AI USAGE IN THE BANKING AND FINANCIAL SERVICES INDUSTRY AND THE CURRENT STATE OF REGULATION AND LITIGATION INVOLVING AI

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I.   INTRODUCTION

Artificial Intelligence (AI) is rapidly reshaping the landscape of banking and consumer financial services. Though still evolving, banks and consumer finance companies are actively leveraging AI to augment and improve a multitude of financial services functions with the ultimate goal of lowering costs for such services. AI is being used to streamline and improve credit decisioning, enhance cybersecurity, augment risk management and controls, detect fraud, improve customer service and marketing, increase productivity, and drive profitability. Industry projections estimate that AI could boost financial sector profits by as much as $170 billion in four years.[1]

This article explores the growing role of AI in the delivery of financial products and services, the emerging legal challenges arising from its use, and how legislatures and regulators are working to keep pace with the technology.

II.   HOW AI IS BEING DEPLOYED IN THE BANKING AND CONSUMER FINANCIAL SERVICES INDUSTRY

While AI and machine learning have been embedded in the financial services industry for years, recent advances in generative AI and increasingly agentic AI are opening a new frontier with significant legal implications. These emerging technologies are beginning to materially influence core banking functions including underwriting, credit decision-making, risk management, and customer service and engagement. Legal practitioners must stay abreast of these developments as they reshape operational models and legal or regulatory risks.

A.   Client Engagement

Financial institutions are deploying AI systems at the initial point of client engagement, most visibly through chatbots, virtual assistants, and automated call centers. Beyond these frontline applications, AI is being integrated across the entire product and service lifecycle to enhance efficiency and customer experience. One major use case is the hyper-personalization of financial products and services. Leveraging vast volumes of consumer data, AI systems can identify tailored offerings for individual clients with a speed and consistency that often far exceeds human capabilities.[2]

Traditional banks of all sizes, including major global institutions, and nonbank lenders have publicly embraced AI to refine customer engagement strategies and customize their offerings.[3] These tools not only help identify appropriate financial solutions for customers but also assist in drafting targeted communications and structuring outreach campaigns.

AI is similarly transforming customer relationship management. Financial service providers are enhancing digital interfaces, such as online banking platforms and mobile apps, with AI-powered features that support omnichannel communication, automate complaint analysis and resolution, and provide intelligent financial insights to users. In a notable example, one financial institution has implemented an AI-driven feature that proactively advances funds when an impending overdraft is detected, helping customers avoid fees and maintain account stability.

B.   Underwriting and Credit Approval Determinations

AI is increasingly being used to analyze customer credit history, spending patterns, and other financial behaviors to assess creditworthiness through more nuanced, non-traditional methods.[4] Rather than relying solely on static models that assign weight to standard variables—such as FICO scores—AI and machine learning systems can process vast volumes of diverse data points in real time. These systems detect patterns and behaviors that may not be visible through

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[1] *AI Set to Revolutionize Global Banking, Boosting Profits by $170 billion by 2028: CITI Report*, THE ECON. TIMES (Oct. 30, 2024), https://economictimes.indiatimes.com/tech/artificial-intelligence/ai-set-to-revolutionize-global-banking-boosting-profits-by-170-billion-by-2028-citi-report/articleshow/111191867.cms?from=mdr.

[2] *Embracing Generative AI in Credit Risk*, MCKINSEY & CO. (July 1, 2024), https://www.mckinsey.com/capabilities/risk-and-resilience/our-insights/embracing-generative-ai-in-credit-risk; Jim Marous, *GenAI: Banking's Best Offense in Challenging Times*, THE FIN. BRAND (Feb. 12, 2024), https://thefinancialbrand.com/news/banking-trends-strategies/genai-bankings-best-offense-in-challenging-times-174940/.

[3] *Klarna Boosts Profits with ChatGPT as BNPL Firms Tap AI*, PYMNTS (Apr. 8, 2024), https://www.pymnts.com/buy-now-pay-later/2024/klarna-boosts-profits-with-chatgpt-bnpl-firms-tap-artificial-intelligence/.

[4] PAUL TIERNO, CONG. RSCH SERV., R47997, ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING IN FINANCIAL SERVICES 6 (2024); Miriam Fernández, *AI in Banking: AI Will Be An Incremental Game Changer*, S&P GLOBAL (Oct. 31, 2023), https://www.spglobal.com/en/research-insights/special-reports/ai-in-banking-ai-will-be-an-incremental-game-changer.

conventional underwriting, enabling more precise assessments of default risk.[5]

A survey of senior credit risk executives at 24 banks found that 80% are either already using AI or plan to implement AI in their credit risk functions.[6] 20% of these executives had deployed at least one AI-based tool, and another 60% expected to do so within the year. Banks are also using AI to support frontline bankers by streamlining data collection and assisting in the preparation of credit memos. This usage ultimately accelerates and enhances the credit decision-making process. By integrating AI into underwriting workflows, financial institutions can make faster, more accurate lending decisions that reduce the approval of high-risk borrowers while expanding access for creditworthy applicants.

C. Fraud Detection and Prevention

Traditionally, banks and other lenders have relied on rule-based transaction monitoring and name screening systems that were prone to generating high volumes of false positives and often identified fraud only after the fact. Today, both banks and nonbank lenders are adopting advanced AI-driven systems to enhance fraud detection efforts.[7] These modern tools complement existing infrastructure by analyzing vast amounts of data to detect subtle transactional patterns, anomalies, and hidden relationships between accounts or counterparties. As a result, fraud detection is shifting from a reactive to a proactive function that is more accurate in flagging suspicious activity and capable of preventing fraudulent transactions before they occur.[8]

D. Account Servicing and Collections

Financial institutions are increasingly deploying AI-powered chatbots enhanced with Natural Language Processing to engage with customers directly or to support human agents during online interactions. By one example, Bank of America's virtual assistant "Erica" offers around-the-clock account services as part of an effort to deliver a seamless customer experience.[9] Once considered clunky and limited in capability, today's chatbots can assist customers with complex tasks, such as opening accounts and the like, which previously required significant time and handling by human representatives.[10]

Lenders are similarly integrating AI into their collection processes. Among other things, AI is being utilized to predict a borrower's likelihood to repay, act as a negotiator in repayment discussions, recommend optimal communication strategies, and profile customers within collection workflows.[11]

E. Back-Office Operational Tasks

Banks and consumer finance companies, like many other companies, are deploying AI and machine learning to automate the operational tasks of bank employees, such as document digitization and compliance monitoring.[12] For example, JPMorgan Chase offers a ChatGPT-powered program, "LLM Suite," to assist more than 60,000 employees with tasks such as preparing reports and writing emails.[13] This technology was awarded American Banker's Innovation of the Year Award in 2025.[14] Banks are also using AI to determine branch and ATM locations and create marketing content.

