



UNITED STATES OF AMERICA  
**FEDERAL TRADE COMMISSION**  
WASHINGTON, D.C. 20580

## **Federal Trade Commission (FTC) Equity Action Plan**

### **1. Executive Summary**

The Federal Trade Commission (FTC or Commission) is a law enforcement agency that has jurisdiction to police unfair methods of competition and unfair or deceptive practices in broad sectors of the economy. The agency achieves its mission by pursuing enforcement actions against individuals and companies to stop illegal activity, remedying harm caused by that activity, and preventing its reoccurrence; developing rules to ensure a fair, competitive, and open marketplace; and educating consumers and businesses about their rights and responsibilities.

The FTC is committed to protecting the public, including meaningfully addressing barriers that underserved communities face in participating in and benefiting from a fair and thriving marketplace. The agency's enforcement priorities include ensuring that the agency is being thorough and fair in evaluating how business practices and potential enforcement responses affect the broad range of market participants that the FTC is tasked to protect, including underserved communities. Internally, the agency is strengthening its capacity to evaluate equity in its workforce and programs by establishing a Chief Diversity Officer position, enhancing its procurement-related data collection and analysis, and investing in staff development that supports workplace and programmatic equity.

## 2. Summary of Early Accomplishments (since 1/20/21)

Since its formation, the cross-agency EO 13985 Equity Team has engaged internal stakeholders to understand existing equity assessment practices, including the Every Community Initiative (ECI) the agency's Bureau of Consumer Protection (BCP) launched in 2014, and gather ideas for strengthening equity in the agency's programs. The team vetted and prioritized potential focus areas and consolidated them into four broad objectives, forming a sub-team for each objective to further engage stakeholders, review existing practices, collect data, and develop the contents of this Agency Action Plan.

2021 accomplishments:

- A. In March 2021, the FTC launched [ReportFraud.ftc.gov/community](https://www.reportfraud.ftc.gov/community), which is a site to help legal services organizations serving lower-income populations report fraud and get next steps to try to recover their money.
- B. In March 2021, Executive Director David Robbins designated Deputy Executive Director Monique Fortenberry to lead a cross-agency team to implement EO 13985 and develop a roadmap for programmatic equity analysis. The cross-agency team worked together throughout the year to develop this Plan.
- C. In July 2021, the agency implemented monthly, virtual open Commission meetings during which the public is invited to share feedback on the Commission's work generally and bring relevant matters to the Commission's attention. The meetings are open captioned and the agency posts transcripts of the meeting to its public-facing website. This open, interactive process is a first in the Commission's history.
- D. In October 2021, the FTC released "[Serving Communities of Color: A Staff Report on the Federal Trade Commission's Efforts to Address Fraud and Consumer Issues Affecting Communities of Color](#)." The report highlights extensive strides the FTC has made in the last five years to address fraud in Black and Latino communities as well as efforts to expand this work to other communities of color, including Asian-American and Native-American communities, and to expand its portfolio to include non-fraud related consumer issues that also disproportionately affect communities of color.
- E. In November 2021, the FTC [released a preliminary draft Strategic Plan for Fiscal Years 2022 to 2026](#) for public review and comment. The plan presents strategic goals and objectives for the next five years and describes how the agency will measure success in these areas. For the first time in its history, the FTC's draft Strategic Plan includes objectives for its Bureau of Competition (BC) and Bureau of Consumer Protection (BCP) that are devoted exclusively to advancing equity and support for communities that have been adversely affected by economic inequality or otherwise bear disproportionate economic burdens. While the agency has been committed to this work throughout its history, the new objectives will enable the agency to better measure success and collect longitudinal data on its performance.

### 3. Equity Action Plan

OMB guidance: Please clearly identify **three to five** actions that your agency plans to undertake and list them **in order of priority**; provide evidence-based reasoning for selection; and outline high-level elements of implementation. Actions should address institutional resources available to offices responsible for advancing **civil rights** pursuant to Section 5(d) and **procurement and contracting** pursuant to Section 7(a) of EO 13985, but may focus on other significant priorities identified by the agency regardless of whether they were included in the agency's equity assessment.

