August 12, 2024

The Honorable Jeanette Quick
Deputy Assistant Secretary for Financial Institutions Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

Re: Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector (TREAS-DO-2024-0011)

Dear Deputy Assistant Secretary Quick:

The U.S. Chamber of Commerce ("Chamber") appreciates the opportunity to comment on the Department of the Treasury's ("Treasury") Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector ("RFI") regarding the evolving nature of Artificial Intelligence ("AI") technologies and their use in the financial services sector.

It is critical for Treasury and other regulators to recognize that financial institutions have been using AI technology in different capacities for decades, for the benefit of their consumers and clients.

AI has brought efficiencies to the financial services sector that improve the consumer experience, increase inclusion in capital markets, support fair lending and expand credit, detect and prevent fraud, and support anti-money laundering. AI continues to evolve and will present opportunities to further improve the financial system and customer engagement.

Many of the questions surrounding AI – and concerns over risks expressed by government authorities – have been driven by the more recently developed generative AI ("GAI"). Any initiatives to address AI through formal regulations or guidance should not inappropriately disincentivize the use of a technology that has been safely and appropriately deployed by many regulated entities for years. The Chamber strongly supports a balanced and flexible framework towards AI that mitigates novel risks posed by AI while maximizing its innovative potential.

The Chamber has been a leading voice and an active participant in public policy discourse regarding the regulatory treatment of AI. Examples of our proactive engagement include:

- In September 2019, the Chamber released a set of AI policy principles that outline regulatory concepts for AI such as adopting a risk-based approach and endorsing sector-specific solutions as opposed to a one-size-fits-all approach.[1]

- The Chamber has extensively engaged on development of the Office of Management and Budget's ("OMB") memorandum on Guidance on the Regulation of Artificial Intelligence Applications ("OMB Memorandum") that was finalized in November 2020.[2]

- In 2022, the Chamber formed the Commission on Artificial Intelligence, Competitiveness, Inclusion, and Innovation ("Chamber AI Commission"). This independent Chamber AI Commission, chaired by former Representatives John Delaney and Mike Ferguson, and composed of academics, business leaders, ethicists, and technological leaders, met with experts of varying opinions throughout the United States, European Union, and the United Kingdom. The report and recommendations were a cumulation of over 14 months of work and were released in March 2023.[3]

- On January 30, 2024, the Chamber sent a letter to the Securities and Exchange Commission ("SEC") on AI policy development. The letter cited a report that 85% of financial firms are already using AI. Accordingly, the Chamber recommended to Chair Gensler that the SEC should use roundtables and concept releases to engage stakeholders to determine the course and shape of AI policies. Additionally, the letter recommended that the SEC General Counsel conduct an inventory to determine if gaps exist that will require Congress to grant additional authorities if risks exist.[4]

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[1] U.S. Chamber of Commerce Technology Engagement Center, Artificial Intelligence Principles (September 23, 2019), available at https://americaninnovators.com/news/u-s-chamber-releases-artificial-intelligence-principles/.
[2] U.S. Chamber of Commerce, Comments to OMB on its AI Draft Guidance (December 5, 2023), available at https://www.uschamber.com/technology/u-s-chamber-comments-to-the-office-of-management-and-budget-on-its-ai-draft-guidance.
[3] U.S. Chamber of Commerce Technology Engagement Center, Commission on Artificial Intelligence Competitiveness, Inclusion, and Innovation, Report and Recommendations (2023), available at https://www.uschamber.com/assets/documents/CTEC_AICommission2023_Report_v6.pdf.
[4] U.S. Chamber of Commerce, Letter to SEC on AI Policy Development (January 30, 2024), available at https://www.uschamber.com/assets/documents/ccmc/20240130_U.S-Chamber-Letter-to-Chair-Gensler-on-Artificial-Intelligence.pdf.

In pointing out that many AI activities are already covered by existing laws and regulations, the Chamber AI Commission advised policymakers to take a gap-filling, risk-based approach when addressing regulatory uncertainty around AI. Broadly, the Chamber urges regulators to consider the evolving nature of AI and the wide array of regulations and consumer and investor protections already in place before contemplating any new policy options. The financial services industry is already heavily regulated and has existing risk management frameworks in place to manage risks associated with AI.

Treasury should be flexible in its regulatory approach to ensure that innovation can proceed, American leadership is advanced, existing laws enforced, and gaps filled if existing law does not cover an activity that is determined to have a risky profile. In all of this, Treasury should defer to a financial institution's primary regulator. Any future recommendations for regulation should be technology neutral and in response to a clearly identified regulatory gap, taking into the account the robust regulatory requirements already in place and focusing on outcomes, risks, and real-world applications of AI – rather than the underlying technologies deployed by financial institutions.

This RFI should be a first step by Treasury in its efforts to understand how the variety of sectors under this RFI's financial institution definition use AI. Given the sheer breadth of the questions, wide array of financial institutions utilizing AI, and evolving nature of AI, the Chamber encourages Treasury to continue its learning in this space through public roundtables and other stakeholder engagement before issuing recommendations or calls to action.

The RFI sets forth an array of questions on the use of AI by the financial sector. The Chamber's feedback, on a subset of the questions asked by Treasury, represents the views of the array of financial services institutions defined by Treasury in this RFI.[5]

Definition of AI (RFI Question #1)

Is the definition of AI used in this RFI appropriate for financial institutions? Should the definition be broader or narrower, given the uses of AI by

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[5] RFI, p. 3. Treasury defines "financial institutions" as "banks, credit unions, insurance companies, non-bank financial companies, fintech companies, asset managers, broker-dealers, investment advisors, other securities and derivatives markets participants or intermediaries, money transmitters, and any other company that facilitates or provides financial products or services under the regulatory authority of the federal financial regulators and state financial or securities regulators."

financial institutions in different contexts? To the extent possible, please provide specific su ggestions on the definitions of AI used in this RFI.

There is not one single definition of AI. Moreover, an unworkable definition of AI in regulation or statue would unwarrantedly curb AI use and the path of future research and policy. The Chamber therefore urges regulators to remain flexible in their approach to AI to accommodate technical progress while being precise enough to provide the necessary legal certainty for financial institutions.

The Chamber supports a technology neutral approach that focuses on improved outcomes for market participants and regulated entities instead of trying to regulate specific technologies. As innovation continues to expand, it is important to have frameworks in place that are built to evolve with technology. Taking a technologically neutral approach is prudent as it would allow for the continued development of advanced technologies to further strengthen America's position as the global leader in AI, while still enforcing our existing regulations to protect consumers and market participants.

A variety of legislators, regulators, and standards-setting bodies in the U.S. and globally are increasingly taking steps to define AI. As with any regulation, a patchwork of overlapping and possibly conflicting definitions can create unnecessary confusion and increased costs for both financial services institutions and consumers. The Chamber supports the harmonization of key terms so the global AI community can speak the same language. As we explained to the National Institute of Standards and Technology ("NIST") in 2021, a "common lexicon will give organizations and society more confidence and promote greater alignment of standards, frameworks, models, etc."[6]

The Chamber has explained[7] that both the Organization for Economic Co-operation and Development ("OECD") Expert Group definition and the Financial Stability Board ("FSB") definition on Artificial Intelligence are strong legal definitions worth considering when determining how to define AI. Notably, both definitions address the need to focus on AI systems that learn and adapt over time.

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[6] U.S. Chamber of Commerce Technology Engagement Center, Letter to NIST on Artificial Intelligence Risk Management Framework RFI (September 15, 2021), available at https://www.nist.gov/system/files/documents/2021/09/16/ai-rmf-rfi-0084.pdf.
[7] U.S. Chamber of Commerce, Letter to AI Commission on Competitiveness, Inclusion, and Innovation (February 25, 2022), available at https://americaninnovators.com/wp-content/uploads/2022/02/AI_Commission_RFI_Def_Final.pdf.

