

# Developments in Artificial Intelligence Regulation in Financial Services

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## I. INTRODUCTION<sup>1</sup>

As technological developments in the artificial intelligence (AI) field unfold at an increasingly rapid pace, federal and state lawmakers and regulators have taken steps to ensure the safe, sound, and compliant operation of financial institutions seeking to adopt and develop AI systems and tools. In recent years, state legislatures have led the way in enacting laws designed to prevent discrimination in the development and deployment of AI tools in consequential decisions, including those related to financial services, and to ensure that the public understands that they are interacting with generative AI systems. At the federal level, a change in administration brought about new policy initiatives focused on promoting AI-related innovation and adoption. Enforcement activity at the state and federal levels saw agencies bringing actions against financial institutions and service providers purporting to use AI in marketing and in offering consumer services. This survey catalogues these and other recent significant developments in AI in financial services regulation.

## II. STATES TAKE THE LEAD ON AI LEGISLATION

On the heels of the development of the European Union AI Act (EU AI Act), formally adopted in May 2024,<sup>2</sup> state legislatures considered and, in some cases,

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1. This survey is one in a series of works covering recent updates in various areas of consumer financial services law. For an overview of the other surveys in this issue of *The Business Lawyer*, see John L. Ropiequet, Sabrina A. Neff, Christopher K. Odinet & Caren D. Enloe, *Introduction to the 2026 Annual Survey of Consumer Financial Services Law*, 81 *Bus. Law.* 527 (2026) (in this *Annual Survey*).

2. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L 2024/1689) 1.

enacted AI-specific legislation applicable to various consumer-facing industry participants, including financial institutions.

Colorado led the way by enacting the Colorado AI Act (CAIA) in May 2024.<sup>3</sup> Slated to originally take effect in February 2026, CAIA establishes requirements for “high-risk” AI system developers and deployers that are a substantial factor in making so-called “consequential decisions” affecting consumers, including decisions impacting provision, denial, cost, or terms of a financial lending service or housing.<sup>4</sup> The primary purpose of CAIA is to prevent algorithmic discrimination in the creation and use of AI systems in such consequential decisions, including by imposing system documentation, risk management, impact assessment, and notice requirements where the decision is adverse to the consumer.<sup>5</sup> Although banks are exempt from a number of CAIA’s provisions, this exemption would only apply to banks subject to guidance or regulations that “impose requirements that are substantially equivalent to or more stringent than the requirements imposed [by CAIA].”<sup>6</sup> In May 2025, federal and state officials wrote a letter to the Colorado General Assembly urging the body to delay implementation until January 2027 to allow time for additional stakeholder engagement in connection with CAIA.<sup>7</sup> While this did not happen, the General Assembly did, however, delay implementation until June 30, 2026.<sup>8</sup>

In June 2025, Texas followed suit by enacting the Texas Responsible AI Governance Act (TRAIGA), which was also originally modeled after the EU AI Act and focused on preventing consumer harm and discrimination in the use of “high-risk” AI systems.<sup>9</sup> Notably, TRAIGA was substantially amended prior to its enactment, with the final version of the bill prohibiting intentional discrimination and making clear that “a disparate impact is not sufficient by itself to demonstrate an intent to discriminate.”<sup>10</sup> The inclusion of an intent requirement for AI discrimination materially distinguishes the application of TRAIGA from CAIA. TRAIGA additionally prohibits certain manipulative and exploitative conduct using AI systems and implements a regulatory sandbox program to encourage AI system development.

Utah established itself as an early mover in regulating generative AI tool deployment by enacting the Utah Artificial Intelligence Policy Act (UAIP) in March 2024.<sup>11</sup> The statute defined “generative AI” to include a system that “generates non-scripted outputs similar to outputs created by a human, with limited or no human oversight.”<sup>12</sup> UAIP required an entity that “uses, prompts, or otherwise

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3. COLO. REV. STAT. §§ 6-1-1701 to -1707 (2024).

4. *Id.* § 6-1-1701(3).

