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Navigating the Rollbacks in Protection of Reproductive and LGBTQI+ Rights in the United States

A Guidance for Financial Institutions



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Disclaimer: This report does not constitute and cannot be relied upon as legal or compliance advice of any sort. Companies seeking to implement the recommendations contained in this report should obtain legal advice on how to do so in a manner consistent with their legal or regulatory obligations.

Executive Summary

Recent rollbacks of rights across the United States (US) have created a fragmented legal landscape on social issues that is destabilizing for business. This landscape exposes financial institutions (FIs) to myriad legal, reputational, and financial risks,¹ yet little guidance exists to help FIs navigate many of the pressing social issues currently at stake in the US in a principled way.

Two prominent areas subject to rollbacks are reproductive rights, including access to abortion, and the rights of LGBTQI+ people, which together could affect an estimated 70 million people.² Following the overturning of *Roe v. Wade* in June 2022, a wave of state-level abortion restrictions spread across the country. Abortion is currently illegal in 14 states and healthcare providers and others who help patients access care face financial and criminal penalties.³ In parallel, LGBTQI+ rights restrictions are proliferating, with 571 anti-LGBTQI+ equality bills introduced in state legislatures in 2023 and 77 signed into law.⁴ Many make providing gender-affirming care a felony despite widespread agreement among the medical community of the importance of such care.⁵

Driving these trends is a wave of political extremism, societal intolerance, and a coordinated attack against companies that consider environmental, social, and governance (ESG) factors when doing business. These developments have had a chilling effect on companies concerned with operating responsibly and expose FIs to complex ethical dilemmas, such as how to comply with the law while upholding the reproductive and LGBTQI+ rights of their customers, users, and workforce.

Objectives and scope

This report provides FIs with guidance on how to responsibly navigate instances in which US state laws are at odds with the principles that define human dignity—universally recognized human rights. It provides an overview of the material risks that may result from failing to support reproductive and LGBTQI+ rights and a summary of how FIs may be involved with impacts on retail and institutional customers, users, workers, and society at large. It offers practical guidance and case studies that reflect the responsible business conduct framework set out in the UN Guiding Principles on Business and Human Rights (UNGPs) and insights gathered through stakeholder engagement.

While all FIs may be connected to impacts on reproductive and LGBTQI+ rights, this report focuses on retail and commercial banks, financial technology (“fintech”)

platforms, payment processing companies, and insurance companies. The scope of activities is the provision of financial services to retail and institutional customers and users, employment practices, and political influence activities.

Material Risks for Financial Institutions in the Current US Context

Across the US, states are advancing measures that may create liability risks for FIs that want to respect reproductive and LGBTQI+ rights. These measures include public policy proposals seeking to prevent credit card companies⁶ from processing abortion-related transactions and limit employer support for out-of-state abortion care.⁷ On the other hand, operating in ways that fail to support reproductive and LGBTQI+ rights can lead to unmanaged human rights impacts that may lead to short-, medium-, and long-term business risks,⁸ such as:

Global compliance and license to operate

Governments outside the US are enacting regulations that require companies to assess, address, and report on their actual and potential human rights impacts. Failure to comply could result in damages, fines, reputational harm, and even prison time in certain jurisdictions.⁹

Employee mobility, attraction, and retention

Legal developments are undermining business competitiveness as workers prefer to live in states where abortion and LGBTQI+ rights are guaranteed.¹⁰

Investor concerns

Investors have called on FIs to disclose information on data privacy policies and practices, including how sensitive customer data is collected and handled, since these may lead to the use of financial transactions and other sensitive data for law enforcement investigations and prosecutions.¹¹

Reputation and consumer expectations

Consumers believe by wide margins that people should be free to choose whether to continue a pregnancy,¹² and civil society has sought to hold companies accountable for the impact of their data management practices on reproductive rights.¹³ Meanwhile, nearly half of US investors polled want opportunities to invest in LGBTQI+ equity and inclusion.¹⁴

Financial Institution Involvement with Impacts on Reproductive and LGBTQI+ Rights in the US

Human rights are inherent to all people regardless of nationality, sex, ethnicity, color, religion, language, or any other status, including gender identity and sexual orientation. Human rights standards are outlined in a range of international instruments, including the International Bill of Human Rights, International Labor Organization Core Conventions, and Convention on the Elimination of All Forms of Discrimination Against Women, as well as regional instruments and domestic laws that codify these instruments.

Currently in the US, FIs may be involved with adverse impacts on reproductive and LGBTQI+ rights through:

Collection of financial and other personal data

The collection, processing, and storage of sensitive data by FIs beyond data that is legally required and/or necessary for providing financial services can negatively impact customers, workers, and other data subjects where it is used by authorities to prosecute cases related to abortion and gender-affirming care.

Handling of law enforcement requests

Policies on data sharing with authorities may pose risks to individuals seeking to access reproductive or gender-affirming care as well as those providing or financing such care. FIs that adopt a traditional legal compliance approach and share transaction and/or other sensitive data with law enforcement without conducting due diligence on the validity and/or scope of requests or informing affected people may expose retail and institutional customers or users to criminal investigation or prosecution.

Barriers to accessing financial products and services

Where laws restrict reproductive healthcare and LGBTQI+ rights, FIs may be unable, unwilling, or unaware of how to ensure accessibility to financial products and services for at-risk communities and organizations who serve them.

Unequitable healthcare coverage and workplace discrimination

The rollback in healthcare protections may mean that FIs fail to provide adequate healthcare coverage, such as paid time off and support for traveling out of state to access abortion and gender-affirming care services.

Use of undue influence in public affairs

FIs may knowingly or inadvertently undermine reproductive and LGBTQI+ rights through lobbying or political donations.

The following human rights are at a heightened risk in the current US context:

Right to equality and nondiscrimination

which includes the prohibition of discrimination on the grounds of sex, gender identity, and sexual orientation,¹⁵ and at times requires affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination.



Right to the enjoyment of the highest attainable standard of physical and mental health

¹⁶ which requires access to health services without discrimination. It includes women's right to reproductive health¹⁷ and access to gender-affirming healthcare.¹⁸



Right to privacy

which enables the full development of individuals while protecting against harms that stunt human development and includes the freedom of individuals to make autonomous decisions about their bodies.¹⁹



A Principles-Based Approach to Navigating the US Context for FIs

To help FIs navigate the current US context, this report offers principles-based guidance that builds on the UNGPs framework and incorporates insights gathered through stakeholder engagement. The UNGPs offer FIs a structured, widely accepted, and increasingly legally mandated roadmap to help companies respond when governments fail to protect human rights. By aligning with this approach, FIs will be better equipped to assess the implications of legislative developments on their business, identify how they may be connected to adverse impacts on customers, users, and workers, weigh competing stakeholder claims, and respond in ways that uphold human dignity.

Steps

Recommendations

1 Commit to Reproductive and LGBTQI+ Rights and Embed in Governance

- Adopt an enterprise-wide policy commitment to respect human rights even where national law conflicts with human rights, and seek to honor human rights principles within the boundaries of the law.
- Establish systems to escalate decisions related to conflicting legal requirements to higher decision-making bodies at headquarters, group, or parent company level, enabling potentially high-risk compliance decisions to be centralized and placing distance between the decision-maker and company staff at the local level.

2 Assess Impacts on Reproductive and LGBTQI+ Rights

- Undertake human rights assessments to identify and assess high-risk jurisdictions, operations, and financial services where reproductive and LGBTQI+ rights are at risk.

Steps

Recommendations

3 Integrate Assessment Findings Across Business Functions and Act

- Engage in responsible data collection, storage, and use practices, including by limiting the amount of information collected, adopting a human rights lens to “Know Your Customer” due diligence, and enabling customers to give informed consent for all data collected.
- Respond to law enforcement requests in a human rights-sensitive way to avoid overcompliance. Where legally permitted, notify retail and institutional customers and users as soon as possible after receiving data requests from authorities.
- Ensure equitable treatment in the provision of financial services, including by addressing potential negative impacts on health-care providers and abortion funds resulting from FI de-risking activities, and by establishing effective grievance mechanisms for customers and users.
- Ensure equitable access to healthcare and prohibit discrimination in the workplace, including by supporting workers and their families to go out of network and/or out of state to access safe abortions and gender-affirming care, safeguarding their privacy and safety, and providing effective mechanisms for workers to submit grievances.
- Support public policy measures that protect reproductive and LGBTQI+ rights and push back against measures that further undermine them, including through multi stakeholder collaboration and litigation.

4 Monitor Effectiveness of Measures and Adapt

- Develop key performance indicators (KPIs) that reflect a “theory of change” approach to managing risks to reproductive and LGBTQI+ rights to monitor the impact and effectiveness of measures over time.
- Where using leverage fails to create change in support of reproductive and LGBTQI+ rights, consider exiting the jurisdiction.

5 Demonstrate Efforts to Respect Reproductive and LGBTQI+ Rights, Where Possible

- To the extent that it is safe to do so, publicly communicate how the company manages severe risks to reproductive and LGBTQI+ rights.
- Disclose a state-by-state breakdown of data requests for customer or user data, type of information requests, reasons for requests, and whether requests could be shared directly with data subjects.

