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National Association of Federally-Insured Credit Unions

December 5, 2023

Shalanda D. Young
Director
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

RE: Request for Comments: Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence Draft Memorandum (OMB-2023-0020)

Dear Director Young:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Office of Management and Budget's draft memorandum titled *Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence* (the Memorandum). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 138 million consumers with personal and small business financial services products.

As community financial institutions, credit unions recognize that responsible AI deployment can help achieve important benefits for consumers. While federal banking regulators, such as the National Credit Union Administration (NCUA) and Consumer Financial Protection Bureau (CFPB), are independent agencies, they would be "covered agencies" as defined in the Memorandum.[1] AI used by federal financial regulatory agencies would therefore be subject to the Memorandum's substantive provisions addressing risk management practices, governance, and transparency.

NAFCU has generally supported non-regulatory approaches for encouraging the use of AI within the financial services sector.[2] As with other technologies, consumer financial protections and antidiscrimination rules continue to have broad applicability and are not diminished by credit union deployment of AI. Existing regulation requires credit unions to adopt robust risk

[1] OMB, Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence [Memorandum], 3 (November 2023), *available at* https://ai.gov/wp-content/uploads/2023/11/AI-in-Government-Memo-Public-Comment.pdf; *see also* 44 U.S.C. § 3502(1).
[2] *See* NAFCU, Letter to NCUA re: Financial Institutions' Use of Artificial Intelligence, Including Machine Learning (RIN: 3064-ZA24), July 1, 2021, *available at* https://www.nafcu.org/comment-letter-ncua-digital-assets-and-related-technologies-rfi-File

management practices and compliance systems to ensure that the use of new technology does not jeopardize safety and soundness or the rights of individual members.

By contrast, the use of AI by federal banking regulators, such as the CFPB, is subject to fewer explicit guardrails, particular in the domain of transparency. Accordingly, NAFCU supports the Memorandum's directive to agencies to "annually submit an inventory of its AI use cases to OMB and subsequently post a public version on the agency's website."[3] The Memorandum also notes that additional guidance regarding the agency inventory process will be forthcoming. Because the scope and detail of reporting will depend significantly upon OMB's future guidance, NAFCU recommends soliciting public comment on any supplemental instructions for preparing an agency's AI use-case inventory. When developing future guidance, NAFCU recommends OMB clarify what it means for an agency to report use cases "to the extent practicable," and how that standard might apply to financial regulatory agencies.

NAFCU also recommends that OMB specify an additional category of presumptively "rights-impacting" AI usage under section 5(b)(i) of the Memorandum. This category should cover the use of AI by a financial regulatory agency for the purpose of making any material decision related to the supervision of a financial institution. A material supervisory decision could encompass a risk assessment, an examination rating, an exam-related finding, or the initial scoping of an exam—among other things. While it remains unclear whether AI is being deployed in this way by the functional banking regulators, it is likely the CFPB is one covered agency using AI as part of its supervisory prioritization process, which determines the scope and targets of future examinations of financial institutions subject to its jurisdiction.[4]

The CFPB's FY 2023 Annual Performance Report states that the CFPB continues "to assess sources and capabilities that will provide an enhanced data-driven approach to its areas of supervisory focus."[5] The report provides the specific insight that the CFPB is now "[l]everaging additional data sources as well as artificial intelligence within the supervisory prioritization process."[6] To date, the CFPB has shared very little information about its use of AI to perform supervisory prioritization.

Some important information regarding AI projects comes not from the CFPB itself, but from vendors selected to perform data analysis contracts. For example, a press release from one company describes a "Data Analytics Blank Purchase Agreement" covering "machine learning,

[3] The Memorandum, 4 (November 2023)
[4] See NAFCU, Letter to CFPB Director Rohit Chopra, "Re: Supervisory Use of Artificial Intelligence," (October 3, 2023), *available at* https://www.nafcu.org/system/files/files/10.3.2023%20Letter%20to%20CFPB%20re%20Supervisory%20Use%20of%20AI.pdf.
[5] CFPB, FY 2023 Annual Performance Report, 85 (February 2023)
[6] *Id*.

and natural language processing support."[7] However, the CFPB has never disclosed where ML or natural language processing support may be applied. One potential domain is the CFPB's consumer complaint database, where it is unlikely that manual analysis is feasible.[8]

As a matter of fairness, institutions regulated by the federal government should be aware of the inputs and processes that determine supervisory decisions and outcomes. Examinations of credit unions by the CFPB and the NCUA can be expensive in terms of time and resources. Furthermore, as member-owned institutions, credit unions must consider the costs of supervision before determining the share of profits that may be distributed to members as a dividend. Individual members and the credit union itself deserve to know whether AI-driven regulatory processes will influence the scope and length of credit union exams, since unfair or arbitrary supervisory decisions can negatively impact the performance of the credit union and the financial health of its members.

More generally, NAFCU encourages OMB to consider how it can tailor the Memorandum to promote AI transparency within the CFPB and other financial regulatory agencies. To the extent the CFPB has access to institution-specific early warning information, the agency should be willing to share that data with regulated entities. Institutions should also be afforded the opportunity to independently assess data that might inform future exam scope as early as possible. This would allow credit unions and other financial institutions to course correct prior to an examination and would afford an opportunity to explain data trends that might be perceived as problematic.

NAFCU appreciates the opportunity to comment on OMB's draft Memorandum. Where the use of AI is present, the CFPB and other financial regulatory agencies should commit to the same standards of explainability, accountability and transparency that are expected from credit unions and other regulated financial institutions. If you have any questions or concerns, please do not hesitate to contact me at amorris@nafcu.org or (703) 842-2266.

Sincerely,

Andrew Morris

Andrew Morris
Senior Counsel for Research and Policy

[7] Analytica, CFPB Data Analytics BPA Prime Award (October 20, 2022), available at https://www.analytica.net/press-release/cfpb-data-analytics-bpa-prime-award/

[8] *See* Tom Sabo, SAS Institute Inc., "Applying Text Analytics and Machine Learning to Assess Consumer Financial Complaints" (2017), available at https://support.sas.com/resources/papers/proceedings17/SAS0282- 2017.pdf