OECD Expert Group on AI: "An AI system is a machine-based system that is capable of influencing the Environment by making recommendations, predictions, or decisions for a given set of objectives. It does so by utilizing machine and/or human-based inputs/data to: i) perceive real and/or virtual environments; ii) abstract such perceptions into models manually or automatically; and iii) use model interpretations to formulate options for outcomes."[8]

The Financial Stability Board: "The theory and development of computer systems able to perform tasks that traditionally have required human intelligence. Cognitive computer systems are computer systems that learn and/or reason by acquiring knowledge and understanding through data and experience."[9]

In that same letter, the Chamber also explained that rather than sectoral definitions of AI, a definition and assessment of an AI system should be contextual, because it is responsive to the relative risks and benefits of specific uses of AI systems.

Treasury should use caution when considering whether to recommend a definition of AI for regulatory purposes. Even if Treasury believes that it could develop a definition of AI that seems reasonable upon adoption, it would only be a matter of time before that definition becomes out of date as the underlying technology would likely eclipse its parameters. This is especially important to consider as it seems highly likely that the development of AI will only increase in the coming years.

At the same time, if Treasury were to conceptualize a definition of AI that was extremely broad, it would loop in other longstanding technologies that are not considered AI. Specifically, statistical approaches and search and optimization methods have been used in many applications across industries for some time and are generally not considered AI. A recent example of this kind of misstep is the proposed rule from the SEC regarding predictive data analytics ("PDA").[10] While ostensibly an effort to address risks posed from AI or similar technologies, that proposal's definition of "covered technology" would effectively prohibit brokers and investment advisers from using virtually *any* technology to service customers. As one SEC commissioner

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[8] OECD AI Principles overview, available at https://oecd.ai/en/ai-principles.

[9] FSB, Artificial intelligence and machine learning in financial services (November 1, 2017), available at https://www.fsb.org/wp-content/uploads/P011117.pdf.

[10] Securities and Exchange Commission, Proposed Rule on Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers (July 26, 2023), available at https://www.sec.gov/files/rules/proposed/2023/34-97990.pdf.

pointed out, the proposal would go so far as to regulate or even prohibit the use of Excel spreadsheets in connection with customer accounts.[11] The SEC's significant misstep in defining AI contributed to its decision to repropose the rulemaking.

The Chamber is concerned that Treasury is following the SEC's errors in defining AI. The RFI states that it has adopted the definition of AI set forth in President Biden's Executive Order ("EO") on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.[12] However, by interpreting the EO definition to "describe a wide range of models and tools that utilize data, patterns, and other informational inputs to generate outputs – including statistical relationships, forecasts, content, and recommendations – for a given set of objectives,"[13] Treasury has inappropriately broadened the definition to include longstanding tools and mathematical applications, such as statistical models, actuarial models, linear regression models, and the use of spreadsheets that simply do not qualify as AI. When considering a definition of AI, non-AI technologies, models, and tools, such as those that utilize data to forecast or approximate an unknown metric should be carved out of any definition of AI.

Further, as Treasury and other regulatory bodies consider defining AI, it is important to recognize that existing, technology-neutral regulations address concerns related to AI. For example, regulators already prohibit fraud and discrimination and penalize bad actors who engage in such acts. Regardless of whether fraud occurs because of the actions of a human or because of the decisions of an AI model that someone trained to commit fraud, or even if the model taught itself to engage in fraudulent activity, it does not fundamentally alter the outcome and that fraud is already illegal. Should Treasury decide to take any action, its proposal should be based on a clearly identified problem rather than hypotheticals.

<u>Types of AI Models and Tools Utilized by Financial Institutions (RFI Question #2)</u>

What types of AI models and tools are financial institutions using? To what extent and how do financial institutions expect to use AI in the provision of

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[11] SEC Commissioner Mark T. Uyeda, Statement on the Proposals re: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers (July 26, 2023), available at https://www.sec.gov/news/statement/uyeda-statement-predictive-data-analytics-072623.
[12] Executive Office of the President, Sec. 8a(a) of the Executive Order on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence (October 30, 2023), available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-afe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/#:~:text=(a)%20Artificial%20Intelligence%20must%20be,they%20are%20put%20to%20use.
[13] RFI, p. 8.

products and services, risk management, capital markets, internal operations, customer services, regulatory compliance, and marketing?

Financial institutions have been utilizing AI technology in different capacities for decades. Our member firms are currently using a variety of AI tools, including machine learning, and exploring future uses of large language models such as GAI, to support various use cases such as customer service, lending and underwriting, fraud detection and prevention, risk management, cybersecurity, marketing, and back-office functions. To ensure the safety and soundness of AI deployments, our member firms have been leading in developing risk management and governance frameworks, such as maintaining human oversight, pilot programs, and technology experiments.

Customer Service

AI helps financial institutions to enhance customer service, such as learning how their customers interact with their products and services and providing more timely and accurate responses to customer outreach. For example, one member firm is developing a platform that leverages AI to understand customer interactions and opportunities for improvement. Members are also exploring how GAI can be utilized to provide an initial summary of conversations between their customer care professionals and customers to enable financial institutions to provide improved and personalized customer service, particularly when customers re-engage on a particular issue. Recognizing that GAI has the potential to power chatbots, member firms are evaluating the technology to ensure data and responses are accurate, as well as to avoid "hallucinations," a known issue among the current generation of GAI chatbots. As they utilize AI technology, member firms have emphasized the importance of human oversight.

AI is also helping financial institutions to support retail investors with high quality investment advice and educational tools. As an example, by leveraging technology to evaluate geographic constraints and investment preferences, AI can match investors with financial advisors. AI also supports modeling for assets in an investment product and investor protection.

AI enables insurers to facilitate faster claims payouts after natural disasters so customers will have access to money sooner. Claims processing functions include (1) the use of chatbots to reduce wait times for customers, provide 24/7 customer service, and on-demand engagement; (2) automated processes to produce fast and accurate claims approvals; and (3) the rapid evaluation of damage severity and forecasting repair expenses using historical data and image analysis.

Lending and Underwriting

AI also supports some financial institutions' lending and underwriting processes. Underwriting and pricing models may use machine learning techniques that are many decades old. Specifically, AI is utilized to create models to support human decision-making on credit approvals. By quickly processing and analyzing data sets, AI allows underwriters to evaluate creditworthiness, more accurately assess risk, determine accurate pricing, and loan amounts, and offer credit and coverage options. Importantly, AI is enabling insurers, in particular, to improve access and reach uninsured and underinsured portions of the market. As they utilize AI, financial institutions are well-aware of the need for transparency in this process so that consumers understand how credit and insurance decisions are made and have recourse to take corrective action if necessary.

Fraud Detection and Prevention

AI and machine learning are important tools in assisting in the detection of fraud. Financial institutions are using AI models to proactively track patterns in transactions and identify any anomalies that do not conform with a customer's past financial activities, including changes in communication patters that would not on their face indicate fraud. As more sophisticated fraud is perpetrated, financial institutions can identify potential fraud in real time, thus limiting payouts for fraudulent claims. By relying on such predictive analytics, AI enhances employee productivity as they work to help protect customers by more quickly sorting and flagging suspicious transactions or claims.

Risk Management

AI also supports financial institutions' risk management functions. AI can examine meteorological trends, economic data, and additional variables to forecast possible hazards for distinct geographic regions or business sectors. By using AI-supported risk analysis, insurers may be able expand their product offerings to areas once deemed too risky and difficult to predict. Further, AI enhances risk prevention. Mitigating risks could reduce claims and by extension lower costs.