5. *Id.* §§ 6-1-1702 to -1704.

6. *Id.* § 6-1-1705(8).

7. Letter from Jared Polis, Governor, State of Colo., to Colo. 75th Gen. Assemb. (May 5, 2025), <https://governorsoffice.colorado.gov/governor/news/mayor-johnston-governor-polis-attorney-general-weiser-senator-bennet-congressman-neguse> [https://perma.cc/DH96-X4CH].

8. S.B. 25B-004, 75th Gen. Assemb. (Colo. 2025).

9. H.B. 149, 89th Leg. (Tex. 2025) (to be codified at TEX. BUS. & COM. CODE § 552.056).

10. *Id.*

11. UTAH CODE ANN. §§ 13-72-101, 13-72-305 (2025).

12. *Id.* § 13-2-12(1)(a).

causes generative [AI] to interact with a person” to clearly and conspicuously disclose when asked that they are interacting with generative AI and not a human.<sup>13</sup> The statute also required entities in regulated occupations to prominently disclose when persons are interacting with generative AI in the provision of regulated services.<sup>14</sup> Critically, UAIP was amended, effective May 2025, to require that prompts or questions triggering a disclosure must be “a clear and unambiguous request to determine whether the interaction is with generative [AI] rather than a human.”<sup>15</sup> The amendment also limited the prominent disclosure requirement applicable to regulated entities to “high-risk” AI interactions, including financial advice or services, or the collection of financial data.<sup>16</sup> The statute was slated to be repealed in May 2025, but this was extended to July 1, 2027.<sup>17</sup>

Virginia’s attempt to adopt comprehensive AI legislation followed a different path from Colorado, Texas, and Utah. In March 2025, Governor Glenn Youngkin vetoed House Bill 2094, which would have established a framework for regulating AI development and deployment similar to the requirements of the EU AI Act and CAIA.<sup>18</sup> Governor Youngkin stated that the bill “would harm the creation of new jobs, the attraction of new business investment, and the availability of innovative technology in the Commonwealth of Virginia.”<sup>19</sup>

At the federal level, Congress did not adopt any AI-specific legislation that would have meaningfully impacted the financial services industry. Moreover, in July 2025, the U.S. Senate voted down a pause on state and local enforcement of laws and regulations that would limit or restrict AI systems, which had been proposed as part of the One Big Beautiful Bill Act budget reconciliation bill.<sup>20</sup> However, there are signs that Congress is prepared to consider federal AI legislation. For example, on July 30, 2025, a bipartisan bill was introduced in the House of Representatives that would promote regulatory sandboxes for AI projects at the federal financial regulatory agencies.<sup>21</sup>

### III. STATE REGULATORS CLARIFY THEIR AUTHORITY WITH RESPECT TO AI

State law enforcement and financial regulatory agencies have also weighed in on financial institutions’ obligations to use AI responsibly to avoid unlawful bias and other consumer harm. In January 2025, the New Jersey Office of the

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13. *Id.* § 13-2-12(3).

14. *Id.* § 13-2-12(4).

15. S.B. 226, 66th Leg., Gen. Sess. (Utah 2025).

16. *Id.*

17. S.B. 332, 66th Leg., Gen. Sess. (Utah 2025).

18. Va. Leg. Info. Sys., H.B. 2094, Governor’s Veto, <https://lis.virginia.gov/bill-details/20251/HB2094/text/HB2094VG> [<https://perma.cc/MK4L-M9LM>].