I. Introduction

Recent legislative rollbacks of rights across the United States (US) have created a fragmented and often conflicting legal landscape on social issues that is destabilizing for business. Two prominent areas subject to rollbacks are abortion and reproductive rights and the rights of LGBTQI+ people, which together could affect an estimated 70 million people.²⁰

Following the overturning of *Roe v. Wade* in June 2022, a new wave of state-level abortion restrictions has spread across the country. Abortion is currently illegal in 14 states, while in many other states increased litigation causing confusion and policy proposals aim to restrict employer benefits.²¹ Healthcare providers face the prospect of financial and criminal penalties, creating a chilling effect even in states where legal exceptions for the life of the mother exist, meaning women²² risk death or permanent injury due to the delayed response of medical professionals. Recently, IVF procedures, which many employer-sponsored benefits programs support and use to attract talent, were ensnared in abortion restriction measures.

In parallel, widespread LGBTQI+ rights restrictions across state legislatures are proliferating despite US Supreme Court decisions to protect same-sex marriage and prohibit workplace discrimination based on sexual orientation and gender identity. In 2023, 571 anti-LGBTQI+ equality bills were introduced in state legislatures around the country and 77 were signed into law.²³ Many make providing gender-affirming care a felony despite widespread agreement among the medical community of the importance of such care.²⁴

Driving this regulatory trend is a wave of political extremism and societal intolerance and a coordinated attack against companies that consider environmental, social, and governance (ESG) factors when doing business. Coupled with growing—and in some cases, diverging—stakeholder expectations, these developments have had a chilling effect on companies concerned with operating responsibly and respecting human rights in the US.

These developments now affect financial institutions (FIs), including consumer banks, financial technology ('fintech') platforms, credit card issuers, and insurance companies. New laws influence how FIs safeguard sensitive customer or user data in the face of law enforcement requests, whether workers have access to equitable healthcare, and even whether FIs can respectfully provide financial services to their institutional and individual customers.²⁵

Cost of Care and Financial Trail

This patchwork landscape exposes FIs to complex dilemmas and myriad legal, reputational, and financial risks. While supporting reproductive and LGBTQI+ rights may raise legal and reputational risks when operating in certain states, restrictions on access to healthcare compound provider shortages and deserts, create avoidable medical emergencies,²⁶ and impose financial and travel burdens for businesses, employees, and customers.²⁷ This affects the ability of businesses to attract and retain talent and undermines FIs own stated commitments and aspirations on human rights, including women’s rights, gender equity, and LGBTQI+ inclusion.

GAS	8.5 hr drive	\$129
MOTEL		\$75
FOOD		\$72
CHILD CARE		\$540
MEDICAL CARE		\$550
Total :		\$1429
Cash :	+ \$304 lost wages	
Change :		
Bank :		
**** ** 1234		
TOTAL = \$1733		

Complying with regressive state-level legislation also conflicts with consumer and investor expectations, state-level protections in other jurisdictions, and international human rights standards and responsible business conduct frameworks that are increasingly embedded in law around the world. These include the UN Guiding Principles on Business and Human Rights (UNGPs) and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, which are at the heart of the European Union’s (EU) Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD).

Put simply: “staying out of it” to avoid material risks is not realistic or feasible. However, little guidance exists to help FIs navigate many of the pressing social issues currently at stake in the US in a principled way. Other industries have come together to consider how to navigate similar challenges, such as the tech sector through the creation of the multistakeholder Global Network Initiative (GNI), which helps tech companies navigate law enforcement data requests that undermine human rights.

A **principles-based approach** to navigating conflicts between domestic law and international human rights may also be applied to a range of other social issues, including gun safety, where the regulatory and public policy landscape for the sale and purchase of firearms vary widely by state. Some regulatory gaps and public policy measures have contributed to severe harms on the right to life and children’s rights across the US and raised material risks for the financial sector.

In such a fraught environment, FIs will benefit from taking a principles-based approach to proactively and deliberately manage the ethical dilemmas that arise from complying with the law. This approach should be grounded on the principles that define human dignity—universal human rights standards. Recognizing that governments may be unwilling or unable to uphold human rights, the UNGPs offer FIs a globally agreed-upon human rights risk management framework for respecting human rights created through extensive engagement with businesses, investors, governments, civil society, trade unions, and Indigenous Peoples.

By conducting human rights due diligence in line with the UNGPs, FIs have a roadmap to proactively: (1) assess their connection to actual or potential negative human rights impacts in a given jurisdiction and, where necessary, weigh competing stakeholder claims; (2) act on these findings across business functions to prevent and mitigate harms; (3) track the effectiveness of these measures over time and adjust accordingly; and (4) communicate the effectiveness of these efforts to affected stakeholders.

The UNGPs also provide a standard of conduct against which consumers, civil society, and societies can evaluate the adequacy of FIs' actions and hold them to account for the measures they take or fail to take.

Objectives, Methodology, Scope, and Target Audience

This report provides FIs with guidance to help them responsibly navigate instances in which US state laws are at odds with universally recognized human rights. It provides a summary of the legal landscape and how FIs may be involved with impacts on retail and institutional customers, users, workers, and society at large. It gives an overview of the material risks that may result from failing to support reproductive and LGBTQI+ rights and offers practical guidance, case studies, and resources that reflect the responsible business conduct framework set out in the UNGPs.

To assess the impacts and material risks at the intersection of FI practices and legislative rollbacks, BSR conducted desk-based research and interviewed stakeholders, including civil society organizations, healthcare providers, academia, FIs, and other relevant companies. Building on these insights, as well as the UNGPs and OECD Guidelines for Multinational Enterprises,²⁸ BSR developed recommendations to help guide FI efforts to respect human rights to the greatest extent possible in the current context.

All FIs may be connected to actual or potential negative impacts on people linked to the changing legal landscape, either through their own operations or through their business relationships across the value chain, including corporate and institutional clients, portfolio companies, suppliers, and subsidiaries. FIs have a responsibility to respect human rights in all their activities, across all business functions, and throughout their entire value chain.

For the purposes of this report, however, the focus is limited to specific sub-industries and activities, which were identified as priorities during the research process. This includes the consumer-facing financial services, employment

practices, and political influence activities of the following institutions:



Retail and commercial banks that offer financial products or services, including deposit or small business accounts, personal or commercial loans, and credit cards to individuals and nonprofits, such as healthcare providers and abortion funds;



Financial technology ('fintech') platforms that facilitate financial transactions such as account transfers, bill payments, or credit applications;



Payment processing companies that initiate payment transfers from verified customer accounts to merchant or vendor accounts; and



Insurance companies that guarantee payment for a future occurrence to policyholders, including property and life insurance.

Material Risks for Financial Institutions in the Current US Context

The fragmented legal landscape faced by many FIs raises ethical dilemmas that directly and indirectly affect how they operate and their impact on employees, customers, users, and other stakeholders in their value chain. This is coupled with a growing number of investors, customers, employees, and members of the public who either expect businesses to fill the void left where legislative protections fall short or demand that companies “stay out of politics.”

Societal backlashes on issues where stakeholder opinion diverges raise a range of legal, reputational, and financial risks for companies across industries. For instance, when the decision arrived in *Dobbs v. Jackson Women’s Health Organization* to overturn the federal protection for abortion in 2022, relatively few companies spoke out, citing concerns of a backlash.²⁹ Citigroup was the first major bank to act in anticipation of abortion restrictions by committing to pay travel costs for employees affected by abortion bans, leading to House Republicans calling on the federal government to cancel contracts with the bank and a Texas lawmaker threatening legislation that would prevent Citigroup from underwriting municipal bonds.³⁰ In 2023, Target also saw coordinated campaigns culminating in the destruction of store property and harassment of employees over its support for the LGBTQI+ community, while Bud Light suffered a reputational backlash over its partnership with a transgender influencer.³¹

While operating in ways that support reproductive and LGBTQI+ rights can have negative consequences for the bottom line, unmanaged adverse human rights impacts connected to the shifting legal landscape can also lead to short-, medium-, and long-term business risks.³²

- **Standards recognize that impacts on human rights are or may become financially material:** The European Sustainability Reporting Standards (ESRS) highlight that a company’s material impacts on people and financially material risks and opportunities are interdependent. Assessment of a company’s human rights impacts should therefore be the starting point for assessing the short-, medium-, or long-term financial risks and opportunities that arise from a company’s impacts on people.³³
- **Global compliance and license to operate:** Governments outside the US are increasingly adopting laws that require companies to assess, address, and report on their human rights impacts. The EU CSRD sets out sustainability reporting requirements that include disclosure of a company’s negative impacts on workers, communities, consumers, and end-users and how these are managed.³⁴ Once enacted, the EU’s CSDDD will require large companies, including financial institutions, to identify and address actual and potential negative human rights impacts connected to their own operations, those of their subsidiaries, and those of their upstream business partners.³⁵ This means that FIs in scope will be required to address impacts on their own workforce and on retail customers and users. While penalties for noncompliance with these laws will depend on the specific sanctions established by the EU country where the company operates, they may include damages, fines, and even prison³⁶ and lead to loss of business contracts and future opportunities.
- **Employee mobility, attraction, and retention:** Supporting comprehensive healthcare access helps companies improve their own competitiveness for talent, especially among younger workers. Various studies have shown that most workers now prefer to live in states where access to abortion³⁷ and LGBTQI+ rights are guaranteed:
 - By a margin of two to one, workers want to live in states where abortion is legal and accessible. In 2023, half of workers polled expressed concern for themselves or their partner being criminally charged or going to prison for having an abortion in a state where it is illegal. Over a third of workers were also concerned about having enough money for themselves or their partner to travel out of state for an abortion.³⁸



“Texas’s confusing medical exceptions increase business costs, drive away talent, and threaten workforce diversity and well-being.”

