



March 15, 2025

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Re: Request for Information on the Development of an Artificial Intelligence (AI) Action Plan

The National Consumer Law Center (NCLC)¹ submits these comments on behalf of its low-income clients in response to the *Request for Information on the Development of an Artificial Intelligence (AI) Action Plan (Plan)* issued by the Office of Science and Technology Policy (OSTP), the Networking and Information Technology Research and Development National Coordination Office (NITRD NCO).² The widespread adoption of artificial intelligence, including machine learning and generative technology (collectively AI) in all aspects of American life has potential benefits for consumers, including by reducing the cost of goods and services. The use of AI in housing and consumer credit, banking and other critical financial transactions, however, may lead to unlawful discrimination in violation of consumer protection, fair lending and civil rights laws. The building of data centers and other infrastructure may harm consumers and communities by increasing the cost of energy. An Action Plan must guard against the systemic risks posed to consumers by the deployment of AI systems with the capacity to make decisions regarding these important life activities, and the costs associated with the build-out of the infrastructure.

Below we highlight a sampling of the uses and systemic risks posed to consumers that should be addressed in an AI Action Plan. The risks to consumers related to financial products and services and housing are fully detailed in our previously submitted comment letter.³

¹ The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted trainings for tens of thousands of legal services and private attorneys, and provided extensive oral and written testimony to numerous Congressional committees on various topics. In addition, NCLC attorneys regularly provide comments to federal agencies on the regulations under consumer laws that affect low-income consumers.

² 90 Fed. Reg. 9088 (February 6, 2025).

³ NCLC response to Request for Information on Uses, Opportunities, and Risks of Artificial intelligence in the Financial Services Sector available at <https://www.nclc.org/wp-content/uploads/2024/08/Treasury-RFI-on-AI-August-2024.pdf>.

The AI Action Plan should address the environmental and energy insecurity risks posed by data centers.

The growing use of AI will create demand for more data centers, which in turn will affect the availability and cost of local communities' and regions' energy and water resources and pose potential risks of harm for utility customers and communities. AI is driving the growth in data center energy usage, with data centers representing 4.4% of total U.S. electricity consumption in 2023 and estimates that data center energy consumption growth could reach 6.7% to 12% of total U.S. electricity consumption by 2028.⁴ By dramatically driving up electricity demand, the development of data centers create a risk that energy bills will increase. There are also environmental risks for the communities where these data centers are located. Back up generation to protect data centers from outages could increase air pollution (e.g., if the back-up generation is diesel). Cooling data centers requires water and this could affect water sources and also affect water bills for consumers (for example, if the water usage causes scarcity). The constant noise from a data center can be seen as a nuisance by residents.⁵

To mitigate these risks, the AI Action Plan should include community engagement. These plans should also include strategies to ensure that consumers' electric and water bills are protected from AI-related increases and that low-income consumers, in particular, have access to affordable and reliable electricity and water.

The AI Action Plan must guard against discrimination and other abuses in the credit, banking, financial services and housing markets.

To promote economic opportunity and human flourishing consumers need ready access to affordable housing, fairly priced credit, and other financial products and services. Yet problems have occurred in consumer-facing uses of AI including with respect to marketing and advertising of housing and credit, underwriting and pricing of credit, evaluation of collateral, customer service, servicing and collections, and noncredit uses including fraud detection and the monitoring and closure of bank accounts.⁶ The collection and use of consumer data, how it is used and whether it is used with permission, also drives problematic outcomes from decision-making models.

⁴ [LBNL 2024 United States Data Center Energy Usage Report](#) (Dec. 2024), pp 6-7.

⁵ Virginia Joint Legislative Audit and Review Commission, "[Data Centers in Virginia 2024](#), Report to the Governor and General Assembly of Virginia (Dec. 9, 2024), Executive Summary.

⁶ See NCLC response to Request for Information on Uses, Opportunities, and Risks of Artificial intelligence in the Financial Services Sector available at <https://www.nclc.org/wp-content/uploads/2024/08/Treasury-RFI-on-AI-August-2024.pdf>.