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[5] *Overview: The Use of Machine Learning for Credit Underwriting: Market & Data Science Context*, FINREGLAB, https://finreglab.org/research/overview-the-use-of-mahine-learning-for-credit-underwriting-market-data-science-context/.

[6] *Embracing Generative AI in Credit Risk*, MCKINSEY & CO. (July 1, 2024).

[7] Ravi Sandepudi, *The Banker's Guide: Using AI for Fraud Detection*, EFFECTIV.AI (Mar. 11, 2024), https://effectiv.ai/resources/fraud-detection-using-ai-in-banking/; *see* MOODY'S ANALYTICS, NAVIGATING THE AI LANDSCAPE: INSIGHTS FROM COMPLIANCE AND RISK MANAGEMENT LEADERS (2024), https://www.moodys.com/web/en/us/site-assets/ma-kyc-navigating-the-ai-landscape-report.pdf.

[8] Jania Okwechime, PhD, *How Artificial Intelligence is Transforming the Financial Services Industry*, DELOITTE (2023), https://www.deloitte.com/content/dam/assets-zone1/ng/en/docs/services/risk-advisory/2023/ng-how-artificial-Intelligence-is-Transforming-the-Financial-Services-Industry.pdf.

[9] CFPB, CHATBOTS IN CONSUMER FINANCE (2023), https://www.consumerfinance.gov/data-research/research-reports/chatbots-in-consumer-finance/chatbots-in-consumer-finance/.

[10] Jania Okwechime, PhD, *How Artificial Intelligence is Transforming the Financial Services Industry*, DELOITTE (2023).

[11] Renuka Kambli, *Empathy 2.0: How Gen AI and Data are Shaking Up Debt-Collection*, COGNIZANT (May 29, 2024), https://www.cognizant.com/us/en/insights/insights-blog/empathy-and-gen-ai-in-debt-collection-wf2643568.

[12] Serhii Leleko & Roman Chupryna, *Using Machine Learning in the Bank Sector (with Examples)*, SPD TECH. (May 14, 2025).

[13] Hugh Son, *JPMorgan Chase is Giving its Employees an AI Assistant Powered by ChatGPT Maker OpenAI*, CNBC (Aug. 9, 2024), https://www.cnbc.com/2024/08/09/jpmorgan-chase-ai-artificial-intelligence-assistant-chatgpt-openai.html.

[14] *LLM Suite named 2025 "Innovation of the Year" by American Banker* (June 3, 2025), https://www.jpmorgan.com/technology/news/llmsuite-ab-award.

F.   Regulatory Compliance

Financial institutions are turning to AI to support regulatory compliance and oversight functions. This includes the development of AI tools designed to automate key processes such as compliance monitoring, regulatory reporting, and risk assessments.[15] Wells Fargo is one bank in particular that has announced the use of large language models to assist clients in identifying specific information required for submission to industry regulators, thereby streamlining what has traditionally been a complex and labor-intensive task.[16]

III. REGULATORY AND LEGISLATIVE ACTION ADDRESSING TO AI USAGE IN FINANCIAL SERVICES

Federal and state regulators are stepping up oversight and enforcement efforts in targeting companies that deploy AI in consumer-facing services. While there is currently no comprehensive federal law addressing AI, state legislatures have begun to enact their own laws specific to AI. Regulators are also leveraging existing legal frameworks to scrutinize and investigate potential non-compliance in the use of AI technologies.

A.   Federal Regulation

Unlike the European Union, which enacted its comprehensive AI Act in March 2024, the U.S. Congress has made little progress toward passing general AI-focused legislation. Many industries and lobbyists have called upon Congress to enact a comprehensive regulatory system to create uniformity in AI governance across the United States, yet nearly all proposed federal AI bills have stalled in committee or failed to advance beyond early legislative stages.[17] The most recent federal law that was intended to have a significant impact on AI is "The One Big Beautiful Bill Act" from this past summer. This budget reconciliation bill made significant changes to the federal budget, including adding funding for AI technology in the defense and energy fields.[18] An initial version of the bill also would have imposed a 10-year moratorium preventing states from enacting their own laws to regulate artificial intelligence.[19] However, the final bill removed the moratorium, and states will continue to have control over AI policy and regulation for the time being.

In the absence of sweeping federal legislation, the executive branch and various governmental agencies have emphasized that AI-driven functions will be held to the same legal standards as human-led ones. These agencies have been particularly focused in recent years on ensuring that AI-driven functions do not result in unfair or deceptive practices and that these systems do not cause discriminatory outcomes.

B.   Executive Orders

The executive branch has launched a series of initiatives aimed at accelerating regulatory efforts to address the risks and improper use of artificial intelligence. In October 2023, the Biden Administration issued an Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.[20] The Order emphasized AI's "extraordinary potential for both promise and peril" while noting the "potential to help solve urgent challenges" while also posing a risk to "exacerbate societal harms such as fraud, discrimination, bias, and disinformation; displace and disempower workers; stifle competition; and pose risks to national security." The Order set forth "eight guiding principles and priorities" including that "[t]he Federal Government will enforce existing consumer protection laws and principles and enact appropriate safeguards against fraud, unintended bias, discrimination, infringements on privacy, and other harms from AI" involving "financial services." One of the Executive Order's key directives instructed the Consumer Financial Protection Bureau (CFPB) and the Federal Housing Finance Agency to use their authorities to require that regulated entities: (1) use appropriate methodologies, including AI tools to ensure compliance with federal law; (2) evaluate their underwriting models for bias or disparities affecting protected groups; and (3) evaluate

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[15] Moody's Analytics, Navigating the AI Landscape: Insights from Compliance and Risk Management Leaders (2024).

