U.S. Financial Regulators Focus on Artificial Intelligence and Machine Learning

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The use of artificial intelligence and machine learning (**AI**) in the financial sector has become a high priority for the U.S. financial regulators. In a rare event, five of them (the U.S. Department of the Treasury, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Bureau of Consumer Financial Protection and the National Credit Union Administration) have joined together to issue a broadly-worded **request for information and comment** on the use of AI by financial institutions (**RFI**), which consists of 17 questions for public comment.

The tone and tenor of the questions show that, while the U.S. financial regulators are generally supportive and see the benefits of responsible innovation, they also are focused on how AI can be misused or produce an unintended, illogical, incorrect, or biased result, either for customers or the financial institution. The RFI should be viewed as a **prelude** to **future rule makings, guidance and enforcement actions**.

The RFI recognizes that AI can be an important and cost-effective tool in many contexts, both as part of responsibly providing customers with financial products and services and prudently identifying and managing risk associated with such products and services. These **positive uses** of AI may include flagging unusual transactions, identifying potential cybersecurity threats, personalizing customer services, and creating more efficient and accurate processes with respect to credit decisions and risk management and controls.

In the RFI, the U.S. financial regulators also highlight a number of potential risks associated with the use of AI by financial institutions, including risk management challenges in the areas of (1) explainability, which refers to the way how an AI approach uses inputs to produce outputs, (2) data usage that may result in perpetuated bias or inaccuracies and (3) dynamic updating, which refers to AI approaches that have the capacity to update on their own. The fact that the RFI raises these potential risks is not a surprise; the agencies point out that a number of existing laws, regulations, and supervisory guidance may be applicable to AI, such as the Federal Credit Reporting Act, the Equal Credit Opportunity Act, the Fair Housing Act and the provisions of the Dodd-Frank Act prohibiting unfair, deceptive, or abusive acts or practices. In addition to these laws and regulations, the U.S. financial regulators also point in a very helpful **appendix** to the RFI to **supervisory guidance and statements**, as well as **examination manuals, procedures and other resources** applicable to any process or tool that a financial institution employs, regardless of whether it uses AI.

The focus of the agencies on these risks can only be expected to increase as financial institutions continue to embrace AI as part of moving to digital. For instance, Rohit Chopra, President Biden's pick to be CFPB director, has repeatedly **expressed skepticism** about the use of AI and **technology generally**, as well as spoken out on the potential for AI to produce **discriminatory results in loan underwriting**.

AI, including how U.S. financial regulators potentially regulate or shape its use, is a significant area for both innovation and risks. Financial institutions should consider providing input to help shape dialog on the issues raised by the RFI.

Comments are due 60 days after publication in the Federal Register, which is expected shortly. We expect there to be significant comment and debate on this topic, now and in the future.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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