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Ten Recommendations to Strengthen AI and Algorithm Auditing Laws

Cities and states around the country are increasingly enacting laws that require independent audits of algorithmic systems used in areas like employment, housing, and credit. These auditing requirements are often designed to increase transparency and address issues like algorithmic bias; to ensure that these audits serve their intended purpose, they must be comprehensive, accessible, and usable for the public, researchers, and policymakers. Seemingly minor details — like requirements for where and how audits are shared — can make the difference between audits supporting accountability and being largely ineffective.

Audit-mandating legislation and the resulting audits should include the following (see our recent research paper "Auditing the Audits" for more detail):

1. **Holistic Assessment of Algorithmic Bias and System Performance:** Laws requiring algorithm auditing should require independent auditors to assess the risk of potential bias against people in different groups, including but not limited to race, sex, age, and disability status, and intersectional groups. Legislators could look to protected categories outlined under existing civil rights laws to craft these standards. Algorithm audits should also evaluate the system(s) under audit for accuracy and validity in the context in which it is deployed, including whether the system(s) work as advertised. In these evaluations of system performance and potential for bias, both quantitative and qualitative auditing methods may be appropriate based on the context and system(s) in question.

2. **Actionable Requirements and Robust Enforcement:** For auditing laws to be effective, they should include actionable requirements, and the relevant enforcing agency must monitor deploying entities' compliance with the law. For instance, auditing laws should outline actions audited entities should take based on the findings of bias audits (such as ceasing to use tools that demonstrate bias in audits) and should provide clear penalty structures for missing audit reports. Enforcing agencies should visibly enforce those requirements, and entities subject to the auditing law should be required to register a compliant audit with the enforcing agency prior to deploying a covered automated tool.

3. **Central Repository of Audits and Standard URL Format:** Language requiring that audits be posted in a "clear and conspicuous manner" may be insufficient to ensure audits are findable. The law's enforcing agency should maintain an up-to-date, publicly available repository of audits. Entities conducting audits (auditors or the businesses whose tools they audit, including entities without public-facing websites) should be required to submit audits to the enforcing agency. In addition, entities that maintain websites should be required to post their audits on their websites at a location determined by a standardized mechanism for the law in question. By specifying how and where audits should be posted on websites, lawmakers can provide covered entities with a clear mechanism for publishing their audits and can ensure those audits are findable

for regulators, researchers, and others.

4. **Requirements for Historical Preservation and Version Control:** Audited entities should be required to keep previous audits available and not overwrite them with new versions on their websites (for those entities that maintain websites). Each new audit should be submitted regularly to the relevant enforcement agency and posted on relevant entities' websites in accordance with the standardized mechanism described above, preserving a continuous and accessible historical record of audit data.

5. **Standardized, Accessible Audit Format:** Audits are often published as PDFs or interactive webpages, but these formats are often inaccessible for users of assistive technologies and time-consuming for researchers to analyze at scale. All information required to be included in audits should be reported in a structured, machine-readable format and should align with accessibility standards (e.g., the Web Content Accessibility Guidelines or similar standards). Machine-readability need not come at the expense of ensuring readability for the public – for instance, audits could be required to include PDF-style reports (as they often do now) accompanied by CSVs or Excel files with the same information.

6. **Auditor Data and System Access:** Algorithm auditors are sometimes granted only black-box access to a system (i.e., they can only see system inputs and outputs), but greater access to the underlying system can allow for more holistic auditing than black-box access alone, including by allowing auditors to inspect the system's architecture and test separate parts of the algorithm. Legislation should contemplate more expansive access schemes where feasible. In fact, researchers have proposed many alternative access schemes that legislators could consider, depending on the context and focus of the auditing laws or regulations.

7. **Handling Missing Demographic Data:** For various reasons, demographic information such as race, sex, and age may often be unavailable for many people impacted by the tool under audit. In these instances, auditors should be required to report information about impacted people whose demographics are unavailable (including how much demographic information is missing). They should also be required to conduct the same bias analyses and report the same bias metrics as they are for groups with available information. Auditors can calculate "uncertainty bounds" that consider missing demographic data to help readers interpret their findings, such as the impact on the results if all the individuals with missing demographic data were included in each protected class.

8. **Using Representative Data and Bias Metrics:** Audits should be required to use metrics and data that clearly represent how the tool under audit is used in practice. Auditors should be required to provide detailed explanations about how data used for an audit was collected from deploying entities like employers and aggregated or filtered for analysis. The legislation mandating the audits or its implementing regulations should provide clear guidance to ensure the data and metrics used are robust and representative. For instance, auditors could be required to include datasheets or model cards about audit data and explanations of how the audit conditions represent how the tool is used in practice.

9. **Auditor Determination Guidelines:** The key takeaways of algorithm audits should be legible to a variety of audiences, including policymakers, job seekers, and the public;

one way to enable this accessibility would be for auditors to include a determination of an audit summarizing the audit's findings. Policymakers should evaluate appropriate categories of determinations based on the context of the legislation (e.g., in some contexts, "pass" or "fail" determinations may be appropriate). In all cases, legislation should specify which factors should be considered for an audit determination, and audits should clearly state their results with respect to each factor and the overall determination.

10. **Transparency on the Deploying Entity's Governance and Accountability:** At a minimum, published audit reports should include a section discussing the deploying entity's (and where relevant, the tool vendor's) governance and accountability structure, outlining who conducted and reviewed the results of the bias audit, how the deploying entity makes decisions relating to algorithmic bias — including mitigation and updates based on bias audit findings — and the names and titles of the deploying entity's relevant points of contact for questions from the public, policymakers, or researchers related to the audit.

When conducted in a holistic, ongoing, and transparent manner to examine issues including and beyond bias and discrimination, audits can support meaningful accountability and remedy algorithmic failures. But when not carefully designed, they can be ineffective or can present a misleading picture of an automated tool, potentially legitimizing discriminatory systems.

These recommendations are not exhaustive — legislatively mandated audits should also be tailored for the context in which the tools in question operate and should be accompanied by actionable protections for impacted people. While there is no one-size-fits-all approach to auditing, incorporating these recommendations into audit-mandating legislation can help ensure the resulting audits are effective and impactful.

For more information on these recommendations, contact Marissa Gerchick (mgerchick@aclu.org).