D.C. – Attorney General Karl A. Racine today introduced landmark legislation to strengthen civil rights protections for District residents and prohibit companies and institutions from using algorithms that produce biased or discriminatory results and lock individuals, especially members of vulnerable communities, out of critical opportunities, like jobs and housing.

The legislation – the first comprehensive bill of its type across the country – would hold businesses accountable for preventing biases in their automated decision-making algorithms and require them to report and correct any bias that is detected. The proposal would also increase transparency by requiring companies to inform consumers about what personal information they collect and how that information is used to make decisions. Discriminatory algorithms can impact individuals' everyday lives, including the schools they can go to, the homes they can purchase, the loans they get approved, and the jobs they are hired for. To root out discrimination in automated decision-making tools, AG Racine's legislation would make it illegal for businesses and organizations to use discriminatory algorithms in four key areas of life opportunities: education, employment, housing, and public accommodations and services including credit, health care, and insurance.

"Not surprisingly, algorithmic decision-making computer programs have been convincingly proven to replicate and, worse, exacerbate racial and other illegal bias in critical services that all residents of the United States require to function in our treasured capitalistic society," said AG Racine. **"That includes obtaining a mortgage, automobile financing, student loans, any application for credit, health care, assessments for admission to educational institutions from elementary school to the highest level of professional education, and other core points of access to opportunities to a better life. This so-called artificial intelligence is the engine of algorithms that are, in fact, far less smart than they are portrayed, and more discriminatory and unfair than big data wants you to know. Our legislation would end the myth of the intrinsic egalitarian nature of AI."**

The passage of the landmark civil rights laws in the 1960s provided a national legal framework for preventing discrimination in key aspects of life – the workplace, housing, voting, financial aid, federal benefits, and much more. Building on these landmark federal laws, in the 1970s, the District passed the Human Rights Act, one of the strongest civil rights laws in the country. And in 2019, the Office of the Attorney General (OAG) established its Civil Rights Section to investigate and challenge discriminatory patterns and policies that harm District residents.

The passage of the original civil rights legislation in the 1960s and 1970s have helped make progress to build a more equitable and inclusive society. But the lawmakers who passed them could not have predicted modern technologies. Today, discrimination increasingly results from institutions' use of advanced algorithms to make important decisions.

Algorithms are automated tools that use machine learning and personal data to make predictions and decisions about individuals. Companies often use algorithms to help determine who to hire for a new job, how much interest to charge for a loan, whether to approve a tenant for an apartment, or when a patient should be referred for additional medical care. These systems are designed to recognize patterns and draw conclusions using existing data, and as a result, algorithms can inherit the biases of prior decision-makers. When companies rely on biased algorithms to make important decisions, they can unintentionally replicate existing inequalities and continue historical patterns of discrimination based on race, gender, sexual orientation, disability, and other traits. Problematically, this kind of bias often goes undetected, but it can have sweeping ramifications on individuals' daily lives.

"Every one of us is evaluated by computers for some of the most important opportunities in our lives, such as whether we are an appropriate candidate for a job, whether we should be offered a loan, or whether we would be a good tenant in an apartment building," said Professor Laura Moy, Director of the Communications & Technology Law Clinic at Georgetown Law. **"Faceless algorithms often scrutinize us in relative secrecy, and sometimes their determinations deny us important opportunities, without anyone telling us why. We like to think of ourselves as a "land of opportunity," but increasingly, automated processes may deprive us of opportunities—sometimes in a discriminatory manner. Residents of Washington, DC deserve to know whether and how tools like artificial intelligence are used to make extremely consequential decisions about them,**

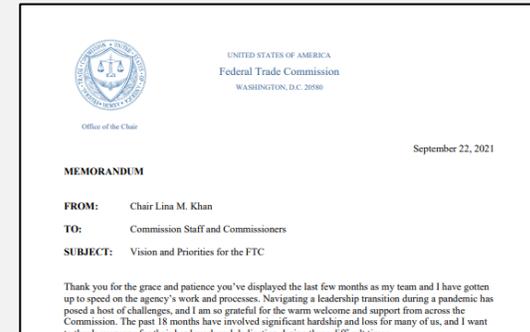
CFPB and Bank Regulators

- **CFPB**
 - New Director Rohit Chopra and staffing changes at the Bureau
 - Big announcements, taking on tech, taking on FDIC, promoting competition, and more
 - Guidance to staff re engaging with former employees, and heightened scrutiny
- **Bank Regulators (FRB, OCC, FDIC, NCUA)**
 - Focus on fintech integrations
 - Third-party risk management
 - Fair lending/redlining initiatives