19. *Id.*

20. One Big Beautiful Bill Act, Pub. L. No. 119-21 (2025) (not yet published in the United States Statutes at Large).

21. H.R. 4801, 119th Cong. (2025).

Attorney General and Division on Civil Rights published guidance regarding the application of the state's Law Against Discrimination to algorithmic discrimination resulting from the use of AI and other emerging data-driven technologies.<sup>22</sup> The guidance highlighted the potential for disparate treatment and disparate impact when automated tools are used to make decisions affecting key aspects of consumers' lives, including "who is selected for an apartment rental or obtains a mortgage to purchase a house."<sup>23</sup> The guidance did highlight that some automated decision-making tools could be used to reduce bias and discrimination, citing the use of alternative data by financial technology (FinTech) companies to "assess non-traditional credit factors to improve approval odds for consumers with low traditional credit scores, increasing access to credit for marginalized communities and reducing discriminatory lending outcomes."<sup>24</sup>

Also in January 2025, the California attorney general issued a legal advisory on the application of the state's existing laws to AI.<sup>25</sup> The advisory highlighted the ways in which AI can implicate rights and obligations under California's consumer protection, civil rights, competition, and data privacy laws, including the Unruh Civil Rights Act and the California Unfair Competition Law.<sup>26</sup> The advisory also listed recently enacted AI legislation impacting certain businesses, including requirements for AI developers to disclose information about AI training data on their websites and to visibly mark content generated by AI systems.<sup>27</sup>

Regarding information security implications, the New York Department of Financial Services issued guidance in October 2024 intended to assist regulated entities in mitigating cybersecurity risks arising from AI use.<sup>28</sup> The guidance underscored the threats of AI-enabled social engineering and AI-enhanced cybersecurity attacks, including the potential for sensitive data used by AI tools to be exposed or stolen by threat actors seeking to exploit such data for financial gain or malicious purposes.<sup>29</sup> The guidance outlined specific controls that financial institutions can adopt to prevent damage to their customers and businesses resulting from these scenarios, including risk assessments, proactive monitoring and testing plans, vendor management policies, robust access controls, and mandatory cybersecurity training for relevant personnel.<sup>30</sup> The guidance also touted the potential benefits

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22. N.J. OFF. ATT'Y GEN. & DIV. ON C.R., GUIDANCE ON ALGORITHMIC DISCRIMINATION AND THE N.J. LAW AGAINST DISCRIMINATION (2025), [https://www.nj.gov/oag/newsreleases25/2025-0108\\_DCR-Guidance-on-Algorithmic-Discrimination.pdf](https://www.nj.gov/oag/newsreleases25/2025-0108_DCR-Guidance-on-Algorithmic-Discrimination.pdf) [<https://perma.cc/8WL3-GX3P>].

23. *Id.* at 1.

24. *Id.* at 5.

25. CAL. DEP'T JUST. OFF. ATT'Y GEN., LEGAL ADVISORY ON THE APPLICATION OF EXISTING CALIFORNIA LAWS TO ARTIFICIAL INTELLIGENCE (2025), <https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Advisory%20-%20Application%20of%20Existing%20CA%20Laws%20to%20Artificial%20Intelligence.pdf> [<https://perma.cc/XZ7N-LHYH>].

26. *See id.* at 2–4.

27. *Id.* at 6–7 (citing CAL. CIV. CODE § 3110 *et seq.* and CAL. BUS. & PROF. CODE § 22757 *et seq.*).

28. Letter from N.Y. Dep't Fin. Servs. to Industry Letter (Oct. 16, 2024), <https://www.dfs.ny.gov/industry-guidance/industry-letters/il20241016-cyber-risks-ai-and-strategies-combat-related-risks> [<https://perma.cc/M6QH-WFP3>].

29. *Id.*

30. *Id.*

of using AI to enhance the efficacy of cybersecurity programs, noting that AI can be useful for “automating routine repetitive tasks, such as reviewing security logs and alerts, analyzing behavior, detecting anomalies, and predicting potential security threats; efficiently identifying assets, vulnerabilities, and threats; responding quickly once a threat is detected; and expediting recovery of normal operations.”<sup>31</sup>