AI systems must be transparent and explainable to fully protect consumers and comply with consumer protection laws. The Equal Credit Opportunity Act (ECOA), for example, requires that creditors give applicants to credit an adverse action notice - a statement outlining the reasons for the denial of credit or for taking other adverse action on an application.⁷ Explaining the credit decision and compliance with the ECOA's notice requirement is particularly challenging for creditors who use more complicated AI models in credit decisions; yet such transparency is essential for consumers denied credit to make a successful follow-up application.

The use of AI by housing providers and the financial services industry has the potential either to improve access to credit for all consumers or to amplify historical patterns of discrimination. An Action Plan should encourage the private sector to mitigate these risks through rigorous compliance with fair lending and consumer protection laws. This includes efforts to detect and mitigate bias in the models and similar efforts to seek less discriminatory alternatives.

An AI Action Plan should call for the rigorous evaluation of data sources including data provided by vendors or third-party party organizations. The collection of data should be voluntary – that is the consumer knowingly consents to the collection and use of the data and the data should be used for the purpose for which the consumer granted permission. Moreover, private entities in their fair lending evaluations of AI generated decisions should be mindful of the exclusion, unfair treatment or higher pricing of consumers of color who are voluntarily or involuntarily excluded from data sets.

Any technology no matter how complex must comply with the ECOA's adverse action notice requirement. Compliance with this mandate aids consumers and government oversight of this technology.

An AI Action Plan must prioritize government oversight to prevent abuses; industry self-regulation is not enough.

Industry self-monitoring and self-policing of complicated and opaque AI systems will not work. This hands-off model was pursued by the Consumer Financial Protection Bureau (CFPB) in its failed oversight of the creditor Upstart with No Action letters in 2017 and 2020.⁸ Despite assertions that the company had tested their models for fair lending compliance, an independent review confirmed that Upstart's AI model charged higher interest rates to hypothetical applicants who attended community colleges, historically black colleges and universities (HBCUs), and Hispanic serving institutions (HSIs).⁹ This bias in the creditor's underwriting process was not caught by the CFPB. The Bureau failed to independently test

⁷ 15 U.S.C. § 1691(d)(2).

⁸ Upstart No-Action application to the CFPB (Sept. 2017)
https://files.consumerfinance.gov/f/documents/201709_cfpb_upstart-no-action-letter-request.pdf

⁹ *Educational Redlining*, Student Borrower Protection Center, Feb. 2020, available at
<https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf>

Upstart's assertions, and instead relied on the company's representations rather than conduct its own analysis.

The private industry often fails to adequately monitor its technology for discriminatory impact and compliance with consumer protection laws, especially when the technology is deployed in the field. However, high-risk systems that make consequential decisions increase the risk of harm to consumers and should receive the highest level of regulatory scrutiny to ensure they are safe and effective.

Additional Recommendations

In addition to the recommendations outlined above, to foster innovation and address the systemic risks posed to consumers by the widespread and rapid adoption of this technology, OSTP and NITRD NCO should embed the following general principles in the Action Plan:

- The private sector in its development and deployment of AI must produce models that are transparent, explainable and in compliance with fair lending and consumer protection laws;
- Businesses must routinely test their models to ensure that the outputs are fair, empirically derived, and statistically sound, and accurately predict risk or achieve other valid objectives;
- Businesses using AI must hire individuals from diverse backgrounds to evaluate the effect of AI on consumers of color and other protected groups; and
- The private sector and government agencies must engage a diverse group of key stakeholders, including civil rights organizations, consumer advocates, and impacted community members to receive ongoing feedback on impact of AI in the market for consumer products and services.

Conclusion

In addition to the potential benefits of AI, an AI Action Plan must address the potential harm consumers face from the deployment of AI. This includes potentially unlawful and discriminatory practices in housing, credit and financial services, and energy insecurity posed by data centers. Such practices create barriers to opportunity and undermine consumers' economic stability.

Thank you for the opportunity to comment on this important topic. If you have questions about these comments, please contact Odette Williamson at owilliamson@nclc.org or 617-542-8010.

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Respectfully submitted,

National Consumers Law Center (on behalf of its low-income clients)