– Whitney Wolfe Herd, founder and former CEO of Bumble Inc.

- A 2022 study found that 86 percent of women polled agreed that controlling if and when to have children had been important to their careers. Seventy percent of women ages 18-44 would be discouraged from taking a job in a state that restricts access to abortion, while 83 percent wanted employer insurance to cover reproductive care.³⁹
- In 2023, one in three LGBTQI+ adults would consider moving from a state that enacted a ban on gender-affirming care.⁴⁰

“We are deeply concerned by the bills being introduced in state houses across the country that single out LGBTQI+ individuals—many specifically targeting transgender youth—for exclusion or differential treatment. ... These bills would harm our team members and their families, stripping them of opportunities and making them feel unwelcome and at risk in their own communities. As such, it can be exceedingly difficult for us to recruit the most qualified candidates for jobs in states that pursue such laws, and these measures can place substantial burdens on the families of our employees who already reside in these states. Legislation promoting discrimination directly affects our businesses, whether or not it occurs in the workplace.”

– 335 company signatories of the Business Statement Opposing Anti-LGBTQI+ State Legislation

Investor concerns: Shareholders are calling on FIs to pay attention to social issues, including ensuring the privacy of consumers seeking abortions. Investors have called on FIs to disclose information on data privacy policies and practices, including how sensitive customer data is collected and handled, because these may lead to the use of financial transaction and other sensitive data for law enforcement investigations and abortion prosecutions.⁴¹

Reputation and consumer expectations:

- Civil society and consumers also expect companies to safeguard privacy rights, respect reproductive and LGBTQI+ rights, and be consistent in their messaging on these topics.

In November 2023, 40 businesses and business people joined an amicus brief arguing that the ambiguity in Texas’s abortion laws:



- Has negative consequences for talent recruitments and retention
- Discourages pregnant women from other states to travel to Texas for business meetings; and
- Prompts conference organizers to move events to other states.

– ***Amicus brief in Zurawski v. Texas***

- In 2022, civil society efforts drew attention to human rights due diligence practices of FIs related to the collection and use of sensitive data affecting individuals seeking abortion care.⁴²
- A data privacy and ethics survey⁴³ found that in 2023, 86 percent of Americans were more concerned about their privacy and data security than the state of the US economy.⁴⁴ An earlier KPMG study found that 87 percent of consumers regard data privacy to be a basic human right.⁴⁵
- In 2022, 79 percent of Gen Z respondents in an AAMC Center for Health Justice poll believed that people should have the right to decide if they want to continue their pregnancy.⁴⁶ Since the Supreme Court overturned *Roe*, seven states, including Ohio, Kansas, Kentucky, Montana, and Michigan, introduced bellwether ballot initiatives to further restrict abortion that were rejected by voters, affirming that the overwhelming majority want decisions about healthcare to remain between patients and providers.⁴⁷
- In 2023, a Morgan Stanley survey found that nearly half of US investors want opportunities to invest in LGBTQI+ equity and inclusion, across a broad range of products and strategies.⁴⁸
- The American Bar Association noted that political donations to candidates who do not fully align with a company's stated values are likely to create difficulties in recruiting and retaining employees, shareholder dissatisfaction, public backlash, and boycotts.⁴⁹ Reports have found that companies that claim to back the LGBTQI+ community have also made political contributions to state lawmakers who advance anti-transgender bills⁵⁰ and federal lawmakers who voted against the Equality Act.⁵¹

Key Standards and Frameworks

A principles-based approach to managing operational dilemmas in the current context involves looking to universally agreed-upon human rights standards, which establish the elements underlying the dignity and well-being of individuals and communities, including women and LGBTQI+ individuals.

Human rights are inherent to all people regardless of nationality, sex, ethnicity, color, religion, language, or any other status, including gender, gender identify, and sexual orientation. Human rights standards are outlined in a range of instruments, including:

- The International Bill of Human Rights (composed of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights)
- International Labour Organization (ILO) Core Conventions
- Specific human rights instruments that define rights relevant to certain groups in society, including Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁵²
- American Convention on Human Rights and associated human rights jurisprudence
- Domestic laws that codify the human rights set out in international and regional human rights instruments

Universal Declaration of Human Rights



Article 1

Free and equal



Article 2

Freedom from discrimination



Article 3

Right to life



Article 4

Freedom from slavery



Article 5

Freedom from torture



Article 6

Right to recognition before the law



Article 7

Right to equality before the law



Article 8

Access to justice



Article 9

Freedom from arbitrary detention



Article 10

Right to a fair trial



Article 11

Presumption of innocence



Article 12

Right to privacy



Article 13

Freedom of movement



Article 14

Right to asylum



Article 15

Right to nationality



Article 16

Right to marriage and to found a family



Article 17

Right to own property



Article 18

Freedom of religion or belief



Article 19

Freedom of expression



Article 20

Freedom of assembly



Article 21

Right to partake in public affairs



Article 22

Right to social security



Article 23

Right to work



Article 24

Right to leisure and rest



Article 25

Right to adequate standard of living



Article 26

Right to education



Article 27

Right to take part in cultural, artistic, and scientific life



Article 28

Right to a free and fair world



Article 29

Duty to your community



Article 30

Rights are inalienable

Human rights are indivisible, interdependent, and interrelated; the improvement or enjoyment of one right facilitates the advancement of others, and where one right is deprived, it affects the enjoyment of others. For instance, impacts on women’s reproductive health may also impact their rights to life, health, privacy, adequate standard of living, education, and to be free from discrimination.

The following human rights are at a heightened risk in the current US context:

▶ **Right to equality and nondiscrimination**, which includes the prohibition of discrimination on the grounds of sex, gender identity, and sexual orientation,⁵³ and at times requires affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination.



▶ **Right to the enjoyment of the highest attainable standard of physical and mental health**,⁵⁴ which requires access to health services without discrimination. It includes women’s right to reproductive health⁵⁵ and access to gender-affirming healthcare.⁵⁶



▶ **Right to privacy**, which enables the full development of individuals while protecting against harms that stunt human development and includes the freedom of individuals to make autonomous decisions about their bodies.⁵⁷



Who Is Responsible for Human Rights?

International human rights law establishes that governments have the primary duty to respect, protect, and fulfill human rights, which requires the adoption and enforcement of effective policies, legislation, and regulations. This includes various protections against human rights harm by business, including labor, nondiscrimination, health and safety, environmental, land, and consumer protection laws. In some countries, human rights are explicitly protected in the constitution or in national legislation.

Companies, including FIs, do not have direct international human rights obligations and are instead regulated domestically at the national and local levels, where governments have wide discretion for how they uphold human rights. As a result, domestic measures,

Business responsibility to respect human rights in all contexts

Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.

—Commentary of UN Guiding Principle 23

Anonymous case studies

Companies operating abroad have adopted innovative approaches to respecting human rights in contexts that criminalize LGBTQI+ people:

- A company provides rent and cleaning fees for multi-bedroom apartments to its workers in a jurisdiction with anti-LGBTQI+ criminal laws to help maintain the appearance that same-sex partners are living in separate rooms.
- A company supports employees assigned to anti-LGBTQI+ jurisdictions who are unable to obtain spousal visas or residency permits for their partners by providing additional leave allowance so they may regularly visit home and maintain family relationships.



including federal and state laws, may not address all human rights, leaving gaps in law that expose people to harm in the face of business or, in some cases, may directly conflict with human rights, compelling business to undermine human rights despite their efforts to the contrary.

The UNGPs—unanimously endorsed by governments in the UN Human Rights Council in 2011—were created in recognition that governments are not always willing or able to protect human rights in their jurisdictions, creating a vacuum whereby businesses may harm human rights with impunity.

