

COMPREHENSIVE FEDERAL PRIVACY LEGISLATION

Discriminatory Data Practices



In its 2016 Big Data report, the Federal Trade Commission (FTC) found that “big data offers companies the opportunity to facilitate inclusion or exclusion.” Unchecked data processing and algorithmic decisionmaking can amplify discrimination based on race, gender, sexual orientation, ability, age, financial status, and other group membership. Since the FTC’s report, discriminatory data practices have continued but little has been done to address them. Congress must act to curb data-driven discrimination and protect civil rights.

Exclusion from opportunity

The data economy offers new opportunities to target information and personalize experiences, but it also creates new opportunities for exclusion based on minority or protected group membership.

- Journalists and researchers have demonstrated how advertising platforms can be used to target housing, job, and credit ads away from protected classes (e.g., excluding categories like “mothers” or “wheelchair users” from seeing a housing ad). Targeting affects who gets to learn about and apply for an opportunity.
- Employers often rely on services that proactively match them with job candidates, but if those algorithms are based on past hiring preferences, they can replicate discriminatory patterns.
- Predictive analytics used to target health interventions or set insurance rates may be less accurate for minority groups that have historically been excluded from research data.

State and federal civil rights laws are designed to prevent discrimination in housing, employment, and other important opportunities; but data-driven discrimination often flies under the radar.

Predatory targeting

Advertisers have also leveraged data to target risky, undesirable, or even fraudulent opportunities based on sensitive characteristics. The data broker industry has aggregated information from disparate sources and used it to create marketing segments such as “urban scramble,” “diabetes interest,” and sexual assault survivors. The payday loan and for-profit college industries have used sensitive segments as well as deceptive data collection interfaces to generate leads.

Discriminatory data practices demand action

Consumer privacy legislation must address discriminatory data practices. CDT proposes granting the FTC rulemaking authority to address discriminatory advertising, give people the right to correct information used to make decisions about protected opportunities, create more transparency and redress requirements for data brokers, and limit repurposing personal information. As a coalition of privacy and civil rights organizations articulated in the 2018 Public Interest Privacy Legislation Principles, “Decades of civil rights law have promoted equal opportunity in brick-and-mortar commerce; legislation must protect equal opportunity in online commerce as well.”