FTC, State Attorneys General, & State Regulators

- **FTC**
 - New Chair Lina Kahn
 - June 16, 2022 Combatting Online Harms Through Innovation Report to Congress
 - Resurrection of its penalty offense authority? (education/student loans, endorsements and testimonials)
 - A focus on growing role of private equity and other investors; and individual liability
- **State AGs**
 - Debt collection practices
 - Installment lending
 - Buy now/ pay later and lease-to-own
 - Privacy and data security
- **CA Department of Financial Innovation and Protection:** UDAAP authority, active investigations, registration, and more – a “mini-CFPB”
- **NY Department of Financial Services**



January 12 / 8:00 a.m. - January 13 / 1:00 p.m.

2022 NAAG Legislative Conference

The conference has been postponed. Attendees will receive an email with rescheduled dates. Please contact Cecilia Dakers at cdakers@naag.org if you have any questions. January 12-13, 2022 Washington, D.C. The...

er into the agency's workload. the job Congress has given us and the across markets. Using our full set of to adjudication—will be critical,

change and transformation. At its best, new evidence, and course-correcting cases depend on the Commission to we can deliver.

ve learn and to focus on key strategic ights on each of these fronts, and I k. I respect deeply the expertise and will require collective learning and

each across their work.

ognizing that antitrust and consumer ell as consumers. Focusing on power

CFPB and Bank Regulators

In the course of examining banks' and other

companies' compliance with consumer

pro

dis

“When a person is denied access to a bank account because of their religion or race, this is unambiguously unfair,” said CFPB Director Rohit Chopra. “We will be expanding our anti-discrimination efforts to combat discriminatory practices across the board in consumer finance.”

The CFPB will closely examine financial institutions' decision-making in advertising, pricing, and other areas to ensure that companies are appropriately testing for and eliminating illegal discrimination.

CFPB Consumer Laws and Regulations

UDAAP

Unfair, Deceptive, or Abusive Acts or Practices

Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers.

- The principles of unfairness, deception, and abuse in the context of offering and providing consumer financial products and services;
- Assessing the risk that an institution's practices may be unfair, deceptive, or abusive;
- Identifying unfair, deceptive or abusive acts or practices (including by providing examples of potentially unfair or deceptive acts and practices); and
- Understanding the interplay between unfair, deceptive, or abusive acts or practices and other consumer protection and antidiscrimination statutes.

Unfair Acts or Practices

The standard for unfairness in the Dodd-Frank Act is that an act or practice is unfair when:

- (1) It causes or is likely to cause substantial injury to consumers;
- (2) The injury is not reasonably avoidable by consumers; and

¹ Dodd-Frank Act, Title X, Subtitle C, Sec. 1036; PL 111-203 (July 21, 2010).

² Sec. 1031 of the Dodd-Frank Act. The principles of “unfair” and “deceptive” practices in the Act are similar to those under Sec. 5 of the Federal Trade Commission Act (FTC Act). The Federal Trade Commission (FTC) and federal banking regulators have applied these standards through case law, official policy statements, guidance, examination procedures, and enforcement actions that may inform CFPB.

³ Dodd-Frank Act, Secs. 1024; 1025(b)(1); 1026(b) of the Act.

AI and ML at the CFPB

cfpb Consumer Financial Protection Bureau

Innovation spotlight: Providing adverse action notices when using AI/ML models

By Patrice Alexander Ficklin, Tom Pahl, and Paul Watkins - JUL 07, 2020

As part of our consumer protection mission, Congress tasked the Bureau with ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. One area of innovation we are monitoring is artificial intelligence (AI), and particularly a subset of AI, machine learning (ML). For example, in 2017, the Bureau issued a Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process (RFI). We also issued a No-Action Letter to Upstart Network, Inc., a company that uses ML in making credit decisions, and later shared [key highlights \(https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/\)](https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/) from information provided by Upstart.

