UNITED STATES OF AMERICA
Federal Trade Commission
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Office of Commissioner
Rohit Chopra

# Introductory Remarks of Commissioner Rohit Chopra[1]

## National Fair Housing Alliance 2020 National Conference

**October 6, 2020**

Thank you to the National Fair Housing Alliance for hosting all of us virtually. Each and every moment, companies are collecting data on all of us: tracking our movements and attention inside and outside our homes, and sweeping up information that others have recorded on us. This bulk surveillance has major implications for our economy and our society, as black-box algorithms, machine learning, and artificial intelligence make more decisions in our lives.

While machines crunching numbers might seem capable of taking human bias out of the equation, they can't. More and more of us are asking whether we are doing enough to understand the bias that is coded into the machines. And if not, are we making discrimination, including housing discrimination, even harder to detect?

While many are focused on new laws and new rules, I have focused on how the FTC and other regulators can use laws on the books today to halt abuse and discrimination in the data economy. I want to briefly discuss two of them.

The first is the Fair Credit Reporting Act, which turns 50 years old this month. The FCRA requires that consumer reporting agencies take reasonable steps to ensure maximum possible accuracy. This has significant implications in housing, where many providers rely on background screeners when deciding whether to offer a home for rent. But when those who assemble these dossiers include inaccurate information, this can lead to discriminatory effects. The Department of Housing and Urban Development has already issued guidance about the risky use of criminal records and its potential to lead to discrimination, and these concerns are amplified when those records are riddled with inaccuracies stemming from sloppy matching procedures and data drawn from disparate sources.

The FCRA is a powerful tool to not only combat these inaccuracies but also combat the discriminatory effects they produce. In a recent landmark case brought by the Connecticut Fair Housing Center and the National Housing Law Project, a federal judge determined that tenant

[1] The views expressed below are my own and do not necessarily reflect those of the Commission or of any other Commissioner.

screeners can be liable under the Fair Housing Act if their reports contribute to discriminatory decision-making. In my view, even if a tenant screener claims they have a legitimate business justification for the use of criminal records, there is no justification for producing records riddled with errors, especially when a clear, less discriminatory alternative would be to follow the FCRA's requirement to assure maximum possible accuracy.

As more and more firms build their businesses on collecting data to shape decision-making, the FCRA can emerge as a powerful weapon to combat discrimination stemming from errors and inaccuracies.

The second tool we can use today is the FTC Act's prohibition on unfair acts and practices. As we all know, it is rare to uncover direct evidence of racist intent, which is why disparate impact analysis is a critical tool to uncover hidden forms of discrimination under sector-specific laws like the Fair Housing Act and the Equal Credit Opportunity Act. But many areas of the economy are not covered by these laws. In a recent auto lending discrimination case brought by the FTC, I argued that many discriminatory practices are also unfair under the FTC Act, which covers almost the entire economy. Unfair practices are those that are (i) likely to cause substantial injury (ii) that is not reasonably avoidable, and (iii) that is not outweighed by countervailing benefits to consumers or competition. Discriminatory practices often are three for three, causing grievous harm that cannot be avoided. This means that the FTC Act can serve as an important gap-filler to combat discrimination across the economy, particularly as machine learning and artificial intelligence make more and more decisions about our lives.

Thank you, and I look forward to the discussion.