#### 4. Action Plan: Equity in Consumer Protection Enforcement

The FTC’s Bureau of Consumer Protection (BCP) plans to develop a toolkit to aid staff in evaluating the impact of deceptive or unfair practices in the use of emerging technologies (e.g., algorithmic bias and the gig economy) on underserved communities, building on the foundation and momentum of the ECI and the agency’s strategic goals.

##### A. Barriers to Equitable Outcome(s)

- Companies employing emerging technologies may engage in deceptive or unfair practices that are especially harmful to underserved communities. Assessing whether these communities are disproportionately impacted is challenging without guidance or resources for doing so.
- Data and reporting limitations make it difficult to spot and quantify disproportionate harms, but research shows that certain practices may harm some consumers more than others.
  - “Gig work” companies often recruit individuals in financial distress, offering a flexible work schedule and appealing potential earnings. If these companies mislead individuals about the job, the individuals may suffer harm due to lost wages, missing tips, and wasted time.<sup>1</sup> As discussed in the October 2021 FTC Staff Report: Serving Communities of Color, research has demonstrated that workers in the gig economy are disproportionately people of color.<sup>2</sup> Thirty percent of Hispanic adults, 20% of Black adults, and 19% of Asian adults report having engaged in gig work, compared to only 12% of White adults.<sup>3</sup>
  - Instances of algorithmic bias in the criminal justice system and healthcare are documented. For example, there is evidence that facial recognition algorithms mischaracterize identities of people of color more often than White individuals,<sup>4</sup> potentially resulting in wrongful arrest and other harms.<sup>5</sup> In healthcare, an algorithm that allocated resources to patients based on need inadvertently allocated more resources to White individuals because predicted health costs were an input to the decision-making.<sup>6</sup> Since algorithms are used in a wide range of consumer contexts, including in targeted advertising online, lending decisions, and virtual exam proctoring, algorithmic

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<sup>1</sup> See, e.g., <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-puts-businesses-notice-false-money-making-claims-could-lead>; <https://www.ftc.gov/news-events/press-releases/2017/01/uber-agrees-pay-20-million-settle-ftc-charges-it-recruited>; <https://www.ftc.gov/news-events/press-releases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some>.

<sup>2</sup> [https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report\\_oct\\_2021-508-v2.pdf](https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf).

<sup>3</sup> Pew Research Center, The State of Gig Work in 2021, <https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/>.

<sup>4</sup> See, e.g., Patrick Grother et al., Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects, NIST at 7-8 (Dec. 19, 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

<sup>5</sup> See, e.g., Kashmir Hill, Another Arrest and Jail Time, Due to a Bad Facial Recognition Match, N.Y. TIMES (Jan. 6, 2021), <https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html>.

<sup>6</sup> See, e.g., <https://www.sciencenews.org/article/bias-common-health-care-algorithm-hurts-black-patients>.

decision-making has the potential to result in similarly biased and unfair outcomes in these spheres.<sup>7</sup>

## B. Actions and Intended Impacts on Barrier

- BCP plans to develop a toolkit for assessing whether certain communities are disproportionately suffering losses as a result of unfair or deceptive practices in the use of emerging technologies.
- If BCP identifies new law enforcement actions, it will seek to bar further harms through injunctive relief and compensate consumers where possible. Increased outreach will warn consumers in those communities, potentially helping them avoid harm. Holding firms accountable for this behavior and bringing light to the consequences may also encourage other market actors to take steps to prevent these impacts.

## C. Tracking Progress

- Short term (2-4 years out):
  - Have we implemented the new toolkit and directed resources toward this effort?
  - Have the efforts resulted in law enforcement actions?
  - Are market actors responding to our efforts?
- Long-term (5-8 years out):
  - Use of the toolkit is embedded in staff's work.
  - Robust law enforcement, community outreach, and new policies or initiatives (e.g., rulemakings, market studies, or other initiatives) that address relative harms to different market participants, including underserved communities.
  - Market actors affirmatively avoiding disparate harm to market participants, including underserved communities.

