

**Testimony of Peter Romer-Friedman**  
Principal, Gupta Wessler PLLC

**Before the U.S. House of Representatives**  
**Committee on Education and Labor**  
**Subcommittee on Civil Rights and Human Services**

**“The Future of Work: Protecting Workers’ Civil Rights in the Digital Age”**

February 5, 2020

Chair Bonamici, Ranking Member Comer, and distinguished members of the House Subcommittee on Civil Rights and Human Services. Thank you for inviting me to testify today and share my experience combating the rising tide of digital discrimination and algorithmic bias that threatens to erase decades of progress that our country has made in the area of equal employment opportunity.

My name is Peter Romer-Friedman. I am a principal at Gupta Wessler PLLC, a national appellate, constitutional, and complex litigation firm, where I am the head of the firm’s civil rights and class actions practice. Gupta Wessler represents workers harmed by discrimination, service members denied rights and benefits, consumers defrauded by deceptive practices, and many others whose constitutional and statutory rights are violated. My practice focuses on vindicating civil rights for people and organizations in federal and state trial courts. Over the past 10 years, I have litigated civil rights and class actions against major companies, as well as the federal government and state governments, including in areas such as employment discrimination and benefits, fair housing, credit discrimination, and constitutional rights. Before becoming a civil rights litigator, I had the great privilege to serve as labor counsel to Senator Edward M. Kennedy (MA) and the Senate Committee on Health Education Labor and Pensions that Senator Kennedy chaired for many years. As labor counsel to the HELP Committee and in my prior capacity as a legislative representative for the United Steelworkers, I had the honor of collaborating with many current and former members of the House Committee on Education and Labor, including its current Chairman Rep. Bobby Scott (VA) and former Chairman Rep. George Miller (CA).

Since 2016, I have worked to identify and bring impact litigation to stop digital discrimination and algorithmic bias in the workplace, as well as the market for housing, credit, and other financial services products. Digital discrimination has the potential to undermine civil rights laws that Congress enacted in the 1860s to end racial discrimination in contracting, employment and housing, and that Congress enacted between 1964 and 1974 to end discrimination in employment, housing, and credit based on protected classes such as race, gender, age, national origin, and religion, as well as more recent laws.

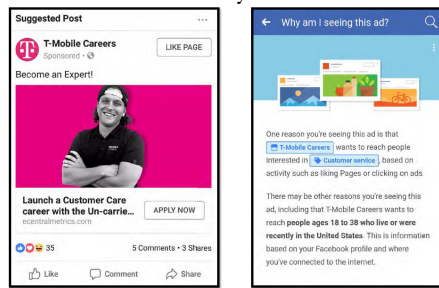
It may be hard to believe, but in the past few years it has been possible for employers to send job advertisements – and ads for other economic opportunities – via social media platforms like Facebook that exclude workers from receiving those ads based on their race, age, gender, religion, national origin, disability, and even political affiliation. These types of exclusionary advertisements mean that people may not learn about jobs or other economic opportunities because of who they are or what they believe. For example, until recently a publicly traded company could decide not to send job ads on Facebook to people interested in Christianity, the Second Amendment, or the Republican National Committee, or alternatively an employer could exclude people interested in the American Civil Liberties Union (“ACLU”), the AFL-CIO, or Planned Parenthood from receiving their job ads. And, incredibly, not so long ago, employers actually had the option of targeting their ads on Facebook to people who

were interested in things like Hitler, rape, white pride, fascism, and the Confederacy, or to people who had identified their “field of study” as “Jew Hater” or “how to burn Jews.”<sup>1</sup>

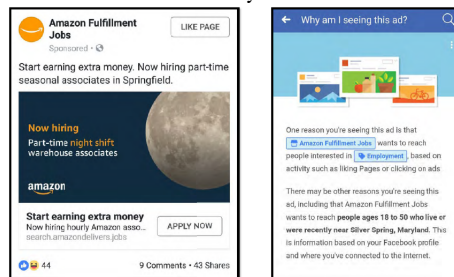
The growing problem of digital discrimination has been thoroughly documented by the investigations of my clients—especially the Communications Workers of America and Housing Rights Initiative—groundbreaking investigative reporting by journalists at *ProPublica*, the *New York Times*, and the *MarkUp*,<sup>2</sup> and the legal advocacy of civil rights and civil liberties organizations like the National Fair Housing Alliance and the ACLU.

