NFHA NATIONAL FAIR HOUSING ALLIANCE™

Written Statement of

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Submitted by

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Introduction

I am Lisa Rice, President and CEO of the National Fair Housing Alliance (NFHA), the country's only national civil rights organization dedicated to eliminating all forms of housing discrimination and fostering well-resourced, vibrant, resilient communities. With 200 organizational members, NFHA is the trade association for fair housing groups that work at the local, state, regional, and/or national levels to advance fair housing and equitable opportunities.

Throughout this document, I will use the terms Artificial Intelligence (AI) and Automated Systems (AS) interchangeably with the understanding that AI or AS is driven by business logic, data, model or policy implementation.

NFHA has addressed harms associated with AI or automated systems since its inception in 1988. We first concentrated our efforts on prohibiting or restricting the use of discriminatory automated systems such as credit and insurance scoring, underwriting, and pricing models, in housing and financial services. Early settlements with entities like Prudential, State Farm, Nationwide, and Allstate addressed these discriminatory systems. Several years ago while litigating a major case against then-Facebook, it became even more clear that technology, including *AI or Automated Systems are the new civil and human rights frontier* and, as a civil rights agency, we had to be a leader in this sector. Thus, we established our Responsible AI division with an initial focus on Tech Equity. The division is comprised of researchers and engineers committed to civil and human rights principles and is headed by one of the world's premier AI Research Scientists, Dr. Michael Akinwumi. NFHA's Responsible AI division has five workstreams founded on each of the following technical and policy research pillars:

- Tech Equity: We focus on developing and advocating for methodologies that ensure automated systems offer equitable access to housing opportunities.

- Data Privacy: We strive to test and promote technologies that balance consumer privacy with the need for data access to eliminate bias in automated systems.

- Explainability: We advocate for consumers' right to explanations for automated decisions and work to test and promote methodologies that clarify the reasoning or design behind automated systems.

- Reliability: We focus on testing and advancing techniques to ensure only safe and valid automated systems are used in housing applications.

- Human Alternative Systems: We work on advancing technical and policy solutions to determine when human-centered alternatives should take precedence over automated systems in housing decisions, particularly when data quality is poor, infrastructure is inadequate, or there is a lack of social awareness about harms of automated systems.

Since launching our Responsible AI work, NFHA has contributed to, advocated for, and created technical and policy solutions that advance responsible use of technologies in housing, including the White House's AI Bill of Rights, the National Institute of Science and Technology's Risk

Management Framework, the development of a state-of-the-art framework for auditing algorithmic systems,[1] and other policies.

Automated systems impact every area and aspect of our lives. They can provide access to key services that can open the doors of opportunity, or block our ability to take advantage of critical amenities that we need to survive and live successful lives. Automated systems can determine whether consumers will have access to housing, get a living-wage job, access quality credit, get an accurate and fair value for their home, obtain life-saving healthcare, receive compensation from their insurance company for a loss, get released on bail after an arrest, or serve a prison sentence.

Whereas the math behind automated systems is not good, bad, or neutral, it is imperative that we rapidly work to eliminate bias from these systems. Studies reveal that structural inequality, including the harms perpetuated by unethical tech, are not only having a deleterious impact on individuals and communities, but it is stifling the nation's economic progress.

Many innovations have been made in the math of automated systems. For example, it can be used to avoid, mitigate, or manage biases innate in these systems. Much as scientists used the coronavirus, a deadly germ that has killed millions of people in the world, to develop life-saving vaccines, we can intentionally use math to detect, diagnose, and cure technologies that are extremely harmful to people and communities.

Automated Systems Can Perpetuate Injustice and Discriminatory Outcomes

Automated systems can create, automate or perpetuate bias, creating harmful impacts for millions of innocent people. While automated systems driven by business logic, statistical models and machine learning have been in the making since the 1950s, the data behind large-scale applications of these systems were impacted by historical discrimination and/or the enterprise architectures of the systems were developed without awareness of their socio-technical implications. For example, Black and Latino borrowers pay $765 million more than they should each year, due to discriminatory automated mortgage pricing systems. This represents 11.5 percent of mortgage lenders' "average profit per loan."[2] Additionally, certain technologies used in healthcare contain modifiers that insinuate racial differences that do not actually exist causing disparate, harmful outcomes for Black, Latino, and other people of color.[3] In short, algorithmic systems are trained on historical data and they reflect the discrimination in that data absent deliberate and targeted interventions.

