August 12, 2024

U.S. Department of Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Re: Request for Information on Uses, Opportunities, and Risks of Artificial intelligence in the Financial Services Sector

The undersigned 25 consumer advocacy, workers' rights, and racial justice organizations submit these comments in response to the U.S. Department of Treasury's (Treasury) Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector.[1] While artificial intelligence (AI),[2] including machine learning and generative models, could potentially transform the financial services industry, insufficiently robust AI regulatory oversight and supervision can harm consumers by amplifying discriminatory patterns in credit markets, increasing consumer costs, and creating barriers to accessible credit.

To address these harms, federal regulators should pursue a rights-based and not solely a risk-based approach. Federal regulators must protect consumers' rights, not simply mitigate the risk of harm that AI poses to consumers. This approach was pursued by the Administration in its blueprint for the AI Bill of Rights, and is the basis for a robust regulatory scheme that protects consumers. A purely risk-based approach would only minimize the likelihood of harm to consumers and mitigate those harms when they occur. A risk-based AI regulatory approach can result in an unacceptable infringement of civil rights, constitutional rights, privacy rights, and statutory consumer protections. This should never occur and must be prevented.

Federal financial regulators should also designate any AI system with the capacity to make decisions regarding credit, housing, and financial products and services as high-risk systems that receive the highest level of regulatory scrutiny due to the impact on consumers' fair lending and civil rights. The potential harms include discrimination and bias, known and emerging, in underwriting, housing, marketing and advertising, banking services, and servicing and debt collection. To that end, federal regulators should require that these high-risk systems undergo independent testing before market deployment and regular, ongoing system audits to determine whether AI systems are safe and effective. Regulators should also exercise enforcement authority to the fullest extent possible, with steep financial penalties and withdrawal of systems that violate individual rights and consumer protection. Use of models and technologies violating these rights must be immediately stopped to minimize further harm.

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[1] 89 Fed. Reg. 50048 (June 12,2024).

[2] This RFI comment uses the AI definition adopted by Executive Order 14110 on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/.

Financial institutions' widespread AI models used in consumer credit, banking, and financial services are high-risk systems that require robust federal oversight. The financial industry is rapidly deploying AI models across a wide variety of consumer-facing applications with little or no monitoring or regulatory oversight. In public presentations, AI providers, developers, and deployers do not disclose the specifics of their models, what (potentially biased) data is being analyzed, the output and processes used, or what testing and oversight they receive.

Lack of transparency in the use of this technology makes it almost impossible for consumers to discern when and how they are harmed and how companies are using AI technology, what personal data is fueling AI algorithms, whether that data is accurate, whether consumers can remedy errors, how the AI algorithms weigh and evaluate the data, and what recourse consumers have to challenge AI-decision making. Federal regulators must vigorously oversee and supervise AI-powered consumer finance technologies to ensure that financial companies comply with fair lending and consumer protection laws and to ensure privacy, equity, and transparency of the systems.

- **Treasury should regulate online surveillance practices and hyper-targeted marketing that may be illegally steering consumers to higher-priced credit and predatory financial products.** Businesses are collecting, aggregating, sharing, and selling personal data from continuous online surveillance that tracks customer behavior across multiple platforms, making inferences about their interests, demographics, and other characteristics, which are then repackaged and sold to data brokers.[3] Financial firms already deploy big data and analytics powered by AI to target consumers, test willingness-to-pay to determine the highest prices people will accept, and cross-market products. This makes it easier for AI-driven models to digitally redline or exclude vulnerable consumers or hyper-target and steer consumers toward high-cost, subprime products.[4] While there are instances when differences in engagement-related matters relevant to the advertising approach may help improve language access and disability access,[5] the material terms of an advertisement and financial product terms and tools advertised or offered should not be different across protected classes. Regulatory supervision must include ongoing review of online marketing strategies to determine if there are discriminatory offers of credit.

