July 1, 2021

Board of Governors of the Federal Reserve System
Consumer Financial Protection Bureau
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency
(the "Regulators")

Re: Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, including Machine Learning
FRB Docket No. OP-1743
CFPB Docket No.: CFPB-2021-0004
FDIC No.: RIN 3064-ZA24
NCUA Docket No. NCUA -2021-0023
OCC Docket ID: OCC-2020-0049

Dear Regulators,

The 23 undersigned consumer, community, housing, small business, and other public interest organizations submit these comments in response to the regulators' Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, including Machine Learning ("RFI").

Artificial intelligence (AI) and machine learning (ML) are changing the landscape of decision making at financial institutions and playing an increasingly larger role in determining the types of products and services a customer is offered or denied. The growing use of AI and ML has important consumer protection and fair lending implications for the entire financial marketplace. Given the widespread impact of AI and ML use, we are glad to see that the Federal Reserve Board, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency (collectively "the Regulators") are soliciting feedback and examining these issues together through this RFI.

I. Risks posed by increased AI and ML use in the financial marketplace.

Proponents of increased use of AI and ML tout promises of greater accuracy and objectivity in decision-making. There are certainly some benefits AI and ML can provide over time, such as reducing problems caused by human error and making systems more efficient for consumers. For example, AI and ML have improved fraud detection and made it easier to stop unauthorized use of credit cards and access to bank accounts.

However, the accuracy and predictability of AI and ML decision-making cannot be separated from the data that goes into the development of its models, and all such data and patterns cannot be separated from the context of systemic inequities in this country. For much of U.S. history, redlining and related government policy decisions systematically excluded communities of color

from economic opportunities and blocked their ability to access credit and build wealth. These discriminatory policies created the massive wealth, homeownership, and credit gaps between White families and families of color that persist today. By drawing conclusions from data in this historical context, AI and ML may actually exacerbate existing exclusion and discrimination that have been baked into U.S. history for centuries.

AI and ML often use a combination of traditional and alternative data inputs, but neither traditional nor alternative data is independent from history. Alternative data – whether from conventional sources or Big Data – reflects historical biases that may be replicated in any automated credit decision or risk assessment. Much like the factors that drive the disparities in traditional credit scores, new sources of data reflect deeply ingrained structural inequalities in employment, education, housing and economic opportunity. Seemingly neutral variables when used alone or in combination can correlate with race, ethnicity and other prohibited factors. Learning algorithms, processing large volumes of information, will likely pick up subtle but statistically significant patterns that correlate with race and other protected characteristics and replicate existing bias.

The current proliferation of AI and ML use in the financial services market exponentially increases the potential for far-reaching adverse impacts for borrowers of color and other protected groups by perpetuating, amplifying, and even accelerating existing discriminatory patterns. The Regulators already have the tools they need to conduct strong supervision and enforcement, and it is important that they use these tools to closely examine AI and ML use with a fair lending lens to avoid these dangers and prevent further exclusion. The Regulators should also set strong standards and expectations for AI and ML models through policy statements that make it clear that models must fully comply with consumer protection and fair lending laws. Government, industry, and advocacy groups should work together to support the development of equitable AI systems that promote inclusion and allow all consumers and institutions to access the potential benefits AI and ML can provide.

II. Existing fair lending laws provide a framework to guide the Regulators on how to approach AI and ML developments.

Existing civil rights laws and supervisory policies provide a framework for the Regulators to analyze fair lending risk in AI and to engage in supervisory or enforcement actions, where appropriate. The Equal Credit Opportunity Act ("ECOA") and the Fair Housing Act (collectively, the "fair lending laws")—prohibit discriminating on the basis of protected characteristics such as race, national origin, religion, and sex. ECOA applies to nearly all applications for credit, including consumer and small businesses lending. The Fair Housing Act prohibits housing discrimination, including discrimination in mortgage lending and other residential real estate-related transactions.