Many big and small businesses have used digital tools to discriminate when recruiting workers and customers online. The following advertisements have been published on Facebook since 2016. (Images of these biased ads are provided in **Exhibit A** to this testimony and several are shown below.)

- **T-Mobile** sent job ads on Facebook that targeted people who were 18 to 38 years old, thereby excluding workers older than 38 years old from receiving the ads.<sup>3</sup>



- **Amazon.com** sent job ads on Facebook that targeted people who were 18 to 50 years old, thereby excluding workers older than 50 years old from receiving the ads.<sup>4</sup>



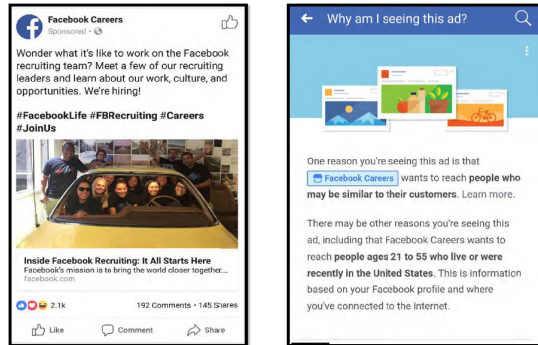
<sup>1</sup> See Julia Angwin, *Facebook Enabled Advertisers to Reach Jew Haters*, *ProPublica* (Sept. 14, 2017), <https://www.propublica.org/article/facebook-enabled-advertisers-to-reach-jew-haters>; Noam Scheiber, *Facebook’s Ad-Targeting Problem, Captured in a Literal Shade of Gray*, *N.Y. Times* (Sept. 28, 2017), <https://www.nytimes.com/2017/09/28/technology/facebook-ads.html>; Will Oremus & Bill Carey, *Facebook’s Offensive Ad Targeting Options Go Far Beyond “Jew Haters”*, *Slate* (Sept. 14, 2017), <https://slate.com/technology/2017/09/facebook-let-advertisers-target-jew-haters-it-doesnt-end-there.html>.

<sup>2</sup> See Julia Angwin & Terry Parris Jr., *Facebook Lets Advertisers Exclude Users by Race*, *ProPublica* (Oct. 28, 2016), <https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race>; Julia Angwin, Noam Scheiber, & Ariana Tobin, *Facebook Job Ads Raise Concerns About Age Discrimination*, *N.Y. Times* (Dec. 20, 2017), <https://www.nytimes.com/2017/12/20/business/facebook-job-ads.html>; Ariana Tobin & Jeremy Merrill, *Facebook Is Letting Job Advertisers Target Only Men*, *ProPublica* (Sept. 18, 2016), <https://www.propublica.org/article/facebook-is-letting-job-advertisers-target-only-men>. Julia Angwin, who uncovered the potential for race discrimination in housing ads on Facebook, recently founded the *MarkUp*, where she is the editor in chief and leads a team of journalists who investigate new technologies.

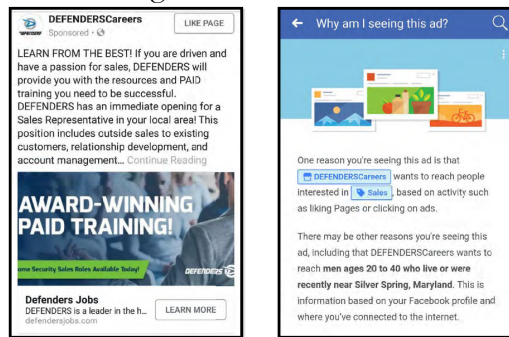
<sup>3</sup> Complaint ¶ 86 & Ex. 1, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. Dec. 20, 2017), Dkt. No. 1.

<sup>4</sup> *Id.* ¶ 2 & Ex. 1.