[16] Miriam Fernández, *AI in Banking: AI Will Be An Incremental Game Changer*, S&P Glob. (Oct. 31, 2023).

[17] Although Congress has so far been unable to pass a comprehensive law governing AI usage, President Trump signed the TAKE IT DOWN Act, Public Law No. 119-12, on May 19, 2025, which criminalized the publication of non-consensual intimate imagery (NCII), including AI-generated "deepfakes." But the limited focus of this law has little to no effect on the consumer finance industry and does not address the comprehensive regulatory structure that many have called to be implemented to broadly govern the use of AI across business practices and industries.

[18] *One Big Beautiful Bill Act*, P.L. 119-21 (2025).

[19] Kevin Collier & Bruna Horvath, *'Big, beautiful bill' passes Senate without AI-law moratorium,* NBC News (July 1, 2025) https://www.nbcnews.com/tech/tech-news/big-beautiful-bill-ai-moratorium-ted-cruz-pass-vote-rcna215111

[20] Exec. Order No. 14,110,88 Fed. Reg. 75,191 (Oct. 30, 2023), https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/.

automated collateral-valuation and appraisal processes in ways that minimize bias.

In January 2025, President Trump revoked the Biden Administration's prior Executive Order and issued his own, titled "Removing Barriers to American Leadership in Artificial Intelligence."[21] The stated purpose of the new Order is to revoke "existing AI policies and directives that act as barriers to American AI innovation" and ensure the United States is able to "retain global leadership in artificial intelligence." Despite the revocation of the previous Order, laws, regulations, or policies put in place in accordance with the previous Order are not automatically revoked. Instead, the Assistant to the President for Science and Technology, the Special Advisor for AI and Crypto, and the Assistant to the President for National Security Affairs will coordinate with the heads of agencies to "identify any actions taken pursuant to Executive Order 14110" that do not align with the policies of the new Order. The government agencies are directed to "suspend, revise, or rescind such actions, or propose suspending, revising, or rescinding such actions" so identified.[22]

C.   Federal Agency Guidance

Prior to the Trump Administration's Executive Order, federal agencies had previously taken action to regulate AI in the financial services industry. On April 25, 2023, officials from the Federal Trade Commission (FTC), the Civil Rights Division of the U.S. Department of Justice, the CFPB, and the U.S. Equal Employment Opportunity Commission issued an interagency proclamation on the agencies' collective effort to police AI.[23] That Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems noted that "[a]lthough many of these [AI] tools offer the promise of advancement, their use also has the potential to perpetuate unlawful bias, automate unlawful discrimination, and produce other harmful outcomes."

On June 6, 2024, the Department of Treasury released a "Request for Information on Uses, Opportunities, and Risks of AI in the Financial Services Sector," seeking information to address the risks presented by AI applications within the financial services sector, potential obstacles for facilitating responsible use of AI within financial institutions, consumer impact, and recommendations for enhancements to regulatory and supervisory frameworks applicable to AI in financial services.[24]

After receiving 103 comment letters from a variety of organizations such as financial firms, consumer advocacy groups, and technology providers, the Department of Treasury released their final report on December 19, 2024.[25] The report analyzed risks and concerns brought up but the comments, and suggested five potential next steps:

1.   Continuing international and domestic collaboration among governments, regulators, and the financial services sector to promote consistent and robust standards for uses of AI in the financial services sector;
2.   Further analysis and stakeholder engagement to explore solutions for any gaps in the existing regulatory frameworks, and to address the potential risk of AI causing consumer harm;
3.   Financial regulators continue coordination to identify potential enhancements to existing risk management frameworks and working with other government agencies to clarify supervisory expectations on the application of frameworks and standards;
4.   The financial services sector and government agencies further facilitating financial services-specific AI information sharing, alongside the AI cybersecurity forum recommended in Treasury's AI Cybersecurity report, to develop data standards, share risk management best practices, and enhance understanding of emerging AI technologies in financial services; and
5.   Financial firms prioritizing their review of AI use cases for compliance with existing laws and regulations before deployment and periodically reevaluating compliance as needed.

On April 7, 2025, the White House's Office of Management and Budget issued two new policies on the use of AI for

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[21] WHITE HOUSE, REMOVING BARRIERS TO AMERICAN LEADERSHIP IN ARTIFICIAL INTELLIGENCE (2025), https://www.whitehouse.gov/articles/2025/04/white-house-releases-new-policies-on-federal-agency-ai-use-and-procurement/.
[22] *Id.*
[23] Rohit Chopra et al., *Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems* (Apr. 25, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf.
[24] *See* U.S. DEP'T. OF THE TREASURY, REQUEST FOR INFORMATION ON USES, OPPORTUNITIES, AND RISKS OF ARTIFICIAL INTELLIGENCE IN THE FINANCIAL SERVICES SECTOR (2024), https://home.treasury.gov/system/files/136/Treasury-AI-RFI-financial-sector-2024.pdf.
[25] *See* U.S. DEP'T. OF THE TREASURY, ARTIFICIAL INTELLIGENCE IN FINANCIAL SERVICES (2024), https://home.treasury.gov/system/files/136/Artificial-Intelligence-in-Financial-Services.pdf.

federal agencies, replacing the policies released in 2024.[26] The memoranda, titled "Accelerating Federal Use of AI through Innovation, Governance, and Public Trust" and "Driving Efficient Acquisition of Artificial Intelligence in Government," are designed to promote the policies described in the Trump Administration's January 2025 Executive Order regarding AI. The memoranda instruct agencies on how to responsibly and efficiently implement AI for the benefit of the American public.[27] Unlike the Biden Administration's primary focus on protecting against perceived risks associated with AI, the Trump Administration sets a strong emphasis on encouraging American innovation in AI and helping support a strong economic marketplace, as well as maintaining public trust through transparency. Additionally, agencies are instructed to mitigate risks associated with the use of AI through clear rules and guidelines and tracking the progress of the AI as it is used.

