

January 31, 2024

Chair Tina Smith  
Ranking Member Cynthia Lummis  
U.S. Senate Committee on Banking, Housing and Urban Affairs  
Subcommittee on Housing, Transportation, and Community Development  
226 Dirksen Senate Office Building, Washington D.C. 20515

***Re: CAIDP Statement for the Record: “Artificial Intelligence and Housing: Exploring Promise and Peril”***

Dear Chair Smith, Ranking Member Lummis, and Members of the Subcommittee,

We write to you regarding the hearing on “Artificial Intelligence and Housing: Exploring Promise and Peril.”<sup>1</sup> The Center for AI and Digital Policy (CAIDP) appreciates your leadership on addressing the risks and benefits of AI systems, and your work towards establishing standards of AI governance.

The CAIDP is an independent research and education non-profit based in Washington, DC.<sup>2</sup> Our global network of AI policy experts and advocates advises national governments, international organizations, and congressional committees regarding artificial intelligence and digital policy. Our President, Merve Hickok testified at the first congressional hearing on AI last year—“Advances in AI: Are We Ready For a Tech Revolution?”<sup>3</sup> CAIDP routinely provides advice to Congressional Committees on matters involving AI policy. We previously advised the Senate Judiciary Committee on AI in Criminal Prosecutions<sup>4</sup>, AI and Human Rights<sup>5</sup>, Senate HELP Committee on AI and Healthcare,<sup>6</sup> the

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<sup>1</sup> U.S. Senate Committee on Banking, Housing and Urban Affairs, Subcommittee on Housing, Transportation, and Community Development, *Artificial Intelligence and Housing: Exploring Promise and Peril*, (Jan. 31, 2024), <https://www.banking.senate.gov/hearings/artificial-intelligence-and-housing-exploring-promise-and-peril>.

<sup>2</sup> CAIDP, About, <https://www.caidp.org/about-2/>.

<sup>3</sup> Testimony and statement for the record of CAIDP President Merve Hickok, *Advances in AI: Are We Ready For a Tech Revolution?*, House Committee on Oversight and Accountability, Subcommittee on Cybersecurity, Information Technology, and Government Innovation (March 8, 2023), [https://oversight.house.gov/wp-content/uploads/2023/03/Merve-Hickok\\_testimony\\_March-8th-2023.pdf](https://oversight.house.gov/wp-content/uploads/2023/03/Merve-Hickok_testimony_March-8th-2023.pdf).

<sup>4</sup> CAIDP, *Statements*, <https://www.caidp.org/statements/>

<sup>5</sup> CAIDP, *Statement to Senate Judiciary Committee on “AI and Human Rights”*, (June 13, 2023), <https://www.caidp.org/app/download/8462575863/CAIDP-SJC-06132023.pdf>

<sup>6</sup> CAIDP, *Statement to Senate HELP Committee on “Avoiding a Cautionary Tale: Policy Considerations for Artificial Intelligence in Healthcare”*, (November 8, 2023), <https://www.caidp.org/app/download/8487454163/CAIDP-Senate%20HELP-AI-Healthcare-11082023.pdf>

Senate Rules Committee on AI and Elections<sup>7</sup>. We also publish the annual *Artificial Intelligence and Democratic Values Report*,<sup>8</sup> providing a comprehensive review of AI policies and practices in 75 countries.

In brief, our recommendations to this Committee are:

- 1) to exercise oversight on federal government tasked with strengthening AI and civil rights in the broader economy under the Biden AI Executive Order.<sup>9</sup>
- 2) to move forward with AI legislation, such as the the Algorithmic Accountability Act of 2023

### **Recommendation 1: Exercise oversight on federal agencies tasked with strengthening AI and civil rights in the broader economy under the AI Executive Order**

President Biden’s Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence<sup>10</sup> (“AI EO”) is a sweeping document on AI guardrails and seeks to position the federal government as a model of accountable AI development and use.

The principles and policies section of the AI EO states, “*Artificial Intelligence policies must be consistent with my Administration’s dedication to advancing equity and civil rights. My Administration cannot—and will not—tolerate the use of AI to disadvantage those who are already too often denied equal opportunity and justice. From hiring to housing to healthcare, we have seen what happens when AI use deepens discrimination and bias, rather than improving quality of life. Artificial Intelligence systems deployed irresponsibly have reproduced and intensified existing inequities, caused new types of harmful discrimination, and exacerbated online and physical harms.*”<sup>11</sup>

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<sup>7</sup> CAIDP, *Statement to Senate Rules Committee on “AI and Elections”*, (September 27, 2023), <https://www.caidp.org/app/download/8478562663/CAIDP-SRC-AI-ELECTIONS-09272023.pdf>

<sup>8</sup> CAIDP, *Artificial Intelligence and Democratic Values (2023)*, <https://www.caidp.org/reports/aidv-2022/>.