- **Facebook** used its own ad platform to send job ads to workers to apply for jobs at Facebook, and in doing so Facebook targeted people who were 21 to 55 years old, thereby excluding workers older than 55 years old from receiving the ads. And Facebook also used a controversial tool called “Lookalike Audiences” that my clients alleged involved age and gender bias.<sup>5</sup>



- **Defenders**, a leading home security installation company, sent job ads on Facebook to men who were 20 to 40 years old, thereby excluding *all* female workers and male workers older than 40 years old from receiving the ads.<sup>6</sup>



- **Rice Tire**, a regional auto repair chain, sent job ads on Facebook that targeted men who were 18 to 55 years old, thereby excluding *all* female workers and male workers older than 55 years old from receiving the ads.<sup>7</sup>
- **Numerous major housing companies** in the District of Columbia Metropolitan area excluded older persons from receiving their housing ads on Facebook.<sup>8</sup>

<sup>5</sup> *Id.* ¶ 3 & Ex. 1.

<sup>6</sup> ACLU, Facebook EEOC Complaint – Defenders Charge (Sept. 18, 2018), <https://www.aclu.org/legal-document/facebook-eec-complaint-defenders-charge>; ACLU Facebook EEOC Complaint, Ex. A (Sept. 18, 2018), <https://www.aclu.org/legal-document/facebook-eec-complaint-defenders-exhibit>; Noam Scheiber, *Facebook Accused of Allowing Bias Against Women in Job Ads*, N.Y. Times (Sept. 18, 2018), <https://www.nytimes.com/2018/09/18/business/economy/facebook-job-ads.html>.

<sup>7</sup> ACLU, Facebook EEOC Complaint – Rice Tire Charge (Sept. 18, 2018), <https://www.aclu.org/legal-document/facebook-eec-complaint-rice-tire-charge>; ACLU, Facebook EEOC Complaint – Rice Tire, Ex. A (Sept. 18, 2018), <https://www.aclu.org/legal-document/facebook-eec-complaint-rice-tire-exhibit>.

<sup>8</sup> Marie Baca, *Housing companies used Facebook's ad system to discriminate against older people, according to new human rights complaints*, Wash. Post (Sept. 18, 2019), <https://www.washingtonpost.com/technology/2019/09/18/housing-companies-used-facebooks-ad-system-discriminate-against-older-people-according-new-human-rights-charges/>.

- **Numerous financial service companies** nationwide excluded women and older people from receiving their ads for financial services opportunities, such as credit, bank accounts, insurance, and financial consulting.<sup>9</sup>
- **All of these ads on Facebook relied on an ad delivery algorithm** that my clients allege uses age and gender to determine which Facebook users will receive ads within the audience an advertiser has selected to send its ads.<sup>10</sup>

These types of biased ads illustrate the discrimination that we believe has been systemic and pervasive for many years. And it was made possible by large technology companies that voluntarily gave employers and other entities tools to “micro-target” the types of workers and customers they want to reach via their ads.

It is likely that there have been hundreds of millions of incidents of digital discrimination. And in most cases, workers and consumers have had no idea that they were denied equal opportunity. Whether you're liberal, moderate, or conservative, this rising tide of digital discrimination should trouble you. And, in fact, in combating digital discrimination, I have worked hand-in-hand with lawyers and organizations of all political and ideological stripes—because we all agree that your opportunity to hear about a job should not depend upon your race, age, gender, religion, or political interests.

When I learned about the problem of digital discrimination, I thought to myself how disappointed Senator Kennedy would be to see national companies deny millions of job advertisements to hard working women and men who were looking for a job to make ends meet—simply because of their race, age, or gender. I thought about how Senator Kennedy had worked so hard to pass bipartisan legislation—like the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Fair Housing Act of 1968, and the Equal Credit Opportunity Act of 1974—and how digital discrimination seemed to violate both the spirit and letter of these laws. I thought about how courageous women and men, including Rep. John Lewis (GA), had risked or even given their lives to create these laws that were intended to give every person in America an equal opportunity to hear about, apply for, and secure a job. Indeed, Dr. Martin Luther King Jr. led the March on Washington for Jobs and Freedom, worked with President Lyndon Johnson to enact the Civil Rights Act, and fought for fair housing, and it was his tragic death that led Congress to enact the Fair Housing Act just days later.