#### IV. FEDERAL EXECUTIVE BRANCH SEEKS TO FOSTER AI GROWTH

Since taking office, the new administration has issued several executive orders aimed at fostering AI use in the United States, which likely will have implications for financial services participants. Between January and July 2025, the White House published four executive orders, two of which directed presidential advisors to develop an action plan to “sustain and enhance America’s global AI dominance in order to promote human flourishing, economic competitiveness, and national security”<sup>32</sup> and established the White House Task Force on Artificial Intelligence Education, directing the Secretary of Education to “prioritize the use of AI in discretionary grant programs for teacher training.”<sup>33</sup> The other two executive orders directed the Office of Management and Budget to issue guidance to the agencies governing the development of unbiased large language models<sup>34</sup> and established the American AI Exports Program “to support the development and deployment of United States full-stack AI export packages.”<sup>35</sup>

Additionally, in July 2025, the White House published *America’s AI Action Plan* to promote “innovation, infrastructure, and international diplomacy and security” by focusing on three pillars: taking actions to accelerate AI growth; fostering the building and development of AI infrastructure; and positioning the United States as a leader in AI.<sup>36</sup>

These actions from the White House signal that the present administration appears to view AI adoption relatively favorably and may encourage financial institutions to explore potential AI use cases for internal and customer-facing purposes.

#### V. FEDERAL AGENCY PUBLICATIONS AND STATEMENTS ON AI IN FINANCIAL SERVICES

Federal agencies—including the federal financial regulators—have increasingly focused attention on AI use cases (i.e., specific scenarios for which AI is used to accomplish tasks or objectives) and trends in the private sector, particularly in the financial services industry. In the last year, two separate agencies published reports outlining AI uses and risks in financial services.

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31. *Id.*

32. Exec. Order No. 14179, 90 Fed. Reg. 8741 (Jan. 31, 2025).

33. Exec. Order No. 14277, 90 Fed. Reg. 17519 (Apr. 28, 2025).

34. Exec. Order No. 14319, 90 Fed. Reg. 35389 (July 28, 2025).

35. Exec. Order No. 14320, 90 Fed. Reg. 35393 (July 28, 2025).

36. Exec. Off. of the President, *Winning the Race: America’s AI Action Plan* (July 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf> [<https://perma.cc/K84M-TKMH>].

## A. TREASURY REPORT ON THE USES, OPPORTUNITIES, AND RISKS OF AI IN FINANCIAL SERVICES

In December 2024, the U.S. Department of the Treasury published a report<sup>37</sup> on the uses, opportunities, and risks of AI in the financial services sector. The report follows Treasury's June 2024 Request for Information,<sup>38</sup> for which it received 103 comments from different stakeholders.<sup>39</sup> The report highlighted AI use cases for typical banking operations, such as credit underwriting, risk management, regulatory compliance, and customer service, as well as "consumer-facing" use cases to improve customer relations and credit outcomes.<sup>40</sup> Treasury also outlined several risks raised by commenters that were categorized into six buckets: data privacy, security, and quality standards; bias, explainability, and hallucinations<sup>41</sup>; impacts on consumers, fair lending, and financial inclusion; concentration-related risks; third-party risks; and illicit finance risks.<sup>42</sup>

Treasury reviewed commenter feedback and policy considerations and recommended continued "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," including continued coordination among the financial regulators to identify additional opportunities for risk management.<sup>43</sup> Treasury also recommended working with industry stakeholders to identify potential regulatory gaps and to encourage more AI information sharing between the public and private sectors.<sup>44</sup>

## B. GAO REPORT ON AI USE AND OVERSIGHT IN FINANCIAL SERVICES

In May 2025, the Government Accountability Office (GAO) published a report<sup>45</sup> on the use and oversight of AI in financial services, specifically in response to the increased use of the technology in the industry. In compiling the report,

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37. U.S. DEP'T OF THE TREASURY, ARTIFICIAL INTELLIGENCE IN FINANCIAL SERVICES: REPORT ON THE USES, OPPORTUNITIES, AND RISKS OF ARTIFICIAL INTELLIGENCE IN THE FINANCIAL SERVICES SECTOR (2024) [HEREINAFTER TREASURY REPORT], <https://home.treasury.gov/system/files/136/Artificial-Intelligence-in-Financial-Services.pdf> [<https://perma.cc/B9HU-6YAS>].

38. Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector, 89 Fed. Reg. 50048, 50048–55 (June 12, 2024).

39. Treasury Report, *supra* note 37, at 4.

40. *Id.* at 4–6.

41. Hallucinations are characterized as situations where a generative AI model confidently produces an incorrect output. *See id.* at 8 (citing *What Are AI Hallucinations?*, IBM (June 2024), <https://www.ibm.com/topics/ai-hallucinations>).

42. TREASURY REPORT, *supra* note 37, at 27–30.

43. *Id.* at 32–33.

44. *Id.* at 33–34.

45. U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-107197, ARTIFICIAL INTELLIGENCE: USE AND OVERSIGHT IN FINANCIAL SERVICES (May 19, 2025) [hereinafter GAO REPORT], <https://www.gao.gov/assets/gao-25-107197.pdf>; *see also* Caroline Stapleton et al., *GAO Report Reveals How Financial Institutions (and Their Regulators) Are Using AI*, ORRICK (May 28, 2025), [https://www.orrick.com/en/Insights/2025/05/GAO-Report-Reveals-How-Financial-Institutions-And-Their-Regulators-Are-Using-AI#\\_edn1](https://www.orrick.com/en/Insights/2025/05/GAO-Report-Reveals-How-Financial-Institutions-And-Their-Regulators-Are-Using-AI#_edn1) [<https://perma.cc/LTT2-XWA9>].

the GAO conducted interviews with various constituents, including depository institutions, the federal financial regulatory agencies, industry trade groups, and consumer groups.<sup>46</sup> The report outlined the benefits and risks of AI use in the financial services sector, citing “lower costs, enhanced efficiency, and improved accuracy and customer convenience” among the benefits.<sup>47</sup>

The report highlighted that AI may promote financial inclusion by using alternative data sources to determine creditworthiness, thus making credit more accessible.<sup>48</sup> The GAO also saw the potential for AI to improve customer service, enhance detection of cyber threats and money laundering, reduce market volatility, and facilitate institutions’ compliance and risk management controls.<sup>49</sup> In terms of potential risks, the GAO raised the same concerns as the Treasury report but added that there may be “model risk” inherent in institutions’ AI use; that is, the risk that “AI models may underperform and result in financial losses or reputational harm to a financial institution.”<sup>50</sup> The interviewees for the GAO report also cautioned about the risks of hallucinations, bias, privacy, and conflicts in AI use, with industry representatives reporting “they have been more cautious about adopting AI for activities where a high degree of reliability or explainability is important or where they are unsure how regulations would apply to a particular use of AI.”<sup>51</sup>

The report also summarized feedback from the federal financial regulatory agencies, who noted that “existing guidance generally applies to financial institution activities regardless of AI use” and “statutory authorities are generally sufficient to supervise regulated entities’ AI use at this time.”<sup>52</sup> The report highlighted agencies’ supervisory and enforcement actions covering institutions’ AI use but noted that the National Credit Union Administration (NCUA) was lacking key AI oversight tools, recommending “that Congress consider granting NCUA authority to examine technology service providers of credit unions.”<sup>53</sup> The GAO concluded that “[t]he rapid advancement and widespread adoption of AI warrant robust oversight tools for federal financial regulators.”<sup>54</sup>

## VI. FTC LAUNCHES OPERATION AI COMPLY TO COMBAT FRAUDULENT AND DECEPTIVE AI USE

In September 2024, the Federal Trade Commission (FTC) announced “Operation AI Comply,” which it characterized as a “law enforcement sweep” against companies that have engaged in unfair or deceptive acts or practices in the use of

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46. GAO REPORT, *supra* note 45, at 2.

47. *Id.* at 1–3.

48. *Id.* at 8.

49. *Id.* at 10–12.

50. *Id.* at 16.

51. *Id.* at 9.

52. *Id.* at 19–20.

53. *Id.* at 37.