The UNGPs do not expect companies to step in for every government failure; rather, they clarify that businesses have a responsibility to respect human rights by avoiding negative human rights impacts wherever they operate. **Where domestic laws fall short of internationally recognized human rights, companies should uphold the higher standard. And where laws conflict with those standards, they should seek ways to honor human rights principles within the boundaries of the law.**⁵⁸

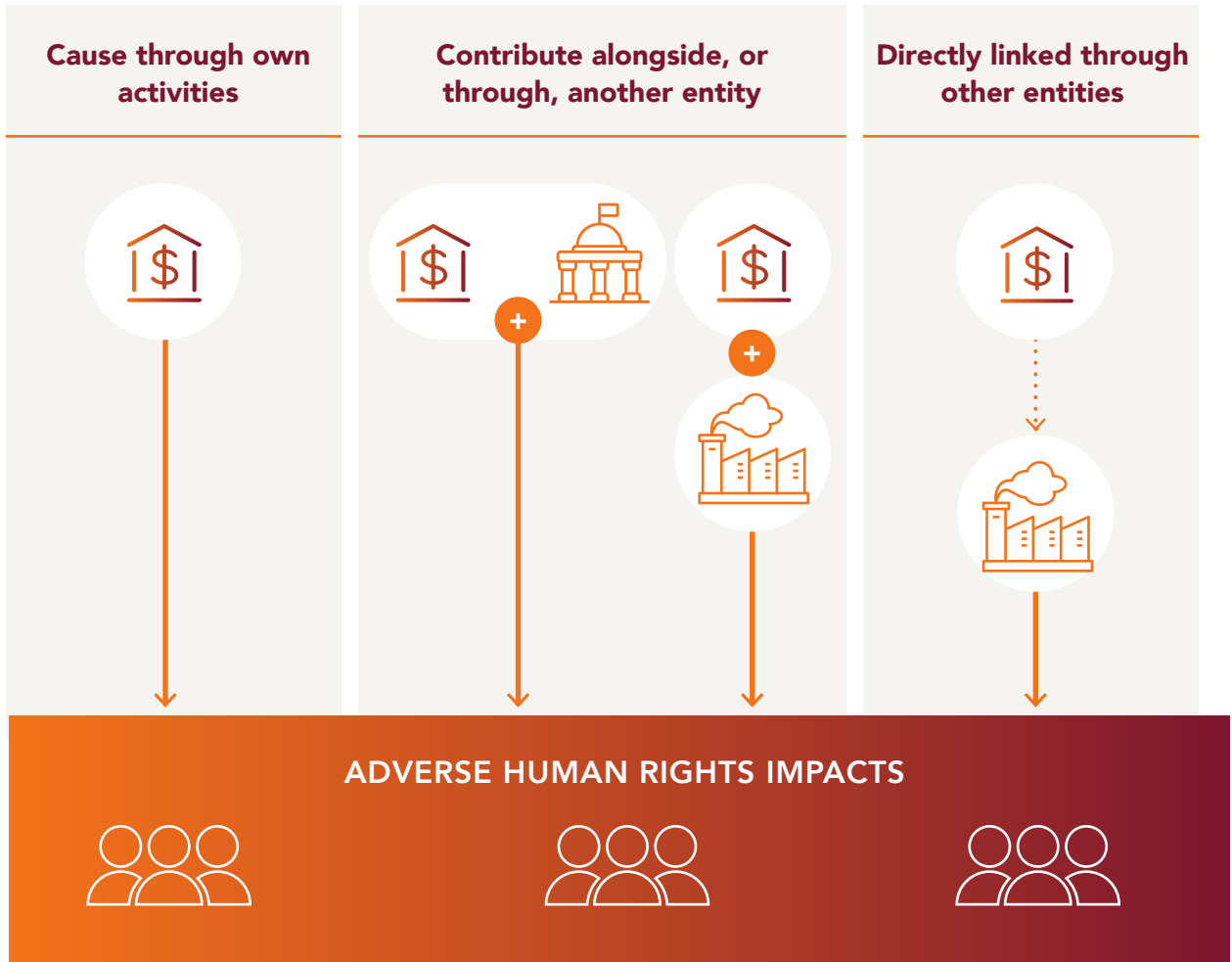
For instance, although the US has not ratified CEDAW and some state laws conflict with its provisions, companies operating within the US are expected to respect the rights of women codified in the convention.⁵⁹

To help companies achieve this vision, the UNGPs provide businesses of all sectors and sizes with an operational framework to help them navigate identify, prevent, mitigate,

and account for how they address adverse human rights impacts. In doing so, they provide an essential roadmap for FIs seeking to operate in the US with respect for human rights, including reproductive rights and the rights of LGBTQI+ people.

How Are FIs Involved with Human Rights Impacts?

The UNGPs clarify that a business may be involved with negative human rights impacts in three ways:



Attributing a business’s involvement in human rights risk or harm has implications for what an appropriate response is and whether a business has a role to play in remedy. The concept of remedy aims to restore individuals or groups that have been harmed by a business’s activities to the situation or condition they were in prior to the negative impact.

II. Rollbacks of Human Rights Protections and Implications for Financial Institutions

With increased polarization and political movements gaining traction at various levels through elected officials, judicial appointments, and regulatory authorities, the US has been undergoing a rollback of legislative and judicial progress on human rights and social justice across the country.⁶⁰ This has implications for how companies in high-risk jurisdictions—those states where rollbacks of human rights protections are most acute—operate and may result in FIs being connected to adverse human rights impacts due to their efforts to comply with these rollbacks.

The following section provides an overview of recent legislative developments pertaining to reproductive and LGBTQI+ rights and examples of how FIs may be connected to adverse human rights impacts.

Restrictions on Reproductive Rights

Access to reproductive rights has been significantly curtailed across the country since the June 2022 Supreme Court decision in *Dobbs v. Jackson Women’s Health Organization*, which overturned *Roe v. Wade*—the landmark 1973 ruling that established constitutional protection for abortion. The UN High Commissioner for Human Rights called the Dobbs ruling “a major setback after five decades of protection for sexual and reproductive health and rights in the US” and “a huge blow to women’s human rights and gender equality.”⁶¹

As of October 2023, more than 900 abortion-related bills had been introduced across the US aiming to either restrict abortion access or protect it. Of the bills that impose abortion restrictions, 58 were enacted.⁶² As of March 2024, 14 states enforce full bans on abortion, in most cases without exceptions for rape or incest, while other states significantly restrict access.⁶³ Laws also include cross-border restrictions on abortion care, telemedicine, and medication abortion.⁶⁴

Penalties target abortion providers and include fines of up to \$100,000 and prison time ranging from 10 to 99 years.⁶⁵ An alarming trend in 2023 was the introduction of legislation seeking to criminalize pregnant people.⁶⁶ Meanwhile, Texas and Oklahoma ban “aiding and abetting” abortion, which could impact employers who fund employee out-of-state abortion care or travel because laws expressly state that aiding and abetting an abortion can include “paying for or reimbursing the costs of an abortion through insurance.”⁶⁷

In states where abortion is illegal or highly restricted, and health insurance providers no longer cover abortion care. Individuals seeking abortion instead use personal credits cards, debit cards, cash, and fintech such as Apple Pay to cover abortion-related expenses, including medication, telehealth visits, out-patient care, and surgical interventions.⁶⁸ The farther individuals must travel to access abortion care, the longer the financial trail.

Experts note that to build their case, prosecutors may work in collaboration with law enforcement to gather online information, such as purchasing history.⁶⁹ This could include the purchase of a pregnancy test on fintech apps where financial history is public.⁷⁰ As abortion funds, which raise and distribute money to people who need

Bills targeting business

Some states have proposed criminal sanctions for companies, including Texas, which introduced bills that would ban credit card companies from processing abortion-related transactions.

Five states introduced bills to restrict cross-border abortion care by seeking to prohibit contracts with companies that assist employees with out-of-state care.



Individuals seeking abortion instead use personal credits cards, debit cards, cash, and fintech such as Apple Pay to cover abortion-related expenses, including medication, telehealth visits, out-patient care, and surgical interventions.

help paying for abortions, are increasingly targeted,⁷¹ authorities are more likely to compel FIs, payment apps, and fundraising sites to release customer information.

In 2022, the US Senate reintroduced the “My Body, My Data Act.” If passed, it would protect sensitive sexual and reproductive health data collected by entities under the Federal Trade Commission’s jurisdiction (such as fintech companies) by establishing data minimization requirements and enshrining individuals’ right to access and delete their health data.⁷²

Impacts on Women and Reproductive Rights

An estimated one in four women in the US will end a pregnancy during their lifetimes. The impact of these restrictive laws is widespread and infringes on “dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health.”⁷³ The UN and others have warned of the chilling effect these laws have on healthcare providers who must make medically necessary or life-saving abortions and related procedures.⁷⁴ This undermines legal “exceptions” for the life of the mother, as providers are unwilling to help patients until they are close to dying, resulting in patients being severely and permanently injured due to doctor delays.⁷⁵ This takes place in a context where the maternal mortality rate has for years exceeded that of other high-income countries, with exceptionally high rates of maternal death for Black women.⁷⁶

Decades of research find that access to safe abortions has kept many American women from falling into poverty.

Restrictions also undermine women’s right to an adequate standard of living.⁷⁷ Access to safe abortion has expanded women’s participation in economies and labor markets around the world.⁷⁸ Decades of research finds that access to safe abortions has kept many American women from falling into poverty. This disproportionately impacts lower-income Black and Hispanic women because they are more likely to lack the financial resources and ability to get time off work to travel out-of-state for care.⁷⁹



Bills targeting FIs

Kansas bill SB224 discourages fiduciaries from making investment decisions based on a company's policies or practices related to transgender rights, among other issues. It calls for Kansas' pension funds to divest from entities engaged in so-called ideological boycotts and requires the state treasurer to publish a list of FIs considered to be involved in such boycotts.