Shortly after learning about the problem of digital discrimination, I and other civil rights advocates took action in federal court to enforce the civil rights that Congress had passed to level the playing field for all of us. And since we began these efforts in 2016, we have made some real progress to convince many companies to change their practices on all digital platforms, to convince Facebook to curb the most crude forms of digital discrimination that it had given to employers in exchange for money, and to have our federal government stand up for civil rights online.

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<sup>9</sup> Jonthan Stempel, *Facebook sued for age, gender bias in financial services ads*, Reuters (Oct. 31. 2019), <https://www.reuters.com/article/us-facebook-lawsuit-bias/facebook-sued-for-age-gender-bias-in-financial-services-ads-idUSKBN1XA2G8>.

<sup>10</sup> Fourth Amended Complaint ¶¶ 82-83, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. June 5, 2019), Dkt. No. 140.

I am happy to report that there has been broad and bipartisan support for stopping digital discrimination, including from non-profit groups like the AARP and the Lawyers Committee for Civil Rights Under Law, the bipartisan leaders of the Senate Aging Committee,<sup>11</sup> and bipartisan members of other congressional committees.<sup>12</sup> And several federal agencies have taken decisive action, including the U.S. Department of Justice, the Equal Employment Opportunity Commission (“EEOC”), and the U.S. Department of Housing & Urban Development (“HUD”).

But digital discrimination is a fairly new phenomenon in the context of civil rights laws that have been on the books for more than 150 years, and we are now in the early stages of understanding and confronting this problem. This means that Congress and federal regulators have a unique opportunity to shape how civil rights will be treated and respected in the digital era in which technology and algorithms seem to rule the world and dictate the unique opportunities and experiences of each person. I believe that we can strike a fair balance between technology and civil rights that reaffirms the dignity of every person and promotes efficient and fair labor markets.

There is hard work to be done for all of us who want civil rights to have a place in a digital America. There are many ways that our laws can be improved so that no American loses out on an opportunity because of what a piece of data says about her race, national origin, gender, age, religion, disability, familial status, or political interests.

Today, I will identify how this Committee and this Congress can clarify and strengthen our federal civil rights laws to stop digital discrimination and algorithmic bias and to ensure that technology advances the cause of equal opportunity, integration, and justice in America.

Although I believe that many digital discrimination practices violate current civil rights laws, making the law even more clear, specific, and protective will ensure that employers will know what their obligations are. In my experience, most employers want to follow the law, and greater clarity in the law helps them to comply and reduces litigation. In addition, transparency of employers’ practices will be critical to stopping digital discrimination, first because workers cannot enforce their rights if they don’t know how their rights are being affected, and second because employers will have little incentive to comply with the law if they believe that workers will never know when their rights are being violated.

As I describe below, Congress should consider adopting a range of policy reforms to combat digital discrimination, including:

- Ensuring that tech platforms like Facebook that play a role in advertising and recruiting workers are covered by federal civil rights laws.
- Clarifying that certain types of digital discrimination are unlawful, such as job ad campaigns that exclude people based on protected statuses, algorithms that deliver ads based on protected statuses, and job ads that are targeted based on categories unrelated to jobs.
- Requiring tech platforms and employers to disclose to workers and federal agencies the types of digital tools they use to advertise, recruit, hire, and take other employment actions.

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<sup>11</sup> Jennifer Valentino-DeVries, *AARP and Key Senators Urge Companies to End Age Bias in Recruiting on Facebook*, ProPublica (Jan. 8, 2018), <https://www.propublica.org/article/aarp-and-key-senators-urge-companies-to-end-age-bias-in-recruiting-on-facebook>; see *infra* Notes 32-34 on the actions taken by federal agencies on these issues.

<sup>12</sup> The House Financial Services Committee recently held a hearing that focused on Facebook’s housing discrimination. U.S. House Committee on Financial Services, Full Committee Hearing: An Examination of Facebook and Its Impact on the Financial Services and Housing Sectors (Oct. 23, 2019), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404487>.