<sup>9</sup> Executive Order 14110 of October 30, 2023, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, Federal Register Vol. 88, No. 210, pg. 75191-75226, <https://www.govinfo.gov/content/pkg/FR-2023-11-01/pdf/2023-24283.pdf>

<sup>10</sup> Executive Order 14110 of October 30, 2023, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, Federal Register Vol. 88, No. 210, pg. 75191-75226, <https://www.govinfo.gov/content/pkg/FR-2023-11-01/pdf/2023-24283.pdf>

<sup>11</sup> *Id.*, Section 2(d), pg. 75192

Section 7.3 of the AI EO addresses the obligations of the federal government for “*Strengthening AI and Civil Rights in the Broader Economy*.”<sup>12</sup> Notably, the AI EO mandates “[t]o address discrimination and biases against protected groups in housing markets and consumer financial markets”<sup>13</sup> and encourages the Director of the Federal Housing Finance Agency and the Director of the Consumer Financial Protection Bureau to consider using their authorities, as they deem appropriate, to require their respective regulated entities, where possible, to use appropriate methodologies including AI tools to ensure compliance with Federal law.<sup>14</sup> To achieve such purpose, the AI EO requires the relevant agencies to evaluate their underwriting models for bias or disparities affecting protected groups and evaluate automated collateral-valuation and appraisal processes in ways that minimize bias.

The AI EO directs the Secretary of Housing and Urban Development (HUD) shall, and the Director of the Consumer Financial Protection Bureau (CFPB) to issue additional guidance: “... to combat unlawful discrimination enabled by automated or algorithmic tools used to make decisions about access to housing and in other real estate-related transactions,”<sup>15</sup> and specifically requires the guidance to address:

- “the potential violation of the Fair Housing Act (Public Law 90–284), the Fair Credit Reporting Act (Public Law 91–508), or other relevant federal laws by tenant screening systems. This includes examining how the use of data, such as criminal records, eviction records, and credit information, can result in discriminatory outcomes that violate Federal law, and
- how the Fair Housing Act, the Consumer Financial Protection Act of 2010 (Title X of Public Law 111–203), or the Equal Credit Opportunity Act (Public Law 93–495) apply to the advertising of housing, credit, and other real estate-related transactions through digital platforms, including those that use algorithms to facilitate advertising delivery. Also, providing best practices to avoid violations of Federal law.”<sup>16</sup>

We urge this Committee to exercise oversight on the actions to be completed by HUD and CFPB under the AI EO, specifically the issuance of additional guidance to address the risks of bias, discrimination, exclusion, and predatory practices in housing, credit related decisions arising from the use of automated decision-making systems.

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<sup>12</sup> *Id.*, pg. 75213

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, Section 7.3(c), pg. 75213.

<sup>16</sup> *Id.*

## Recommendation 2: Move forward with comprehensive AI legislation

We commend the agency actions to guide the appropriate use of AI— including the April 2023 joint statement by the FTC, DOJ, EEOC, and CFPB on bias in automated systems,<sup>17</sup> and the White House Blueprint for an AI Bill of Rights.<sup>18</sup>

However, these measures do not address the full spectrum of governance required for the development, deployment, and use of AI systems. We support the Blumenthal-Hawley Bi-Partisan Framework for U.S. AI Act<sup>19</sup> and the Algorithmic Accountability Act<sup>20</sup>. We believe the implementation of either of these initiatives would go a long way in filling the legislative vacuum in which high-risk AI systems operate.

AI-powered screening, rental programs can greatly exacerbate the current problems with access to housing and credit, for already underserved populations and vulnerable groups.<sup>21</sup> Generative AI systems can produce convincing yet fake datasets,<sup>22</sup> enabling the spread of housing market misinformation through fake reviews, testimonials, articles, or emails. There are also examples of algorithmic systems facilitating collusion among landlords to raise rental prices to the detriment of consumers in the market. Just last year, the Department of Justice joined an antitrust lawsuit filed by dozens of tenants against Texas-based software provider Real Page for its price-setting algorithms which inflated rents.<sup>23</sup>

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<sup>17</sup> EEOC, CRT, FTC, and CFPB, *Joint Statement On Enforcement Efforts Against Discrimination And Bias In Automated Systems*, (Apr. 25, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf).

<sup>18</sup> White House Office of Science and Technology Policy, *Blueprint for an AI Bill of Rights*, (October 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>.

