

## SENATE BANKING SUBCOMMITTEE EXPLORES THE INTERSECTION OF AI AND HOUSING

### EXECUTIVE SUMMARY

On January 31, the Senate Banking Subcommittee on Housing, Transportation, and Community Development held a [hearing](#) entitled “Artificial Intelligence and Housing: Exploring Promise and Peril.” During the hearing, the panel considered various applications of artificial intelligence (AI) that are already being adopted, or may be pursued, across the housing sector — including credit scoring and mortgage lending, property appraisals through automated valuation models (AVMs), and tenant screening.

While senators on both sides of the aisle acknowledged that AI can help to improve access to credit and housing, there was also bipartisan agreement that the technology poses certain risks and concerns, including around bias and discrimination, transparency and explainability of AI model decision-making, data privacy, and competition. While witnesses generally agreed that AI’s use in housing is largely covered by existing laws and regulations, it was also recognized that certain “gaps” remain, including a need to address potential rental price-fixing.

### OPENING STATEMENTS

**Chair Tina Smith (D-MN)** discussed how AI is already being used across the housing industry, including for a variety of beneficial use cases such as: (1) reducing cost and wait times; (2) helping to identify families at risk of eviction; and (3) mapping out zoning laws and codes to help identify where and how housing access can be improved. However, she also pointed to concerns around AI’s use, citing cases where landlords have used AI-generated tenant screening reports that include inaccurate or prohibited data and where AI has been used to automate eviction filings. How AI is used has “major” implications for people’s credit scores, mortgage rates, and homeownership, and Congress should explore where the technology may be reinforcing biases, she concluded.

**Ranking Member Cynthia Lummis (R-WY)** similarly cited the “many” potential benefits to using AI in housing, offering as examples AI’s use of more data to expand credit and housing access, expediting processes to approve new housing developments, and facilitating property appraisals. She drew a parallel between AI and digital assets, explaining that both are rapidly evolving technologies where there is a need to explore how existing regulations apply and ensure that any new rules are appropriate. The Ranking Member also pointed to a need to consider the risk that AI may be trained such that it ends up reinforcing bias and discrimination.

## WITNESS TESTIMONY

**Ms. Lisa Rice** ([testimony](#)), President and CEO of the National Fair Housing Alliance (NFHA), explained that AI is already being used “extensively” in the housing and financial services sectors, such as for credit scoring, tenant screening, and automated underwriting — all of which are areas where bias and discrimination may arise, she added. However, she also explained that AI can be used to detect discrimination risks, provide financial services more effectively, and identify barriers to fair and affordable housing. To best take advantage of AI’s benefits, Congress should ensure that: (1) federal agencies, researchers, and non-governmental organizations can apply existing regulations and standards to use of automated systems; (2) agencies have “sufficient” resources; and (3) pass legislation that balances innovation while “protecting society,” Ms. Rice stated.

**Dr. Vanessa Perry** ([testimony](#)), of the George Washington University and Urban Institute, spoke about the use of AI models in the mortgage market, including for purposes such as credit risk evaluation, property valuation, and loan servicing. While noting that AI can enable more efficient, objective appraisals and help expand homeownership for underrepresented individuals, she cautioned that the technology can also “amplify discrimination and inequality” through its use of historical data that includes cases of redlining. Dr. Perry proposed a framework through which to evaluate AI that focuses on five factors: (1) societal values; (2) contextual integrity; (3) accuracy; (4) legality; and (5) expanding opportunity, which includes access to credit.

**Mr. Nicholas Schmidt** ([testimony](#)), AI Practice Lead at BLDS and Founder of SolasAI, emphasized that human decision-making is central to the development and deployment of AI systems, noting for example that in the case of a mortgage delinquency algorithm, humans choose how delinquency is defined and what data and type of algorithm are used, among other factors. This, he suggested, allows for human agency to improve AI systems. He also noted that algorithms have long been used in the housing industry and so there is a “wealth of experience” and frameworks that can and should be drawn on when regulating AI applications in the industry, such as: the Federal Reserve (Fed) and Office of the Comptroller of the Currency’s (OCC) [SR 11-7 guidance](#); the National Institute of Standards and Technology (NIST) [AI Risk Management Framework](#) and [SP 1270 guidance](#); and the Fair Housing Act. Ultimately, AI regulation should be guided by four principles: (1) fairness; (2) transparency; (3) accountability; and (4) materiality, he concluded.

## DISCUSSION AND QUESTIONS

### *Bias & Discrimination*

- Ranking Member Lummis asked which of the principles Mr. Schmidt identified in his testimony — fairness, transparency, accountability, and materiality — poses the “weakest link.” Mr. Schmidt responded by pointing to fairness. He alleged that there are a lot of “extremely low quality” models being developed across all sectors and called for the application of “strong” model governance standards similar to those advanced by the Fed and OCC to areas such as the health care industry.