54. *Id.*

AI.<sup>55</sup> Concurrently, the FTC announced enforcement actions against five companies<sup>56</sup> that it alleged “have relied on artificial intelligence as a way to supercharge deceptive or unfair conduct that harms consumers.”<sup>57</sup> The entities included a company claiming to offer “the world’s first robot lawyer,” a company marketing an AI product to assist in drafting reviews and testimonials, and three companies that marketed AI tools to consumers opening online storefronts.<sup>58</sup>

Following the launch of the FTC’s AI enforcement efforts, the agency brought two more actions. The first action was in March 2025 against an online cash advance FinTech company that promoted its use of AI, alleging the FinTech “deceived consumers about how much money they could get and how fast that money could be available.” The second action was in April 2025 against an AI detection tool.<sup>59</sup> Although the FinTech subject to the March 2025 action did use AI to rapidly risk-score consumer applicants, the FTC took issue with the company’s representations regarding the amount of funds to be advanced, as well as the timing of advances that were marketed as being available “today” or “instantly,” but which, in fact, could arrive later unless the consumer paid a previously undisclosed fee.<sup>60</sup>

## VII. CFPB RESCINDS GUIDANCE ON ALGORITHMIC CREDIT DECISIONING

In May 2025, the Consumer Financial Protection Bureau (CFPB) announced that it was withdrawing several agency guidance documents, policy statements, interpretive rules, and advisory opinions dating back to 2011.<sup>61</sup> Among those

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55. See Press Release, Fed. Trade Comm’n, FTC Announces Crackdown on Deceptive AI Claims and Schemes (Sept. 25, 2024) [hereinafter Deceptive AI Press Release], <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-announces-crackdown-deceptive-ai-claims-schemes>; see also Alvaro Puig, *Operation AI Comply: Detecting AI-Infused Frauds and Deceptions*, FED. TRADE COMMISSION (Sept. 25, 2025), <https://consumer.ftc.gov/consumer-alerts/2024/09/operation-ai-comply-detecting-ai-infused-frauds-and-deceptions> [https://perma.cc/98T3-WL8F].

56. See Complaint, *In re* Donotpay, Inc., No. 232-3042, 2024 WL 4382258, at \*1 (FTC Sept. 25, 2024); see also Complaint, *In re* Rytr LLC, No. 232-3052, 2024 WL 4382143, at \*1 (FTC Sept. 25, 2024); Complaint at 1, Fed. Trade Comm’n v. Empire Holdings Grp. LLC, No. 24-CV-4949 (E.D. Pa. Sept. 18, 2024); Complaint at 1, Fed. Trade Comm’n v. Ascend Capventures Inc., No. 24-cv-07660 (C.D. Cal. Sept. 9, 2024); Complaint at 1, Fed. Trade Comm’n v. TheFBAMachine Inc., No. 24-cv-06635 (D.N.J. June 3, 2024).

57. See Deceptive AI Press Release, *supra* note 55.

58. See *id.*

59. See Press Release, Fed. Trade Comm’n, FTC Order Requires Workado to Back Up Artificial Intelligence Detection Claims (Apr. 28, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/04/ftc-order-requires-workado-back-artificial-intelligence-detection-claims> [https://perma.cc/3R43-NX9Y]; Press Release, Fed. Trade Comm’n, Cash Advance Company Cleo AI Agrees to Pay \$17 Million as Result of FTC Lawsuit Charging It Deceives Consumers (Mar. 27, 2025) [hereinafter Cash Advance Company Cleo AI], <https://www.ftc.gov/news-events/news/press-releases/2025/03/cash-advance-company-cleo-ai-agrees-pay-17-million-result-ftc-lawsuit-charging-it-deceives-consumers> [https://perma.cc/W9DD-44DW].

60. Cash Advance Company Cleo AI, *supra* note 59.

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

rescinded were two circulars that it published in 2022 and 2024 pertaining to the applicability of adverse action requirements under Regulation B to credit decisions using AI and complex algorithms.

