

Regulatory Alert

Regulatory Insights

April 2023

Enforcement/Supervision to “Automated Systems”

KPMG Regulatory Insight:

- Anticipate enforcement and supervision related to algorithms, AI, and innovative technologies (under existing laws and regulations).
- Expect a “whole of government” approach (across multiple agencies) to include consumer and employee laws and regulations (including anti-discrimination, civil rights, ADA, fair lending/housing, UDAP/UDAAP, etc.)
- Strengthen risk management and governance in light of regulatory enforcement and supervisory focus on “fairness”, including potential disparate impacts/outcomes and/or model bias.

The Consumer Financial Protection Bureau (CFPB), the Department of Justice Civil Rights Division (DOJ), the Equal Employment Opportunity Commission (EEOC), and the Federal Trade Commission (FTC) jointly release an [Interagency Statement](#) reiterating their “resolve to monitor the development and use of automated systems” and to “vigorously use their collective authorities to protect individuals’ rights regardless of whether legal violations occur through traditional means or advanced technologies.”

In particular, the agencies:

- State their existing legal authorities apply to the use of “automated systems” and “innovative new technologies” just as they apply to other practices.
- Define “automated systems” broadly, to include software and algorithmic processes, including artificial intelligence (AI).
- Believe that “although many of these tools offer the promise of advancement, their use also has the potential to perpetuate unlawful bias, automate unlawful discrimination, and produce other harmful outcomes.”
- Together, are responsible for enforcing civil rights, non-discrimination, fair competition, consumer protection, and other legal protections.

- Take seriously their “responsibility to ensure that rapidly evolving automated systems are developed and used in a manner consistent with federal laws.” Key areas of concern include:

- Data and datasets
- Model opacity and access
- Design and use.

Each of the agencies has previously expressed concerns about, and/or taken actions to address, potentially harmful uses of “automated systems”; a representative list is included as part of the Interagency Statement.

In separate but related statements, the agencies each reinforce their intention to use their enforcement and/or supervisory authorities:

- The [CFPB](#) states that the Interagency Statement “makes it clear that the CFPB will work with its partner enforcement agencies to root out discrimination caused by any tool or system that enables unlawful decision making.”
- The [DOJ](#) states, “This is an all hands on deck moment and the Justice Department will continue to work with our

government partners to investigate, challenge and combat discrimination based on automated systems.”

- The [EEOC](#) states, “We will continue to raise awareness on this topic; to help educate employers, vendors, and workers; and where necessary, to use our enforcement authorities to ensure AI does not become a high-tech pathway to discrimination.”
- The [FTC](#) says, “Technological advances can deliver critical innovation—but claims of innovation must not be cover for lawbreaking.”

The CFPB also indicates it will be i) [proposing rules](#) related to bias and discrimination in home valuations to “make sure artificial intelligence and automated valuation models have basic safeguards when it comes to discrimination;” and ii) releasing a [white paper](#) “discussing the current chatbot market and the technology’s limitations, its integration by financial institutions, and the ways the CFPB is already seeing chatbots interfere with consumers’ ability to interact with financial institutions.”

For more information, please contact [Amy Matsuo](#) or [Todd Semanco](#).

Contact the author:



Amy Matsuo
Principal and National
Leader
Regulatory Insights
amatsuo@kpmg.com

kpmg.com/socialmedia



Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

All information provided here is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is

accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the facts of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.