Financial institutions are starting to deploy AI across a range of functions, including as virtual assistants that can fulfill customer requests, in models to detect fraud or other potential illegal activity, or as compliance monitoring tools. One additional area where AI may have a profound impact is in credit underwriting.

In 2015, the Bureau released a Data Point titled "[Credit Invisibles \(https://www.consumerfinance.gov/data-research/research-reports/data-point-credit-invisibles/\)](https://www.consumerfinance.gov/data-research/research-reports/data-point-credit-invisibles/)." The Data Point reported that 26 million consumers—about one in 10 adults in America—could be considered credit invisible because they do not have any credit record at the nationwide credit bureaus. Another 19 million consumers have too little information to be evaluated by a widely used credit scoring model.

AI has the potential to expand credit access by enabling lenders to evaluate the creditworthiness of some of the millions of consumers who are unscorable using traditional underwriting techniques. These technologies typically involve the use of models that allow lenders to evaluate more information about credit applicants. Consideration of such information may lead to more efficient credit decisions and potentially lower the cost of credit. On the other hand, AI may create or amplify risks, including risks of unlawful discrimination, lack of transparency, and privacy concerns. Bias in the source data or model construction can also lead to inaccurate predictions. In considering AI or other technologies, the Bureau is committed to helping spur innovation consistent with consumer protections.

cfpb Consumer Financial Protection Bureau

Consumer Education ▾ Rules & Policy ▾ Enforcement ▾ Compliance ▾ Data & Rese

← Notice & Opportunities to Comment / Open Notices

Request for comment or information

Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning

APR 12, 2021

The Board of the Federal Reserve System, Bureau of Consumer Financial Protection, Federal Deposit Insurance Corporation, National Credit Union Administration, and the Office of the Comptroller of the Currency are gathering information and comments on financial institutions' use of artificial intelligence (AI), including machine learning (ML). The purpose of this request for information (RFI) is to understand respondents' views on the use of AI by financial institutions in their provision of services to customers and for other business or operational purposes; appropriate governance, risk management, and controls over AI; and any challenges in developing, adopting, and managing AI. The RFI also solicits respondents' views on the use of AI in financial services to assist in determining whether any clarifications from the agencies would be helpful for financial institutions' use of AI in a safe and sound manner and in compliance with applicable laws and regulations, including those related to consumer protection.

PROPOSED RULE WITH REQUEST FOR PUBLIC COMMENT

[Read it in the Federal Register](#) ↗

[View issued pdf](#) 📄

SUBMIT A FORMAL COMMENT

[Regulations.gov comment form for this notice](#) ↗

[Read Comments Received](#) ↗

Understanding Fair Lending and Equal Credit – Prohibitions on Discrimination



Fair Lending and Equal Credit

- The use of data in credit decisioning is governed by federal fair and equal lending laws, specifically the Fair Credit Reporting Act (“FCRA”) and the Equal Credit Opportunity Act (“ECOA”), and their implementing regulations.
- These laws are enforced by the CFPB, FTC, and through private litigation. In addition, both the CFPB and FTC have general authority to police unfair and deceptive acts and practices (UDAAP/UDAP), and have used that authority when creditors failed to provide accurate information about the information used to make credit decisions, what the terms of credit are and what may impact changes in rates and repayment, and other credit-related activity that was not disclosed to borrowers at the time of applying for and accepting credit.
- This general regulatory background sets the framework through which the regulators and Congress analyze new and alternative sources and types of data and underwriting practices in the marketplace.