Cybersecurity

Financial institutions are utilizing AI, machine learning, and natural language processing ("NLP") to detect and respond to an array of potential cybersecurity threats – to detect phishing, impersonation, behavioral patterns, vendor business e-mail compromise, account takeover – more quickly and efficiently than human intelligence

alone. AI-based network security software can monitor incoming and outgoing network traffic to identify suspicious patterns in the real-time data traffic.

Marketing

Member firms reported that their teams are exploring how GAI may help provide content and offers that are more personalized and relevant to their customers, while doing so in a manner that is responsible and consistent with regulatory requirements, including privacy principles. In particular, GAI can be utilized to provide automated insights on products and customer services.

Back Office

Our members report a variety of uses of AI to support back-office functions. AI may be used, for example, to produce real-time transcripts of calls and meetings. One member is exploring AI for several potential use cases, including engineering, financial reporting, knowledge management, and workforce productivity enhancements. For one such use case, the financial institution is evaluating a third-party technology to help engineers code more efficiently. Another firm is assessing future opportunities to utilize AI to enhance existing compliance processes, enabling compliance professionals to conduct certain reviews with increased accuracy and efficiency.

Use Cases (RFI Question #3)

> To what extent does the type of AI, the development of AI, or AI applied use cases differ within a financial institution? Please describe the various types of AI and their applied use cases within a financial institution.

> Are there additional use cases for which financial institutions are applying AI or for which financial institutions are exploring the use of AI? Are there any related reputation risk concerns about using AI? If so, please provide specific examples.

Supporting Investor Access and Participation

In addition to the use cases described in Question #2, AI can be a useful tool to support the growing participation of Americans in retail investing. Data indicates that the supply of financial advisers may not keep pace with the growing demand. According to the Bureau of Labor Statistics, firms are projected to add 42,000 new

financial advisor jobs to meet the needs of investors in the future.[14] However, according to a forecast by Cerulli, more than 109,000 financial advisors (38% of industry headcount) are likely to retire in the next decade.[15] Taken together, these statistics demonstrate that there may not be sufficient talent in the pipeline to meet growing investor demand. AI can be an integral tool to enable financial firms to bridge demand and supply.

Greater Efficiency and Performance of Capital Markets and Market Infrastructure

AI is also expected to transform how capital is raised and bring efficiencies to the market ecosystem, as explained by a World Economic Forum ("WEF") report prepared in collaboration with Deloitte.[16] As the report explains, the capital raising process has historically been labor intensive and inefficient. However, AI can help discover promising investment opportunities by tracking patterns and opportunities that are not detectable through conventional research. Further, AI may contribute to more accurate and optimized capital reserves in real time, allowing firms to estimate risk more accurately.

In addition, AI is strengthening the capital market's infrastructure. As the WEF report further explains, AI will help to improve trade speed and price using dynamic execution methods and streamline post-trade processes and increase cost efficiency. AI will also create advanced insights on market structure and risk that will enable institutions to identify fraudulent trading activity and to optimize order execution in unstable market conditions.

Additional Considerations about GAI

Currently, GAI is more likely to be used in more established contexts, such as for internal productivity enhancements, business line back-office productivity, or customer assisted interactions that are aided by a human. As our member firms further explore the use of GAI, they are evaluating how to manage several operational and reputational areas of concern, such as cybersecurity, fraud, data privacy, inaccurate data, and third-party management. Like other technological advancements, AI can have risks associated with already existing types of harm. However, financial

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[14] Bureau of Labor Statistics, Occupational Outlook Handbook, Personal Financial Advisors, available at https://www.bls.gov/ooh/business-and-financial/personal-financial-advisors.htm#tab-6 .

[15] Investment News, "Over a third of US advisors plan to retire within 10 years," (January 16, 2024), available at https://www.investmentnews.com/practice-management/news/financial-advisors-plan-to-retire-within-10-years-248121.

[16] World Economic Forum, The New Physics of Financial Services (August 2018), available at https://www2.deloitte.com/content/dam/Deloitte/cz/Documents/financial-services/WEF_Deloitte_The_New_Physics_of_FS_How_AI_is_transforming_the_financial_ecosystem.pdf.

institutions can manage these risks within existing regulatory and risk management frameworks.

<u>Benefits of AI (RFI Question #5)</u>

> What are the actual and expected benefits from the use of AI to any of the following stakeholders: financial institutions, financial regulators, consumers, researchers, advocacy groups, or others? Please describe specific benefits with supporting data and examples. How has the use of AI provided specific benefits to low-to-moderate income consumers and/or underserved individuals and communities (e.g., communities of color, women, rural, tribal, or disadvantaged communities)?

> How has AI been used in financial services to improve fair lending and consumer protection, including substantiating information? To what extent does AI improve the ability of financial institutions to comply with fair lending or other consumer protection laws and regulations? Please be as specific as possible, including details about cost savings, increased customer reach, expanded access to financial services, time horizon of savings, or other benefits after deploying AI.

AI brings numerous benefits to the financial services sector and consumers, with AI able to promote the integrity, resiliency, and vibrancy of the financial services markets. Our response to Question #1 already highlights a number of benefits to consumers from the use of AI by financial services institutions. The use of AI ultimately helps to drive down costs, improve the customer experience, increase efficiency, and expand access to financial services products. In this section, we highlight several additional benefits from AI specific to consumer engagement, increased inclusion in capital markets, fair lending and expanding credit, fraud detection and prevention, and anti-money laundering.

Consumer Engagement

Financial institutions are using AI to improve the consumer experience as it relates to communications, servicing, and fraud detection. Using AI, financial institutions can improve their understanding of the types of products consumers need. They can then use targeted communications to improve consumer awareness of these opportunities. Similarly, AI can support the origination process and servicing, while minimizing fraud and identify theft, as it can assist with confirming a consumer's identity, employment status, income, and other information. AI is also used in servicing departments. For example, speech recognition technology and other

validation tools are used in call centers by financial institutions to assist with verifying a customer's identity.

Increased Inclusion in Capital Markets

A wide range of technological advances over the past decades, including AI, have transformed the capital markets, bringing efficiencies to the services offered by investment advisers and broker-dealers that have translated into fairer, more accessible, and inclusive markets. Advancements in technology have lowered trading costs and made investing in the stock market more accessible for millions of Americans. More Americans invest today because they have access to low or no fee online brokerage accounts.

Technological investments in AI may also contribute to more Americans entering capital markets to achieve their long-term financial goals. At a recent meeting of the SEC's Investor Advisory Committee, SEC Commissioner Uyeda explained that "[a]rtificial intelligence and other analytic tools can process and analyze vast quantities of information efficiently, which can enhance data driven investment decisions and reduce the cost of investment advice." Further, AI "could unleash great potential for investors, including through increased and lower-cost access to personalized investment advice. Innovation in this area is something that regulators ought to be encouraging."[17]

Our members report that AI enables them to provide new tools and investor education to ensure that investors remain on a strong financial path to retirement and other major life goals. Given its capacity to evaluate large quantities of data quickly and cost-effectively, we expect institutions to leverage AI to better customize investor portfolios and investment strategies, and ultimately improve investment outcomes. With improved digital tools and education, AI has the potential to make the capital markets more accessible to individuals in underserved, low-income, and moderate-income communities.

Whether an investor chooses to work with a financial professional – a broker-dealer or investment adviser – to help them make trading decisions and to assist with long-term financial planning or chooses to do their own research and trade through a self-directed online platform, both types of investors will be able to benefit from real-time access to market data and research driven by AI.

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[17] SEC Commissioner Mark T. Uyeda, Remarks at the Meeting of the Investor Advisory Committee (June 6, 2024), available at https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-iac-060624.