D.   On April 16, 2025, in an internal memo to staff, the CFPB's new leadership issued new "supervision and enforcement priorities."[28]   Among the new priorities, the memo instructs CFPB staff to "respect Federalism," signaling the agency's decision to allow state regulators to enforce applicable law. AI is not referenced in the memo. State Legislation

While Congress has yet to make meaningful progress on AI-focused legislation, states have moved forward. For example, California and New Jersey were early to enact laws to address chatbots. Specifically, both states passed laws requiring disclosure of chatbots and otherwise prohibiting the deceptive use of chatbots in commerce and elections. Separately, California recently enacted over a dozen new laws regarding AI.[29]   However, with some exception, most of these laws are sector or use specific, unlike the more comprehensive laws seen before, such as in Colorado and Utah. Texas has also created an AI regulatory framework with the enactment of the Responsible Artificial Intelligence Governance Act in June 2025.

1.   Texas's Responsible Artificial Intelligence Governance Act

Texas enacted the "Texas Responsible Artificial Intelligence Governance Act" on June 22, 2025, which will become law on January 1, 2026.[30]

As seen in previous laws, Texas has created a disclosure requirement for certain entities using AI. For example, government agencies that provide an AI system interacting with customers will be required to "disclose to each consumer, before or at the time of interaction, that the consumer is interacting with an artificial intelligence system."[31]

The Act also has intent-based prohibitions on AI usage. Specifically, an individual cannot develop an AI system that "intentionally aims to incite or encourage a person to: (1) commit physical self-harm, including suicide; (2) harm another person; or (3) engage in criminal activity."[32] Individuals also cannot "develop or deploy an artificial intelligence system with the sole intent for the artificial intelligence system to infringe, restrict, or otherwise impair an individual's rights guaranteed under the United States Constitution."[33]   More applicable to the financial services industry, and the regulation of discriminatory "redlining" credit practices by consumer lenders, the Act provides that a person may not "develop or deploy an artificial intelligence system with the intent to unlawfully discriminate against a protected class in violation of state or federal law."[34] For this section, a discriminatory intent is required, not simply a disparate outcome.

2.   Colorado's AI Anti-Discrimination Act.

In May 2024, Colorado enacted an AI consumer protection law titled "Concerning Consumer Protections in

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[26]   WHITE HOUSE, REMOVING BARRIERS TO AMERICAN LEADERSHIP IN ARTIFICIAL INTELLIGENCE (2025), https://www.whitehouse.gov/articles/2025/04/white-house-releases-new-policies-on-federal-agency-ai-use-and-procurement/.

[27] *See* U.S. DEP'T. OF THE TREASURY, ACCELERATING FEDERAL USE OF AI THROUGH INNOVATION, GOVERNANCE, AND PUBLIC TRUST (2025) https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-21-Accelerating-Federal-Use-of-AI-through-Innovation-Governance-and-Public-Trust.pdf; *See* U.S. DEP'T. OF THE TREASURY, DRIVING EFFICIENT ACQUISITION OF ARTIFICIAL INTELLIGENCE IN GOVERNMENT (2025), https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-22-Driving-Efficient-Acquisition-of-Artificial-Intelligence-in-Government.pdf.

[28] 2025 Memo to CFPB Staff, "2025 Supervision and Enforcement Priorities" April 16, 2025.

[29] Susan Rohol, *Is California Leading the Way on AI or Just Causing Chaos?*, CALIFORNIA LAWYER'S ASSOCIATION (2024), https://calawyers.org/privacy-law/is-california-leading-the-way-on-ai-or-just-causing-chaos.

[30] H.B. 149, 89th Leg., Gen. Sess. (Tex. 2025).

[31] *Id.* at § 552.051(8).

[32] *Id.* at § 552.052.

[33] *Id.* at § 552.055(a).

[34] *Id.*

Interactions with Artificial Intelligence Systems."[35] The law is modeled after the EU's risk-based AI framework and focuses on "high-risk artificial intelligence systems," which are those involved in "consequential decision[s]" affecting consumers.[36] The statute defines "consequential decision[s]" as "a decision that has a material legal or similarly significant effect on the provision or denial to any consumer of, or the cost or terms" of education, employment, financial, or lending services, essential government services, healthcare services, housing, insurance, or legal services.[37]

The law generally seeks to prohibit "algorithmic discrimination," which includes, by definition, "any condition in which the use of an artificial intelligence system results in an unlawful differential treatment or impact that disfavors an individual or group of individuals on the basis of their actual or perceived age, color, disability, ethnicity, genetic information, limited proficiency in the English language, national origin, race, religion, reproductive health, sex, veteran status, or other classification protected under the laws of this state or federal law."[38]

The law specifically places obligations on AI system "developers" to prevent "algorithmic discrimination" and to provide users of an AI system with various types of documentation and information about the system, including the "type of data used to train" the system and the steps taken to mitigate "algorithmic discrimination."[39] Separately, the statute requires "deployers" of AI systems to use "reasonable care to protect consumers from any known or reasonably foreseeable risks of algorithmic discrimination."[40] Deployers must provide "impact assessments" of the AI system annually, among other information, to ensure the system avoids "algorithmic discrimination."[41] The law requires disclosures to consumers when AI systems are used in consumer interactions.

The Colorado AI Act separately provides that violations of the Act may qualify as deceptive trade practices, enforceable by the state Attorney General (AG).[42] However, developers and deployers would have a rebuttable presumption if they establish compliance with the law's requirements and an affirmative defense if they take certain steps to mitigate a violation of the law.[43] The law does not go into effect until February 1, 2026. The Colorado AG will enforce it, and there is no private right of action under this law.