Fair Lending and Equal Credit

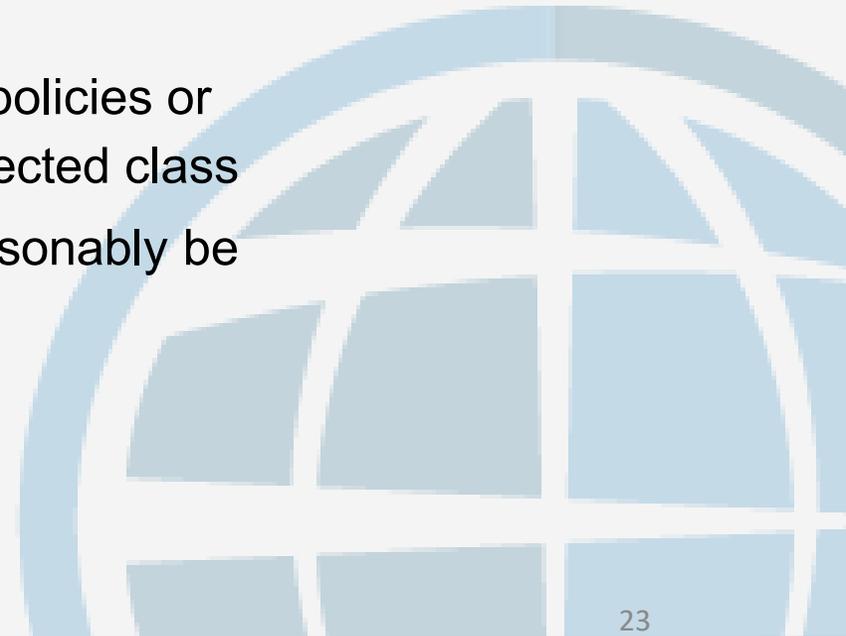
- The Equal Credit Opportunity Act (ECOA) applies to all creditors and those who, in the ordinary course of business, regularly refer prospective applicants to creditors. Implemented by Regulation B.
- Illegal to discriminate against applicant regarding **any** aspect of a credit transaction
 - On the basis of race, color, religion, national origin, sex or marital status, or age (if applicant has capacity to contract)
 - Because all or part of the applicant's income derives from any public assistance program
 - Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act
- The CFPB has ECOA rulemaking authority and supervises for and enforces compliance. FTC also has enforcement authority.

Fair Lending and Equal Credit

- Reg. B covers creditor activities before, during, and after the extension of credit.
 - Information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing information about credit; revocation, alteration, or termination of credit; collection procedures.
- Reg. B prohibited practices (12 C.F.R. § 1002.4):
 - Discriminating against applicants on a prohibited basis regarding any aspect of a credit transaction.
 - Making oral/written statements, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application.

Fair Lending and Equal Credit

- Two theories of ECOA/Reg. B liability: disparate impact & disparate treatment.
- Disparate treatment occurs when a creditor treats an applicant differently based on a prohibited basis.
 - Can be overt/open **or** be found by comparing treatment of applicants who received different treatment for no discernable reason other than a prohibited basis.
- Disparate impact occurs when a creditor employs facially neutral policies or practices that have an adverse effect or impact on a member protected class
 - **Unless** they meet a legitimate business need that cannot reasonably be achieved by means that are less disparate in their impact.



Fair Lending and Equal Credit

- **Discrimination and Digital Redlining.** The most common concern voiced across government and civil society entities that focus on alternative credit data and AI driven lending was that such programs will continue existing structural roadblocks to credit for marginalized groups, and result in discriminatory outcomes (either intentional or unintentional) that may violate fair lending laws. The overriding concern is that entities will not properly use, calibrate, monitor, or adjust any data sources or algorithms used in new lending platforms to properly control for statistical discrimination (especially that causing a disparate impact on marginalized groups, even through the use of a facially neutral system).
- **Unfair Data Inclusion.** FCRA prohibits certain data elements from being included in consumer reports, and also places requirements on CRAs to ensure a certain level of accuracy in the data used to create consumer reports. Several commentators and government agencies stated concerns that alternative data may be collected and used outside of FCRA's requirements. For example, social media data (e.g., friend groups and educational institutions) as a proxy for credit worthiness was seen as less reliable and fair compared to the inclusion of rent or utility payments into a credit decision.
- **Improper Additional Data Uses.** A variety of sources noted for the potential misuse of alternative credit data outside of the underwriting context. Because alternative credit data can include a range of data points, including Internet activity, social media, and other data typically associated with digital advertising and other uses of such information, some entities are worried that consumers may grant access to information to receive credit but that the same information will be repurposed for other uses without the consumer's knowledge.
- **Deceptive Terms and Conditions.** Concerns that consumers may not be aware of the types of data or activity that has bearing on their credit decisions when a company uses alternative data and AI to make such decisions, they may be unable to address or challenge adverse terms or changes in a credit offer.

