JOINT STATEMENT ON ENFORCEMENT OF CIVIL RIGHTS, FAIR COMPETITION, CONSUMER PROTECTION, AND EQUAL OPPORTUNITY LAWS IN AUTOMATED SYSTEMS

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America's commitment to the core principles of fairness, equality, and justice is deeply embedded in the federal laws that our agencies enforce to protect civil rights, fair competition, consumer protection, and equal opportunity. These established laws have long served to protect individuals even as our society has navigated emerging technologies. Responsible innovation is not incompatible with these laws. Indeed, innovation and adherence to the law can complement each other and bring tangible benefits to people in a fair and competitive manner, such as increased access to opportunities as well as better products and services at lower costs.

Today, the use of automated systems, including those sometimes marketed as "artificial intelligence" or "AI," is becoming increasingly common in our daily lives. We use the term "automated systems" broadly to mean software and algorithmic processes, including AI, that are used to automate workflows and help people complete tasks or make decisions. Private and public entities use these systems to make critical decisions that impact individuals' rights and opportunities, including fair and equal access to a job, housing, credit opportunities, and other goods and services. These automated systems are often advertised as providing insights and breakthroughs, increasing efficiencies and cost-savings, and modernizing existing practices. Although many of these tools offer the promise of advancement, their use also has the potential to perpetuate unlawful bias, automate unlawful discrimination, and produce other harmful outcomes.

Automated Systems May Contribute to Unlawful Discrimination and Otherwise Violate Federal Law

Many automated systems rely on vast amounts of data to find patterns or correlations, and then apply those patterns to new data to perform tasks or make recommendations and predictions. While these tools can be useful, they also have the potential to produce outcomes that result in unlawful discrimination. Potential discrimination in automated systems may come from different sources, including problems with:

- **Data and Datasets:** Automated system outcomes can be skewed by unrepresentative or imbalanced datasets, datasets that incorporate historical bias, or datasets that contain other types of errors. Automated systems also can correlate data with protected classes, which can lead to discriminatory outcomes.

- **Model Opacity and Access:** Many automated systems are "black boxes" whose internal workings are not clear to most people and, in some cases, even the developer of the tool. This lack of transparency often makes it all the more difficult for developers, businesses, and individuals to know whether an automated system is fair.

- **Design and Use:** Developers do not always understand or account for the contexts in which private or public entities will use their automated systems. Developers may design a system on the basis of flawed assumptions about its users, relevant context, or the underlying practices or procedures it may replace.

Our Agencies' Enforcement Authorities Apply to Automated Systems

Existing legal authorities apply to the use of automated systems and innovative new technologies just as they apply to other practices. The Consumer Financial Protection Bureau, the Department of

Justice, the Equal Employment Opportunity Commission, the Federal Trade Commission, the Department of Education, the Department of Health and Human Services, the Department of Homeland Security, the Department of Housing and Urban Development, and the Department of Labor are among the federal agencies responsible for enforcing civil rights, non-discrimination, fair competition, consumer protection, and other vitally important legal protections. We take seriously our responsibility to ensure that these rapidly evolving automated systems are developed and used in a manner consistent with federal laws, and each of our agencies has previously expressed concern about potentially harmful uses of automated systems. For example:

- The **Consumer Financial Protection Bureau** (CFPB) supervises, sets rules for, and enforces numerous federal consumer financial laws and guards consumers in the financial marketplace from unfair, deceptive, or abusive acts or practices and from discrimination. The CFPB has taken action to protect consumers from black-box credit models including by publishing two circulars that confirm that federal consumer financial laws, including adverse action requirements, apply regardless of the technology being used. The first explained that the use of complex, opaque, or new technology to make a credit decision is not a defense for violating these laws; and the second affirmed that adverse action requirements mean creditors must explain their decisions by providing accurate and specific reasons for the adverse action. The CFPB joined five other federal regulatory agencies in proposing a rule designed to ensure the credibility and integrity of models used in real estate valuations, in part through compliance with applicable nondiscrimination laws. The CFPB is also considering a rulemaking under the Fair Credit Reporting Act to prevent the misuse and abuse of Americans' sensitive data by data brokers. These firms harvest massive amounts of data about Americans' daily lives and monetize that data by sharing it with other companies using AI to make predictions and decisions.

- The **Department of Justice** enforces constitutional provisions and federal statutes that uphold civil rights and protect consumers. The **Civil Rights Division** (Division) enforces laws prohibiting discrimination across many facets of life, including in education, the criminal justice system, employment, housing, lending, and voting. Among the Division's other work on issues related to AI and automated systems, the Division filed a statement of interest in federal court explaining that the Fair Housing Act applies to algorithm-based tenant screening services. More recently, the Division convened the heads of civil rights offices and senior officials from multiple federal agencies to discuss the critical intersection of AI and civil rights as directed by President Biden's Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. The **Civil Division's Consumer Protection Branch** (Branch) is leading efforts to investigate and prosecute crimes involving the use of generative AI. Branch attorneys are working with law-enforcement partners to apply the full range of existing authorities, both criminal and civil, to AI-enabled scams. These efforts complement the Branch's existing initiatives targeting elder fraud, romance scams, unlawful activities by payment processors, and unlawful robocalls.

