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July 1, 2021

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning (Docket No. NCUA–2021–0023)

Dear Ms. Conyers-Ausbrooks:

On behalf of America's credit unions, I am writing to the National Credit Union Administration (NCUA) in response to the interagency Request for Information (RFI) and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning.[1] The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members.

Use of AI in Financial Services

CUNA believes that it is appropriate for the Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, NCUA, and Office of the Comptroller of the Currency (Agencies) to issue this RFI. It is timely that the Agencies study the use of artificial intelligence (AI) and machine learning (ML) in the financial services sector as financial institutions are similarly exploring using AI for a variety of tasks. With the exception of the nation's largest credit unions, use of AI remains in its nascent stages for credit unions. Where it has been deployed to date, the early focus tends to be on member support applications, such as "chatbots," and contact center optimization tools – tools focused on internal efficiencies. Credit unions' interest in AI is accelerating as products incorporating AI focused on serving community institutions come to market. Credit unions are preparing to deploy AI for more uses, including those that potentially impact more sensitive activities such as credit decisioning and account onboarding.

As financial institutions of all sizes seek to deploy AI, it is important that the NCUA and the other federal financial regulators establish an understanding of how financial institutions are using AI. This understanding is needed so that regulators can supervise financial institutions without developing overly prescriptive regulations and guidance that will stifle innovation and burden financial institutions with unnecessary layers of onerous oversight. Community institutions may deploy AI products and services rapidly, as third parties are creating and

[1] 86 Fed. Reg. 16837 (March 31, 2021).

bringing to market products that purport to fundamentally change the delivery of a products or increase efficiencies at a starling pace. It is important that the regulators develop supervisory plans for financial institutions using AI just as quickly. The absence of guidelines shouldn't stymie the rollout of AI, but it will if financial institutions lack confidence that regulators will smartly monitor the use of AI. Furthermore, a regulatory vacuum and fear of a regulatory heavy hand gives non-bank fintechs and other lightly regulated providers of financial services and products a distinct advantage when deploying products that use AI.

Defining AI

The RFI points out the most obvious areas where financial institutions might use AI, such as for flagging unusual transactions, personalization of customer services, credit decisions, risk management, textual analysis, and cybersecurity. As mentioned above, credit unions are using AI for chatbots and back and contact center optimization, but they are also in various stages of using AI in their lending programs. Furthermore, it is likely that credit unions have deployed what some could consider AI and ML for years. An example would be Bank Secrecy Act / Anti Money Laundering (BSA/AML) software. Determining what is AI and ML can be difficult especially when overlayed with marketing puffery from vendors looking to sell the latest technology.

The term AI seems to have become ubiquitous when describing new technology products and is, again, likely often puffery. We see it used in conjunction with terms like ML, "neural network" and "deep learning" but these terms can be confusing as well. We note that the RFI does not define AI, and we think for good reason: AI is hard to define with no clear definition coming from the private or public sector. At this point, defining AI may be a fool's errand because of the rapid pace of development in the technology, which could make any evergreen definition overbroad. That said, the RFI points out that "the agencies recognize that AI has the potential to offer improved efficiency, enhanced performance, and cost reduction for financial institutions, as well as benefits to consumers and businesses." We believe this statement perfectly describes why a financial institution would invest in technology whether or not the technology leverages AI in a literal sense.

Review of Processes and Products

As the regulators seek to understand the use of AI by financial institutions, we agree that the focus of financial institutions should be developing appropriate governance, risk management, and controls over AI, or more specifically where technology using AI could create novel risks. We believe that AI doesn't necessarily need to be categorized as a new risk by regulators, but rather that Agencies should focus on products or services where the use of AI might change processes or products significantly enough that the incremental risks might be difficult to understand. Instead of focusing on whether AI is being used, regulators should look at processes and products- whether developed in-house or by vendors- that dramatically and fundamentally change a current process or product.

At this point, we believe most, if not all, credit unions will first implement AI through vendors offering new products or novel approaches to current products and processes. As NCUA gains regulatory experience with AI, we encourage it to focus efforts on areas where it can help credit unions understand and manage risk. The NCUA should draw distinctions between AI use cases targeting internal efficiencies as compared to those potentially impacting more sensitive activities such as credit decisioning and account onboarding.

Federal Regulators Should Collaborate

We encourage the NCUA to look for ways to leverage other financial regulators' efforts in understanding the AI driven products and services offered by vendors. Credit unions should not be responsible for doing the heavy lifting to help NCUA understand vendors' products when such information might already be available from other agencies or examinations of other credit unions. While we realize that credit unions' use of products might seem bespoke, most are relying on technology from a limited number of vendors. NCUA should seek opportunities to understand these solutions at the vendor level, then examine whether a specific credit union is using the technology properly. Furthermore, CUNA is fully supportive of the notion of model transparency for audit and oversight purposes. It's worth noting that with most vendors, the underlying algorithms remain part of the vendor's intellectual property. As such, the Agencies should address the obligation of service providers to appropriately share such potentially sensitive competitive information, should the financial institution be required to disclose such information.

The Agencies could also use some form of market-based oversight solutions. For example, The Agencies could work together to identify what risk mitigations should be inherently included in AI/ML applications, and then accept something similar to ASQ/ISO audit reports to ensure compliance. Another approach could be working with the tech sectors to create a healthy, robust self-governing body for fintech vendors that could set standards for a baseline of risk mitigation protections within AI/ML algorithms.

Consider Customer Disclosure Requirements

CUNA suggests regulators also consider the impact of AI and ML models on customer disclosure requirements. A key benefit of AI and ML is the ability to improve decision criteria on an ongoing basis as relevant new information is identified. These capabilities may be inconsistent at times with the disclosure requirements imposed on credit unions, which can involve the updating of documentation across multiple channels and groups. An assessment of AI should include a reassessment of disclosure requirements to harmonize them with the realities of AI- particularly if less regulated entities would otherwise be advantaged through their ability to more fully leverage AI's potential.

Conclusion

We recommend that the Agencies continue to work with financial institutions on the use of AI in the delivery of financial services. The Agencies should focus their efforts on areas where AI could create safety and soundness risk or discrimination in the delivery of financial services.

If you have any questions about our comments, please do not hesitate to contact me at (202) 508-6705.

Sincerely,

J. Lance Noggle

Lance Noggle
Senior Director of Advocacy and Senior Counsel for Payments and Cybersecurity