CFPB Long-Term Actions – Artificial Intelligence

- “Although use of AI holds the potential to expand credit access to underserved consumers, use of such technologies may also hold risks, including risks of unlawful discrimination and lack of transparency”
- “The Bureau recognizes the importance of continuing to monitor the use of AI and is evaluating whether rulemaking, a policy statement, or other Bureau action may become appropriate”
- 2017 Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process
- 2018 Calls for Evidence
- 2020 Adverse Action Tech Sprint
- 2020 Request for Information on the Equal Credit Opportunity Act and Regulation B

Federal Register / Vol. 82, No. 33 / Tuesday, February 21, 2017 / Notices 11183

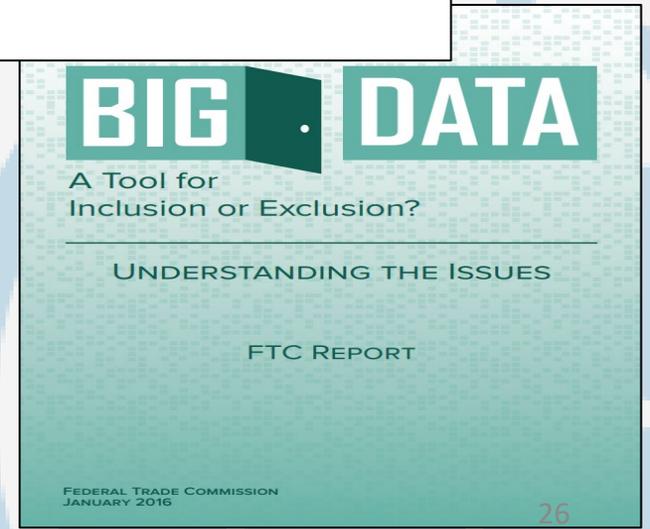
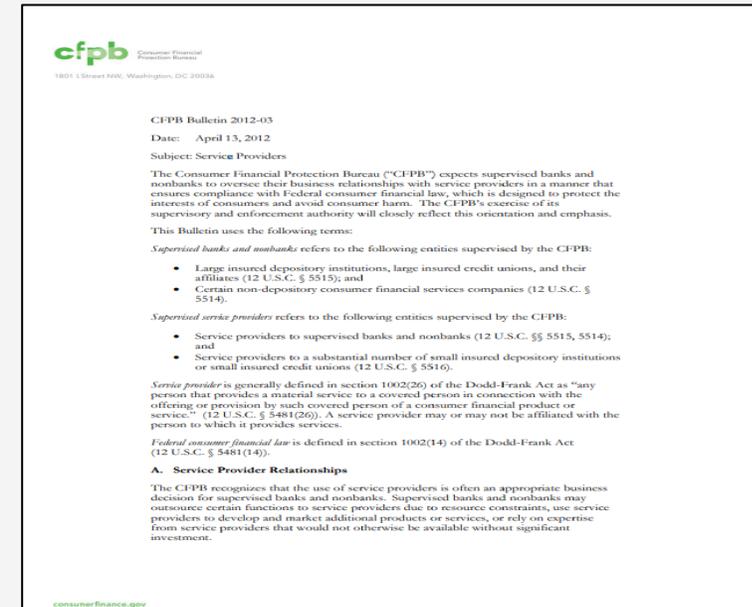
Special Accommodations
This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.
Authority: 16 U.S.C. 1801 et seq.
Dated: February 15, 2017.
Tracey L. Thompson,
Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2017-03310 Filed 2-17-17; 8:45 am]
BULNO CODE 819-32-*