- Adopting appropriate remedies for digital bias, such as modest penalties for each violation, in order to adequately deter violations and address the types of harm caused by such bias.
- Clarifying that Title II of the Civil Rights Act, the federal public accommodations law, applies to online places of public accommodation as well as physical ones.
- Adopting a federal privacy law that prohibits collecting, selling, lending, or using data on workers' protected statuses to discriminate against them.
- Ending Section 230(c) internet immunity for commercial or paid advertising and for situations in which a web site does not take reasonable affirmative and timely steps to stop legal violations that it knows about or should reasonably know about.

In too many areas of American society, the “Move fast and break things” credo of powerful technology leaders<sup>13</sup> has turned back the clock by more than half a century. It has upended our civil rights, our civil discourse, and even the most basic facts that our society can agree upon. Indeed, the same micro-targeting tools that domestic employers have deployed to discriminate in job advertising have been used by foreign agents to foster disinformation and foment division within our society.

In my view, technology should not disrupt our civil rights. It should not break equal opportunity. Technology can and should be a mechanism for making the promise of equal opportunity and integration a reality, especially in the American workplace. Technology should unite businesses and workers for a common cause.

There are some people and companies who believe that that employers and digital platforms must have a free license to use technology to discriminate against workers. Some have even argued that a federal law—the Communications Decency Act of 1996, 47 U.S.C. § 230(c)—gives absolute immunity to technology companies like Facebook when they discriminate against their users. I don't believe that is the law today. And I don't believe that should be the future that our children and grandchildren grow up in. Technology should enhance justice, fairness, and equality. But it will only do so when human beings demonstrate sound and ethical leadership from the boardroom to Congress.

### **The Rising Tide of Digital Discrimination in Job Recruiting and Hiring**

Over the past decade, job advertising and recruiting has shifted dramatically from traditional forms of media, such as classified ads in newspapers, or passive online job boards like Craigslist, to relatively new interactive platforms like social media. Likewise, the process for applying for jobs has increasingly become digital. For example, in the 2000s, a job applicant might learn about a job and snail mail a cover letter and resume to an employer for an office job, or apply in person for a clerk position. But today it is much more likely that a worker will hear about a job through advertising that is targeted and tailored directly to her, and then apply for a job on the employer's web site by filling in drop down forms and uploading her resume. Twenty years ago, even large employers would sort through resumes manually, while today they may rely on their own software or platforms like ZipRecruiter to determine which workers should be considered or interviewed. And today, once a worker gets a job, her employer is likely to analyze her performance with types and volumes of data that were not previously available—such as using online customer surveys to analyze performance. These digital tools and

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<sup>13</sup> The Drake Baer, *Mark Zuckerberg Explains Why Facebook Doesn't Move Fast And Break Things' Anymore*, Business Insider (May 2, 2014), <https://www.businessinsider.com/mark-zuckerberg-on-facebooks-new-motto-2014-5> (Facebook CEO Mark Zuckerberg acknowledged that the company's motto had been “Move fast and break things”).

applications give employers an unprecedented ability to analyze data on their applicants and workers. And they can be used in very positive or negative ways.

The trend towards advertising and applying for jobs online has offered the prospect of democratizing the labor market and making it much more efficient for workers to acquire information about jobs, for employers to identify which workers might be interested in applying for jobs, and for employers to sort through and analyze job applications.

Regrettably, injecting digital technology into employment advertising, recruiting, and hiring has also created an unprecedented opportunity for employers to discriminate, especially by targeting job advertisements towards people who match the demographic profile—including age, gender, race, and location—that employers want to recruit. And an enormous number of employers have jumped at the opportunity to advertise jobs only to specific demographic groups, thereby excluding millions of people from receiving their job ads based on protected statuses like age, gender, and race.

Because most of the work I have done to combat digital discrimination has involved Facebook and because Facebook is the largest social media platform in the United States (7 of every 10 Americans use Facebook<sup>14</sup>), I will use my experience with Facebook to illustrate the problem of digital discrimination.