Members of the Connecticut legislature notably attempted to enact a law similar to the Colorado AI Act in April 2024. The bill, titled "An Act Concerning Artificial Intelligence," would have placed burdens on developers and deployers of high-risk AI systems, similar to Colorado's AI Act, including prohibitions on "algorithmic discrimination."[44] However, that bill died in the state's House of Representatives after the governor threatened to veto the law.[45]

3.   Utah's Artificial Intelligence Policy Act.

Utah has enacted a statute regarding AI, known as the "Artificial Intelligence Policy Act."[46] The Act in its present form requires that suppliers of AI systems "disclose to the individual that the individual is interacting with generative artificial intelligence and not a human, if the individual asks or otherwise prompts the supplier about whether artificial intelligence is being used."[47] This disclosure must be made verbally before an oral exchange and through electronic messaging before written exchanges.[48] It is not clear from the statute what it means to be "asked or prompted" so this issue may be left to the courts to decide. For those in "regulated occupations," the law requires those persons to "prominently disclose when an individual receiving services is interacting with generative artificial intelligence in the provision of regulated services if the use of generative artificial intelligence constitutes a high-risk artificial intelligence

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[35] S.B. 24-205, 74th Gen. Assemb., 2d Reg. Sess. (Colo. 2024).

[36] *Id.* at § 9a.

[37] *Id.* at § 3.

[38] *Id.* at § 1a.

[39] *Id.* at § 6-1-1702.

[40] *Id.*

[41] *Id.* at § 6-1-1703.

[42] *Id.* at § 6-1-105.

[43] *Id.* at § 6-1-1702.

[44] *See* Substitute Bill No. 2, An Act Concerning Artificial Intelligence, 2024 Gen. Assemb., Feb. Sess. (Conn. 2024).

[45] Susan Haigh, *Connecticut Lawmakers Adjourn Session, Fail to Pass AI Regulations but Pass Absentee Ballot* Reforms, AP News   (May 8,   2024),   https://apnews.com/article/connecticut-legislature-adjournment-artificial-intelligence-617d20eaba36a6fc8ad055ff9b4d7055.

[46] S.B. 149, 65th Leg., Gen Sess. (Utah 2024).

[47] S.B. 226, 65th Leg., Gen Sess. (Utah 2025).

[48] *Id.* at § 13-75-103(3)(a) and (3)(b).

interaction."[49]   Utah's law became effective on May 1, 2024, with amendments to the law made effective shortly thereafter as of May 7, 2025.

4.   <u>California's Generative Artificial Intelligence: Training Data Transparency Act and Automated Decisions Safety Act</u>

In September 2024, California Governor Gavin Newsom signed Assembly Bill No. 2013, known as the "Generative Artificial Intelligence: Training Data Transparency Act."[50] This law, which becomes effective on January 1, 2026, aims to address challenges that regulators and industry participants face when trying to determine what data is used by generative AI systems and how those AI systems make decisions. More specifically, the Act imposes requirements on developers of generative AI systems and services to publicly disclose information about the datasets used to train and implement their products. That includes disclosures identifying the dataset owners, the categories and types of data points used in the AI system, whether the datasets include personal information or aggregate any consumer information, and other information regarding the collection and use of such data.

While the Act itself does not impose any new regulation on the usage of any particular data for generative AI products, California has a large patchwork of state data privacy laws—namely the California Consumer Privacy Act (CCPA), the California Privacy Rights Act (CPRA), and the California Invasion of Privacy Act (CIPA)—as well as other credit decisioning laws, that will be implicated as AI-service providers are required to make these disclosures.

At the same time, the California legislature is working to pass other laws that would impose strict regulatory requirements governing the use of AI in the financial services industry. Particularly notable is California Assembly Bill 1018, titled the "Automated Decisions Safety Act."[51] While still pending in the Senate Appropriations Committee as of August 2025, the bill has already passed the California Assembly and the Senate Judiciary Committee. If enacted in its present form, it will impose new transparency, accountability, and consumer rights obligations on the use of AI and algorithmic decision-making for "consequential decisions" affecting the provision of credit and other financial services to consumers. This law will affect a wide range of activities familiar to financial institutions, such as credit scoring, loan underwriting, fraud detection, identity verification, and risk profiling.

For banks and fintech companies that deploy or develop AI systems impacting more than 5,999 individuals over a three-year period, the Act will impose on them substantive new compliance requirements. Institutions that deploy such systems will be required to provide consumers with advance notice of the use of any automated decision system (ADS), potentially offer an opt-out mechanism, and ensure a process for human review or appeal of the automated decision. These mechanisms mirror aspects of the Equal Credit Opportunity Act's adverse action requirements but go further by requiring procedural rights before the decision is made. Developers of these systems (including third-party vendors or internal teams) will be required to conduct performance evaluations, bias audits, and disparate impact assessments prior to transferring the system for deployment.

For financial services entities operating nationally, Assembly Bill 1018 threatens to introduce further complexity in compliance architecture. Institutions already navigating federal obligations under the Equal Credit Opportunity Act (ECOA), the Fair Credit Reporting Act (FCRA), and other regulatory requirements will face a separate California-specific regime that imposes pre-decisional transparency and fairness duties not required under federal law.

As of the 2025 legislative session, all 50 states have proposed or enacted legislation regarding artificial intelligence in some form.[52] Included among these are Montana's new "Right to Compute" law, which allows citizens to own and use various computational resources, including software, hardware, and data processing tools, and New Jersey's resolution, which encourages AI companies to make voluntary commitments to protect employee whistleblowers. Numerous states have also passed legislation to create formal committees, task forces, councils, and/or commissions to study AI and its impact.[53]

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[49] *Id.* at § 13-75-103(2)(a).

[50] A.B. 2013, Leg. (2035-2024), Reg. Sess. (C.A. 2024).

[51] A.B. 1018, Leg. (2025-2026), Reg. Sess. (C.A. 2025).