BUREAU OF CONSUMER FINANCIAL PROTECTION
[Docket No. CFPB-2017-0005]
Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process
AGENCY: Bureau of Consumer Financial Protection.
ACTION: Notice and request for information.
SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) seeks information about the use or potential use of alternative data and modeling techniques in the credit process. Alternative data and modeling techniques are changing the way that some financial service providers conduct business. These changes hold the promise of potentially significant benefits for some consumers but also present certain potentially significant risks. The Bureau seeks to learn more about current and future market developments, including existing and emerging consumer benefits and risks, and how these developments could alter the marketplace and the consumer experience. The Bureau also seeks to learn how market participants are or could be mitigating certain risks to consumers, and about consumer preferences, views, and concerns.
DATES: Comments must be received on or before May 19, 2017.
ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2017-0005, by any of the following methods:
• **Electronic:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
• **Mail:** Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
• **Hand Delivery/Courier:** Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE, Washington, DC 20002.
Instructions: Please note the number associated with any question to which you are responding at the top of each response (you are not required to answer all questions to receive consideration of your comments). The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street NE, Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Standard Time. You can make an appointment to inspect the documents by telephoning 202-435-7275. All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.
FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202-435-7275.
Authority: 12 U.S.C. 5515(c).
SUPPLEMENTARY INFORMATION: The Bureau would like to encourage responsible innovations that could be implemented in a consumer-friendly way to help serve populations currently underserved by the mainstream credit system. To that end, in reviewing the comments to this request for information (RFI), the Bureau seeks not only to understand the benefits and risks stemming from use of alternative data and modeling techniques but also to begin to consider future activity to encourage their responsible use and lower unnecessary barriers, including any unnecessary regulatory burden or uncertainty that impedes such use. The Bureau encourages comments from all interested members of the public. The Bureau anticipates that the responding public may encompass the following groups, some of which may overlap in part:
• Individual consumers;
• Consumer, civil rights, and privacy advocates;
• Community development and service organizations;
• Lenders, including depository and non-depository institutions;
• Consumer reporting agencies, including specialty consumer reporting agencies;
• Data brokers and aggregators;
• Model developers and licensors, as well as companies involved in the analysis of new or existing models;
• Consultants, attorneys, or other professionals who advise market participants on these issues;
• Researchers or members of academia;
• Telecommunication, utility, and other non-financial companies that rely on consumer data for eligibility decisions;
• Participants in non-U.S. consumer markets with knowledge of or experience in the use of alternative data or modeling techniques for use in the credit process; and
• Any other interested parties.
All commenters are welcome to respond in any manner they see fit, including by sharing their knowledge of standard practices, their understanding of the market as a whole, or their own positions and views on the questions included in this RFI. Commenters may also choose to answer only a subset of questions. The information obtained in response to this RFI will help the Bureau monitor consumer credit markets and consider any appropriate steps. Comments may also help industry develop best practices. The Bureau seeks information predominantly pertaining to products and services offered to consumers. However, because some of the Bureau's authorities relate to small business lending,¹ the Bureau welcomes information about alternative data and modeling techniques in business lending markets as well. Information submitted by financial institutions should not include any personal information relating to any customer, such as name, Social Security

¹ For example, the Equal Credit Opportunity Act covers both consumer and commercial credit transactions. 15 U.S.C. 1601 et seq. In addition, section 1071 of the Dodd-Frank Act requires data collection and reporting for lending to women-owned, minority-owned and small businesses. The Bureau has yet to write regulations implementing that section but it has begun that process.

Fair Lending and Equal Credit

- Focus on payments systems, data harvesting, consumer choice/access restrictions, and more (e.g., EFTA, GLBA, etc.)
- **Denial of Credit / Access:** The CFPB is more closely scrutinizing the use of big data when it is used to deny credit (or access to financial services); less likely to object to the use of big data by creditors to reconsider credit applications that would otherwise be denied.
 - FTC Report, Big Data: A Tool for Inclusion or Exclusion (2016)
- **FCRA Disparate Impact:** One concern with using big data is that it may present fair lending issues if its use causes a disparate impact. When a creditor determines that a big data factor may be leading to a discriminatory impact, the creditor should determine whether:
 - 1) the factor is highly correlated with the discriminatory impact,
 - 2) there is a good basis for continuing to use that factor, and
 - 3) there is a better variable that could be used for the same purpose that does not lead to a discriminatory impact.
- **Third Party Vendor Management Policy, CFPB Bulletin 2012-03 (April 13, 2012) -** CFPB will focus on primary providers of financial service and service providers. If the CFPB believes that service providers are not complying with a consumer financial services law, or are committing a UDAAP violation when interacting with the institution's customers, the CFPB plans to hold both companies accountable. May include exams/investigations.