History of Housing/Banking Bias

For centuries, laws and policies enacted to create land, housing, and credit opportunities were race-based, denying critical opportunities to Black, Latino, Asian American and Pacific Islander

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[1] Michael Akinwumi, Lisa Rice, and Snigdha Sharma, Purpose Process, and Monitoring: A New Framework for Auditing Algorithmic Bias in Housing and Lending, National Fair Housing Alliance (2022), https://nationalfairhousing.org/wp-content/uploads/2022/02/PPM_Framework_02_17_2022.pdf

[2] Bartlett, R. et al. (November 2019), Consumer-Lending Discrimination in the FinTech Era, http://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf?_ga=2.154679614.781032725.166776 1872-1353433160.1667761872.

[3] Khazanchi R, Morse M. NYC Coalition to End Racism in Clinical Algorithms (CERCA) Inaugural Report; 2022; 1-33, https://www.nyc.gov/assets/doh/downloads/pdf/cmo/cerca-report.pdf

("AAPI"), and Native American individuals.[4] These policies were developed and implemented in a racially discriminatory manner despite our founding principles of liberty and justice for all. In particular, the New Deal's federal Home Owners Loan Corporation ("HOLC") developed one of the most harmful policy decisions in the housing and financial services markets by perpetuating a system that included race as a fundamental factor in determining the desirability and value of neighborhoods. The HOLC created appraisal maps that were color-coded to indicate the perceived value of neighborhoods. Communities of color were coded as "hazardous" as signified by red shading and were assigned the lowest value in part because people of color resided in the area, which led to the term "redlining." The HOLC's policy constituted a systemic association between race and risk that still exists today.[5] Moreover, areas adjacent to communities with Black residents could be downgraded simply based on their proximity to a community of color. Notably, the data used to create the maps were not just collected randomly, but were based on the opinions of real estate professionals at the time. Later, the Federal Housing Administration adopted these maps and race-based policies as the basis for its mortgage insurance underwriting decisions. Thus, these policies and procedures helped systematize redlining as well as the unfounded link between race and risk in the U.S. housing and financial services markets.

This bevy of laws, regulations, and policies created structural inequities and systemic bias that are still present in our society. Residential and school segregation, the inextricable link between place and opportunity, the dual credit market[6], the inequitable health ecosystem, the patchwork of exclusive and restrictive zoning systems, and additional structurally unfair systems all stem from a long stream of laws that were either explicitly racist, implemented with racialized policies, or produced disparate impacts on communities of color. These policies widened the racial wealth, income, and homeownership gaps. These systems are still performing their originally-intended function: perpetuating disparate outcomes and generating tainted, bias-laden data that serve as the building blocks for automated systems like tenant screening selection, credit scoring, insurance underwriting, insurance rating, risk-based pricing, and digital marketing technologies. The ability of automated systems to scale can lead to, reinforce, or perpetuate discriminatory outcomes if they are not controlled. While we have passed civil rights statutes designed to stop discrimination, we have not done enough to dismantle the systems of inequality that are still producing biased impacts.

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[4] *See* Lisa Rice, The Fair Housing Act: A Tool for Expanding Access to Quality Credit, The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Federal Fair Housing Act (Gregory Squires, 1st ed. 2017) (providing a detailed explanation of how federal race-based housing and credit policies promoted inequality)

[5] *See* University of Richmond, Virginia Tech, University of Maryland, and Johns Hopkins University, Mapping Inequality (documenting the maps and area descriptions created by the HOLC between 1935 and 1940), https://dsl.richmond.edu/panorama/redlining/#loc=3/41.245/-105.469&text=intro.

[6] The U.S. dual credit market is represented in numerous communities throughout the nation. Mainstream, regulated, low-cost financial services providers are concentrated in predominantly white areas while subprime, non-traditional, higher cost, sparsely regulated financial services providers are hyper concentrated in communities of color and lower-wealth areas. See, https://nationalfairhousing.org/issue/access-to-credit/

Recommendations for Mitigating Risks Associated with Automated Systems

There are significant risks of bias and discrimination in automated systems, but the risks are not insurmountable.[7] Lawmakers, regulators, housing providers, financial institutions, and tech companies should do the following to mitigate the risks associated with automated systems:

- Integrate the review for bias into every phase of the system's lifecycle,
- Use reliable methods for mitigating the risk of data bias,
- Ensure models undergo robust discrimination testing and address and mitigate potential discriminatory outcomes,
- ensure relevant staff receive appropriate civil rights training and reflect the diversity of America, and
- Require the General Accounting Office ("GAO") to review federal oversight of AI bias.