## D. Accountability

The Commission will hold itself accountable to implementing these strategic priorities through its existing planning and monitoring processes. Progress on actions and objectives will be monitored and updated on a regular basis.

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<sup>7</sup> See, e.g., <https://news.northeastern.edu/2019/04/11/a-northeastern-university-team-tested-facebooks-algorithm-and-found-its-delivery-of-advertisements-is-skewed-by-race-and-gender/>; <https://www.theverge.com/2021/4/8/22374386/proctorio-racial-bias-issues-opencv-facial-detection-schools-tests-remote-learning>; <https://www.nber.org/papers/w25943>.

## 5. Action Plan: Equity in Antitrust Enforcement

The FTC's Bureau of Competition (BC) plans to revise its case selection and evaluation process by 1) systematically collecting information regarding the impact of proposed mergers and alleged anticompetitive conduct on communities that are already at a disadvantage in the American economy, particularly low-income communities, rural communities, and communities of color; and 2) including restrictive covenants and effects on workers, particularly low-wage workers, in BC's merger analysis. Supporting BC's case selection and evaluation process with this additional information will enable the Commission to ensure it is focusing its resources on cases that promote a fair and equitable marketplace for all.

### A. Barrier to Equitable Outcome(s)

- BC does not have sufficient resources to address all potential violations of the laws enforced by the Commission. Therefore, BC must evaluate and select which cases to investigate, thereby determining the sectors of the economy and the individuals who will benefit most.
- BC has typically selected cases based on the significance of potential harm, the strength of evidence of harm, and the impact of the potential remedy. BC has considered the impact on specific communities in individual cases, particularly those where the relevant products are used by target groups, e.g., seniors or special-needs children. However, it has not systematically collected and considered this type of information in case selection. The absence of this data has prevented BC from completing a holistic and thorough evaluation of the potential impact on the marketplace.
- Historically, BC has not systematically included an evaluation of whether a proposed transaction will negatively impact workers or enhance the ability of the parties to use restrictive covenants as barriers to entry as part of merger and conduct investigations. For example, mergers of large health systems may result in lower wages for nurses or lab technicians. Additionally, some scholars have suggested that large supermarkets may utilize restrictive real estate covenants to limit the ability of rivals to open stores, resulting in "food deserts" that disproportionately affect low-income communities and communities of color. Acquisitions by large supermarkets may exacerbate this problem. These activities are particularly harmful to low-wage workers and low-income communities.

### B. Action and Intended Impact on Barrier

- To promote equity and inclusion in antitrust enforcement, BC must have the necessary information and a process for incorporating that information into agency decision-making. Therefore, BC plans to update two aspects of BC's competition processes. First, BC will update its case selection and evaluation process by systematically collecting available information regarding the impact of proposed mergers and alleged anticompetitive conduct on underserved communities. For example, when specific geographic areas are affected, BC plans to systematically identify whether those areas

include low-income, rural, and communities of color. The second modification will be to ensure that merger analysis includes effects on workers and restrictive covenants.

- BC staff will continue ongoing efforts to develop—and refine—information requests (via voluntary access letters, second requests, and civil investigative demands) in merger and anticompetitive conduct cases to solicit information about the impact of transactions on underserved communities. One critical aspect of this endeavor will be the consistent inclusion of information requests seeking information about how merging parties compete in labor markets. These requests will produce documents, data, and other information that will help BC identify workers who may be particularly vulnerable to post-merger exercises in market power (e.g., lower compensation). BC also plans to seek to solicit information from a broader array of market participants, such as labor unions, that may not have been routinely considered in prior investigations. BC may also seek information about the incentive and ability of the merging firms to use restrictive covenants to prevent entry by rivals.

### C. Tracking Progress and Accountability

The Commission will hold itself accountable to implementing these strategic priorities through its existing planning and monitoring processes. Progress on actions and objectives will be monitored and updated on a regular basis.

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## **6. Action Plan: Advance Equity by Expanding Institutional Equity Resources and Training Staff on Equity Principles**

The FTC plans to expand the institutional resources it devotes to equity by hiring a Chief Diversity Officer who will develop and help implement a long-term strategic roadmap for equity at the FTC, including the personnel, financial, and operational resources needed to support equity. The agency also plans to procure equity training that addresses equity in programs and operations, in addition to existing agency training that addresses organizational equity. These investments will position the FTC to take a more holistic approach to its work and better protect consumers, workers, and honest business owners, including underserved communities.