Combatting Redline Initiative

- Led by Civil Rights Division’s Housing and Civil Enforcement Section, partnering with U.S. attorney offices, financial regulatory agencies (incl. CFPB), and state AGs.
- Takeaways:
 - Use U.S. attorneys’ offices to ensure that fair lending enforcement takes advantage of local expertise on housing markets and credit needs;
 - Extend DOJ’s analyses of potential redlining to non-depository institutions that DOJ indicated are originating the majority of mortgage loans;
 - Strengthen DOJ’s partnership with financial regulatory agencies to ensure identification and referral of fair lending violations to DOJ; and
 - Increase coordination with state attorneys general on fair lending matters.
- All types of loans, and all types of lenders
- Director Chopra’s comments focused on the use of AI in lending decisions. The CFPB will be “watching for digital redlining,” citing what he called “algorithmic bias” and the need for investigation of whether “discriminatory black box models are undermining th[e] goal” of equal opportunity.

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JUSTICE NEWS

Department of Justice
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FOR IMMEDIATE RELEASE Friday, October 22, 2021

Justice Department Announces New Initiative to Combat Redlining

DOJ, CFPB and OCC Announce Resolution of Lending Discrimination Claims Against Trustmark National Bank

The Justice Department announced the launch of the department's new Combatting Redlining Initiative today. Redlining is an illegal practice in which lenders avoid providing services to individuals living in communities of color because of the race or national origin of the people who live in those communities. The new Initiative represents the department's most aggressive and coordinated enforcement effort to address redlining, which is prohibited by the Fair Housing Act and the Equal Credit Opportunity Act.

"Lending discrimination runs counter to fundamental promises of our economic system," said Attorney General Merrick B. Garland. "When people are denied credit simply because of their race or national origin, their ability to share in our nation's prosperity is all but eliminated. Today, we are committing ourselves to addressing modern-day redlining by making far more robust use of our fair lending authorities. We will spare no resource to ensure that federal fair lending laws are vigorously enforced and that financial institutions provide equal opportunity for every American to obtain credit."

"Enforcement of our fair lending laws is critical to ensure that banks and lenders are providing communities of color equal access to lending opportunities," said Assistant Attorney General Kristen Clarke for the Justice Department's Civil Rights Division. "Equal and fair access to mortgage lending opportunities is the cornerstone on which families and communities can build wealth in our country. We know well that redlining is not a problem from a bygone era but a practice that remains pervasive in the lending industry today. Our new Initiative should send a strong message to banks and lenders that we will hold them accountable as we work to combat discriminatory race and national origin-based lending practices."

Redlining, a practice institutionalized by the federal government during the New Deal era and implemented then and now by private lenders, has had a lasting negative impact. For American families, homeownership remains the principal means of building wealth, and the deprivation of investment in and access to mortgage lending services for communities of color have contributed to families of color persistently lagging behind in homeownership rates and net worth compared to white families. The gap in homeownership rates between white and Black families is larger today than it was in 1968, before the passage of the Fair Housing Act of 1968.

Lender Innovation: Artificial Intelligence in Underwriting

- Using an algorithm, rather than a human, to analyze a variety of factors to more accurately assess credit applicants.
- **Beware** of unwitting discrimination
 - “Black box” problem – algorithms can’t explain a result.
 - What if algorithm considers a data point that correlates strongly with protected characteristic?
 - Algorithms could include information that creates biases against certain groups.

cfpb Consumer Financial Protection Bureau (cfpb.gov/)

Innovation spotlight: Providing adverse action notices when using AI/ML models

By Patrice Alexander Ficklin, Tom Pahl, and Paul Watkins - JUL 07, 2020

As part of our consumer protection mission, Congress tasked the Bureau with ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. One area of innovation we are monitoring is artificial intelligence (AI), and particularly a subset of AI, machine learning (ML). For example, in 2017, the Bureau issued a Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process (RFI). We also issued a No-Action Letter to Upstart Network, Inc., a company that uses ML in making credit decisions, and

AI algorithms can be compatible with ECOA/Reg. B; “a creditor may disclose a reason for a denial even if the relationship of that disclosed factor to predicting creditworthiness may be unclear to the applicant.”

In 2015, the Bureau released a Data Point titled “[Credit Invisibles \(cfpb.gov/data-research/research-reports/data-point-credit-invisibles/\)](https://www.consumerfinance.gov/data-research/research-reports/data-point-credit-invisibles/).” The Data Point reported that 26 million consumers—about one in 10 adults in America—could be considered credit invisible because they do not have any credit record at the nationwide credit bureaus. Another 19 million consumers have too little information to be evaluated by a widely used credit scoring model.

