

# United States Senate

WASHINGTON, DC 20510

April 17, 2018

Mark Zuckerberg  
Chief Executive Officer  
Facebook  
1 Hacker Way  
Menlo Park, CA 94025

Dear Mr. Zuckerberg:

We write today to express our concern over recent reports that Facebook allows advertisers to use the platform's advertising services to target employment and housing advertisements to only certain users on the basis of their protected characteristics. While targeted ads can be a tremendous tool for businesses and organizations, the unregulated use of such targeting for housing and employment advertising can facilitate unlawful discrimination. We urge Facebook to strengthen its policies against the use of targeted advertising on the basis of protected characteristics in online housing and employment advertising, to ensure that we can combat 21<sup>st</sup> century forms of employment discrimination.

In collaboration with *The New York Times*, *ProPublica*'s recent investigation into Facebook's employment advertising business practices found that many of the nation's leading employers, place job ads targeted to limited age groups, usually to younger workers.<sup>1</sup> Without careful oversight, this practice could result in systemic discrimination against older American workers in violation of the Age Discrimination in Employment Act of 1967 (ADEA).<sup>2</sup> If Facebook permits employers to target employment ads on the basis of other protected characteristics, such as race, color, religion, sex, disability, or national origin, the platform and its advertisers could be in violation of Title VII of the Civil Rights Act, Title I of the Americans with Disabilities Act, or Title II of the Genetic Information Nondiscrimination Act.<sup>3</sup> And while it may be unclear whether Facebook's actions would meet the current legal standards of liability for facilitating discriminatory employment practices, it is perfectly clear that the social network's choice to allow ad targeting by age runs counter to the American value of providing equal opportunity in employment.

This news comes at a time when Facebook's ad targeting practices are coming under increased scrutiny in a variety of contexts. Fair housing groups recently filed a lawsuit against the social network alleging that Facebook facilitates housing discrimination through its advertising

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<sup>1</sup> Julia Angwin, Noam Scheiber, and Ariana Tobin, *Dozens of Companies Are Using Facebook to Exclude Older Workers From Job Ads*, PROPUBLICA (December 20, 2017), <https://www.propublica.org/article/facebook-ads-age-discrimination-targeting>.

<sup>2</sup> 29 U.S.C. §§ 621-634.

<sup>3</sup> 42 U.S.C. §§ 2000e-2000e-17; 42 U.S.C. §§ 12111-12117; 42 U.S.C. §§ 2000ff-2000ff11.

programs.<sup>4</sup> The practice of discriminatory ad targeting is particularly nefarious because Facebook users cannot meaningfully control which ads they see; thus, discriminatory practices may go undetected.

Furthermore, we are gravely concerned by the allegations that Facebook has not followed through on its past promises to combat discriminatory ads on its platform. In response to a separate *ProPublica* investigation of discriminatory housing ads on the social network, Facebook updated its policies and promised to improve its enforcement against discriminatory ad content.<sup>5</sup> However, a follow-up investigation revealed that advertisers were still able to place housing ads that explicitly excluded users from certain racial, ethnic, and religious groups.<sup>6</sup> The lawsuit filed by the National Fair Housing Alliance alleges that housing ads discriminating on the basis of sex and family status were still able to be created and published as of February, 2018, in violation of the Fair Housing Act.<sup>7</sup>

With its user base of over 200 million Americans, Facebook has an opportunity and responsibility to ensure that advertisements for employment, housing, and other public accommodations are accessible on a fair and equal basis. Barring advertisers from tailoring their ads to discriminate against users on the basis of their protected characteristics is a necessary step. In light of these concerns about Facebook's current practices regarding targeting for employment and housing advertisements, please respond to the following questions and provide the requested information by May 15, 2018.

1. Please provide a detailed description, including screenshots if applicable, of the nondiscrimination compliance certification that Facebook currently requires advertisers to complete.
2. Regardless of whether the characteristics are described as demographic, behavioral, or interest-based criteria, does Facebook allow employment and housing advertisements to be targeted to users on the basis of protected characteristics, including race, national origin, religion, sex, gender, disability, age, and familial status?
3. Does Facebook allow employment and housing advertisements to be targeted to users on the basis of categories that may be reasonable proxies for protected characteristics?
4. Does Facebook allow employment and housing advertisements to be targeted to users on the basis of their sexual orientation or gender identity?
5. In Facebook's December 20, 2017 press release, Rob Goldman, VP of Ads, wrote that Facebook "proactively look[s] for bad ads, and investigate[s] concerns when they are raised." Please describe Facebook's process for monitoring ads for possible violations of

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<sup>4</sup> Charles V. Bagli, *Facebook Vowed to End Discriminatory Housing Ads. Suit Says it Didn't*. NEW YORK TIMES (March 27, 2018), <https://www.nytimes.com/2018/03/27/nyregion/facebook-housing-ads-discrimination-lawsuit.html>.

<sup>5</sup> See *Improving Enforcement and Promoting Diversity: Updates to Ads Policies and Tools*, FACEBOOK NEWSROOM (Feb. 8, 2017), <https://newsroom.fb.com/news/2017/02/improving-enforcement-and-promoting-diversity-updates-to-ads-policies-and-tools/>.