- **Sen. Bob Menendez (D-NJ)** noted that if there is bias — such as historical bias in housing due to redlining — in the underlying data used for AI, it can be “encoded” in models’ decision-making processes. He accordingly asked how to ensure that AI does not reinforce or expand existing housing disparities. Ms. Rice called for ensuring that AI models are continually audited and monitored, starting from their pre-production phase and continuing after their deployment, noting that these models can evolve post-deployment. Dr. Perry further advocated for deliberately designing models not to consider certain factors that could contribute to biases. She reiterated these solutions in response to a similar question from **Sen. Raphael Warnock (D-GA)** on how to ensure that algorithms do not “perpetuate” historical housing discrimination.
- **Sen. Mike Rounds (R-SD)** offered his view that companies should have to abide by laws such as the Fair Credit Reporting Act (FCRA), Fair Housing Act, and Equal Credit Opportunity Act (ECOA) regardless of what technology they use. He added that there is a need to provide regulators with the ability to ask questions about AI models and request modifications to them if biases are identified, recognizing that identifying such biases is a challenge.
- **Sen. Catherine Cortez Masto (D-NV)** prompted the panel to discuss AVMs, and specifically about how to address any bias in the inputs for these models. Mr. Schmidt explained that the issue is that any automated pricing model will consider geographic location, which he noted has historically reflected housing discrimination and disparities. However, he added that this is better than using human appraisers whose “idiosyncratic” bias cannot be removed and who, especially in rural areas, can be more expensive. Ms. Rice contended that, to make AVMs fairer, their approach to appraising values should shift from the current sales-comparison approach to also considering the cost of reconstruction.

#### Transparency, Explainability, & Competition

- Chair Smith wanted to know how to address the question of AI system explainability and provide for accountability when AI’s decision-making process is opaque. Mr. Schmidt explained that it is not necessary to have complex, opaque algorithms to ensure they are accurate — instead, algorithms can be made more interpretable and understandable while still being effective, he suggested. Dr. Perry pointed out that, because AI models constantly evolve, it is difficult to ascertain which version to scrutinize or monitor for accountability.
- Ranking Member Lummis asked what level of explainability companies and organizations should have to provide to consumers, to which Mr. Schmidt replied that consumers should be: (1) granted insight into what data was used to arrive at a decision; (2) able to appeal a decision, particularly when inaccurate data is used; and (3) provided with a clear way to move from being rejected to being accepted in a process.
- Citing the difficulty involved in parsing, or explaining, the decisions of AI models and the steps taken to arrive at those decisions, Sen. Menendez wondered how Congress should think about accountability and oversight of these models and their data use. Dr. Perry underscored the need for federal agencies to look at: (1) the principles guiding AI development; (2) the inputs that are being used, could be used, and are prohibited from use; and (3) the effects these models have.

- Sen. Warnock expressed concerns that AI could undermine competition in the rental space. In particular, he cited an example where AI software is used for price setting by rental property management companies, which may enable these companies to coordinate and inflate their rent prices. Ms. Rice agreed that this is a concern, adding that consumers also do not have transparency into the reasons behind price increases. She called for increased regulation to address these issues, indicating that existing fair housing and antitrust laws have been insufficient to address AI use in this space.

### Regulatory Solutions

- Ranking Member Lummis prompted the witness panel for recommendations as to how the Subcommittee should approach regulation. Dr. Perry underscored a need to ensure that AI systems are held accountable for expanding housing opportunities and to work quickly given that the housing industry is already applying this technology. Ms. Rice explained that there are already a “bevy” of existing laws and regulations applicable to AI and that there should be a multidisciplinary approach that includes insight from academics, AI developers, industry, and civil rights and human rights organizations. Mr. Schmidt concurred on both the need to move quickly and the applicability of current regulations, saying that much of AI use is already covered by existing rules.
- Chair Smith wondered whether there are any regulations or guidance around AI at the state level that Congress should look at. Mr. Schmidt highlighted a recent [insurance circular letter](#) pertaining to AI from the New York Department of Financial Services as something that may prove effective. Dr. Perry raised concern that state efforts will be fragmented, creating compliance difficulties for the private sector, especially small businesses. Sen. Cortez Masto similarly expressed an interest in hearing whether any state offers a model that may be replicated at the federal level.

### Additional Matters

- Chair Smith wanted to know more about beneficial applications of AI in the housing industry. Ms. Rice touted her organization’s findings that AI can be used to expand access to credit for people who are creditworthy but have been kept out of the financial “mainstream.” She explained that AI can be made to incorporate certain “highly predictive” variables such as people’s rental housing payment histories that are not currently considered in credit underwriting and scoring systems.
- Ranking Member Lummis raised concern about data privacy, asking how companies that use AI models for housing should be thinking about this subject. While noting that he is not a “data privacy expert,” Mr. Schmidt shared his finding that data privacy and preventing data leakages is a “high priority” of companies in the housing industry.
- Following a comment from Ms. Rice that one challenge is ensuring staff are educated and trained on AI systems and their usage, Sen. Rounds agreed that developing a “suitable” AI workforce is a necessity, asking how to achieve this goal. Mr. Schmidt called for providing financial and other incentives to non-governmental organizations and academia to provide AI training and education programs, as well as making sure to hire diverse talent — not just people from purely technical backgrounds.