KANSAS

Restrictions on LGBTQI+ Rights

In June 2023, the US Supreme Court ruled it was constitutional for businesses to, in certain circumstances, discriminate against same-sex couples in the provision of services. While the Court reached this decision on the grounds of free expression,⁸⁰ the petitioner argued that her religion required her to turn away same-sex couples. This is a violation of international human rights law as states are obliged to ensure that LGBTQI+ people are not discriminated against when seeking access to goods and services.⁸¹

This decision came in the midst of a flurry of action across state legislatures, with a record number of anti-LGBTQI+ bills in 2023, more than double the number from 2022.⁸² Of the 510 anti-LGBTQI+ bills, 84 have been enacted in 21 states.⁸³

Laws disproportionately target transgender people, including bans on gender-affirming care for children and adolescents and instruction related to gender identity and sexual orientation (e.g., Florida's "Don't Say Gay or Trans"⁸⁴ bill).⁸⁵ More and more states, including Texas, Florida, Oklahoma, Ohio, and South Carolina, are considering restricting or banning gender-affirming healthcare for adults.⁸⁶

Laws criminalize supportive family members and healthcare providers, and at least five make it a felony to provide gender-affirming care.⁸⁷ Some states impose penalties for knowingly aiding and abetting minors in accessing evidence-based gender-affirming care supported by international guidelines and the American Academy of Pediatrics.⁸⁸ Parents have been subjected to child abuse investigations and, in some cases, children may be taken from parents who seek to support their children.⁸⁹

Gender-affirming care may require ongoing medical visits, medication, and other interventions. In contrast to abortion, such care extends the digital and financial paper trail over time and increases the travel and financial burdens that individuals and families face as they seek care.

Attacks on transgender people extend to barring their access to bathrooms consistent with their gender identity. In 2023, 15 states proposed over two dozen so-called bathroom bills,⁹⁰ and at least six states signed such bills into law, forcing businesses to bar transgender employees and customers from using bathrooms that correspond with their gender identity.⁹¹ States have also restricted transgender people's ability to update gender markers on government identification, including driver's licenses and birth certificates,⁹² and banned drag performances, limiting the entertainment businesses can offer.⁹³

Impacts on LGBTQI+ People

In November 2023, the UN Human Rights Committee found that US state laws “jeopardize a range of civil and political rights, including rights to nondiscrimination, expression, information, privacy, security of the person, life, and freedom from cruel, inhuman, and degrading treatment.”⁹⁴ Trans and gender-diverse people whose identity is not adequately recognized may be deprived of their right to health and may suffer from discrimination in employment, housing, and access to social security.⁹⁵

In 2023, 80 percent of LGBTQI+ adults reported “gender-affirming care bans make them feel less safe.”⁹⁶ More than half of LGBTQI+ parents surveyed in Florida consider fleeing the state because of the state’s anti-LGBTQI+ laws.⁹⁷ Hate crimes against the LGBTQI+ community are on the rise, increasing every year since 2018. The Federal Bureau of Investigation found that in 2022, hate crimes targeting gay men reached 1,075, while anti-lesbian incidents numbered 622—the highest totals in the past five years and a 10 percent increase since 2021. A nearly 40 percent rise was observed in reported anti-transgender incidents (totaling 338) compared to 2021.⁹⁸ Of the transgender and nonbinary people murdered in 2022 to 2023, 90 percent were people of color and 70 percent were transwomen, illustrating the nexus of harm experienced on the basis of race and a culture of transmisogyny.⁹⁹

While the US Supreme Court ruled in 2020 that workplace discrimination against LGBTQI+ people was unconstitutional,¹⁰⁰ half of LGBTQI+ adults surveyed in 2022 reported experiencing “some form of workplace discrimination or harassment in the past year,”¹⁰¹ a trend likely to continue as state-based discrimination proliferates.

80% of LGBTQI+ adults reported “gender-affirming care bans make them feel less safe.”⁹⁶ More than half of LGBTQI+ parents surveyed in Florida consider fleeing the state because of the state’s anti-LGBTQI+ laws.⁹⁷

Financial Institution Involvement with Impacts on Reproductive and LGBTQI+ Rights

Against this backdrop, FIs may be involved with negative human rights impacts related to abortion access and LGBTQI+ rights through:

→ **Collection and storage of sensitive or personal information beyond what is legally required and/or necessary for the purposes of providing the service**

The privacy policies of several FIs provide examples of personal information collected when customers open accounts, conduct transactions, or seek advice. Such information may include location data, computer or mobile device information (e.g., pages visited, relationship information, and inferred information), and may be collected directly from customers, closed-circuit television cameras, or third parties such as social media platforms, vendors, or other data sources. Social media messages have already been successfully used as evidence in a Nebraska court to prosecute a mother for helping her teenage daughter obtain abortion pills.¹⁰² In the financial services context, financial apps may collect personal data, including geolocation data, transaction history, and vendor or merchant information, that may be used to prosecute individuals for seeking or providing abortion care. While credit card issuers do not usually have itemized lists of every item a customer pays for, purchases made at an online pharmacy that only sells abortion pills, at an out-of-state Planned Parenthood,¹⁰³ or at gender-affirming care clinics could be used as evidence by prosecutors.

Damaging Data: Human Rights Due Diligence and Reproductive Rights

In 2022, the Business & Human Rights Resource Centre surveyed 63 technology and financial companies operating in the US and collecting user or payment data that could be used to target people seeking, providing, or facilitating access to reproductive healthcare. The report found:

- Limited transparency on the collection, storage, and use of sensitive data;
- Gaps in human rights due diligence measures to assess the human rights implications of data collection in the current US context and prevent and mitigate harms;
- A “woeful lack of knowledge on how data collection could contribute to violating users’ rights;” and
- Gaps in company policies and practices regarding government requests for access to information.

→ **Handling of law enforcement requests**

Company policies on data sharing with law enforcement and other government agencies may pose risks to individuals seeking to access reproductive or gender-affirming care as well as those providing such care. FIs that adopt a traditional legal compliance approach and share customer, user, and/or transaction data with requesting law enforcement without requiring a legal basis, conducting due diligence on the validity and/or scope of requests, or informing affected customers may expose customers to criminal investigation or prosecution.

→ **Unequal access to financial services through de-risking activities**

Policies and customer due diligence procedures implemented by FIs aimed at customer de-risking may lead to a disruption of services for nonprofit organizations flagged as high-risk. For instance, stakeholders noted that bank and payment platform policies on suspicious activities may consider the frequency of transactions as an indicator of fraudulent use. This may be at odds with the needs of reproductive rights organizations, such as abortion funds that provide financial support to thousands of clients via individual transactions, leading to frequent punitive actions on accounts held and managed by such organizations (including account freezes, suspensions, and reductions in transaction limits) without notice or access to remedy. Concerns over reputational risks could also lead to de-risking institutional customers, such as healthcare providers, in jurisdictions that limit or ban the provision of abortion or gender-affirming care, potentially further exacerbating the challenges people may face in accessing healthcare.

→ **Discrimination against retail and institutional customers, including those seeking insurance, loans, deposit accounts, or digital accounts**

For instance, in 2023, a lesbian bar in Texas was denied insurance for hosting a drag show,¹⁰⁴ and in 2022, 52 percent of LGBTQI+ survey respondents said they struggled to get a mortgage, compared with 38 percent of non-LGBTQI+ people.¹⁰⁵ LGBTQI+ people also face discrimination in accessing life insurance.¹⁰⁶ A 2022 study also found that identification requirements, such as official documentation of legal name or gender marker, could be dangerous for transgender or nonbinary individuals and may prevent them from accessing deposit accounts or other financial products.¹⁰⁷ Fraud detection measures may also flag accounts of transgender persons where inconsistencies between names and gender markers or voice on the phone may exist.

→ **Inequitable provision of healthcare and access to facilities**

As health insurance is tied to employment in the US, FIs that fail to provide access to reproductive healthcare as part of insurance coverage or through alternative programs aimed at supporting access to safe abortions undermine right to health. They may also fail to provide coverage to gender-affirming healthcare and appropriate facilities, including bathrooms that correspond to an individual's gender identity. According to a 2022 study, one in three LGBTQI+ adults—and more than half of transgender or nonbinary respondents—report postponing or avoiding medical care due to cost and gaps in employer-provided health insurance, which can have significant impacts on the right to health of employees.¹⁰⁸

→ **Use of undue influence in public affairs**

Through political donations or lobbying activities, FIs may knowingly or inadvertently undermine reproductive rights, access to safe abortions,¹⁰⁹ and LGBTQI+ rights.¹¹⁰ For instance, a 2022 investigation into corporate sponsors of so-called abortion trigger laws found that financial industry donors had given \$1.6 million to the lawmakers behind these laws.¹¹¹

III.A Principles-Based Approach to Navigating the US Context

The rise of regressive laws and currents of societal intolerance have implications for how FIs operate. FIs are encouraged to be proactive and deliberate in their efforts to navigate the difficult decisions that inevitably arise when operating in states that restrict and criminalize reproductive and LGBTQI+ rights.

The UNGPs offer a structured and widely accepted roadmap for companies seeking to operate responsibly in contexts where governments fail to protect human rights. By adopting a principles-based approach in line with the UNGPs, FIs will be better equipped to assess the implications of legislative developments for how they operate and impact people, weigh competing stakeholder claims, and uphold human dignity.

The core expectations of this approach are that FIs adopt a policy commitment to respect internationally recognized human rights irrespective of operating context, carry out human rights due diligence to identify, prevent, mitigate, and account for actual and potential adverse human rights impacts, and establish effective grievance mechanisms so that people negatively impacted have access to remedy.

The focus of due diligence is on identifying and managing impacts on people as the

Resources

Several resources exist to support FI efforts to respect the human rights in their own operations and throughout the value chain.