A. The Regulators will be more effective if they issue clear policy statements that explain their approach to supervising AI for compliance with the fair lending laws.

In addition to the fair lending laws, the Regulators have issued several policies that provide a framework for effective supervision and enforcement as well as guidance to financial institutions, including the Interagency Fair Lending Examination Procedures, the Model Risk Management Guidance, the Uniform Interagency Consumer Compliance Rating System, and the Bulletin on Responsible Business Conduct.[1] These statements provide useful insight into the Regulators' approach to evaluating AI and ML use.

The Regulators should issue additional policy statements that clearly state their commitment to consumer protection and civil rights laws, including fair lending laws, and provide insight and guidance into their supervisory expectations and methods, as well as useful guardrails and best practices. All financial institutions are required to comply with the fair lending laws, and therefore, analysis of fair lending risk and equity should be integrated into all AI analysis by the Regulators. When evaluating financial institutions' use of AI, the Regulators should define "model risk" to, at a minimum, include the risk of discriminatory or inequitable outcomes for consumers, instead of just the risk of financial loss to a financial institution. Financial institutions should consider noncompliance with fair lending laws as part of their risk analysis in how they use AI and ML. Additional policy statements about these issues would make supervision more effective and provide more guidance to institutions and the public about necessary guardrails and the responsibilities that come up with using AI and ML in the financial marketplace

B. The Regulators should prioritize diversity, equity and engagement in their work on AI and ML issues to better identify and prevent harm and craft equitable solutions that benefit all consumers.

The Regulators should ensure that all AI stakeholders—including regulators, financial institutions, and tech companies—receive regular fair lending and racial equity training. Trained professionals are better able to identify and recognize issues that may raise red flags. They are also better able to design AI systems that generate non-discriminatory and equitable outcomes because they have the relevant information front of mind. The more stakeholders in the field are educated about fair lending and equity issues, the more likely they are to create tools that expand opportunities for all consumers. Given the ever-evolving nature of AI, the training should be updated and provided on a periodic basis.

It is also important that there is staff with necessary expertise in AI systems and fair lending issues that are capable of assessing the use and impact of AI systems at financial institutions, especially with respect to fair lending risks. The Regulators should encourage financial institutions to engage diverse staff for the AI development and design teams as a best practice. The Regulators should also prioritize diversity in staffing their own teams working on AI issues. People with diverse backgrounds and experiences bring unique and important perspectives to understanding how data impacts different communities and awareness of how the use of certain kinds of data may lead to unintended adverse consequences. In several instances, it has been people of color who were able to identify potentially discriminatory AI systems.

[1] FFIEC, Revised FFIEC Fair Lending Examination Procedures and Use of Specialized Examination Techniques, (Aug. 4, 2009); Model Risk Management Guidance at 3; FFIEC, Uniform Interagency Consumer Compliance Rating System (Nov. 7, 2016); CFPB Bulletin 2020-01, Responsible Business Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating (Mar. 6, 2020).

AI and ML risks are likely to have significant implications for borrowers and communities of color as well as other vulnerable communities, such as individuals with disabilities, families, and Limited English Proficiency borrowers. The Regulators should regularly engage with a diverse group of key stakeholders, including civil rights organizations, consumer advocates, and impacted communities in order to receive ongoing input and feedback to work towards solutions that treat all borrowers and communities equitably. Such insights should be regularly considered and incorporated in the Regulators' approach to examining AI and ML use.

III. Strong oversight is necessary to prevent AI and ML from causing harm.

Discrimination flourishes in the dark. Strong regulatory oversight of AI and ML models and how they are used is necessary to prevent harm and correct course as soon as possible to minimize damage. Landlords, lenders and other businesses are using new and increasingly sophisticated models to automate credit and housing decisions. They use complex, opaque algorithmic models that are often proprietary and often closely guarded by the businesses that develop them. New technology is being adopted at a rapid pace in a variety of systems related to lending to automate decisions that are consequential to consumers' ability to obtain and retain credit on non-discriminatory terms.