[52] *Artificial Intelligence 2025 Legislation*, NATIONAL CONFERENCE OF STATE LEGISLATURES (July 10, 2025), https://www.ncsl.org/technology-and-communication/artificial-intelligence-2025-legislation.

[53] *See* S.B. 150, 123d Gen. Assemb., 2d Reg. Sess. (Ind. 2024); H.B. 24-1468, 74th Gen. Assemb., 2d Reg. Sess. (Colo 2024); H.B. 333. 152d Gen. Assemb. (Del. 2024); S.B. 1680, 2024 Leg., Reg. Sess. (Fla. 2024); H.C.R. 66, 2024 Leg., Reg. Sess. (La. 2024); Mass. Exec. Order No. 628 (Mar. 14,2024); H.B. 4153, 82d Leg. Assemb., Reg. Sess. (Or. 2024); H.R. 170, 2023-2024 Gen. Assemb., Reg. Sess. (Pa. 2024); H.B. 2325, 113th Gen. Assemb., Reg. Sess. (Tenn. 2024); S.B. 487, 2024 Gen. Assemb., Reg. Sess. (Va. 2024); S.B. 5838, 68th Leg., Reg. Sess. (Wash. 2024); H.B. 5690, 86th Leg., Reg. Sess. (W. Va. 2024).

IV. LITIGATION INVOLVING AI IN THE CONSUMER FINANCIAL SERVICES INDUSTRY

Most of the litigation related to AI involves claims of copyright infringement. For example, journalists, authors, and artists have sued major AI companies such as OpenAI and Microsoft for a variety of copyright infringement claims.[54] Almost all the claims have involved AI programs using the works of others without permission to train their programs to produce outputs and direct copyright infringement. Many other AI-focused lawsuits have specifically related to the consumer finance and lending space.

In March 2022, a plaintiff filed suit against a money-center bank alleging violations of ECOA, the Fair Housing Act (FHA), and California's Unfair Competition Law.[55] The plaintiffs alleged that the bank's online refinancing calculator amounts to "digital redlining" and discriminated against minority and female applicants seeking to refinance their mortgages.[56] The complaint further claimed that the bank repeatedly approved White applicants' mortgage finance requests at twice the rate of Black and Hispanic minority applicants. On March 19, 2025, the court issued an order that class certification is being considered and indicated it will address the bank's summary judgment motion after the question of class certification is resolved.[57] The case remains pending. It will remain closely watched by financial institutions in the industry who seek to deploy or have already implemented similar AI-based credit tools to consumers, as they continue to evaluate the risks and validation protocols that may be required prior to the deployment of such products to the market.

In another case admonishing reckless AI usage, a fair housing non-profit and an Illinois woman sued a real estate investment and management company and a rental software company, among others, because their unmonitored chatbots allegedly discriminated against housing voucher holders.[58] The plaintiffs alleged that the defendants' chatbot was trained to reject individuals applying with vouchers under Section 8 of the United States Housing Act of 1968. In response to queries about such vouchers, the chatbot allegedly stated that they were "currently not accepting housing choice vouchers." Plaintiffs specifically claimed that the defendants' "blanket no-voucher policy statements directed toward renters with housing assistance vouchers . . . ha[d] a disparate impact on African American renters." However, the defendants agreed to multiple measures to resolve the case, including (1) providing a written report cataloging any applicants who apply with housing vouchers and the reasons behind any denials of said applicants; (2) providing the plaintiff an opportunity to review and comment on all non-discrimination policies and procedures in place; (3) requiring defendants to use an approved FHA anti-discrimination training video as a part of their training for employees; and (4) allowing a review of AI-based communications generated by the chatbot to ensure compliance with applicable fair housing laws.[59]

In another well-publicized chatbot case brought against a Canadian airline, a consumer brought a claim for purported misrepresentations made by the airline's chatbot.[60] The airline's third-party operated chatbot told the customer that the airline would provide a special bereavement rate for his flight to his grandmother's funeral as long as the request was submitted within ninety days of the flight. However, the airline's official written policy was different: bereavement rates would not be honored after the travel was completed. The customer sued for negligent misrepresentation, and the airline denied liability on account of the fact that a third party operated the chatbot. The court rejected the defense, holding that the airline was fully responsible for the statements by the chatbot, even where the technology was not technically owned or fully controlled by the airline itself.

Another set of lawsuits targeted the use of third-party AI services to collect information related to customer phone calls with their banks. In those cases, bank customers claimed violations of the California Invasions of Privacy Act alleging that phone calls with their banks had been improperly recorded without their consent.[61] The plaintiffs claimed they had called their respective banks with the expectation that their calls would be confidential and exclusively between themselves and the bank. However, without asking for consent or providing notice to the consumer, third-party AI service providers of the banks allegedly recorded and analyzed the calls. The plaintiffs sued under California

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[54] *See* Complaint, *N.Y. Times Co. v. Microsoft Corp.*, No. 1:23-cv-11195 (S.D.N.Y. 2023); *Authors Guild v. OpenAI Inc.*, No. 1:23-cv-08292 (S.D.N.Y. 2023).

[55] Complaint, No. 3:22-cv-00990 (N.D. Cal. 2022).

[56] Web Arnold, *Analysis: What Lenders Should Know About AI and Algorithmic Bias*, BLOOMBERG L. (Apr. 25, 2023), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-what-lenders-should-know-about-ai-and-algorithmic-bias.

[57] Order, No. 3:22-cv-00990 (N.D. Cal. 2022).

[58] *See* Complaint, No. 1:23-cv-14070 (N.D. Ill. 2023).

[59] *See* Consent Decree, No. 1:23-cv-14070 (N.D. Ill. 2023).

[60] 2024 BCCRT 149 (Can.).

[61] *See* Order on Motion to Dismiss, No. 2:23-cv-00491 (W.D. Wash. 2024); Order on Motion to Dismiss, No. 22-cv-05827-DMR (N.D. Cal. 2024).