- [Human Rights Roadmap for Transforming Finance](#), BSR
- [Responsible Business Conduct in the Financial Sector](#), OECD
- [Investor Toolkit on Human Rights](#), Investor Alliance for Human Rights
- [Why and How Investors Should Act on Human Rights](#), UN PRI
- [Doing Business with Respect for Human Rights](#), UN Global Compact Network Netherlands, Shift, Oxfam
- [Financial Sector & Human Rights](#), UN Working Group on Business & Human Rights

entry point, not risk to the business. It involves prioritizing action on those actual or potential impacts that are most severe (in terms of scope, scale, and irremediability) and engaging affected stakeholders as a cross-cutting component.

When identifying risks to people, businesses should pay particular attention to individuals, groups, or communities who may be at heightened risk of adverse impacts. Vulnerability depends on the context and can change across geographies and in relationship to different products and services. Specific groups or populations in the current US context that require particular attention include women, girls, and members of the LGBTQI+ community, especially those who belong to racial or ethnic minority groups.

Where laws, regulations, or customs may require companies to act in ways that conflict with human rights, implementing this framework becomes more challenging. While it may not be easy, it is possible. The UNGPs Interpretive Guidance describes ways companies could respond, such as “prepar[ing] its personnel for ethical dilemmas, through training, scenarios, lessons learned, decision trees, and similar processes.”¹¹² Building and using leverage to influence public policy in ways that enable responsible business is also essential in such contexts,¹¹³ as is collaborating with peers and/or with civil society to identify ways to uphold the spirit of human rights, regardless of legal compliance.

An early example of how this has been done in other sectors is the Global Network Initiative (GNI). Established in 2008, the GNI is a multistakeholder collaboration of ICT companies, human rights organizations, academics, and investors to support responsible company decision-making on freedom of expression and privacy rights.¹¹⁴ The initiative was inspired in part by an instance in 2005 in which Yahoo provided the Chinese government with access to private correspondence of a Chinese journalist, which later led to the journalist’s imprisonment.¹¹⁵ Faced with a growing need to identify how to safeguard human rights in the face of conflicting government policies and demands, stakeholders came together to form the GNI and develop principles and implementation guidelines that reflect the spirit of the UNGPs.

Resources

Several resources highlight how businesses can increase and use their leverage to address conflicts between law and human rights:

- [When National Law Conflicts with International Human Rights Standards: Recommendations for Business](#)
- [Meeting the Responsibility to Respect in Situations of Conflicting Legal Requirements: A Good Practice Note Endorsed by the United Nations Global Compact Human Rights Working Group](#)
- [Tackling Discrimination Against Lesbian, Gay, Bi, Trans, & Intersex People, Standards of Conduct for Business](#)

Addressing Religious Freedom Claims

A concern that may arise for companies seeking to respect human rights is whether and/or how to balance rights that may be perceived as being in tension with one another. Social media platforms have often been confronted by such dilemmas, such as how to respect children's rights online while safeguarding the right to privacy of users, or how to respect freedom of expression while still respecting the right to equal treatment and nondiscrimination.¹¹⁶

In the current context, the right to freedom of religion¹¹⁷ is often cited as a reason for suppressing reproductive and LGBTQI+ rights in law and in practice. FIs seeking to uphold human rights in the US may ask whether upholding reproductive or LGBTQI+ rights, including of consumers, may infringe on the freedom of religion of others, for example, individuals working for the business.

Article 18 of the Universal Declaration of Human Rights states everyone has the right to freedom of thought, conscience, and religion. At the same time, human rights law clarifies that freedom to manifest one's religion or beliefs may be subject to limitations when necessary to protect the fundamental rights and freedoms of others.¹¹⁸ In this sense, freedom of religion is distinct from religion in that it protects a person's freedom to possess and express beliefs, religious or not, and encompasses both freedom of religion and freedom from religion.¹¹⁹

In the case of women's rights, the Special Rapporteur on the Freedom of Religion and Belief has clarified:

Freedom of religion or belief can never be used to justify violations of the rights of women and girls, and that it can no longer be taboo to demand that women's rights take priority over intolerant beliefs used to justify gender discrimination. It would be contrary to both women's human rights as well as freedom of religion or belief provisions to allow one set of rights (i.e., women's rights) to be undermined based on claims made in defense of the right to freedom of religion or belief.¹²⁰



Under human rights law, excluding or discriminating against LGBTQI+ consumers in the name of religion is also prohibited. The UN Special Rapporteur has similarly clarified, “[I]t is not permissible for individuals or groups to invoke ‘religious liberty’ to perpetuate discrimination against [LGBTQI+ people], when it comes to the provision of goods or services in the public sphere.”¹²¹

The right to equal treatment also extends to nonprofit organizations, such as health-care providers and organizations that provide funding for abortion and gender-affirming care. The Special Rapporteur on freedom of peaceful assembly and of association has stated that some forms of differential treatment constitute “discrimination against civil society organizations.”¹²² The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief recognizes that freedom of thought, conscience, religion, or belief includes the freedom “to establish and maintain appropriate charitable or humanitarian institutions” and “to solicit and receive voluntary financial and other contributions from individuals and institutions.”¹²³

Recommendations and Good Practice

The following recommendations and resources build on the UNGPs and insights gathered through stakeholder engagement and desk-based research. They seek to support FIs’ efforts to prevent and, where necessary, mitigate adverse impacts on the right to health, including reproductive and gender-affirming healthcare, as well as the rights to equality and freedom from discrimination and privacy, among other rights. In doing so, they offer FIs an opportunity to support the realization of human rights, including the highest standard of physical and mental health at a time when US state governments seek to undermine them.

Although specific recommendations are provided here, achieving meaningful outcomes for people in the face of conflicting legal requirements and undercurrents of societal intolerance calls for FIs to build an internal culture of innovative and creative thinking and problem solving. Practical examples are provided to demonstrate noteworthy business action. Not all case studies are specific to the financial industry or to the US, but they can nevertheless serve as examples to inspire good practice.¹²⁴

Business Functions

The following recommendations speak to a wide range of internal company stakeholders, including individuals from the following teams and business functions:

- Human rights
- Legal and compliance
- Sustainability
- Diversity, equity, and inclusion
- IT
- Human resources
- Public affairs
- Customer relations
- Procurement
- Communications
- Government relations

STEP 1

Make and Embed a Commitment to Respect Human Rights

Adopt or update relevant internal policies to reflect human rights standards and approach.

- » Adopt an enterprise-wide human rights policy commitment to respect human rights in own operations and across the value chain, including financial products and services, irrespective of national law. Where national law conflicts with human rights, commit to seeking ways to honor human rights principles within the boundaries of the law.
- » Update privacy and consumer data policies to ensure the highest level of privacy protection possible for customers and users by collecting only that data which is necessary for legitimate business operations and retaining that data for only as long as is required for a given purpose.
- » Align existing nondiscrimination, diversity, equity, and inclusion (DEI) and anti-harassment policies and programs with human rights commitment to ensure these efforts reflect universal human rights standards, as opposed to federal or state law (or whichever is higher), and mandate a human rights due diligence approach to managing these issues.
- » Establish or align policies that govern public affairs and business association membership with international standards on responsible business conduct, including UNGPs and the OECD Guidelines for Multinational Enterprises. This extends to direct and indirect lobbying activities, political contributions, and employee political action committees.

Ensure the board of directors has oversight of and accountability for human rights risk management.

- » Establish board mandate to oversee human rights risk management, using a lens of risk to people, including in the context of issues arising from legal conflicts and political risk.
- » Develop systems to escalate legal compliance decisions related to conflicting legal requirements to higher decision-making bodies at headquarters, group or parent company level, enabling potentially high-risk compliance decisions to be centralized and placing distance between the decision-maker and company staff receiving pressure at the local level.
- » Ensure the board of directors has access to human rights expertise, including the right to equal treatment and nondiscrimination in the context of women's rights, reproductive rights, and the rights of LGBTQI+ people. This may involve establishing an independent advisory committee of experts.

Embed a commitment to respect human rights, including reproductive and LGBTQI+ rights, throughout the business.

- » Establish or strengthen the mandate of a human rights lead and team, tasked with day-to-day oversight and accountability for human rights risk management. Ensure the mandate includes capacity and resources to address how the company identifies and manages risks to reproductive and LGBTQI+ rights in the FI's operations and through its financial products and services. Where a human rights focal point already exists, ensure that function is mandated and empowered to oversee the company's day-to-day efforts on these issues.
- » Create or strengthen existing cross-functional taskforce to enable ongoing coordination and shared ownership of the company's efforts on reproductive and LGBTQI+ rights, including representations from human rights, sustainability, DEI, human resources, ESG, legal, compliance, public affairs, data management/IT, and customer services teams.
- » Provide internal human rights guidance and capacity building, including trainings and workshops to socialize human rights standards and initiatives and provide direction on how to manage dilemmas where the law conflicts with human rights standards. Training materials may include case studies for relevant business functions, such as human resources, legal and compliance, customer services, mortgage officers, and account managers, among others.

