ARTIFICIAL INTELLIGENCE

The role of artificial intelligence (AI) and machine learning in financial services is rapidly evolving. One aspect of this is the use of increasingly sophisticated algorithms in the underwriting and decisioning process for loans.

In recent times, algorithms – a set of technical instructions that computers follow to perform a task – have become critical tools for automated decision-making. Lenders use algorithms for credit scoring and rate setting, credit risk calculations and fraud risk management.

Increased understanding of the use of algorithms in lending has identified the risk of "emergent bias" - a bias that is not known at the time of an algorithm's development, but which might have a discriminatory effect on some borrowers.

AFSA acknowledges the existence of bias in algorithms and supports measures to eradicate it. Automated decisioning has, however, the potential to increase the availability and lower the cost of credit for borrowers. We urge policymakers to ensure that new laws to tackle algorithmic bias do not inadvertently undercut this.

A Commitment to Equality

AFSA condemns bias in all its forms and is committed to equality in lending as in all other matters.

- The price of a loan is based on the economic risk involved in making the loan and competition between lenders, never on racial or ethnic considerations.
- This type of pricing has expanded access to credit and significantly contributed to the well-being of individuals and families who would otherwise have limited financial capability.
- Consumers are benefiting tremendously because lending is far more competitive than ever before. Today's unprecedented competition between lenders is keeping prices low and allowing consumers to shop around for a better-priced loan.

AFSA supports fair lending and strives to make credit available to all qualified borrowers. We devote substantial resources on an ongoing basis to ensure that credit decisions for all loan applicants are made without regard to race or other bases that are prohibited under federal or state law.

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The Benefits of Automated Decisioning

- Creditors use AI for automating the underwriting process, which can reduce underwriting times and lower costs. This allows creditors to extend financing to more applicants and speeds loan approvals and access to funds.
- Sophisticated algorithms can provide granular detail in the underwriting process, allowing credit decisions to be made on more, and more accurate, inputs. This can increase the number of qualifying borrowers, particularly among applicants with minimal credit records.
- Automated decisioning tools remove human bias from the lending process, and even with emergent bias, ensure very high levels of fairness.
- AI plays a critical role in fraud detection, which not only protects consumers, but lowers costs for creditors.
- Artificial intelligence and machine learning have and will, continue to improve efficiencies in back-office areas, including in compliance, customer service and fraud risk management.

AFSA supports the investigation of new methods being employed by both machine learning users and developers to improve the use of automated decisioning technology further by eradicating unintended bias.

- Developers of automated decisioning technology must be diligent in proactively addressing factors which contribute to bias.
- Responding to algorithmic bias upfront, as soon as it is detected, can potentially avert harmful impacts to users.
- AFSA supports considering methods to improve automated decisioning technology and processes, including:
  - Regular auditing and validating of algorithmic models;
  - The maintenance of human oversight in the development and use of algorithms;
  - The maintenance of diverse legal and engineering teams in algorithm development;
  - The innovation of algorithm designs to better isolate biased model components, so they can be identified should bias be detected.

The Need for Careful Policymaking

The understandable desire to develop public policy that addresses broad challenges in the use of consumer data and AI by businesses has led to a number of new pieces of legislation and a raft of new regulations, which stand to significantly increased the compliance burden for businesses like AFSA and hamper the innovation and widespread adoption of beneficial AI.

- In the past two years, more than 30 bills have appeared in legislatures across the nation with the aims of regulating the use of AI.

- General AI bills or resolutions were introduced in at least 17 states in 2021, and enacted in Alabama, Colorado, Illinois and Mississippi.
- Notably, a 2020 bill in California (CA AB 13) sought to require "state agencies [to] use an acquisition method that minimizes the risk of adverse and discriminatory impacts resulting from the design and application of automated decision systems."
- Much of the legislation seen duplicates numerous disclosures required of covered entities and service providers under existing laws, such as Privacy Act and the Fair Credit Reporting Act.
    - Some bills contain requirements that overlap with other federal regulatory guidance (including guidance on financial services) on AI.
    - Consumers will not welcome or be able to utilize, yet more disclosure information. This will lead to confusion and undermine the central purpose of such disclosures.
    - An increased compliance burden is exacerbated by the proliferation of ESG guidance and disclosures from regulators.

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