Fair Lending and Expanding Credit

A U.S. Chamber report, Data for Good: Promoting Safety, Health, and Inclusion, underscores how data-oriented solutions such as credit scoring and automated underwriting are improving lending, reducing origination costs, and increasing financial inclusion.[18] It is worth re-emphasizing that because AI can quickly analyze large data sets, including alternative data, financial institutions are already expanding consumers' access to credit, including to those individuals with no credit or limited credit, and those in underserved, low, and moderate-income communities. AI can be an important tool in the underwriting process that can consider a wider range of data points and risk factors (see further discussion on alternative data sets in Question #8).

To this point, a Consumer Financial Protection Bureau ("CFPB") blog post, "Innovation spotlight: providing adverse action notices when using AI/ML models,"[19] notes "AI may have a profound impact" in credit underwriting." The blog post specifically references a 2015 "Credit Invisibles Data Point" issued by the CFPB before stating, "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."

Fraud Detection and Prevention

AI makes it possible for financial institutions to analyze large sums of data to detect and prevent fraud in real time. Financial institutions have been analyzing data for fraud detection for decades but have been able to expand their capabilities as new AI tools have been developed. Fraud detection models benefit from the experience of reviewing millions or even billions of examples that consist of both legitimate and illegitimate transactions. This analytical capability enables financial institutions to alert customers about possible fraudulent activity.

Anti-Money Laundering

In referencing its 2024 National Strategy for Combatting Terrorist and Other Illicit Financing, the RFI notes that "innovations in AI, including machine learning and

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[18] U.S. Chamber of Commerce, Data for Good: Promoting Safety, Health, and Inclusion (January 30, 2020), available at https://americaninnovators.com/wp-content/uploads/2020/01/CTEC_DataForGood_v4-DIGITAL.pdf.

[19] Ficklin, P., Pahl, T., & Watkins, P., Innovation spotlight: Providing adverse action notices when using AI/ML models (July 7, 2020), available at https://www.consumerfinance.gov/about-us/blog/innovation-spotlight-providing-adverse-action-notices-when-using-ai-ml-models/.

large language models such as generative AI, have significant potential to strengthen anti-money laundering/countering the financing of terrorism (AML/CFT) compliance by helping financial institutions analyze large amounts of data and more effectively identify illicit finance patterns, risks, trends, and typologies."[20] Financial institutions are utilizing AI to meet their anti-money laundering ("AML") obligations under the Bank Secrecy Act ("BSA"). With its ability to analyze large sums of data quickly and in real time, AI is used by financial institutions to identify potentially suspicious, anomalous, or outlier transactions.

Open-Source Code (RFI Question #6)

> To what extent are the AI models and tools used by financial institutions developed inhouse, by third-parties, or based on open-source code? What are the benefits and risks of using AI models and tools developed in-house, by third-parties, or based on open-source code?

> To what extent are a particular financial institution's AI models and tools connected to other financial institutions' models and tools? What are the benefits and risks to financial institutions and consumers when the AI models and tools are interconnected among financial institutions?

Many benefits of open-source technology exist. Open-source technology allows developers to build, create, and innovate in various areas that will drive future economic growth. We already see innovation in marketing, communication, cybersecurity, and medicine, among other fields. Improved access to AI development through the use of open-source development tools and frameworks further expands the range of participants involved in the AI innovation ecosystem. Also, opensource tools and frameworks can help ensure that the trustworthy insights, leading practices, and techniques are shared widely within the AI stakeholder community.

For financial institutions, open-source models can help mitigate a variety of risks Treasury has highlighted in the RFI. Open-source models can play a key role in fostering growth among less resourced actors and helping to widely share access to AI's benefits, such as the ability to detect and prevent fraud and anti-money laundering. The Chamber continues to be a strong advocate for using technology to assist small businesses. A Chamber report released last year highlighted that 87% of small businesses believe that technology platforms have helped their business

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[20] RFI, p. 5.

operate more efficiently and that 71% of them plan to adopt the latest technology, including AI.[21]

Financial institutions see a mix of third-party and in-house development in the marketplace, depending on the type of AI involved. Large financial institutions will be more likely develop and train AI models in-house. However, with fewer resources smaller financial institutions will be more likely to engage third parties and / or use open-source models. For GAI, the vast majority is developed by third parties.

While open-source code can accelerate development, financial institutions have a responsibility to ensure the source is legitimate and they have processes in place to vet the code and monitor the performance of the code before it is implemented. Firms are able to manage potential risks the same as with any technological services provider, including by monitoring the technology and potential outputs, as well as developing robust policies, procedures, and controls to address and mitigate potential risks. For GAI, most financial institutions are ensuring their input data to foundational models is adequately insulated and protected, and that their data is not used to update or train the foundational model. Similarly, research is focused on developing GAI systems that are constructed with in-house Retrieval Augmentation technology or the use of internally hosted and trained small open-source large language models ("LLMs"). These approaches protect highly sensitive data and support consistent decision.

Explainability and Risk Management (RFI Question #7)

How do financial institutions expect to apply risk management or other frameworks and guidance to the use of AI, and in particular, emerging AI technologies? Please describe the governance structure and risk management frameworks financial institutions expect to apply in connection with the development and deployment of AI. Please provide examples of policies and/or practices, to the extent applicable.

What types of testing methods are financial institutions utilizing in connection with the development and deployment of AI models and tools? Please describe the testing purpose and the specific testing methods utilized, to the extent applicable.

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[21] U.S. Chamber of Commerce, Empowering Small Business: The Impact of Technology on U.S. Small Business at 3 (September 2023), available at https://www.uschamber.com/assets/documents/The-Impact-of-Technology-on-Small-Business-Report-2023-Edition.pdf.

> To what extent are financial institutions evaluating and addressing potential gaps in human capital to ensure that staff can effectively manage the development and validation practices of AI models and tools?
>
> What challenges exist for addressing risks related to AI explainability? What methodologies are being deployed to enhance explainability and protect against potential bias risk?

The RFI refers to explainability as "the ability to understand a model's output and decisions, or how the model establishes relationships based on the model input"[22] and notes "[c]hallenges in explaining AI-assisted or AI-generated decisions also create questions about transparency generally, and raise concerns about the potential obfuscation of model bias that can negatively affect impacted entities."[23] While there is no broadly accepted definition for "explainability," there is a common understanding that AI explainability relates to how humans can understand how a model generates a certain output or outcome, and whether the output or outcome generated merits close review or scrutiny.

Overall, the Chamber believes that the degree of explainability for AI systems will differ depending on several factors including context, the degree of risk, and the user type involved. Not all AI applications pose risk, or the same risks. Consequently, not all AI applications will need to be explainable to all user types. Explainability may also be catered to different audiences depending on the level and type of interaction with the model. Data scientists who regularly interact with the model may benefit from more detailed information while other stakeholders would benefit from a different or simpler explanation of how the model operates. A one-size-fits-all approach to explainability is not appropriate.

Financial institutions are committed to improving methods to address conceptual soundness, and they already have substantial experience identifying and mitigating any such risks. Effective model risk management systems can help financial institutions protect consumers by ensuring that they understand, and can explain, how the AI they employ functions as appropriate to the use case. Techniques to explain or interpret models have improved significantly in recent years, and this trajectory is expected to continue as financial institutions continue their investments. Practices around data input, decision-making criteria and weighting of those criteria, assurance review and others are being developed to ensure that validation processes keep pace with technology, along with ways to trace how AI models process inputs into outputs.

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[22] RFI, p. 4.
[23] RFI, p. 13.

Financial institutions are already highly regulated as it relates to AI and explainability. For example, the banking sector is subject to the Supervisory Guidance on Model Risk Management SR 11-7 to conduct thorough model risk management to help alleviate potential increased risks posed by AI.[24] This guidance is principles-based and enables the institutions to manage the risks from broader or more intensive data processing and usage that may result from using AI, including for analyzing large data sets using alternative data. SR 11-7 provides detailed guidance on model development, implementation, and use, model validation, and governance, policies, and controls that can be used by financial institutions as they manage risks that may be associated with the use of AI. The Supervisory Guidance on Model Risk Management appropriately notes:

> "As is generally the case with other risks, materiality is an important consideration in model risk management. If at some banks the use of models is less pervasive and has less impact on their financial condition, then those banks may not need as complex an approach to model risk management in order to meet supervisory expectations."