For a number of years, employers have routinely used age, gender, and race to target their job advertisements on Facebook to the people they wanted to recruit. Until Facebook made significant changes to its platform in late 2019, as a result of a settlement with my clients (including the Communications Workers of America), Facebook gave employers powerful tools to discriminate against workers when determining which specific people would receive their job ads on their News Feed and other places on Facebook, Instagram, and Messenger. And a very large portion of employers deployed those tools.

Facebook's discriminatory digital tools came in different flavors. For instance:

- Facebook gave employers the ability to target job ads to Facebook users between certain ages (such as people 18 to 38 years old), thereby excluding older workers from receiving job ads.<sup>15</sup> This type of exclusionary advertising indicates a preference for younger workers based on age and causes fewer older people to be hired, and thus violates the ADEA's advertising discrimination and hiring discrimination provisions.<sup>16</sup>
- Facebook gave employers the ability to target job ads to Facebook users based on their gender, thereby excluding female or male workers from receiving job ads.<sup>17</sup> This type of exclusionary advertising indicates a preference for workers based on sex and causes

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<sup>14</sup> Pew Research Center, 10 facts about Americans and Facebook (May 16, 2019), <https://www.pewresearch.org/fact-tank/2019/05/16/facts-about-americans-and-facebook/>.

<sup>15</sup> Fourth Amended Complaint, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. June 5, 2019), Dkt. No. 140; Julia Angwin, Noam Scheiber, & Ariana Tobin, *Facebook Job Ads Raise Concerns About Age Discrimination*, N.Y. Times (Dec. 20, 2017), <https://www.nytimes.com/2017/12/20/business/facebook-job-ads.html>.

<sup>16</sup> 29 U.S.C. § 623(e) (barring a notice or advertisement relating to employment that indicates a preference or discrimination based on age); *id.* § 623(a)(1) (barring age discrimination in hiring).

<sup>17</sup> ACLU, Facebook EEOC Complaints (Sept. 18, 2019), <https://www.aclu.org/cases/facebook-eeoc-complaints>; Ariana Tobin & Jeremy Merrill, Facebook Is Letting Job Advertisers Target Only Men, ProPublica (Sept. 18, 2016), <https://www.propublica.org/article/facebook-is-letting-job-advertisers-target-only-men>.

fewer people of a specific gender to be hired, and thus violates Title VII's advertising discrimination and hiring discrimination provisions.<sup>18</sup>

- Facebook gave employers the ability to target job ads based on the race that Facebook associated with the user, such as “African American,” “Hispanic,” or “Asian American,” thereby excluding people of color from receiving job ads or targeting one racial or ethnic group at the expense of another group—in violation of the same provisions of Title VII. (Facebook originally called these racial and ethnic categories a “Demographic” group, but when it was sued for race discrimination by my clients Facebook inexplicably decided to call these categories a “Behavior.”)<sup>19</sup>
- Facebook gave employers the ability to target job ads to people whom Facebook considered to be “Millennials,” “Generation X,” or “Young and Hip,” and dozens to hundreds of additional categories that were directly associated with age, gender, race, religion, disability, familial status, political affiliation, other classes protected under federal, state, or local law.<sup>20</sup>
- Facebook allowed advertisers to engage in digital redlining, so that advertisers could exclude Facebook users who lived in certain zip codes or lived within a mile of a certain address from receiving their ads. When an advertiser excluded certain zip codes, Facebook’s ad platform literally drew a red line around those zip codes. This kind of redlining in advertising has long been considered unlawful, especially in housing where advertisers traditionally steered their housing ads away from African Americans.<sup>21</sup> This practice can dramatically limit the racial or ethnic diversity of the audience that would receive the ad and apply for the relevant opportunity (whether housing, credit or a job). For example, an employer could place a job ad that is sent to all people in the District of Columbia, but specifically excludes Facebook users who live in zip codes whose residents are predominantly black and live south of the Anacostia River.
- Through its “Lookalike Audiences” tool, Facebook helped employers to identify a larger group of Facebook users who look like the workers or customers that employers identified to Facebook in a “seed” audience. This practice is similar to word of mouth recruiting and hiring (*i.e.*, recruiting people who are friends with an employer’s current

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<sup>18</sup> 42 U.S.C. § 2000e-3(b) (barring a notice or advertisement relating to employment that indicates a preference or discrimination based on sex); *id.* § 2000e-2(a)(1) (barring discrimination in hiring based on sex).