§ 631, which forbids wiretapping phone calls without the consent of all parties, and § 632, which prohibits eavesdropping or the recording of confidential communications without the consent of all parties. In both lawsuits, the defendants moved to dismiss but those motions were largely denied. Both matters were later resolved out of court or voluntarily dismissed. Although these litigations were filed against the companies who developed the third-party AI, they raise new risk considerations for banks or other financial services companies who choose to use call monitoring technology without obtaining prior customer consent.

In December 2022, another group of plaintiffs filed a class action alleging that an insurance carrier's use of automated claims processing methods and machine learning algorithms discriminated against Black policyholders by treating their insurance claims with greater suspicion than those of their White counterparts.[62] The complaint alleged that the carrier was more likely to request additional documentation from Black claimants, and Black claimants were required to have more interactions with the carrier's employees to resolve their claims, resulting in disparate impact and economic harm to them. The complaint specifically claimed that the carrier's automated claims processing methods and machine learning algorithms impermissibly relied on (1) biometric data that function as proxies for race, such as physical appearance, genetics, and voice; (2) intrusive behavioral data that function as proxies for race, such as geolocation, social media presence, and browser search history; and (3) historical housing and claims data that are themselves infected with racial bias. On September 11, 2023, the Court granted in part, and denied in part, the carrier's motion to dismiss the case, and as of July 2025, the case is still in discovery. As more of these cases arise, it is becoming clear that financial institutions must monitor any AI algorithms they deploy to prevent discriminatory outcomes.

In September 2024, the FTC announced they were filing 5 new suits in a new enforcement action called Operation AI Comply.[63] The purpose of this action was to crack down on companies advertising their use of AI algorithms or chatbots and promising far more than they can deliver, thereby allegedly misleading and defrauding customers. One of the cases that the FTC filed was against DoNotPay, a company that claimed to offer an AI chat service that can completely replace a human lawyer. The FTC alleged this company did not conduct proper testing to check the AI chatbot's output, and no attorneys were hired to verify the legality or adequacy of advice being given. In January 2025, the FTC issued a final order requiring the company to pay $193,000, to send a notice out to all customers of the real limitations of the service, and to cease its deceptive advertising claims.[64]

In July of 2025, the Massachusetts Attorney General announced a $2.5 million settlement with a private student loan company.[65] The Attorney General alleged that the lender had violated consumer protection and fair lending laws by utilizing an AI algorithm in its lending practices that caused disparate harm to minority and non-citizen applicants. The company allegedly failed to test and monitor its AI lending program for biases or disparate impacts, leading to many students claiming to have been unfairly and disproportionality penalized. The Attorney General specifically asserted that the AI algorithm in question improperly used a "Knockout Rule" and a "Cohort Default Rate" when making lending decisions. The "Knockout Rule" would automatically deny applications based on the applicant's immigration status. The "Cohort Default Rate" was a variable allegedly incorporated into the AI model that associated certain default loan rates with specific educational institutions. While denying all claims, the student lender agreed to resolve the claims by, among other things, developing more robust policies to ensure the outcomes produced by its AI systems were responsible and legally compliant and also would no longer implement any "Knockout Rule" or "Cohort Default Rate."

V. SPECIFIC REGULATORY GUIDANCE AND ACTION RELATING TO AI IN FINANCIAL SERVICES

Federal regulatory agencies in the United States have issued a number of policy statements, circulars, and interpretive documents regarding the use of AI in consumer financial services. Those pronouncements have largely focused on applications involving AI-driven credit underwriting, adverse action notices issued to consumers under ECOA and the FCRA, AI-based chatbots, and algorithmic discrimination. These have notably been areas where regulators perceive persistent or emerging risks of unlawful bias or unfairness. However, the legal status and weight of federal regulatory guidance shifted dramatically in May 2025, when the CFPB rescinded 67 guidance documents, including some foundational to the Bureau's position on AI and automated decision-making.

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[62] No. 22 C 7014, 2023 WL 5854164 (N.D. Ill. Sept. 11, 2023).

[63] *FTC Announces Crackdown on Deceptive AI Claims and Schemes*, Federal Trade Commission (September 25, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-announces-crackdown-deceptive-ai-claims-schemes.

[64] *DoNotPay*, FTC (Sept. 25, 2024), https://www.ftc.gov/legal-library/browse/cases-proceedings/donotpay.

[65] Assurance of Discontinuance Pursuant to G.L.c.93A, No. 2584-cv-01895.

A.   AI Underwriting and Notices of Adverse Action

Until recently, one of the most cited regulatory interpretations concerning AI in underwriting was CFPB Circular 2022-03, titled "Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms."[66] Issued in May 2022, the circular warned that creditors employing complex algorithms (including machine learning and black-box models) remain subject to ECOA and Regulation B's requirement to provide specific principal reasons for any adverse credit action. The CFPB made clear in this policy statement that opacity or technical complexity caused by AI in reaching credit decisions would not excuse a financial institution from complying with its standard disclosure requirements:

Creditors who use complex algorithms, *including artificial intelligence or machine learning*, in any aspect of their credit decisions must still provide a notice that discloses the specific principal reasons for taking an adverse action . . . . A creditor cannot justify noncompliance with ECOA and Regulation B's requirements based on the mere fact that the technology it employs to evaluate applications is *too complicated or opaque to understand.*[67]

This interpretation was separately reaffirmed in another September 2023 circular addressing emerging forms of data in underwriting and credit denials.[68] The CFPB noted at the time that AI was "expanding the data used for lending decisions" and therefore generating a "growing . . . list of potential reasons . . . why credit is denied." It emphasized that creditors must update or modify Regulation B sample checklists of reasons for adverse action when AI-generated decisions rely on novel, nontraditional data points: "A creditor . . . may not rely solely on the unmodified checklist of reasons in the sample forms provided by the CFPB if the reasons provided on the sample forms do not reflect the principal reason(s) for the adverse action."[69] The Bureau further instructed that "[s]pecificity is particularly important when creditors utilize complex algorithms," signaling the agency's increased scrutiny of vague or overly generic adverse action explanations in the age of AI.[70]

CFPB Circular 2022-03, however, was one of the 67 policy statements and guidance documents that the CFPB rescinded on May 12, 2025.[71] That has created relative ambiguity surrounding the ongoing relevance of this prior guidance material, but the underlying statutes or regulations—namely ECOA and Regulation B—remain in force. The only thing that has changed is that the sub-regulatory interpretation of how those laws apply to algorithmic credit decisioning is no longer in place. Therefore, many financial institutions are substantially maintaining their build-out of ECOA and Regulation B compliance processes related to AI.