### **A. Barrier to Equitable Outcome(s)**

- Employees across the agency are working on a range of formal and informal equity initiatives, but the agency does not currently have a centralized hub for coordinating, tracking, amplifying, and leading programmatic equity work.
- In addition, the FTC workforce has varying levels of familiarity with equity principles and, therefore, varying abilities to apply equity analysis to the FTC's work. For example, BCP has long-standing expertise in this area as reflected in its *Every Community Initiative*, its recently released [Serving Communities of Color](#) report, and its enforcement of fair lending laws. Other offices are committed to organizational equity but do not yet have deep roots in program-focused equity analysis.

### **B. Action and Intended Impact on Barrier**

- To address these internal barriers, the Commission plans to hire a Chief Diversity Officer (CDO) in 2022. This position will bring additional equity expertise to the agency, support a broad array of equity related initiatives and strategic objectives, and, among other things, develop recommendations to make additional infrastructure investments to support equity in the FTC's programs and operations. Pending the completion of this hiring process, the agency will continue to lead implementation of its programmatic equity work at the executive level in coordination with the Office of the Executive Director and other internal stakeholders.
- The Commission plans to procure training that supports a broader understanding of how equity principles apply to agency programs. The agency will deploy this training in phases, starting with employees who are implementing equity-related Executive Orders, leading equity initiatives, and developing the agency's Strategic Plan. In consultation with a newly appointed Chief Diversity Officer, the EEOI Director, and the Human Capital Management Office, the agency will evaluate broader developmental opportunities in the equity space for staff and managers.



### C. Tracking Progress

- Short term success (2-4 years out): The agency will hire a Chief Diversity Officer and deliver equity training in phases, as informed by the newly hired CDO's plans.
- Long term success (5-8 years out): Specific measures of progress are described in the Action Plans and the agency will develop additional measures in coordination with the newly hired Chief Diversity Officer.

### D. Accountability

The Commission will hold itself accountable to implementing these strategic priorities through its existing planning and monitoring processes. Progress on actions and objectives will be monitored and updated on a regular basis.

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## 7. Action Plan: Equity in Procurement and Contracting

The FTC intends to (1) procure training for its skilled acquisition workforce to increase awareness of opportunities to embed equity analysis in contracting operations and (2) collect and analyze data that will enable the FTC to better support the small business community, including historically disadvantaged and underrepresented entrepreneurs.

### A. Barriers to Equitable Outcome(s)

The agency exceeds government-wide goals for small business contracting and plans to identify more opportunities to support Small Disadvantaged Businesses, women-owned small businesses, service-disabled veteran owned small businesses, and small business contractors in Historically Underutilized Business Zones. The agency maintains statistics on small business participation but does not currently analyze the data to identify and track participation of subgroups within the small business community.

### B. Action and Intended Impact on Barrier

To address these barriers to equitable outcomes the agency intends to:

- Collect and analyze more granular data on the kind of small business each offeror is, enabling the agency to perform a more detailed barrier analysis, note trends in small business contracting, and develop targeted outreach to support access to contracting opportunities.
- Procure training to expand the skilled acquisition workforce's awareness of equity analysis, as framed in EO 13985, and in connection with the FTC's plan to train employees involved in implementing the EO.

### C. Tracking Progress

- Short term (1-3 years out):
  - Collect and analyze small businesses contractor data, including data indicating whether the business is disadvantaged or otherwise traditionally underserved.
  - Procure equity training for the FTC's acquisition workforce.
- Long term success (5-8 years out): A successful long-term outcome will be continuing to exceed government-wide goals for small business contracting, having fuller data sets to inform policy priorities, and providing periodic refresher training for acquisitions staff.

### D. Accountability

The Commission will hold itself accountable to implementing these strategic priorities through its existing planning and monitoring processes. Progress on actions and objectives will be monitored and updated on a regular basis.