The Chamber's financial institutions support responsible, ethical, and explainable AI. With that philosophy in mind, many financial institutions automatically incorporate explainability into their models and risk management processes. Related risk management practices in the financial sector are mature and include incorporating relevant elements from NIST's 2023 AI Risk Management Framework,[25] in addition to other governance enhancements based on each institution's experience and regulatory guidance.

As the amount of data increases, risk management approaches will adapt appropriately, and will leverage a variety of risk management practices, including but not limited to data governance, weighted decision-making criteria, assurance and testing, and continuous risk monitoring. A collaborative effort by all participants in the AI ecosystem, including technology companies and nonfinancial industry stakeholders, can result in clear, practical, and proportionate guidance aligned with core enterprise risk management concepts that delivers trusted, reliable, and interpretable outcomes that ensure transparency while allowing firms to innovate confidently.

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[24] Federal Reserve Board of Governors, SR 11-7: Guidance on Model Risk Management (April 4, 2011), available at https://www.federalreserve.gov/supervisionreg/srletters/sr1107.htm.
[25] NIST, AI Risk Management Framework (April 29, 2024), available at https://www.nist.gov/itl/ai-risk-management-framework.

Non-Traditional Data (RFI Question #8)

> What types of input data are financial institutions using for development of AI models and tools, particularly models and tools relying on emerging AI technologies? Please describe the data governance structure financial institutions expect to apply in confirming the quality and integrity of data. Are financial institutions using "non-traditional" forms of data? If so, what forms of "non-traditional" data are being used? Are financial institutions using alternative forms of data? If so, what forms of alternative data are being used?

Just as we understand that one must verify information obtained from internet searches, financial institutions understand the limitations of AI and that outputs often require vetting and validation. The RFI also points out there may be risks from the use of alternative data. The RFI cites concerns over privacy, unintended spillover effects from the use of data tied to individual behavior and making conjectures about attributes or behavior.[26] Members have policies and procedures designed to address and mitigate these risks. For example, financial institutions may prohibit employees from inputting sensitive personal identifiable information ("PII") or using outputs containing PII or prohibit the input of sensitive data or code.

As explained in the Chamber's Data for Good report,[27] non-traditional data is highly effective at filling in the gaps left by traditional data as it relates to rendering decisions regarding credit-worthiness. In addition, the Chamber issued a report in 2021, "The Economic Benefits of Risk-Based Pricing for Historically Underserved Consumers in the United States"[28] finding, among other things, that companies are innovating and using alternative data to reduce the credit-invisible population and improve credit scores for those who currently have them. The report also found that incorporating more predictive data into pricing models generates positive economic benefits, especially for underserved populations. An OECD study revealed that underserved populations including minorities and low-income groups in the U.S. benefit from having more information incorporated into credit decisions. In the case of credit underwriting, AI has been used to expand lending to individuals with no/limited credit profiles, including those in underserved communities.

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[26] RFI, p. 15.

[27] U.S. Chamber of Commerce, Data for Good: Promoting Safety, Health, and Inclusion (January 30, 2020), available at https://americaninnovators.com/wp-content/uploads/2020/01/CTEC_DataForGood_v4-DIGITAL.pdf.

[28] U.S. Chamber of Commerce, The Economic Benefits of Risk-Based Pricing (April 12, 2021), available at https://www.uschamber.com/assets/documents/CCMC_RBP_v11-2.pdf.

Fair Lending and Consumer-Related Risks (RFI Question #10)

> How are financial institutions addressing any increase in fair lending and other consumer-related risks, including identifying and addressing possible discrimination, related to the use of AI, particularly emerging AI technologies? What governance approaches throughout the development, validation, implementation, and deployment phases do financial institutions expect to establish to ensure compliance with fair lending and other consumer-related laws for AI models and tools prior to deployment and application?
>
> In what ways could existing fair lending requirements be strengthened or expanded to include fair access to other financial services outside of lending, such as access to bank accounts, given the rapid development of emerging AI technologies? How are consumer protection requirements outside of fair lending, such as prohibitions on unfair, deceptive and abusive acts and practices, considered during the development and use of AI? How are related risks expected to be mitigated by financial institutions using AI?

The RFI calls out the "the potential for models to perpetuate discrimination by using and learning from data that reflect and reinforce historical biases; and the potential for AI tools to expand capabilities for firms to inappropriately target specific individuals or communities."[29] In general, advancing AI systems that work fairly and equitably for everyone is incredibly important. Like any technology, users of AI are responsible for ensuring it is used reasonably and appropriately.

AI contributes significant benefits to consumers, and a rigid regulatory framework runs the risk of stifling future benefits that have yet to be realized. Financial institutions are aware of, and many are supervised for, their obligations under these consumer protection laws, including the applicability of these laws to their use of AI. Compliance management systems currently expected of financial institutions for managing fair lending risk are applicable to AI-based credit approaches. As an example, CFPB Regulation B (Equal Credit Opportunity Act) makes it unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction.[30] Further, the Federal Reserve Board and OCC's Supervisory Guidance on Model Risk Management SR 11-7 instructs banking

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[29] RFI, p. 4.
[30] CFPB, Consumer Financial Protection Circular 2023-03 (September 19, 2023), available at https://www.consumerfinance.gov/compliance/circulars/circular-2023-03-adverse-action-notification-requirements-and-the-proper-use-of-the-cfpbs-sample-forms-provided-in-regulation-b/.

organizations to be attentive to the possible adverse consequences of decisions based on models that are incorrect or misused.[31]

Data Privacy Risk (RFI Question #11)

> How are financial institutions addressing any increase in data privacy risk related to the use of AI models, particularly emerging AI technologies? Please provide examples of how financial institutions have assessed data privacy risk in their use of AI.
>
> In what ways could existing data privacy protections (such as those in the Gramm-Leach Bliley Act (Pub. L. No. 106-102)) be strengthened for impacted entities, given the rapid development of emerging AI technologies, and what examples can you provide of the impact of AI usage on data privacy protections?
>
> How have technology companies or third-party providers of AI assessed the categories of data used in AI models and tools within the context of data privacy protections?

The RFI notes that "use of AI may present new or increased data privacy risks for impacted entities and compliance risks for financial institutions."[32] Such risks are not unique to AI and financial institutions already adhere to applicable regulatory requirements. Privacy and information security regulations, policies, and procedures apply to AI just in the same way they apply to other technologies. This is not to say there are no privacy and cybersecurity risks, but that practices presently used by financial institutions have been effective. These risks are similar to other emerging technologies and can be managed accordingly.

Financial institutions are subject to the Gramm-Leach-Bliley Act[33] and adhere to guidance from the Federal Financial Institutions Examinations Council and NIST as it relates to cybersecurity. The SEC recently amended Regulation S-P, adopted under the Gramm-Leach-Bliley Act, to require funds, investment advisers, and broker dealers to adopt incident response programs and provide notice of certain types of data

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[31] Federal Reserve Board of Governors, SR 11-7: Guidance on Model Risk Management (April 4, 2011), available at https://www.federalreserve.gov/supervisionreg/srletters/sr1107.htm.
[32] RFI, p. 14.
[33] Gramm-Leach Bliley Act (Pub. L. No. 106-102), available at https://www.govinfo.gov/app/details/PLAW-106publ102. Requires financial institutions – companies that offer consumers financial products or services like loans, financial or investment advice, or insurance – to explain their information-sharing practices to their customers and to safeguard sensitive data.

breaches.[34] Furthermore, the SEC is expected to finalize cybersecurity rules for investment advisers, funds, broker-dealers, and certain other regulated entities.[35]

Financial institutions are committed to robust cybersecurity protections and dedicate vast resources to ensure their data – including the data used in AI models – is protected. AI-based cybersecurity tools, notable for their speed and accuracy, may be deployed to prevent, detect, and remediate compromise of information systems containing training data and machine learning models. Financial services' current required privacy programs focus on data inputs and outputs and permissions for those uses. Privacy requirements like transparency and consumer choice are relevant in AI policy discussions and form some of the strongest controls on AI use. The Gramm-Leach-Bliley Act requires financial institutions to provide notice and opt-out rights before sending nonpublic personal information to non-affiliated third parties for their own use. This also prohibits the industry from allowing an AI provider to use company data to train AI products in a way that would expose data to others.