B.   Chatbots

The consumer finance industry's use of chatbots has been another target of regulatory scrutiny. For example, the CFPB published a report on AI-based chatbot usage in June 2023.[72] The report followed the CFPB's research of the current use of chatbots and complaints related to chatbots, noting that 37% of the U.S. population (98 million) used a financial institution chatbot in 2022 and that the number was expected to grow to more than 40% (110.9 million) by 2023. The report focused on the shift away from "human support to algorithmic support" in the banking and consumer finance industry.

The CFPB's report notably outlined four key requirements for chatbot deployment in financial services:

(1)   providing reliable and accurate responses;
(2)   detecting and appropriately reacting to consumer's attempting to exercise his or her legal rights;
(3)   preventing endless and repetitive automated interactions (or "doom loops") by chat bots without human escalation; and
(4)   protecting consumer privacy and data security rights.

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[66] *Consumer Financial Protection Circular 2022-03: Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms*, CFPB (May 26, 2022), https://www.consumerfinance.gov/ compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms/.

[67] *Id.* (emphasis added).

[68] *CFPB Issues Guidance on Credit Denials by Lenders Using Artificial Intelligence*, CFPB (Sep. 19, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-on-credit-denials-by-lenders-using-artificial-intelligence/.

[69] *Id.*

[70] *Id.*

[71] Interpretive Rules, Policy Statements, and Advisory Opinions; Withdrawal, 90 Fed. Reg. 20084 (May 12, 2025).

[72] CFPB, CHATBOTS IN CONSUMER FINANCE (2023), https://www.consumerfinance.gov/data-research/research-reports/chatbots-in-consumer-finance/chatbots-in-consumer-finance/.

The CFPB's report on chatbots sent a message to banks and nonbank lenders that they would be responsible for what their chatbots did or failed to do under applicable consumer protection laws. The CFPB has not rescinded this guidance under the Trump Administration.

C.   Algorithmic Discrimination or Redlining

Another focus of federal regulators has been to ensure that AI-based systems do not result in "modern-day redlining," a historic practice in which lenders used facially neutral data points, such as zip codes, as a basis for credit decisions. Redlining was outlawed in 1968 with the enactment of the Fair Housing Act of 1968, but it has remained top of mind with federal regulators with the influx of AI.

On June 24, 2024, six federal agencies (including the CFPB, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency (OCC), and the Federal Housing Finance Agency), announced a new rule titled "Quality Control Standards for Automated Valuation Models."[73] The new rule mandates the implementation of quality control policies by mortgage originators and secondary market issuers designed to, among other things, protect against data manipulation and conflicts of interest and comply with nondiscrimination laws. The final rule is set to become effective by October 2025.[74]

The OCC has also been vocal about its expectations regarding AI in the banking system. In June 2024 comments, then-Acting Comptroller of the Currency Michael J. Hsu presented the OCC's view that a methodical guardrail approach should be used to test the risk and provide controls at each of three general phases of AI implementation—the input phase, co-pilot phase, and AI-as-agent phase.[75] Comptroller Hsu noted that "data sets can be biased, algorithms can hallucinate, and reinforcement learning from human feedback can yield mistakes."

D.   CFPB Enforcement Actions Related to AI

In 2022, the CFPB took action against a financial technology company named Hello Digit.[76] Hello Digit offered a personal finance application to consumers that relied on a proprietary algorithm allowing consumers to "auto-save" by making automatic transfers from their checking accounts. Hello Digit allegedly provided a "no overdraft guarantee" with their application and promised to reimburse any overdraft fees. The CFPB alleged that, despite the guarantees, the application did not work as represented and that, in fact, Hello Digit's automated-savings tool routinely caused consumers' checking accounts to overdraft, and Hello Digit did not always reimburse consumers for overdraft fees caused by the auto-save tool. Hello Digit was required to pay a penalty of $2.7 million and provide redress of $68,145.

VI.   CONCLUSION

Artificial intelligence and machine learning tools are powerful tools that stand to alter the way banks and finance companies operate and do business. Regulators and consumer advocates – not to mention the plaintiffs' bar – continue to wrestle with how to respond to the use of AI. But what has already been made clear is that AI algorithms must comply with already existing laws, such as with respect to potential unlawful credit discrimination and unfair or deceptive acts or practices. Banks and finance companies, and the legal practitioners representing them, will have to ensure that the AI systems and tools used are properly vetted, and re-vetted, to ensure compliance and to mitigate regulatory and litigation risk.

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[73] *Quality Control Standards for Automated Valuation Models*, 89 Fed. Reg 64538 (Aug. 7, 2024) (to be codified at 12 C.F.R. pt. 1222).

[74] *Agencies Issue Final Rule to Help Ensure Credibility and Integrity of Automated Valuation Models*, CFPB (Jul. 17, 2024), https://www.consumerfinance.gov/about-us/newsroom/agencies-issue-final-rule-to-help-ensure-credibility-and-integrity-of-automated-valuation-models/.

[75] M. Hsu, *"AI Tools, Weapons, and Accountability: A Financial Stability Perspective,"* Remarks of Comptroller M. Hsu (June 6, 2024), https://www.occ.gov/news-issuances/speeches/2024/pub-speech-2024-61.pdf.

[76] Hello Digit, LLC, CFPB No. 2022-CFPB-0007 (Aug. 10, 2022), https://www.consumerfinance.gov/enforcement/actions/hello-digit-llc/.