CFPB Comment on Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector

AUG 12, 2024

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

Thank you for the opportunity to comment on this important issue in the financial services sector. The Consumer Financial Protection Bureau (CFPB) is a unit of the Federal Reserve System charged with ensuring that consumer financial markets are fair, transparent, and competitive.[1] As part of the agency's mandate, we are focused on monitoring the market for consumer financial products and services to identify risks to consumers and ensure that companies using emerging technologies, including those marketed as "artificial intelligence" or "AI," do not violate federal consumer financial protection laws. The CFPB has therefore taken a leadership role in working to understand the future of consumer finance and novel uses of consumer data, including by means of new technologies.

As technology continues to advance across all segments of society, we have seen the rapid adoption of new technologies in the consumer financial marketplace, including both the entrance of technology-focused firms and the use of emerging technologies by established players such as large banks. Technologies marketed as artificial intelligence are just one aspect of that larger trend. Technological innovation has been a key driver for improving the lives of people in the United States. For innovation to flourish in a way that benefits consumers, however, it is crucial that companies compete on the merits of their products or services, rather than by exploiting legal loopholes or engaging in regulatory arbitrage. Companies must therefore comply with crucial consumer protections that protect people from, for example, unlawful discrimination. To that end, the CFPB has been keenly focused on ensuring that institutions using emerging technologies comply with the law and that the rules foster competition.

In this response, we highlight some of our key findings regarding the role of regulators in managing the adoption of emerging technologies and fostering innovation in the financial services sector. Specifically, as the CFPB has undertaken this work over the past few years, a few points have become clear:

1. *Although institutions sometimes behave as if there are exceptions to the federal consumer financial protection laws for new technologies, that is not the case.* Regulators have a legal mandate to ensure that existing rules are enforced with respect to all technologies, including those marketed as new or novel. This is what Congress has instructed regulators to do, and what is required to prevent consumer harm.[2]
2. *Ensuring that all market participants comply with the rules fosters innovation.* When regulators uniformly enforce rules, firms are discouraged from investing in legal evasion to make law-breaking their competitive advantage and instead are incentivized to invest in developing innovative products and services that benefit consumers.
3. *Innovation is also fostered by clear regulatory requirements that do not unfairly advantage incumbent businesses or afford special treatment to individual firms.* Establishing clear, straightforward rules encourages firms to invest in better products and services, rather than in finding legal gray areas, taking advantage of incumbent-favoring loopholes, or seeking out special treatment.

Applying existing authorities to emerging technology

As CFPB Director Rohit Chopra has said, "there is no 'fancy new technology' carveout to existing laws."[3] The CFPB is monitoring what some have referred to as the "Uber" model of consumer finance: providing services without complying with the law and "wait[ing] for the legal system to catch up."[4] When firms choose to violate consumer protection laws, not only can there be significant harm to people and families, but firms may put resources into evading the law, rather than competing on price or quality. The CFPB's position is clear: firms must comply with consumer financial protection laws when adopting emerging technology. If firms cannot manage using a new technology in a lawful way, then they should not use the technology.

Over the past few years, the CFPB has engaged in extensive outreach and discussions with law enforcement, regulators, market participants, investors, entrepreneurs, individual consumers, and other stakeholders about their experience with emerging technologies in the market for consumer financial products or services. These conversations have shed light on the risks to consumers that may arise when firms rush to adopt such technologies but do not take steps to comply with the law.

For instance, the CFPB has published research on the use of automated customer service technology in consumer finance, including technologies built on large language models.[5] We have highlighted that these tools may provide incorrect information, fail to provide meaningful dispute resolution, and raise privacy and security risks. As more companies adopt these types of technology, the CFPB is monitoring compliance with, among other things, the Equal Credit Opportunity Act, which prohibits discrimination on a prohibited basis in lending transactions, and the Consumer Financial Protection Act, which prohibits unfair, deceptive, or abusive acts or practices. These laws apply not only to the origination of credit but also to servicing and debt collection practices, including critical customer service functions like what options companies provide to struggling consumers.[6] Courts have held in other contexts that a firm's decision to use algorithmic, machine-learning, or other types of automated decision-making tools can itself be a policy that produces bias prohibited under civil rights laws.[7] This logic also applies with respect to compliance with the Equal Credit Opportunity Act.

The CFPB has also seen that financial institutions are increasingly using new technologies to engage in "fraud screening," often through third-party vendors that assign consumers individualized risk "scores." These companies often tout their use of machine-learning and other forms of "AI." It is critical that companies offering these services recognize that the consumer financial laws—including the Consumer Financial Protection Act and, in appropriate circumstances, the Equal Credit Opportunity Act—apply to fraud screening conducted as part of a transaction for a consumer financial product or service. Moreover, because "fraud screening" is used to assess credit-worthiness by determining who gets offered or approved for a financial product, firms that compile and provide such information are typically subject to the requirements of the Fair Credit Reporting Act. While companies must take steps to limit fraud, that should never be an excuse to violate the law.[8]

The same principles apply when firms use advanced technology for lending and underwriting decisions. The Equal Credit Opportunity Act applies regardless of the complexity or novelty of the technology deployed by institutions, including when it comes to combatting unlawful discrimination or explaining how certain credit decisions are made. For example, the CFPB will continue to closely monitor and review the fair lending testing regimes of financial institutions, including reliance on complex models.[9] Robust fair lending testing of models should include regular testing for disparate treatment and disparate impact, including searches for and implementation of less discriminatory alternatives using manual or automated techniques. CFPB teams will continue to explore the use of automated debiasing methodologies to produce potential alternative models to institutions' underwriting models.