Yet, there is an inherent contradiction and trade-off between privacy and explainability when personal data is involved. An overemphasis on the explainability of an AI system can lead to diminishing privacy. If explainability regulations required detailed information regarding the training dataset being used, the type of machine learning algorithm, or other information, the regulations could make attacks by nefarious actors on machine learning models, such as model extraction, much easier and more successful. In the absence of such details, attackers are left to less successful black-box attacks. How organizations weigh these various tradeoffs should be a subject of discussion for NIST as it develops the framework.

Further, as we noted in our response to Question #2, GAI algorithms are trained on large data sets. For example, there is a risk that the GAI could use personal information in ways that are not reasonably related to what is disclosed to consumers. Increased transparency and explainability by financial institutions will be key to ensuring that GAI only uses personal information consistent with declared intentions, disclosures, and data subject expectations. Given data subjects rights provided by various data privacy regimes, our members have noted the challenges of balancing the

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[34] Securities and Exchange Commission, SEC Adopts Rule Amendments to Regulation S-P to Enhance Protection of Consumer Information (May 16, 2024), available at https://www.sec.gov/newsroom/press-releases/2024-58.
[35] Securities and Exchange Commission, Cybersecurity Risk Management Rule for Broker-Dealers (and other regulated entities) (S7-06-23), available at https://www.sec.gov/files/rules/proposed/2023/34-97142.pdf, and Cybersecurity Risk Management Rule for Investment Advisers, Registered Investment Companies, and Business Development Companies (S7-04-22), available at https://www.sec.gov/files/rules/proposed/2022/33-11028.pdf.

rights of individuals to control how personal information is used against the need to use that personal information by GAI tools.

A national privacy standard that protects privacy while enabling continued innovation is crucial for the U.S. to continue leading in AI and secure the digital economy's benefits. Good data is essential for effective AI, and overly strict privacy could impede the development of lawful and impartial AI. [36] The Chamber advocates for Congress to establish a preemptive national data law since it would prevent a disjointed state-by-state approach, offering the market stability needed for the emerging AI-driven digital economy to flourish. Stanford University's Human-Centered Artificial Intelligence (HAI) aligns with the Chamber's sentiment and points out the tension between keeping data private and collecting enough information to ensure AI is fair and unbiased.[37]

Fraud Risks (RFI Question #12)

> **How are financial institutions, technology companies, or third-party service providers addressing and mitigating potential fraud risks caused by AI technologies? What challenges do organizations face in countering these fraud risks? Given AI's ability to mimic biometrics (such as a photos/video of a customer or the customer's voice) what methods do financial institutions plan to use to protect against this type of fraud (e.g., multifactor authentication)?**

As we have explained, AI has become increasingly important in the fight against fraud and is routinely used by the financial services sector to identify anomalies in transactions and proactively identify outliers that do not conform with customer's past patterns or payment activity. AI can identify potential fraud in real time and can boost employee productivity by sorting and flagging suspicious claims.

AI models not only improve the performance of financial institutions' fraud detection capabilities, but also help catch fraudulent activity before it impacts customers. By helping institutions to detect and respond to cyberattacks more quickly and efficiently, AI tools help protect customers and their sensitive information, and help institutions lower costs and limit payouts for fraudulent claims.

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[36] U.S. Chamber of Commerce, A National Data Privacy Standard Is Essential (November 20, 2023), available at https://www.uschamber.com/technology/future-of-ai-latest-updates#:~:text=Our%20Take%3A%20The%20U.S.%20Chamber,to%20discriminate%20against%20U.S.%20firms.

[37] Stanford University Human-Centered Artificial Intelligence, The Privacy-Bias Trade Off (October 2023), available at https://hai.stanford.edu/policy-brief-privacy-bias-trade.

Illicit Finance Risks (RFI Question #13)

> How do financial institutions, technology companies, or third-party service providers expect to use AI to address and mitigate illicit finance risks? What challenges do organizations face in adopting AI to counter illicit finance risks? How do financial institutions use AI to comply with applicable AML/CFT requirements? What risks may such uses create?

The application of AI can be used by financial institutions to detect money laundering and comply with their obligations under the BSA. AI is used by financial institutions to identify potentially suspicious, anomalous, or outlier transactions for BSA / AML investigations.

The advantages of utilizing AI to mitigate illicit finance risks is clear. The Federal Reserve Board ("Fed"), Office of the Comptroller of the Currency ("OCC"), Federal Deposit Insurance Corporation ("FDIC"), National Credit Union Administration ("NCUA"), and Financial Crimes Enforcement Network ("FinCEN") have extolled the benefits of AI to prevent money-laundering.

> "Some banks are also experimenting with artificial intelligence and digital identity technologies applicable to their BSA/AML compliance programs. These innovations and technologies can strengthen BSA/AML compliance approaches, as well as enhance transaction monitoring systems. The Agencies welcome these types of innovative approaches to further efforts to protect the financial system against illicit financial activity. In addition, these types of innovative approaches can maximize utilization of banks' BSA/AML compliance resources."[38]

In addition, several years ago, FinCEN began shifting towards a risk-based approach for preventing money laundering. Its proposal on "Anti-Money Laundering Program Effectiveness" included a stated purpose to "provide financial institutions greater flexibility in the allocation of resources and greater alignment of priorities across industry and government, resulting in the enhanced effectiveness of and efficiency of AML programs."[39] Such reforms would enable financial institutions to

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[38] FRB, FDIC, FinCEN, NCUA, OCC, Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing. (December 3, 2018), available at https://www.fincen.gov/sites/default/files/2018-12/Joint%20Statement%20on%20Innovation%20Statement%20%28Final%2011-30-18%29_508.pdf.

[39] U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, Letter to FinCEN on Anti-Money Laundering Program Effectiveness (November 16, 2020), available at https://www.uschamber.com/assets/documents/ccmc/CCMC-Comment-Letter-FinCEN-ANPR-Final-11.16.20.pdf.

assist law enforcement with responding to and preventing money laundering, through leveraging new technology, such as artificial intelligence and machine learning, to identify illicit activity.

NAIC Model Bulletin on the Use of AI Systems (RFI Question #14)

As states adopt the NAIC's Model Bulletin on the Use of Artificial Intelligence Systems by Insurers and other states develop their own regulations or guidance, what changes have insurers implemented and what changes might they implement to comply or be consistent with these laws and regulatory guidance?

How do insurers using AI make certain that their underwriting, rating, and pricing practices and outcomes are consistent with applicable laws addressing unfair discrimination?

How are insurers currently covering AI-related risks in existing policies? Are the coverage, rates, or availability of insurance for financial institutions changing due to AI risks? Are insurers including exclusions for AI-related risks or adjusting policy wording for AI risks?

