July 1, 2021

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

The Honorable Ann E. Misback
Secretary, Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

The Honorable James P. Sheesly
Assistant Executive Secretary
Attn: Comments-RIN 3064-ZA24
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

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*** *(**OCC:** Docket ID OCC-2020-0049; **Federal Reserve System:** Docket No. OP-1743; **FDIC:** RIN 3064-ZA24; **CFPB:** Docket No. CFPB-2021-0004; **NCUA:** Docket No. NCUA-2021-0023)*

Dear Madam or Sir:

Internet Association[1] (IA) appreciates the opportunity to provide comments in response to the Request for Information issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve Board System, and Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, and the National Credit Union Association (Agencies) regarding the use of artificial intelligence (AI) and machine learning (ML), by financial institutions.[2] IA members are global leaders in the drive to develop accessible, fair, and responsible solutions using the technologies, with many of the financial institutions the Agencies regulate being customers and partners.

IA applauds the Agencies for seeking input on the potential impact of AI and ML. This transparent and collaborative approach is an important component of understanding the benefits of AI/ML (e.g., improved efficiency, enhanced

[1] Internet Association represents the world's leading internet companies and supports policies that promote and enable innovation, increased consumer access to the financial system, and the responsible use of technology by banking organizations and the regulators who supervise them. Many of our members have cloud-based services that are used by banking organizations and their employees in order to improve their organization's operational resiliency, their internal efficiency, their user experience, as well as a number of other enterprise-wide activities. IA's current member list is available at: https://internetassociation.org/our-members/.

[2] *See* Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning, 86 FR 16837 (issued March 31, 2021).

performance, and cost reduction) while exploring risk management considerations. While the underlying request for comments was understandably aimed at financial institutions, IA members provide a number of services that allow for and permit the use of AI and ML by financial institutions and regulators alike, allowing them to glean a great deal of experience and knowledge in how to implement the technology effectively.

AI/ML technologies benefit financial institutions by improving operations. These organizations are benefitting from a variety of applications, including fraud detection and enhanced customer service. The technologies are also democratizing access to the financial sector by enabling financial institutions to provide both traditional and innovative solutions for their customers, including under- and unbanked individuals. We recommend that the Agencies build on the existing regulatory frameworks that apply to the use of AI/ML in order to advance innovation and improve risk management/compliance.

The Agencies should fully support the responsible use of AI and ML by financial institutions to improve internal operations and optimize external opportunities.

With the momentum behind developing and establishing global leadership in emerging technologies, there is a real opportunity to utilize existing frameworks that have been applied to AI and ML in a manner that will allow financial institutions and other regulated entities to be a major part of that effort. To make the most of this opportunity, it is imperative that the Agencies consider the impact of regulation on no or low risk uses, such as those that automate rote tasks with no impact on a person's access to goods or services.

With years of experience in developing AI/ML solutions and seeing the impact on the finances, productivity, and satisfaction of financial institutions who are able to effectively adopt the technologies, IA members have unique insight into the use of AI/ML. To that end, in response to Question 3[3], IA respectfully recommends that the Agencies adopt explainability requirements that are based on the impact of their application or use case.

As is detailed below, a robust approach that incorporates this recommendation will allow financial institutions to meaningfully use AI and ML throughout their operations. This will be particularly important as individuals participating in the financial sector are using a variety of devices that have changed the landscape of banking, from mobile banking overtaking electronic and in-person banking to the use of data to scale workflows that optimize benefits for both users and developers of the technology alike.

Adopt explainability requirements that are based on the impact of their application or use case.

Explainability is an important factor in building trust among regulators and the public in high risk applications of AI systems. The proposal states that explainability refers to how an AI approach uses inputs to produce outputs. While the field of explainability is still evolving, industry participants are strongly incentivized to fine tune the way their solutions work in response to the latest research and new findings, putting a great deal of resources towards development of the field. Beyond establishing accountability, explainability requirements that account for complexity will provide the foundation for responsible use of the technology.

[3] "For which uses of AI is lack of explainability more of a challenge? Please describe those challenges in detail. How do financial institutions account for and manage the varied challenges and risks posed by different uses?" *Id.* Page 16840 (direct link: https://www.federalregister.gov/d/2021-06607/p-67).

Generally, lack of explainability is considered a challenge when there will be a decision leading to denial of access to important goods or services. In those cases, it may be beneficial for the decision (or input that goes into the decision) to be understandable to the person ultimately responsible for the decision and potentially to the person that was denied access. To address this, the Agencies should adopt explanatilibilty requirements that account for the severity of the use case, the importance of the goods or services involved, the impact on the affected person, other controls that are in place by the decision maker, and the complexity of the model.

With greater complexity, the more challenging explainability becomes. Furthermore, there are some use cases that add a greater degree of difficulty due to their ultimate application. For example, deep learning ensemble models not only pose a challenge for explaining decisioning in a single network, but also for explaining how the outputs of different networks come together and are prioritized in the final decision. These types of models provide the best performance in applications with large and complex datasets, so the challenge becomes weighing the trade-off between explainability and performance. In other words, policymakers will need to consider whether complex models that will improve society and people's outcomes should be avoided because they cannot be fully explained.

When using such a model to make decisions – such as eligibility for credit – explainability is important to help ensure fairness across demographics, that decisions are being properly made, and that meaningful adverse action codes are provided to customers. However, in other cases, such as defending a company's customers against fraud, it may be desirable to use complex models even if they cannot be fully explained, as long as testing shows that they are accurate and reliable. To manage these differences, it is important to set standards for explainability based on the application, overall use case, as well as the end-to-end business processes involved, and then balance the ability to reach successful outcomes against regulatory requirements.

By focusing on explainability requirements on the application or use case, utilizing existing laws and regulations wherever possible, and providing specific additional guidance when a specific application or use case creates a unique scenario, the Agencies will enable financial institutions to benefit from the promise of AI and ML.

The Agencies have made great strides towards establishing a foundation for financial innovation through their recent efforts to engage industry, both individually and as a group through this request for comment. Keeping the lines of communication active and open will ensure the Agencies maintain that positive momentum. The proper implementation of these solutions has never been more important, whether in terms of maintaining American technological leadership or in reducing the number of unbanked and underbanked among our fellow residents.

By considering the feedback and insight provided in our recommendations, we believe the Agencies will be able to continue to provide the leadership, guidance, and most importantly, trust, that other government agencies, financial institutions, and service providers rely on. We appreciate your time in considering our feedback and look forward to the opportunity to discuss them with you in further detail.