AMERICAN FINANCIAL SERVICES ASSOCIATION

ISSUE BRIEF

DC STOP DISCRIMINATION BY ALGORITHMS ACT
B24-0558

The consumer credit industry is committed to equality in lending and shares the Council's concern about discriminatory outcomes.

Automated decisioning, artificial intelligence, algorithms, and risk-based credit pricing have expanded access to credit and significantly contributed to the well-being of those who would otherwise have limited financial capability.

- AI is used for automating the underwriting process, which reduces underwriting times and lowers cost. This allows creditors to extend financing to more applicants and speeds loan approvals and access to funds; Many financial institutions use AI to automate routine functions, increasing efficiencies and lowering costs.
- Algorithms play a critical role in fraud detection, which protects consumers, and minimizes costly losses to businesses.
- The use of AI based on statistically valid data helps mitigate any personal bias an individual may have in making a credit decision.

The bill imposes an impossible compliance burden on lenders, that can only result in decreased credit access and higher cost loans.

- This bill would stifle innovation in an area which shows great promise for increased credit access.
- The bill contains vague, overbroad, and open-ended terms throughout.
- The bill's auditing requirements are too cumbersome and would be impossible to implement.
- The bill applies outside of DC's borders and may require changes to operations nationwide.
- Those not in compliance would face draconian fines, penalties, and the possibility of a private right of action.
- The bill would strengthen large tech companies at the expense of smaller companies or service providers.

The bill is unnecessary and duplicates existing laws/regulations.

- The consumer credit industry faces unique scrutiny and regulation over potential discrimination. For decades, our industry, more than any other, has spent time, resources, and community capital to combat discriminatory practices.
- Covered entities and service providers already provide numerous disclosures in compliance with existing laws (Privacy Act, Fair Credit Reporting Act, etc.).

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- There is tension with other existing banking regulations or guidance. *e.g.,* subprime guidance on stricter underwriting is directionally at odds with SDAA.
- Parts of the bill 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 leads to confusion and undermines the central purpose of such disclosures.
- There are significant regulatory gaps in the bill that would result in risks to the safety and soundness of individual firms or of the financial system, or to consumers with respect to the use of AI by creditors.

The information required in the report to the AG is overbroad, difficult to operationalize, creates unnecessary risk.

- This could create an unnecessary risk of unauthorized disclosure of information supporting fraud or security protection algorithms to fraudsters and hackers, intellectual property, trade secrets, and corporate or commercial proprietary, confidential, or material non-public information.
- There is also the risk of unauthorized disclosure of personal information of D.C. residents and any other natural persons' personal information used as training data sets.
- As drafted, the bill seems to require disclosure essentially of <u>every aspect</u> of an algorithmic determination, with no reference to exceptions, exemptions, limitations, or assurances that the AG will not make publicly available even protected, private, or personal information or data.
- Third-party technology or scores would be impossible for creditors to utilize if this bill were enacted.

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