STEP 2

Assess Actual and Potential Impacts on Reproductive and LGBTQI+ Rights

- » Conduct horizon scanning across jurisdictions of operation at regular intervals, including prior to entering a new market and on an ongoing basis once operating in a market, to identify existing or potential changes in law that may inhibit the ability of the FI to respect human rights, including reproductive and LGBTQI+ rights.
- » Assess actual and potential adverse impacts of operations, products, and services on workers, retail and institutional customers, users, and/or other potentially affected stakeholders in connection with legal requirements, public policy proposals and societal discrimination, including impacts on the right to equal treatment and nondiscrimination, reproductive health, and privacy, among others.
- » Engage, consult, and where possible, develop ongoing relationships with potentially affected stakeholders, including their legitimate representatives, such as customer or employee groups and civil society organizations, to stay updated on the latest legal developments, risks to reproductive and LGBTQI+ rights, and potential actions that the FI could take.
- » Conduct assessments to identify human rights risks associated with the collection, storage, and use of customer or user data, particularly regarding data that may be used to infer health-related financial transactions.
- » Assess employee benefits to determine whether company employees have access to the highest level possible of reproductive and gender-affirming healthcare, including covering out-of-state travel expenses, if necessary, and equal access to benefits, including for diverse family structures.

STEP 3

Address or Mitigate Actual and Potential Conflicts

- » Where actual and potential adverse impacts are identified, build an internally coherent approach with a wide range of internal stakeholders—such as legal and compliance teams, customer services representatives, account managers, product developers, and human resources—to develop solutions that address these dilemmas in ways that uphold human rights.
- » Conduct in-depth scenario planning to establish policies and processes for responding to a diversity of potential human rights risk scenarios related to legal developments and products, services, and business operations.

Avoid Overcompliance

Engage in responsible data collection, storage, and use practices.

- » Limit the amount of information collected to legally required data and data that is strictly necessary for the provision of services. Personal or sensitive data from customers and users (including individual customers, platform users, and institutional customers) should be minimized.
- » “Know Your Customer” due diligence questions should be reviewed through a human rights lens to identify actual and potential impacts that may arise from law enforcement data requests. This includes avoiding questions related to provision of abortion and gender-affirming care.
- » Ensure customers and users give informed consent for all data collected by providing easy to access information in simple language on what personal, sensitive, or transaction data is collected on them, where data is sourced from, how long data is stored for, and how data may be used.
- » Ensure that customers and users can meaningfully exercise their rights of refusal to the collection of personal data that is not legally required or necessary for the provision of financial services.
- » Provide easily accessible options for individual and institutional customers and users to request access to their data.

Respond to law enforcement requests in a human rights-sensitive way.

- » Develop policies and processes on responding to law enforcement requests that take a rights-respecting approach. Policies should set out the organizational approach to law enforcement requests to avoid “over complying” with requests or complying with overly broad or disproportionate requests.
- » Investigate all requests for user data and verify the purpose and/or legality prior to complying. Lengthen the compliance process by requiring all government and law enforcement requests be submitted in writing explaining the legal basis for the request and stamped with an official seal and send all requests to headquarters before approval is given. Challenge overly broad government or law enforcement requests.

Case study

In 2022, Amalgamated Bank committed to scrutinize subpoenas for information related to the prosecution of women for exercising their reproductive rights, to “object to the fullest extent possible,” and to notify customers of subpoenas, unless investigators successfully force the bank not to disclose their existence.

Case study

Participants in the Global Network Initiative (GNI) commit to implementing the organization’s Principles on Freedom of Expression and Privacy (“the GNI Principles”), which provide direction and guidance to technology companies on how to safeguard user privacy and free expression.

Among other things, GNI member companies commit to the following principles:

- Protect the freedom of expression of users by seeking to avoid or minimize the impact of government restrictions on freedom of expression and when confronted with government demands, laws, and regulations that are inconsistent with internationally recognized laws and standards.
- Protect personal information in all countries where they operate to protect the privacy of users, including when confronted with government demands, laws, or regulations that compromise privacy.
- Individually and collectively, engage governments to promote the rule of law and the adoption of laws, policies, and practices that protect, respect, and fulfill freedom of expression and privacy.

- » Customers, users, or other data subjects should, to the extent feasible and legally permitted, be notified of data requests received from government and law enforcement agencies prior to compliance with such requests. Where prior notification is not permitted or possible, customers or data subjects should be notified as soon as possible after compliance with requests. Consider sharing resources that may support them in navigating the situation, such as lists of organizations that provide free legal representation and/or grants that cover legal expenses in these cases.

Ensure Equitable Treatment and Nondiscrimination in Provision of Financial Services

- » Embed human rights considerations in FI de-risking activities to ensure actions to identify and address suspicious transactions or address reputational risks do not disproportionately impact healthcare providers, abortion funds, and other nonprofits supporting reproductive and LGBTQI+ rights. Consider general industry transaction patterns, vulnerabilities of customers, and the potential impact of penalties on the ability of institutional customers to provide services.
- » Clearly communicate and consistently apply policies and processes for handling high-risk customers, suspicious transactions, and complying with anti-money laundering regulations to customers and users. This includes ensuring that healthcare providers, abortion funds, and nonprofits are adequately informed of the reasons for account or transaction penalties or closures.

Case study

To address the negative impacts of de-risking activities on nonprofits, ABN Amro serves larger NGOs through the Institutions & Charities Department, providing them with dedicated relationship managers and ensuring all files are reviewed by specialist compliance staff. The bank recognizes that for nonprofits, being able to make fast and efficient payments can be vital for human rights.

[Human Rights Report 2018, ABN Amro](#)

Resources

- [Bank De-Risking of Non-profit Clients: A Business and Human Rights Perspective](#), NYU Paris EU Public Interest Clinic
- [Financial Inclusion and Non-profit Organisations](#), FAFT

» Ensure that codes of conduct and due diligence processes prohibit and address discrimination in the provision of financial products and services, including insurance and loans. Adopt measures to ensure products and services are accessible to transgender and nonbinary people who may face challenges in changing their identification documents.

» Establish effective grievance mechanisms and designate teams or members of staff with appropriate expertise and resources to engage with affected customers and manage complaints.

This should include establishing rapid redress processes for healthcare providers, abortion funds, and relevant nonprofits.

Case study

In 2019, MasterCard was the first FI to announce that it would allow transgender and nonbinary customers to display their “[True Name](#)” on eligible credit cards without requiring legal name changes. At the time, American Express also offered a similar service without a formal policy. Other FIs, including Citibank, soon followed.

Use and Build Rights-Respecting Leverage Through Multistakeholder Engagement

» Publicly support policy measures that enable business respect for reproductive and LGBTQI+ rights, including by supporting the adoption of the Equality Act, and the Women’s Health Protection Act, and by pushing back against further rollbacks by letting members of Congress know that employers oppose national abortion bans and LGBTQI+ rights restrictions.

Case studies

- As of January 2024, 335 companies had signed the [Business Statement Opposing Anti-LGBTQI+ State Legislation](#) stating their clear opposition to harmful legislation aimed at restricting the access of LGBTQI+ people in society. More than 100 large employers have pledged direct support to the transgender and nonbinary community in HRC’s [Count Us In Pledge](#).
- [Don’t Ban Equality](#) is a coalition of nearly 1,000 businesses publicly advocating against restrictions on reproductive health care and highlighting their negative impacts on business. The “Don’t Ban Equality Statement” has been signed by businesses, including Amalgamated Bank and Chime.
- In 2022, a group of more than 60 companies, including Capital One, Mass Mutual, and PayPal published an [open letter](#) as a full-page ad in *The Dallas Morning News* calling on the Texas governor to “abandon anti-LGBTQI+ efforts” after he authorized state investigations of families who allow transgender kids to receive gender-affirming care.
- In 2020, Capital One, Mass Mutual, SunLife, Amalgamated Bank, and other companies signed a [joint statement](#) opposing anti-LGBTQI legislation and judicial action that might require them to undermine their trans employees’ rights.

Collaborate with peers and other stakeholders to increase leverage in support of strengthening protections.

- » Join public efforts in support of enhanced legal protections for reproductive rights and LGBTQI+ people.
- » Participate in business and multistakeholder initiatives, such as the Partnership for Global LGBTQI+ Equality¹²⁵ and “Don’t Ban Equality.”¹²⁶
- » Engage workers, local communities, and civil society organizations working on abortion and LGBTQI+ rights to identify opportunities for mitigating adverse impacts on reproductive and LGBTQI+ rights.¹²⁷ Individuals and communities directly affected by developments are often best placed to provide insights on how best to use leverage in support of human rights.

Take Legal Action.

Bring or support a legal challenge against regressive laws that undermine reproductive and LGBTQI+ rights, including by filing amicus briefs in support of reproductive or LGBTQI+ rights.

Case studies

- In 2023, 51 companies, including FIs, signed an amicus brief in *Zurawski v. State of Texas* arguing that abortion bans raise profound issues and serious concerns for Texas businesses, including by driving women of reproductive age and their partners away from the state, affecting business and economic outcomes.
- In 2023, CEOs in the pharmaceutical and biotech industry took a stance against legal efforts to revoke access to an FDA-approved abortion medication, given the potential those efforts had to overturn the regulatory framework industries rely upon. Medication abortion accounts for more than half of all abortion care in the US and is also used to manage miscarriage.
- In 2023, a Florida restaurant that regularly hosts drag shows filed a lawsuit against the state of Florida less than a week after a law was signed to ban drag performances in the state.