Under Circular 2022-03,<sup>62</sup> the CFPB advised that the Equal Credit Opportunity Act<sup>63</sup> (ECOA) and Regulation B<sup>64</sup> required creditors to provide a statement of specific reasons for a credit denial to consumers whose credit applications were denied using complex algorithms, such as AI and machine learning.<sup>65</sup> It took the position that if a creditor could not give “specific and accurate” reason(s) for the adverse action, then the creditor could not use the algorithm in its credit decisioning.<sup>66</sup> Similarly, under Circular 2023-03,<sup>67</sup> the CFPB cautioned that creditors using AI or complex credit models could not rely on Regulation B’s sample checklist of reasons for adverse action “if those reasons do not specifically and accurately indicate the *principal reason(s)* for the adverse action.”<sup>68</sup> Use of Regulation B’s model forms functions as a safe harbor for creditors, who often use unmodified versions to satisfy notice obligations under the ECOA and Regulation B.<sup>69</sup> Circular 2023-03 created additional challenges for creditors that use AI or machine learning as part of their credit decisioning.<sup>70</sup>

The CFPB cited three reasons for its decision to withdraw past guidance. First, the CFPB stated it “is committed to issuing guidance only where that guidance is necessary and would reduce compliance burdens rather than increase them.”<sup>71</sup> Second, the CFPB stated it is looking to reduce enforcement activities.<sup>72</sup> Lastly, the agency maintained that it “does not believe that any reliance interests compel retention of guidance.”<sup>73</sup>

## VIII. STATE AI ENFORCEMENT ACTION AGAINST STUDENT LENDER

In July 2025, the Massachusetts attorney general announced a settlement with a student lender based on allegations that the lender violated the ECOA and the state’s Consumer Protection Act by, in part, failing to prevent disparate outcomes

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62. Consumer Financial Protection Circular 2022–03: Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms, 87 Fed. Reg. 35864 (June 14, 2022) [hereinafter Circular 2022-03].

63. 15 U.S.C. § 1691–1691f.

64. 12 C.F.R. pt. 1002 (2025).

65. Circular 2022-03, *supra* note 62, at 35864.

66. *Id.* at 35865.

67. Consumer Financial Protection Circular 2023-03: Adverse Action Notification Requirements and Proper Use of Sample Forms, 89 Fed. Reg. 27361 (Apr. 17, 2024).

68. *Id.* at 27361 (emphasis added).

69. 12 C.F.R. pt. 1002, apps. A–F (2026).

70. See Jeffrey Naimon & Caroline Stapleton, *3 Ways to Limit Risks of Black-Box AI In Financial Services*, LAW360 (Aug. 21, 2024).

71. Interpretive Rules, Policy Statements, and Advisory Opinions; Withdrawal, 80 Fed. Reg. at 20085.

72. *Id.*

73. *Id.*

impacting protected class members in its algorithmic underwriting decisions.<sup>74</sup> The attorney general found that the lender “deployed its Artificial Intelligence Models without taking reasonable measures to mitigate fair lending risks while using those Models.”<sup>75</sup> The attorney general specifically criticized the lender’s use of the “cohort default rate,” which is the average rate of loan defaults associated with specific higher education institutions, in its underwriting model.<sup>76</sup> The attorney general found that this variable resulted in racial discrimination against credit applicants. The attorney general concluded that certain “knockout rules” related to immigration status, including automatic denials of applicants who did not have at least a green card, resulted in national origin discrimination.<sup>77</sup>

The lender agreed to pay a \$2.5 million penalty and to make certain enhancements to its corporate governance, policies and procedures, and testing and training of algorithmic underwriting models.<sup>78</sup> The lender additionally agreed to no longer use the cohort default rate and immigration status eligibility criteria cited by the attorney general as leading to disparate outcomes for certain classes of applicants.<sup>79</sup>

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74. Assurance of Discontinuance, *In re Earnest Operations LLC*, No. 2584-cv-01895 (Mass. Super. Ct. July 10, 2025).

75. *Id.* at 10.

76. *Id.* at 2.

77. *Id.* at 7–8.

78. *Id.* at 11–17.

79. *Id.* at 17.