- **Financial regulators must strictly oversee all AI/machine learning (ML) and financial product pricing for banks and mortgage companies to determine whether AI/ML use does not fuel discriminatory underwriting and pricing.** While AI models have enabled creditors to consider data points beyond traditional credit scores, consumers are still at risk for mortgage

[3] Factsheet: Surveillance Advertising: What is it?, Consumer Federation of America, August 2021 available at https://consumerfed.org/wp-content/uploads/2021/08/2-What-Is-Surveillance-Advertising-margins-General-Format.pdf.

[4] See Carol Evans, Board of Governors of the Federal Reserve System, *From Catalog to Clicks, The Fair Lending Implications of Targeted, Internet Marketing*, Consumer Compliance Outlook (Second Issue 2017) at 4; Amit Datta et al. *Automated Experiments on Ad Privacy Settings: A Tale of Opacity, Choice, and Discrimination*, Cornell Univ., (2015) available at https://arxiv.org/abs/1408.6491.

[5] For example, there are instances in which AI-powered targeted marketing can be used to more effectively identify and reach Spanish speaking consumers, deaf, hard of hearing, or visually impaired communities.

lending discrimination and discriminatory pricing. AI-enhanced automated underwriting can easily lead to inequitable credit access, discriminatory mortgage pricing, and inequitable access to mortgage workouts to preserve homeownership. These problems have been widely documented, including increased disparities for interest rates, particularly for Black and Latino borrowers,[6] and discriminatory mortgage loan pricing patterns that raised the cost of credit for Latino and Black borrowers.[7] Credit underwriting models should be routinely tested for lending and price discrimination as models may be developed with errors or with incomplete or inaccurate data.

- **Financial regulators must carefully consider the potential shortcomings of data generated from automated valuation models (AVMs) for real estate.** While most lenders use state licensed and certified human appraisers, AVM is permitted for more than 80 percent of home sales by aggregate dollar volume that allow AVM.[8] Data fed into AVMs may be less accurate and the proprietary and opaque models can exacerbate racial bias, given the history of racial discrimination in housing and residential mortgage lending.

- **Financial regulators must assess whether AI-enhanced cost-cutting measures could harm vulnerable consumers, including how mortgage servicers and debt collectors are using AI for debt collection and loss mitigation.** Many AI-backed cost-cutting measures may harm borrowers, particularly vulnerable borrowers such as non-English speakers, and may involve unforeseen risks with significant consequences. The "robo signing" scandal of the early 2010s serves as a helpful reminder that automation of seemingly routine tasks, while potentially a cost-cutting measure, may end up harming consumers and weakening a financial institution's reputation. The use of AI-tools by both mortgage servicers and debt collectors may put consumers at heightened risk for abusive collection tactics. Concerning AI debt collection practices include:

    - **Portfolio analytics, and insights into debt portfolios,** which collectors use to decide which debt portfolios to purchase and how much to pay.[9] Segmenting accounts for different types of collections may create disparate treatment outcomes based on zip code or demographic data such as race, gender, nativity, and age.

    - **Additional credit data monitoring with passive monitoring tools**, such as Experian's "Collection Triggers" service, which touts "nearly 100 triggers available" to passively

[6] Andreas Fuster, Paul Goldsmith-Pinkham, Tarun Ramadorai, and Ansgar Walther, *Predictably Unequal? The Effects of Machine Learning on Credit Markets* at 36 (Oct. 2020), available at https://ssrn.com/abstract=3072038

[7] Robert Bartlett, Adair Morse, et al., *Consumer Lending Discrimination in the Fintech Era, National Bureau of Economic Research*, Working Paper 25943, June 2019.

[8] 83 Fed. Reg. 63119 (Dec. 7, 2018).

[9] Experian, Debt collection analytics and insights (last visited July 19, 2024), https://www.experian.com/business/solutions/debt-management-collections/debt-collection-analytics ("An analytically driven collections model will allow you to score and segment customer accounts by exposure, risk, behavioral factors, willingness to pay and preferred contact channel. With collection analytics, you can prioritize your collections activity and better allocate your resources.").

monitor shifts that might correlate to a consumer's ability and/or willingness to pay.[10] When one of these changes, which can range from a new credit line inquiry to evidence of debt payoff to a change in contact information or new employment, debt collectors are notified that it could be "time to add an account back on [their] call list."[11] Targeting consumers can have a destabilizing effect, undermining that consumer's potentially fragile initial steps toward financial recovery.