Ensure corporate political influence is consistent with the company's own commitments to human rights, including gender and LGBTQ+ equity, and responsible business conduct.

- » Review the criterion for making political contributions and test what giving preference to candidates and organizations that support abortion access and LGBTQI+ rights could look like. If reallocating funds to supportive candidates is not possible, educate recipients on how their positions on abortion and LGBTQI+ rights harm workers, customers, and the business environment.
- » Align lobbying activities with the Responsible Lobbying Framework and consider applying the Erb Institute Principles for Corporate Political Responsibility.¹²⁸
- » Request that industry associations receiving money from the FI report on specific lobbying positions, candidates, and legislation supported by the association.
- » Review industry association memberships to assess whether associations represent the FI's commitments to women's and LGBTQI+ rights, including gender equity and LGBTQI+ inclusion, and follow procedures to manage conflicts in positions.
- » Establish lobbying "red lines" that, if crossed by the industry association, will trigger the FI's public withdrawal.

Resource

The [Responsible Lobbying Framework](#) was developed by a multistakeholder working group consisting of civil society organizations and companies. It provides globally applicable principles and standards of responsible lobbying and can be used as an evaluation tool of a specific organization's lobbying activities and practices.

Ensure Equitable Access to Healthcare and Prohibit Discrimination in the Workplace

- » Provide equitable health insurance that includes comprehensive care for reproductive and LGBTQI+-related needs of all workers.
- » Provide support programs that offer privacy protected, time sensitive for workers and their families to go out of network and/or out of state to access safe abortions and gender-affirming care, including by providing paid sick days.
- » Adopt proactive measures to support pregnant workers who live in or travel to states where abortion is illegal and may need to access care in emergencies.
- » Enable flexible working arrangements for pregnant and LGBTQI+ employees at heightened risks in certain jurisdictions.
- » Allow at-risk workers, such as pregnant and LGBTQI+ employees, to refuse to travel to states that restrict abortion or LGBTQI+ rights without negative consequences for their job or career.

- » In states where abortion or gender-affirming care is illegal, take proactive measures to safeguard the privacy and safety of workers and their families accessing related services.
- » Provide safe, anonymous, and effective mechanisms for workers to submit grievances. Take special precautions to ensure mechanisms protect workers in states with laws that encourage informing on seekers of abortion or gender-affirming care or those supporting them.

Resources

- The [UN LGBTQ+ Standards Gap Analysis Tool](#) guides companies on their journey to implement the [UN Standards of Conduct for Business in Tackling Discrimination Against LGBTQ+ People](#)
- [Transgender-Inclusive Benefits: Questions Employers Should Ask](#)
- [Transgender Inclusion in the Workplace: A Toolkit for Employers](#)
- [Workplace Gender Transition Guidelines](#)
- [An Employer Guide to LGBTQ+ Inclusive Self ID](#)

STEP 4

Monitor the Effectiveness of Measures and Adapt Accordingly

- » Develop key performance indicators (KPIs) that reflect a “theory of change” approach to managing risks to reproductive and LGBTQI+ rights.
- **Inputs:** Financial, human, and material resources for supporting action on reproductive and LGBTQI+ rights;
 - **Activities:** Actions to achieve outcomes on reproductive and LGBTQI+ rights;
 - **Outputs:** Products that result from these activities, such as updated data collection and user policies and effective grievance mechanisms easily accessible to at-risk customers;
 - **Practices and Behavior:** The effect that activities and outputs have on the behavior of people tasked with achieving outcomes; and
 - **Outcomes:** The positive effects that flow from these practices and behaviors on affected customers, users, and workers, as well as the effects for business that flow from the outcomes for people.



» Monitor the effectiveness of measures taken, including by reviewing information gathered from grievance mechanisms, employee surveys, and internal audits. Where the use of leverage fails to create change, consider exiting the jurisdiction.

- Evaluate the full spectrum of potential negative human rights impacts of leaving the jurisdiction for people who may be left behind.
- Assess the severity of the harm to women and LGBTQI+ employees, customers, and users as well as institutional customers who may be impacted by delays in deciding whether to leave. The more severe the harm, the more quickly the FI should expect to see change.
- If staying, demonstrate ongoing efforts to mitigate the impact, and be prepared to accept the reputational, financial, or legal consequences of continued presence in the jurisdiction.¹²⁹

Resources

- [Indicator Design Tool](#), Shift
- [Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting](#), UN Office of the High Commissioner for Human Rights
- [Responsible Exit: Discussion and Practice in Development Finance Institutions and Beyond](#), Compliance Advisor Ombudsman, International Finance Corporation

STEP 5

Demonstrate Efforts to Respect Reproductive and LGBTQI+ Rights, Where Possible

- » Publicly disclose how the company manages severe actual and potential impacts on reproductive and LGBTQI+ rights, including publishing:
 - Privacy policies, including regarding third-party access to user data and approach to handling data requests from authorities;
 - State-by-state breakdown of data requests for user or customer data, type of information requests, reasons for request, and whether such requests could be shared directly with the data subjects; and
 - Online FAQs on data collection practices and law enforcement requests that are accessible to customers and users.
- » In cases where publicly communicating about these topics may expose affected stakeholders and the company to further scrutiny, legal liability, security risks, and/or harmful societal backlash, it may be necessary and appropriate to keep information on the company's diverse efforts confidential.
- » Where the FI chooses to disclose the measures it takes, be prepared to vigorously defend its approach and the affected stakeholders whose rights it seeks to uphold.

Case Study

Google publicly discloses data on the number of requests it received from governments around the world for user information and the number of accounts that were subject to those requests on a biannual basis. It also provides information on the percentage of requests that resulted in the disclosure of some amount of information. In the US, it further discloses the number of requests conducted under various legal processes such as subpoenas, search warrants, wiretap orders, emergency disclosure requests, and other court orders.

IV. Conclusion

The concept of human rights has evolved over centuries, and the codification of human rights in domestic laws has been a triumph of universal norms of human dignity. Yet the enjoyment of human rights is not static, nor is progress inevitable. The story of human rights in the US is one of ongoing struggles as diverse movements seek to push for—or against—a more inclusive, just, and dignified country for all people.

Recent rollbacks in legal protections are the latest examples of this tension, one which FIs across the country must now grapple with. The fragmented landscape and political polarization expose the industry to ethical dilemmas, including how to safeguard the privacy of customers, users, and workers, how to counteract currents of societal intolerance to create safe and equitable workplaces, and how to make financial products and services accessible to all.

These dilemmas raise financially material risks and “staying out of it” is not an option—consumers and workers want to live and work in states where reproductive and LGBTQI+ rights are guaranteed.

Adopting a principles-based approach grounded in the UNGPs framework provides FIs with a necessary roadmap for navigating this terrain. By committing to reproductive and LGBTQI+ rights and conducting human rights due diligence to identify and manage the impacts of their business on customers, users, workers, and society, FIs will be able to proactively and deliberately operate in ways that support human dignity and create long-term value.

Annex: Glossary

Abortion fund: a nonprofit organization that offers financial and logistical support to individuals seeking abortion care but who may face difficulties affording the costs involved.

Corporate Sustainability Due Diligence Directive (CSDDD): A proposed European Union (EU) law that aims to foster responsible business practices by requiring large companies to identify, prevent, and mitigate negative impacts on human rights and the environment in their own operations, supply chains, and certain downstream relationships.

Corporate Sustainability Reporting Directive (CSRD): EU law requiring companies to report on material environmental, social, and governance impacts, risks, and opportunities present in their own operations and throughout their value chains.

Financial Institution (FI): A business that deals with financial and monetary transactions and connects customers with various financial services. FIs include banks, credit unions, credit card companies, investment banks, brokerage firms, insurance companies, and mortgage companies.

Gender-affirming care: Medically necessary, evidence-based individualized care that uses a multidisciplinary approach to help a person transition from their assigned gender—the one the person was designated at birth—to the gender that is authentic to themselves.

Gender identity: An individual's innermost concept of self as male, female, a blend of both or neither—how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

Human rights: A set of internationally recognized norms and fundamental freedoms enshrined in international human rights instruments to which all people in the world are entitled to regardless of race, ethnicity, gender, location, religion, ability, or any other inherent attribute.

LGBTQI+: A non-exhaustive acronym for some common gender and sexual minorities, which stands for Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, and Intersex.

Organisation for Economic Co-operation and Development (OECD): An intergovernmental organization with 38 member countries, founded in 1961 to stimulate economic progress and world trade. Member countries are committed to democracy and the market economy. The OECD provides a platform for member companies to compare policy experiences, seek answers to common problems, identify good practices, and coordinate domestic and international policies.

Payment platform: A service that facilitates electronic or online financial transactions between merchants and financial institutions.

Payment processing company: A company that facilitates electronic or online transactions by verifying, authorizing, and settling payments between merchants and financial institutions.

Rightsholder: Individuals and groups that are entitled to human rights and to the protection and respect of their human rights by duty-bearers such as governments and companies.

Sexual orientation: Identities that describe which gender(s) a person is romantically and/or sexually attracted to. There are many sexual orientations. Some common sexual orientations include gay, lesbian, straight, and bisexual.

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