Recent advancements in AI have brought new attention, but the insurance industry has a longstanding history of integrating data into analytical models to support AI tools for functions such as underwriting, risk pricing, claims adjudication, and the creation of new insurance products. AI is an essential tool for the insurance industry given it provides tailored output to address the specific needs of individuals and communities. Failure to utilize these capabilities could inhibit insurance companies from improving their services, thereby damaging their competitiveness. Without AI, the industry could lose out on the ability to automate routine tasks, reduce human error, improve operational efficiency, and match price with risk to expand coverage options.

The National Association of Insurance Commissioners ("NAIC") AI Model Bulletin[40] provides guidance and instruction on addressing potential data inaccuracies, unfair biases leading to discrimination, and data vulnerabilities. The model bulletin reaffirms the effectiveness of state-based insurance regulation while leveraging existing regulatory tools designed to protect consumers and ensure innovation. Recognizing the developing nature of AI technologies, the bulletin relies

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[40] National Association of Insurance Commissioners, Model Bulletin on the Use of Artificial Intelligence Systems by Insurers (December 4, 2023), available at https://content.naic.org/sites/default/files/inline-files/2023-12-4%20Model%20Bulletin_Adopted_0.pdf.

upon a principles-based approach that avoids prescriptive guidelines and allows states to regulate the industry based on their respective market needs. Since its adoption in December 2023, the bulletin has been rapidly implemented by roughly a dozen states, with several more expected to follow.

The bulletin states that insurers' use of AI must "comply with all applicable insurance laws and regulations. This includes those laws that address unfair trade practices and unfair discrimination." Insurers already implement robust enterprise risk management, third party risk management, data privacy, and other disciplines. These disciplines are technology agnostic and AI tools and risks are currently addressed by existing frameworks.

Additionally, most of the AI systems used by insurers are narrowly tailored applications that help perform specific tasks. But having familiarity with AI will help the insurance industry harness AI's power in a responsible manner to meet the evolving needs of consumers and make markets more efficient.

State-based regulation of the insurance industry by state insurance commissioners has proven successful and created a positive risk-mitigation marketplace for individuals and businesses because it has been consistent and aligned across jurisdictions. While any new technology's benefits and challenges need to be fully understood, any consequences of AI are already addressed by state-based regulatory framework that protects consumers, including from unfair pricing and discrimination. There is strong state-level regulation to prevent potential discrimination in the insurance industry. Any additional federal oversight focused on AI based discrimination is likely to be duplicative and unnecessary or, at worst, contradictory.

Third-Party Risks (RFI Question #15)

To the extent financial institutions are relying on third-parties to develop, deploy, or test the use of AI, and in particular, emerging AI technologies, how do financial institutions expect to manage third-party risks? How are financial institutions applying third-party risk management frameworks to the use of AI?

What challenges exist to mitigating third-party risks related to AI, and in particular, emerging AI technologies, for financial institutions? How have these challenges varied or affected the use of AI across financial institutions of various sizes and complexity?

Financial institutions have extensive experience with managing oversight of third parties and adhere to well-established third-party risk management guidance from regulators. Effective third-party risk management and governance processes can control for risks from AI in similar ways as they have controlled for risks for other emerging technologies. Financial institutions are experienced in applying their risk management and governance frameworks in a flexible manner tailored to new technologies to appropriately account for risk.

The various legal obligations already in place and financial institutions' risk management approaches to third-party relationships apply to the use of AI, with firms appropriately tailoring as necessary. Approaches to oversight of third parties include, for example:

- Oversight of outside service providers is already widely understood to be part of an investment adviser's existing legal obligations under the Investment Advisers Act of 1940.[41] Advisers and the financial institutions who hire the advisers have long understood that it would be a violation of their obligations to neglect to conduct proper due diligence and oversight regarding third-party activities under contract.

- Existing guidance from the Federal Reserve establishes standards for the use of third-party models used by banks. SR 11-7 applies to both internal and third-party models. Specifically, it states, "Whenever a banking organization uses external resources for model risk management, the organization should specify the activities to be conducted in a clearly written and agreed upon scope of work, and those activities should be conducted in accordance with this guidance."

- The Federal Reserve Board, FDIC, and OCC issued joint regulatory guidance to all banking organizations on managing risks associated with third-party relationships. The guidance is meant to "assist in the tailoring and implementation of risk management practices commensurate with each banking organization's size, complexity, risk profile, and the nature of its third-party relationships."[42]

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[41] Investment Advisers Act of 1940, available at https://www.govinfo.gov/content/pkg/COMPS-1878/pdf/COMPS-1878.pdf.

[42] Federal Reserve Board of Governors, SR 23-4: Interagency Guidance on Third-Party Relationships: Risk Management (June 7, 2023), available at https://www.federalreserve.gov/supervisionreg/srletters/SR2304.htm.

In the future, if any regulators believe that further guidance regarding oversight of third-party AI may be necessary, we encourage them to clearly identify their specific concerns and publicly request input from financial institutions about how those specific concerns can be addressed effectively. Only if deemed necessary following those actions, a regulator could provide guidance that narrowly addresses the particular concerns identified and identifies appropriate safeguards to use AI responsibly within the existing risk framework. We urge regulators to avoid overly prescriptive safeguards or prohibitions on the use of AI, as these could become a barrier to valuable use cases if institutions do not have appropriate flexibility to test and adapt new AI tools.

<u>Further Actions (RFI Question # 18)</u>

> What actions are necessary to promote responsible innovation and competition with respect to the use of AI in financial services? What actions do you recommend Treasury take, and what actions do you recommend others take? What, if any, further actions are needed to protect impacted entities, including consumers, from potential risks and harms?
>
> Please provide specific feedback on legislative, regulatory, or supervisory enhancements related to the use of AI that would promote a financial system that delivers inclusive and equitable access to financial services that meet the needs of consumers and businesses, while maintaining stability and integrity, protecting critical financial sector infrastructure, and combating illicit finance and national security threats. What enhancements, if any, do you recommend be made to existing governance structures, oversight requirements, or risk management practices as they relate to the use of AI, and in particular, emerging AI technologies?

Existing regulatory frameworks are robust, and we see no evidence of gaps at this point in time. If potential gaps are identified in the future, the Chamber firmly believes that any regulatory approach or guidance should be principles-based, technology-neutral, and focus on outcomes, rather than imposing requirements on specific processes or techniques. Initiatives designed to address AI through formal regulations or regulatory guidance would likely disincentivize their use of AI, which would deprive many consumers and investors of the many benefits they may yield. Regulators should not reflexively treat AI as an outlier risk that must be controlled. Doing so would minimize the benefits and efficiencies that AI is likely to bring to consumers and the capital markets in the coming years.

The process to assess AI risks may vary depending on the institution and use case. Therefore, a one-size-fits-all approach by Treasury or other regulators is not appropriate. In fact, should any regulatory or supervisory enhancements related to AI be needed, a financial institution's primary regulator is in the best position to identify a clearly determined problem, assess any potential gaps in regulation, and ensure that any proposals will not create conflicts and duplication of rules. To the extent any further regulation may be necessary in the future to address concerns around AI, regulators must clearly identify a problem and explain how existing regulations are inadequate to address the concern. Further, a regulator must explain how any proposed regulation would narrowly address specific gaps in existing regulation, and provide an opportunity for public comment.

However, even a primary regulator can go down the wrong path. As an example, the SEC's PDA proposal is a hostile approach towards the use of technology by broker-dealers and investment advisers that would have a chilling effect on communication to and education of American investors. Much like Treasury' broad interpretation of the EO's AI definition, the PDA proposal also would have established overly broad and vague criteria for covered technology. Further, financial institutions rightly expressed deep concern with the PDA proposal for seeking to establish new rules that would be in direct conflict with existing regulations of broker-dealers and investment advisers.

As noted throughout this comment letter, financial institutions are already subject to a wide range of regulations, policies, procedures, and governance requirements that ensure financial institutions act responsibly and ensure the protection of consumers and investors. Financial institutions employ robust and well-developed risk and compliance processes that enable them to appropriately identify and manage the risks associated with AI tools and to deliver trust and transparency to consumers.