  - **AI used to analyze collections communication methods with consumers** add consumer stress and may be inappropriately weaponized to further harass consumers. Using algorithms to generate personal settlements may also increase disparate treatment for some groups of consumers, who may be offered differentiated favorable repayment terms.

  - **AI used for speech analytics** and analytics software used by debt collectors to record and evaluate calls raise privacy concerns related to the recording and analysis of conversations with consumers. Speech analytics designed to respond in certain ways depending on user reactions, such as anger, may also result in disparate treatment depending on a consumer's race, age, gender or nativity.

- **Financial regulators must closely scrutinize and consider risks and harms potentially posed by chatbots, voice AI, and AI collection agents.** AI-driven chatbots and collection agents may not effectively help consumers get correct answers or information, especially for complex and unique questions. Using Voice AI to deploy limitless calls to consumers may create additional stress, anxiety, and harassment through repeated voice calls.

- **Financial regulators must consider how AI and ML tools and technologies can be used to discriminate against vulnerable populations and push them out of the banking system.** Participation in the mainstream U.S. financial system often begins with access to bank accounts. However financial institutions have aggressively used AI-driven tools to sort potential customers based on risk and deny them access to bank accounts and mainstream financial services. And though the use of AI and automated tools to combat the financing of terrorism and payment fraud is critical, innocent consumers need clear rights when they are negatively impacted. Financial institutions have broad discretion in how they respond to perceived risk threats and have sometimes overreacted to fraud waves, catching innocent consumers in the process. Often, the most vulnerable people have been denied access to their money when accounts are closed or frozen.

[10] Experian, Optimizing your recovery strategy with Collection Triggers, at 2 (2024), https://www.insidearm.com/whitepapers/optimizing-your-recovery-strategy-collections-triggers/
[11] *Id.* at 3. See also TransUnion, Collections Prioritization Engine (2020), https://www.transunion.com/content/dam/transunion/global/business/documents/TU-CPE%20Asset%20Sheet.pdf ("Identifies your most collectible accounts by choosing from more than 200 pre-defined credit characteristics").

Federal fair lending and civil rights laws must continue to be used as a framework for addressing systemic AI risks. Where AI directly discriminates or causes a disparate impact based on protected characteristics, laws such as the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA) should continue to be used to challenge unfair and discriminatory practices. Financial institutions should be required to test AI models used in underwriting and other parts of the credit transaction to ensure the outputs are empirically derived, statistically sound, and accurately predict risk or achieve other valid objectives. AI-based underwriting models should also be subject to routine and ongoing monitoring for discrimination to account for drift or changes in the model. AI's potential to increase credit access should not undermine regulatory duties to conduct rigorous fair lending evaluations or water down long held and workable standards.

For these reasons, we urge Treasury to recognize that AI technology that makes consequential decisions regarding credit, housing, and financial products and services must be considered "high-risk" systems and given the highest level of regulatory scrutiny due to the impact on consumers' fair lending and civil rights. At the very least, these measures must include ongoing and robust testing and evaluation, and routine audits coupled with strong enforcement for systems that violate fair lending and consumer protection laws.

Thank you for your consideration,

20/20 Vision
Americans for Financial Reform Education Fund (AFREF)
Autistic Women & Nonbinary Network
Better Markets
Center for Economic Justice
Consumer Action
Economic Action Maryland
Economic Empowerment Center DBA Lending Link
Georgia Advancing Communities Together, Inc.
Government Information Watch
Maine People's Alliance
National Association for Latino Community Asset Builders (NALCAB)
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
National Council of Asian Pacific Americans (NCAPA)
New Jersey Citizen Action
Oregon Consumer Justice
Progressive Leadership Alliance of Nevada
Public Citizen
Public Justice Center
Tzedek DC
UNIDOS US
William E. Morris Institute for Justice
Woodstock Institute