While leveraging new types of data and analytical techniques could potentially benefit consumers, serious concerns have arisen regarding the accuracy, relevance and predictability of the data sources used in these models and its potential to worsen existing disparities. To prevent such harm, there must be a regulatory framework in place that allows for the regular examination of the data used, scrutiny of the algorithmic model and calculations, and analyses of any disparate impacts. Such review cannot be left to the companies themselves; public and regulatory scrutiny is necessary for accountability and to prevent widespread harm.

A. Independent assessments, supervision and enforcement are critical tools for effective review and oversight.

The Regulators should require a financial institution to do a fair lending risk assessment of its AI and ML models and for that assessment to always be conducted by independent actors. The Regulators should set clear standards for fair lending risk assessments concerning the use of AI and ML that includes testing and evaluation of the model's design, implementation and use. The standards should also set documentation and archiving requirements that require institutions to maintain the data, code and information necessary to conduct a meaningful assessment of the systems to check for disparate impacts, model predictability, data accuracy and representativeness. Financial institutions should be provided with an explanation of the metrics and methods that the Regulators will use to evaluate compliance with fair lending laws. The Regulators should also provide examples of best practices that financial institutions can use to mitigate fair lending risks on an ongoing basis that includes periodic testing and evaluation of their own models for disparate impacts or other problems.

If an agency's assessment of a financial institution indicates weaknesses in their compliance systems, or violations of fair lending or consumer protection laws, the applicable agency should use all available tools to prevent consumer harm, including supervisory and enforcement actions. The Regulators have already provided clear guidance (e.g., the Uniform Consumer Compliance Rating System) that financial institutions must appropriately identify, monitor, and address compliance risks, and they should not hesitate to use the full scope of their authority. To the extent possible, the Regulators should explain to the public the risks that they have observed and the actions taken in order to demonstrate their commitment to robust monitoring and oversight over AI and ML to prevent discrimination and harm, and provide clear examples to guide the industry through Supervisory Highlights, reports, and other policy documents.

A. Transparency and greater availability of public information are particularly important as AI and ML use continues to evolve.

The Regulators should prioritize transparency as they continue to develop their knowledge and understanding of the issues by providing public access to information about the financial institutions' use of AI and ML, including the institutions' processes to check for fair lending risks in their models and the findings in those assessments. The Regulators should also set explainability standards sufficient to enable the Regulators, advocates, consumers, independent auditors, and other key stakeholders to understand the decisions and outcomes generated by AI systems used by financial institutions in their decision making. The public is particularly dependent on the Regulators' findings, analysis and information in the AI and ML space because the public often does not have access to data necessary to see patterns or identify problems with AI and ML models and methodology.

The Regulators should also encourage and support both agency and public research that analyzes the efficacy of specific uses of AI in financial services and the impact of AI in financial services for consumers of color and other protected classes. The Regulators should require financial institutions to share with their regulators and the public as much information as possible regarding their AI systems and assessments of those systems to enable researchers and those impacted to evaluate the efficacy and impact of the systems. The Regulators should also strive to share their data, models, decisions, and proposed solutions so that all of the key stakeholders can stay apprised of and comment on the potential impact of proposed Agency actions on the national consumer financial market.

Thank you for the opportunity to comment on these important issues. If you have any questions, please contact Linda Jun, Senior Policy Counsel, Americans for Financial Reform Education Fund, at linda@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform Education Fund
California Reinvestment Coalition
Center for Digital Democracy
Center for NYC Neighborhoods, Inc.
Consumer Action

Consumer Federation of America
Demos
Electronic Privacy Information Center (EPIC)
Illinois People's Action
Liberation in a Generation
Main Street Alliance
Mountain State Justice
National Association of Consumer Advocates
National CAPACD- National Coalition for Asian Pacific American Community Development
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Women's Law Center
New Jersey Citizen Action
Philadelphia Unemployment Project
Public Citizen
Student Borrower Protection Center
Tzedek DC
Woodstock Institute