Fostering competition through creating a level playing field, not special treatment

The Request for Information asks for specific feedback on legislative, regulatory, or supervisory enhancements related to the use of "AI." The CFPB has previously experimented with offering "sandboxes" and other forms of special regulatory treatment to individual firms to foster innovation, including issuing No Action Letters.[10] The CFPB has learned important lessons from these programs, which fell short of their intended purpose of encouraging pro-consumer innovation in financial markets.

The CFPB believes that innovation need not be at odds with compliance with federal consumer protection laws. Indeed, innovation is fostered when regulators ensure that all market participants adhere to the same set of rules and compete on a level playing field. Yet in their effort to encourage innovation, the previous CFPB programs sometimes waived (or at least purported to waive) important consumer protections provided by Congress, including protections from discrimination. Further, these types of programs often gave a competitive edge to a single market participant, without providing a larger market impact that was positive for consumers. And the CFPB also found that the "approvals" or "waivers" granted as part of these programs were sometimes misused, like when firms would advertise them as official endorsements or offering a right to exclusivity. In sum, the CFPB's experience with programs offering special regulatory treatment shows that regulators seeking to encourage innovation must not pick winners and losers in the marketplace.

The CFPB is now focused on fostering innovation and competition that truly benefits consumers. Specifically, the CFPB is:

Making clear that there is no exception to the federal consumer financial protection laws for new technology

For example, the CFPB has provided guidance on the use of black-box credit models, making clear that lenders must provide accurate and specific reasons when they deny credit or take other adverse actions against a consumer, regardless of the complexity or opacity of their models[11] or the use of "artificial intelligence."[12] We also approved a rule on algorithmic home appraisals that would make these automated tools fairer and ensure they comply with nondiscrimination laws.[13]

Ensuring regulations don't stifle competition in pricing or favor incumbents

For instance, the CFPB recently finalized a rule to close a loophole exploited by large credit card issuers to charge excessive late fees. When this rule takes effect, it will help foster competition in the $1 trillion credit card market by encouraging credit card companies to compete transparently on prices, rather than by harvesting junk fees from existing consumers.[14] Similarly, the CFPB issued a proposal to require nation's largest banks to apply longstanding consumer protections, including interest rate disclosures, to overdraft loans.[15] The proposed rule would require institutions that offer these loans to provide the same disclosures and protections that are required for competing credit products, including new market entrants.

Ensuring consistent treatment under the law for similar products and services

The CFPB proposed an interpretive rule indicating that many paycheck advance products, sometimes marketed as "earned wage" products, are consumer loans subject to the Truth in Lending Act and so must follow that law's requirements as all other lending products do.[16] The CFPB also issued an interpretive rule that confirms that Buy Now, Pay Later lenders are credit card providers, highlighting that Buy Now, Pay Later lenders must provide consumers the key legal protections and rights that apply to credit cards.[17]

Combatting anticompetitive practices

The CFPB has seen concerning evidence that some companies that offer comparison-shopping tools to help consumers pick credit cards and other products may be providing users with manipulated results fueled by undisclosed kickbacks. In response, the CFPB recently issued guidance warning that the use of dark patterns and manipulated results in these comparison tools may violate federal law.[18]

Consumers also benefit when they can easily switch from their current provider of financial products or services to a new provider that may offer lower prices or better quality. To that end, the CFPB proposed a rule for personal financial data rights that would spur competition by forbidding financial institutions from hoarding a person's data and by requiring companies to share data at the person's direction with other companies offering better products.[19] If finalized, this rule would incentivize firms to compete for customers based on the quality of their products and services offering.

Monitoring the market and ensuring accountability

As noted above, the CFPB is taking steps to evaluate whether and how companies are testing the algorithms they use to make lending decisions to ensure compliance with the law, including the prohibition against discrimination on the basis of protected characteristics, such as race, sex, and age. For example, when there is evidence of disparities, CFPB examiners engage in further evaluation, including assessing whether the companies searched for less discriminatory alternatives to the models used.[20] The CFPB is also closely tracking how tech firms are expanding into banking-like services in virtual worlds, and ensuring protections and oversight come along with those services.[21] We are also shining a spotlight on how bad actors may use generative "AI" tools to more effectively impersonate others when perpetrating fraud.[22]

Additionally, the CFPB has proposed to subject large technology companies that offer services like digital wallets and payment apps to the CFPB's supervisory process to align oversight of their offering of consumer financial products or services with that of banks and other financial institutions.[23] And we have explained how whistleblowers at Big Tech and other companies are protected from retaliation and discrimination, including by being forced to sign broad nondisclosure agreements.[24]

Conclusion

"Artificial intelligence" is just one aspect of the rapid adoption of new technologies in the consumer financial marketplace. The promise of these technologies is accompanied by new risks and challenges that the CFPB is keenly focused on. Ultimately, innovation flourishes when firms have incentives to compete by offering the best products at the lowest prices. The CFPB is working to ensure that honest businesses that follow the law can compete on a level playing field.

Seth Frotman
General Counsel and Senior Advisor to the Director
Consumer Financial Protection Bureau

Erie Meyer
Chief Technologist and Senior Advisor to the Director
Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau is a 21st century agency that implements and enforces Federal consumer financial law and ensures that markets for consumer financial products are fair, transparent, and competitive. For more information, visit [***www.consumerfinance.gov***](http://www.consumerfinance.gov/) (http://www.consumerfinance.gov/).

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Endnotes

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