AI has the potential to expand credit access by enabling lenders to evaluate the creditworthiness of some of the millions of consumers who are unscorable using traditional underwriting techniques. These technologies typically involve the use of models that allow lenders to evaluate more information about credit applicants. Consideration of such information may lead to more efficient credit decisions and potentially lower the cost of credit. On the other hand, AI may create or amplify risks, including risks of unlawful discrimination, lack of transparency, and privacy concerns. Bias in the source data or model construction can also lead to inaccurate predictions. In considering AI or other

Adverse action notification requirements in connection with credit decisions based on complex algorithms (Circular 2022-3)

- ECOA and Regulation B require creditors to provide statements of specific reasons to applicants against whom adverse action is taken.
 - Some creditors may make credit decisions based on certain complex algorithms, sometimes referred to as uninterpretable or “black-box” models, that make it difficult—if not impossible—to accurately identify the specific reasons for denying credit or taking other adverse actions.
- The adverse action notice requirements of ECOA and Regulation B apply equally to all credit decisions, regardless of the technology used to make them.
- ECOA and Regulation B do not permit creditors to use complex algorithms when doing so means they cannot provide the specific and accurate reasons for adverse actions.
- Call for whistleblowers: “Any use of artificial intelligence/machine learning models that is based on flawed or incomplete data sets, that uses proxies for race, gender, or other group characteristics, or that impacts particular groups or classes of people more than others.”

cfpb Consumer Financial Protection Bureau (cfpb.gov)

CFPB Acts to Protect the Public from Black-Box Credit Models Using Complex Algorithms

Companies relying on complex algorithms must provide specific and accurate explanations for denying applications

MAY 26, 2022

Washington, D.C. – Today, the Consumer Financial Protection Bureau (CFPB) confirmed that federal anti-discrimination law requires companies to explain to applicants the specific reasons for denying an application for credit or taking other adverse actions, even if the creditor is relying on credit models using complex algorithms. The CFPB published a *Consumer Financial Protection Circular* to remind the public, including those responsible for enforcing federal consumer financial protection law, of creditors’ adverse action notice requirements under the Equal Credit Opportunity Act (ECOA).

“Companies are not absolved of their legal responsibilities when they let a black-box model make lending decisions,” said CFPB Director Rohit Chopra. “The law gives every applicant the right to a specific explanation if their application for credit was denied, and that right is not diminished simply because a company uses a complex algorithm that it doesn’t understand.”

Data harvesting on Americans has become voluminous and ubiquitous, giving firms the ability to know highly detailed information about their customers before they ever interact with them. Many firms across the economy rely on these detailed datasets to power their algorithmic decision-making, which is sometimes marketed as “artificial intelligence.” The information gleaned from data analytics has a broad range of commercial uses by financial firms, including for targeted advertising and in credit decision-making.

Law-abiding financial companies have long used advanced computational methods as part of their credit decision-making processes, and they have been able to provide the rationales for their credit decisions. However, some creditors may make credit decisions based on the outputs from complex algorithms, sometimes called “black-box” models. The reasoning behind some of these models’ outputs may be unknown to the model’s users, including the model’s developers. With such models, adverse action notices that meet ECOA’s requirements may not be possible.

Some Steps to be Prepared



Additional Considerations

- Develop interdisciplinary teams including legal and compliance
- Be careful, do not make misleading statements
- Avoid facial discrimination and disparate impacts on protected classes
 - Can't claim didn't realize what AI was doing
- Be prepared to demonstrate proper design, training, functioning (through testing), and remediation.
- Audit AI systems
- Mitigate bias and drift
 - Human intervention?
- Mitigate risks through transparency
- Vet and monitor vendors and customers
- Don't set it and forget
- Include Board of Directors and Management
- Consider basic privacy and data security requirements, including Safeguards Rule
- Maintain up to date policies and procedures, including AI/ML policy in addition to discrete legal obligations and principles.
- Maintain materials that are explanatory and substantiated, to avoid later confusion
- Utilize CMS to manage the risks, identify the issues, and for remediation

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