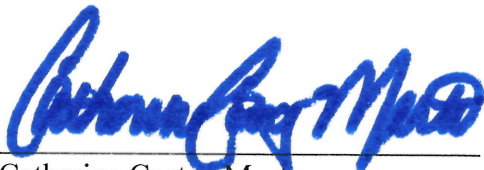
<sup>6</sup> Julia Angwin, Ariana Tobin and Madeleine Varner, *Facebook (Still) Letting Housing Advertisers Exclude Users by Race*, PROPUBLICA (Nov. 21, 2017), <https://www.propublica.org/article/facebook-advertising-discrimination-housing-race-sex-national-origin>;

<sup>7</sup> See Complaint, National Fair Housing Alliance v. Facebook, Inc., 1:18-cv-02689 (S.D.N.Y. March 27, 2018).

Title VII, the Fair Housing Act, the Americans with Disabilities Act, and Title II of the Genetic Information Nondiscrimination Act.

6. Does Facebook “proactively look” for ads that may be discriminatory on the basis of each protected characteristic?
7. Does Facebook have defined, written policies for determining whether an employment or housing ad is discriminatory on the basis of each protected characteristic, and a procedure for deleting such ads? If so, please provide copies of such policies.
8. Has Facebook ever proactively deleted an employment ad on the grounds that it discriminated on the basis of a protected characteristic? If so, how many such ads has Facebook deleted, broken down by each protected characteristic?
9. Has Facebook ever deleted an employment ad on the grounds that it discriminated on the basis of a protected characteristic in response to a user complaint? If so, how many such ads has Facebook deleted, broken down by each protected characteristic?
10. Has Facebook ever barred businesses or ad companies from using its services because of discriminatory ads? How many? Please detail the process Facebook has for addressing discriminatory advertisers, once identified.
11. Many state and local nondiscrimination laws go further than federal statutes prohibiting discrimination against protected classes. Does Facebook require advertisers to certify that they will comply with state and local nondiscrimination laws?
12. Does Facebook “proactively look” at employment and housing ads to evaluate their compliance with state and local nondiscrimination laws?
13. Does Facebook respond to user complaints about employment and housing ads that may violate state and local nondiscrimination laws? If so, how?
14. Please provide a timeline and any relevant documentation of interactions with the U.S. Department of Housing and Urban Development on Facebook’s advertisement policies.

Sincerely,



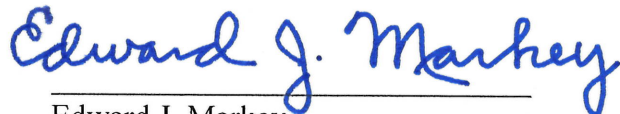
Catherine Cortez Masto  
United States Senator



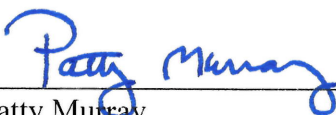
Richard Blumenthal  
United States Senator



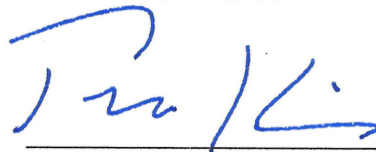
Margaret Wood Hassan  
United States Senator



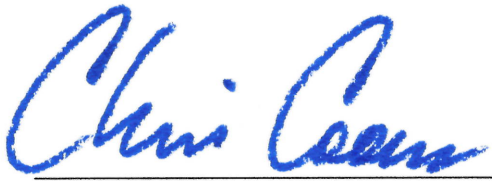
Edward J. Markey  
United States Senator



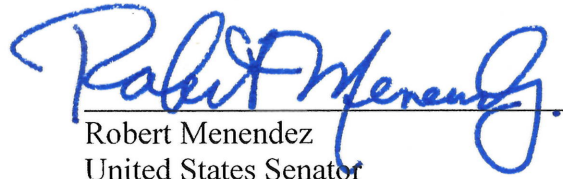
Patty Murray  
United States Senator



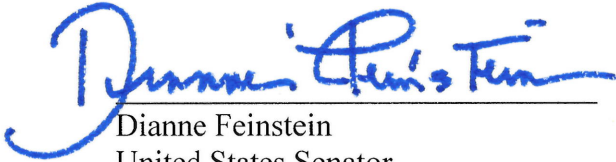
Tim Kaine  
United States Senator



Christopher A. Coons  
United States Senator



Robert Menendez  
United States Senator



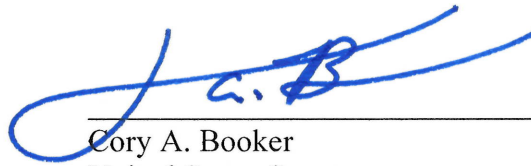
Dianne Feinstein  
United States Senator



Tammy Duckworth  
United States Senator



Richard J. Durbin  
United States Senator



Cory A. Booker  
United States Senator



Jack Reed  
United States Senator



Kamala D. Harris  
United States Senator