

Issue Update

Artificial Intelligence (AI) is an umbrella term for an array of technologies, including the new iteration of prompt-based generative AI as exemplified by ChatGPT. Banks have long been subject to laws and regulations that relate to AI, including agency expectations to conduct model risk management. However, the explosion of growth in generative AI has created strong interest from policymakers in formulating new or updated requirements across all industrial sectors. Congress has worked to educate itself through a series of “insight forums” prepared by Senate Majority Leader Chuck Schumer (D-NY). Additionally, several AI bills have either been introduced or are pending, ranging from industry task forces to substantive requirements.

On the regulatory front, the CFPB, DOJ, EEOC, and FTC jointly stated that AI applications must comply with existing consumer protection and anti-discrimination laws notwithstanding the lack of AI-specific rules. The CFPB also released an advisory on the use of chatbots and the need to be mindful of the impact AI has on customer service as well as a circular that adverse action resulting from algorithmic determinations must be explained accurately with sufficient detail in the notice required under Regulation B. Meanwhile, interagency third-party risk management guidance is principles-based but requires the bank to conduct due diligence and implement appropriate controls. The Biden-Harris Administration issued a sweeping Executive Order on AI in October 2023 that harmonizes the government’s attempt to use and regulate it. Several agencies, including the CFPB, will engage in activity to fulfil these directives. The Executive Order gives the National Institute of Standards and Technology (NIST) a prominent role, and NIST is seeking information from stakeholders through a variety of channels.

Why it Matters

AI is becoming a top issue for business leaders and policymakers. While banks have a long history of complying with existing laws and regulations that pertain to AI, it is vital that new requirements do not stifle potential use cases or unduly impact current practices. As AI evolves, the framework must allow for responsible innovation, including applications involving generative AI such as new products/services, fraud detection, risk mitigation, and regulatory change management. Banks must continue to build and mature their enterprise governance programs to ensure safe and sound AI usage.

Recommended Action Items

- **Warn Congress of the dangers of overly broad or prescriptive legislation.** Lawmakers should follow an industry-focused approach to minimize the impact to businesses (like banks) with mature compliance programs, and to ensure any new frameworks are risk-based and tailored to particular use cases.
- **Encourage clear and uniform regulatory standards.** Buzz around AI could lead to inconsistent supervisory activity. Documentation of any decisions involving AI should be robust, and banks should be prepared to help the examiners understand their rationale and risk calculus, especially when third parties are involved.
- **Join ABA’s AI Working Group.** The AI working group covers a broad range of topics, such as potential use cases, best practices, risks and security threats stemming from the technology. The working group will be tapped to provide feedback on agency requests and to have discussions on general matters. There is also a dedicated Fraud & Cyber AI Subgroup, and more specialized areas are likely to emerge. If interested in joining, please email rmiller@aba.com or pbenda@aba.com.