



Mutual Alert

CFPB Asserts Jurisdiction Over Bank Hiring and Employee Performance Evaluations Employing Artificial Intelligence

The CFPB ventured into DOL territory by issuing a guidance last Thursday that companies need consent to track their employees and to use algorithms to evaluate employee performance. The CFPB warned that companies that fail to comply with the guidelines could potentially violate the Fair Credit Reporting Act.

“Workers shouldn't be subject to unchecked surveillance or have their careers determined by opaque third-party reports without basic protections,” CFPB Director Rohit Chopra said in a statement. “The kind of scoring and profiling we've long seen in credit markets is now creeping into employment and other aspects of our lives.” The guidance notes that emerging technology has significantly widened the scope of background checks and worker tracking, raising concerns that inaccurate algorithms will cost people job opportunities or career growth.

Under the guidance, companies must obtain consent to buy background reports on candidates, allow workers to challenge inaccurate information and offer transparency into the data behind these decisions that affect their employment. It is not clear that the CFPB will initiate enforcement proceedings as DOL may have a different view of the appropriate enforcement mechanism. As the guidance is only that, and not a regulation, it would not likely survive the election with a Trump win. This is yet another example of the CFPB's expansion of its statutory mission and choosing the enforcement mechanism to do so rather than the administrative process of a proposed regulation. Mutual banks need to monitor further developments at least until next year to determine what if any steps they need to take. AI use is becoming more prevalent and

baked into software without the user's knowledge. Some of the procedures recommended may be advisable regardless of the CFPB jurisdiction.

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