The United States Must Enact Comprehensive Legislation to Advance Responsible AI

The U.S. must play a leadership role in advancing Responsible AI principles and tech equity. Leading the world on these issues includes passing comprehensive legislation that forms the basis for sound policies, systems, practices, and frameworks for Responsible AI. While much of the world's technological innovations are developed in the U.S., other nations are significantly stepping up their efforts by building the infrastructure needed to spur AI innovations. This includes supporting education and training in the field and implementing rules to govern AI. The U.S. is behind the curve, and in some cases playing catch-up to other nations. The U.S. must lead the world in ensuring technologies are fair and beneficial; do not harm people and communities; and promote ideals of freedom, equality, and equity. For these reasons, Congress should pass new legislation that :

1. ***Provides for Strong Civil and Human Rights Protections:*** Congress should develop AI legislation that reflects civil and human rights principles that are foundational to America's ideals of freedom and equality. These laws also must create equity. Civil rights, human rights, and consumer protection organizations lack the resources to ensure technologies are beneficial and not harmful, which means Congress must increase federal funding and new programs to support effective oversight and accountability.
2. ***Spurs the Development of Responsible AI Anchored on OSTP's AI Bill of Rights:*** Legislation should encourage Responsible AI innovation while implementing risk mitigation measures, and Congress can use tools like NIST's Risk Management Framework and NFHA's AI auditing framework to help protect consumers, communities, and the U.S. economy. Adequate governmental funding is essential for research, tool development, and support of

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[7] For a fuller discussion of these recommendations See, House Financial Services Task Force on Artificial Intelligence's Hearing, "Equitable Algorithms: How Human-Centered AI Can Address Systemic Racism and Racial Justice in Housing and Financial Services," May 7, 2012 (Testimony of Lisa Rice) available at https://nationalfairhousing.org/wp-content/uploads/2022/01/Lisa-Rice-House-Testimony-on-AI-5-7-21.pdf.

civil rights, research, and consumer protection organizations to ensure equitable access to resources and address the lack of focus from philanthropies on these critical issues.

3. ***Promotes Effective Training for the Federal Workforce:*** The federal workforce currently lacks sufficient knowledge about how data-driven systems can perpetuate bias and discrimination. Federal workers also do not have the requisite training needed to effectively test, monitor, and provide oversight over automated systems. To keep Americans safe, the White House and Congress should support comprehensive training on technology and AI bias for federal regulators and enforcement agencies and ensure the federal workforce has the equipment and resources needed to enforce U.S. laws and regulations.

4. ***Ensures Equitable Digital Access and Public Data Access:*** America is at a critical juncture in deciding whether to develop automated systems that continue to perpetuate historical discriminatory practices or create equitable automated systems that uplift society. Currently, access to broadband and other technologies are not available on an equitable basis. For example, rural areas and communities of color disproportionately do not have access to high-speed internet. These communities also have higher instances of cell phone dead zones. Thus, government, industry, and advocacy groups must collaborate to ensure access to technological solutions are equitable and nondiscriminatory, as its far-reaching impact could either benefit or continue to severely disadvantage underserved groups and society at large. In addition, AI legislation should mandate public availability of key data, as the lack of such data hampers efforts to develop responsible automated systems in areas like healthcare, education, employment, housing, and financial services. Legislation must also consider how to rightly balance privacy rights with the need to protect civil and human rights.

5. ***Ensures Technologies Developed Outside of the U.S. Adhere to U.S. Rules and Regulations:*** Legislation must ensure that foreign innovations adhere to U.S. civil rights and consumer protection standards to prevent violations through irresponsible AI.

Conclusion

It is imperative that the U.S. lead the world in establishing policies and frameworks to advance technological innovations while ensuring these systems are fair, safe, transparent, explainable, and reliable; protect consumers' privacy; and ensure that human alternatives are available when warranted. Technological innovations can provide great benefits to people and society as well as spur economic progress. Yet too many automated systems have been deployed without proper protocols, testing, and oversight. As a result, people have unfairly and inappropriately been denied housing, credit, employment, education, healthcare, and other important opportunities and services. Researchers have found that racial inequality has cost the U.S. economy $16 trillion over the past 20 years.[8] Congress must move with all haste to guarantee the U.S. can remain strong and viable and our citizens can benefit from technological innovations.

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[8] Dana Peterson and Catherine Mann, Closing the Racial Inequality Gaps, Citigroup, September 2020, https://www.citigroup.com/global/insights/citigps/closing-the-racial-inequality-gaps-20200922