- The **Equal Employment Opportunity Commission** (EEOC) enforces federal laws that make it illegal for an employer, union, or employment agency to discriminate against an applicant or employee due to a person's race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information (including family medical history). In addition to the EEOC's enforcement activities on discrimination related to AI and automated systems, the EEOC issued two technical assistance documents. One explains how the Americans with Disabilities Act applies to the use of software, algorithms, and AI to make employment-related decisions about job applicants and employees and the other explains how the use of software, algorithms, and AI may lead to disparate impact under Title VII of the Civil Rights Act of 1964.

- The **Federal Trade Commission** (FTC) protects consumers from deceptive or unfair business practices and unfair methods of competition across most sectors of the U.S. economy by enforcing the FTC Act and numerous other laws and regulations. Recently, the

FTC [banned](#) a company from using AI-based facial recognition technology for surveillance purposes after the company improperly deployed such technology, and the FTC required the company to implement comprehensive safeguards to prevent harm to consumers when deploying automated biometric security or surveillance systems in the future. The FTC has also required firms to destroy [algorithms](#) or other [work product](#) that were trained on data that should not have been collected.

- The **Department of Education's Office for Civil Rights** (OCR) enforces several federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, or age in programs or activities that receive federal financial assistance from the Department. OCR's 12 regional offices nationwide receive, evaluate, and investigate complaints alleging discrimination in violation of the federal civil rights laws the office enforces, including allegations concerning the discriminatory use of automated systems in educational technologies.

- The **Department of Health and Human Services** (HHS) enhances the health and well-being of all Americans by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services. HHS has been on the leading edge of responding to emerging AI technologies and its AI Task Force includes representation from across HHS. Some examples of HHS's recent AI-related regulatory work include the Office for Civil Right's current work finalizing a [rule interpreting Section 1557 of the Affordable Care Act](#) to prevent AI-powered algorithms from contributing to bias and discrimination in healthcare; the Office of the National Coordinator for Health Information Technology's recently published [final HTI-1 rule](#) on algorithmic transparency in electronic health records; and the [FDA's 2022 guidance](#) recommending that some AI-powered clinical decision support tools should be regulated as medical devices. HHS continues to work with partners from across the federal government to promote responsible AI usage.

- The **Department of Homeland Security** (DHS) plays a critical role in ensuring [AI safety and security nationwide](#). DHS uses AI [responsibly](#) to advance its homeland security mission and protect the individual rights of all persons in the United States, and the Office for Civil Rights and Civil Liberties (CRCL) supports this mission while preserving individual liberty, fairness, and equality under the law. [Policy Statement 139-06](#), "Acquisition and Use of Artificial Intelligence and Machine Learning by DHS Components," establishes the foundation for DHS's use of AI with a clear set of principles. It prescribes that DHS will not collect, use, or disseminate data used in AI activities, or establish AI-enabled systems that make or support decisions, based on the inappropriate consideration of race, ethnicity, gender, national origin, religion, sexual orientation, gender identity, age, nationality, medical condition, or disability. CRCL will ensure DHS's federally conducted and assisted activities comply with civil rights law and policy, as applicable.

- The **Department of Housing and Urban Development** (HUD) works to eliminate housing discrimination, promote economic opportunity, and achieve diverse, inclusive communities. HUD has and will continue to vigorously enforce the Fair Housing Act and other civil rights laws to ensure that automated systems and other innovative new technologies are being used to increase economic opportunity on an equitable basis and to prevent such technologies from being used to disproportionately deny access to housing. In furtherance of these efforts, HUD has cautioned in [guidance](#) that housing providers should avoid the use of third-party screening companies that utilize algorithms that may contain racial or prohibited bias in their design, have not been shown to reliably predict risk, may produce inaccurate information about the applicant, or make the decision for the housing provider.

- The **Department of Labor** (DOL) **Office of Federal Contract Compliance Programs** (OFCCP) enforces legal authorities that prohibit federal contractors from discriminating against employees and applicants in hiring and employment because of their race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a

protected veteran. OFCCP has an FAQ explaining that the agency will analyze federal contractors' use of AI-based selection procedures that have an adverse impact the same way it reviews other selection practices. Additionally, OFCCP recently updated its compliance review process to require documentation to better identify discrimination related to AI and automated systems in recruitment, screening, and hiring by federal contractors. DOL's **Civil Rights Center** enforces federal statutes that prohibit discrimination, including related to AI and automated systems, by public entities operating programs and activities related to labor and the workforce, recipients of financial assistance in the public workforce development system, and other DOL-funded programs or activities.

Today, our agencies reiterate our resolve to monitor the development and use of automated systems and promote responsible innovation. We also pledge to vigorously use our collective authorities to protect individuals' rights regardless of whether legal violations occur through traditional means or advanced technologies.

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