<sup>19</sup> Senator Richard Blumenthal & Senator Josh Hawley, *Bipartisan Framework for U.S. AI Act*, <https://www.blumenthal.senate.gov/imo/media/doc/09072023bipartisanaiframework.pdf>

<sup>20</sup> Office of Senator Cory Booker, *Booker, Wyden, Clarke Introduce Bicameral Bill to Regulate Use of Artificial Intelligence to Make Critical Decisions like Housing, Employment and Education*, Press Release, (Sept. 21, 2023), <https://www.booker.senate.gov/news/press/booker-wyden-clarke-introduce-bicameral-bill-to-regulate-use-of-artificial-intelligence-to-make-critical-decisions-like-housing-employment-and-education>

<sup>21</sup> Consumer Reports, *How Tenant Screening Reports Make It Hard for People to Bounce Back From Tough Times*, (Mar. 11, 2021), <https://www.consumerreports.org/electronics/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/>

<sup>22</sup> Miryam Naddaf, *ChatGPT Generates Fake Data Set to Support Scientific Hypothesis*, 623 *Nature* 895 (2023).

<sup>23</sup> ProPublica, *DOJ Backs Tenants in Case Alleging Price-Fixing by Big Landlords and a Real Estate Tech Company*, (November 16, 2023), <https://www.propublica.org/article/doj-backs-tenants-price-fixing-case-big-landlords-real-estate-tech>

Automated systems used to determine who gets housing rely on faulty algorithms and systems which are opaque, predictive, and frequently based on inaccurate data.<sup>24</sup> The discriminatory consequences are not just theoretical; there is growing body of litigation because of disparate impact on minorities.<sup>25</sup> More concerning is that the widespread use of AI driven decision making relating to housing, renting, or credit is constricting avenues for meaningful redress to contest adverse outcomes in court as petitioners struggle to establish “standing”.<sup>26</sup> The models making these decisions are not interpretable<sup>27</sup>, and as such creates barriers to establishing “traceability” for the purpose of “standing” when attempting to enforce private rights of action under applicable statutes.

Specific to housing and related credit or real-estate transactions, we urge the Committee to consider the following recommendations in developing legislation:

- i. The consumer must be provided with clear, transparent, and complete information about AI-driven decision-making processes, including the subjects and elements involved. Simple processes should be in place for appealing any such decision.
- ii. Affected parties should have a right to contest adverse decisions made by AI systems.
- iii. Decisions about housing allocation should not rely solely on algorithmic outcomes, and companies utilizing AI systems be able to provide explanations for their decisions.
- iv. Implement ex-ante impact assessments and ex-post evaluation or audit mechanisms for any AI system that implicates civil rights or public safety.

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<sup>24</sup> TechEquity Collaborative, *The Promises and Perils of Residential Proptech - Year 1 Summary Report*, (Apr. 2023), <https://techequitycollaborative.org/2023/04/25/the-promises-and-perils-of-residential-proptech-year-1-summary-report/>

<sup>25</sup> *Louis v. Saferent Sols., LLC*, No. 22-CV-10800-AK, 2023 WL 4766192 (D. Mass. July 26, 2023); *Connecticut Fair Hous. Ctr. v. Corelogic Rental Prop. Sols., LLC*, 369 F. Supp. 3d 362 (D. Conn. 2019); In re: *TRANSUNION RENTAL SCREENING SOLUTIONS, INC. FCRA Litigation.*, 2021 WL 4932957; *Perez v. Transunion Rental Screening Solutions, Inc.*, 3:18CV02509

<sup>26</sup> U.S. Const. art. III, § 2, cl. 1. This situation is mainly due to the fact that “[t]o meet the constitutional minimum standing requirements, all plaintiffs must establish they have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.”

<sup>27</sup> Pauline T. Kim, *Data-Driven Discrimination at Work*, 58 *Wm. & Mary L. Rev.* 857 (2017), <https://scholarship.law.wm.edu/wmlr/vol58/iss3/4>



Given the serious challenges to housing access, affordability, and equity that are worsened by the widespread of use of AI systems, last year, a coalition of 15 Attorney Generals submitted a comment letter to the FTC and CFPB recommending many of the measures set forth above.<sup>28</sup> AI Legislation is now urgent and we impress upon this Committee to support the Algorithmic Accountability Act 2023 in moving forward to mark-up.

Thank you for your consideration of our views. We ask that this statement be included in the hearing record. We would be pleased to provide you and your staff with additional information.

Sincerely yours,

Marc Rotenberg  
CAIDP Executive Director

Merve Hickok  
CAIDP President

Christabel Randolph  
Law Fellow

Natalia Alarcón Rueda  
Research Assistant

Md Abdul Malek  
Research Assistant

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<sup>28</sup> State of California, Department of Justice, *Attorney General Bonta Submits Comment Letter Recommending Reforms to the Tenant Screening Process*, Press Release, (May 31, 2023), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-submits-comment-letter-recommending-reforms-tenant>