This RFI should be but a first step by Treasury in its efforts to understand how financial institutions use AI. Given the sheer breadth of the questions, wide array of financial institutions utilizing AI, and evolving nature of AI, the Chamber encourages Treasury to continue its learning in this space through public roundtables and other stakeholder engagement before it contemplates any recommendations or calls to action.

The back-and-forth and expert insight brought to roundtables can help elicit greater awareness on behalf of Treasury on issues related to the use of AI. We and our members welcome the opportunity to engage with Treasury to further explore these issues in a public forum.

<u>Differences in Jurisdictional Approaches (RFI Question # 19)</u>

> To what extent do differences in jurisdictional approaches inside and outside the United States pose concerns for the management of AI-related risks on an enterprise-wide basis? To what extent do such differences have an impact on the development of products, competition, or other commercial matters? To what extent do such differences have an impact on consumer protection or availability of services?

A growing patchwork of local, state, federal, and international regulations around AI present challenges for AI actors and their ability to manage AI risks effectively. An overly complex regulatory environment potentially inhibits effective management. As a threshold matter, the Chamber believes that it is vital for the government to avoid imposing rules and regulations that create unnecessary barriers for adopting AI. As outlined in the 2023 Commission on AI report, a flexible risk-based federal framework is the best option to provide American businesses with the certainty they need to invest in AI development and adoption and ensure our workforce is prepared to transition to an AI-empowered economy. [43]

An overcomplicated regulatory environment would harm U.S. competitiveness and risk stifling innovation. For this reason, we encourage any effort to facilitate constructive dialogue between regulators to avoid fragmentation of approaches between jurisdictions, which may add additional cost, complexity, and uncertainty for financial institutions, thereby limiting the potential benefits of AI for both institutions and customers.

It is important for U.S. federal agencies, leading technology companies, and other critical stakeholders, including researchers, to work in a collaborative manner alongside U.S. allies to establish consistent governance frameworks for AI in the financial sector. U.S. regulators must remain cognizant of how any rules they may develop could impact other sectors outside of their jurisdiction. There may be lessons that can be drawn from other governmental entities, or elsewhere in the private sector, to avoid a disjointed approach to policymaking regarding AI. Such an approach would lead to competing and conflicting standards that could impede innovation.

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[43] U.S. Chamber of Commerce Technology Engagement Center, Commission on Artificial Intelligence Competitiveness, Inclusion, and Innovation, Report and Recommendations (2023), available at https://www.uschamber.com/assets/documents/CTEC_AICommission2023_Report_v6.pdf.

U.S. Federal Approaches

As a general-purpose technology, AI can be used in a wide range of contexts and sectors. Consequently, the oversight of AI applications will cross multiple regulators. Should Treasury decide to make a recommendation based on a clearly identified concern, it should acknowledge the statutory and regulatory frameworks already in place in the financial sector.

While the Chamber supports sectoral oversight of AI applications, interagency coordination and consistency are necessary to share best practices, ensure common definitions and concepts when practicable, and prevent duplication or overlap.

Treasury should prioritize intergovernmental cooperation in other contexts that implicate the governance of commercial AI applications. Some of these include the White House Office of Science Technology Policy's interagency committee to implement the National Artificial Intelligence Initiative and the NIST's work on AI standards and best practices such as AI risk management framework.

U.S. State Activity

Federal preemption is becoming a priority given the potential for a patchwork of conflicting state laws that will stifle U.S. innovation and efficiency around AI use. Given the vacuum left by federal regulators, states have recently seized the opportunity to regulate AI. The Chamber is concerned by the growing patchwork of conflicting state laws, which has consequences for financial institutions and consumers.

In an open letter to state leaders in November 2023,[44] the Chamber and more than sixty state and local chambers from across the country called for the prioritization of AI development and adoption and opposition to a patchwork of state regulations. A patchwork of state-level proposals to regulate artificial intelligence threatens to slow the realization of the benefits of AI and stifle innovation, especially for small businesses that stand to benefit the most from the productivity boosts associated with AI. For example, in May 2024, Colorado signed into law SB205, comprehensive rules requiring "a developer of a high-risk artificial intelligence system (high-risk system) to use reasonable care to protect consumers from any known or reasonably foreseeable risks of algorithmic discrimination in the high-risk system."[45] In

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[44] U.S. Chamber of Commerce, Coalition Letter to State Leaders on Artificial Intelligence, available at https://www.uschamber.com/technology/open-letter-to-state-leaders-on-artificial-intelligence.
[45] Colorado General Assembly, SB24-205, Consumer Protections for Artificial Intelligence, available at https://leg.colorado.gov/bills/sb24-205.

addition, California is working to advance sweeping new AI rules based on the California Privacy Rights Act.[46]

The Chamber believes that while there are roles for states to promote the adoption of AI within schools, businesses, and government entities, in the financial services industry, functional regulators already have comprehensive regulatory frameworks in place. In the letter to state leaders, the Chamber urged state leaders to embrace the benefits of AI for their states, and to study whether legal gaps exist before pushing for new regulatory frameworks. States should conduct assessments of existing laws to identify those that already protect consumers from harm and that work as well for AI as for other technologies.

Global Activity

Global regulatory harmonization and flexibility, where possible, will support technology innovation and adoption. Consistent nomenclature and flexible industry standards will be key to ensuring that organizations are able to continue to develop and adopt emerging technologies.

There have been encouraging efforts toward AI interoperability through the G7 initiative and the OECD. But some external jurisdictions have already advanced AI regulations unilaterally. Specifically, in December 2023, the European Union reached a political agreement on the AI Act. The Chamber has expressed concern that the EU AI Act fails to strike a sensible balance between regulating for risk and promoting innovation.[47] The EU AI Act disincentivizes European competitiveness and discriminates against U.S. firms.

Implementation of the EU AI Act will be practically challenging for financial institutions as it is overly prescriptive and contains one-size-fits-all risk mitigation measures, including the way in which it defines specific unacceptable and high-risk AI systems in a way that could lead to interpretation challenges. The EU's approach impedes innovation and will become an impractical compliance burden on organizations as AI systems become more ubiquitous in our daily lives. To the extent possible, any additional requirements should be practical, support innovation, and align with existing compliance practices, such as those under relevant privacy laws.

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[46] California Privacy Protection Agency, Draft Automated Decision making Technology Regulations (December 2023), available at https://cppa.ca.gov/meetings/materials/20231208_item2_draft.pdf.

[47] U.S. Chamber of Commerce, Future of AI: EU AI Act Fails to Strike Sensible Balance (March 8, 2024), available at https://www.uschamber.com/technology/future-of-ai-latest-updates#:~:text=Our%20Take%3A%20The%20U.S.%20Chamber,to%20discriminate%20against%20U.S.%20firms.

Other markets, including the UK, are expressly diverging from the EU approach in an effort to promote innovation.

We further draw Treasury's attention to the U.S.-EU Trade & Technology Council (TTC), which has sought to develop harmonized approaches to measuring existing and emerging AI risk and establish standardized AI terminology and taxonomy. Other countries, such as Australia, France, the UK, and the Netherlands, have also established cooperation mechanisms for digital regulators.

Conclusion

AI holds significant promise for enhancing the operations of financial institutions and increasing opportunities for consumers. We hope that Treasury is deliberative in examining this topic and will look towards leveraging the expertise and frameworks of financial institutions already using AI to inform their understanding of AI including the important benefits to financial institutions and consumers the technology provides. Treasury should be flexible in its approach to ensure that innovation continues, American leadership is advanced and appropriate guardrails established only if activities are not covered by existing law and risk profiles dictate that action should be taken. In doing so, Treasury should defer to a financial institution's primary regulator.

We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

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