<sup>19</sup> Julia Angwin & Terry Parris Jr., *Facebook Lets Advertisers Exclude Users by Race*, ProPublica (Oct. 28, 2016), <https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race>; First Amended Complaint, *Onuoha v. Facebook, Inc.*, No. 16 Civ. 06440 (N.D. Cal. Feb. 13, 2017).

<sup>20</sup> Fourth Amended Complaint ¶ 70, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. June 5, 2019), Dkt. No. 140; First Amended Complaint, *Onuoha v. Facebook, Inc.*, No. 16 Civ. 06440 (N.D. Cal. Feb. 13, 2017); *National Fair Housing Alliance v. Facebook, Inc.*, No. 18 Civ. 02689 (S.D.N.Y. Mar. 27, 2018).

<sup>21</sup> Julia Angwin, Ariana Tobin and Madeleine Varner, *Facebook (Still) Letting Housing Advertisers Exclude Users by Race*, ProPublica (Nov. 21, 2017); 24 C.F.R. § 100.75(c)(3)-(4); 45 Fed. Reg. 57,102 (Aug. 26, 1980); Opposition to Motion to Dismiss Fourth Amended Complaint at 15-21, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. Sept. 24, 2019), Dkt. No. 147.



workers)—a practice that federal courts and the EEOC have long found to be unlawful.<sup>22</sup>

- When Facebook sent employers’ job ads to workers, a portion of the ads informed workers why they had been selected to receive the job ads, including because they were a certain gender or fell within a certain age range that the employer wanted to reach. This practice violates the ADEA and Title VII’s ban on including discriminatory words or content in job ads.<sup>23</sup> Research has shown that these types of age-based and gender-based statements in ads encourage people who fall within the relevant gender or age group to engage with the ad—which in the context of job ads means clicking on the ad and applying for a job.<sup>24</sup>

From 2016 through 2019, my clients and I investigated how employers were using these discriminatory tools to recruit workers (as well as recruit consumers for housing, credit, and financial services opportunities). Collaborating with my client, the Communications Workers of America, and the ACLU Women’s Rights Project (our-co-counsel), we uncovered systemic discrimination against older workers and women in the digital advertising of jobs—from tiny local companies to dozens of national employers, including many publicly traded companies. We found that employers were routinely expressly telling Facebook not to send their job ads to older persons or women, and Facebook followed those directions to not show job ads to older persons and women when delivering the ads to Facebook users. In addition, we learned that many employers were using “lookalike audiences” jointly created by Facebook and the employers to target job ads to people who were demographically similar to their current workers or customers in their “seed” audiences.

In addition to Facebook providing tools to employers to recruit workers in a discriminatory way, Facebook used its own platform to discriminate when hiring people to work at Facebook. For example, in 2017 Facebook excluded workers older than 55 from receiving their job ads to work in various positions at Facebook and routinely used “Lookalike Audiences.”<sup>25</sup>

In the course of investigating Facebook’s ad platform, my clients, co-counsel, and I learned that not only were employers expressly excluding older workers or women from receiving their job ads, but Facebook also was making decisions about which workers would receive job ads within the audience that the employer had selected (and employers were relying on those decisions). We learned that Facebook uses an ad delivery algorithm to decide which people will receive any given ad within a

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<sup>22</sup> See Fourth Amended Complaint ¶¶ 72-73, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. June 5, 2019), Dkt. No. 140; *Domingo v. New England Fish Co.*, 727 F.2d 1429, 1436 & n.3 (9th Cir. 1984).

<sup>23</sup> See Fourth Amended Complaint ¶¶ 84-86, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. June 5, 2019), Dkt. No. 140; see 29 U.S.C. § 623(e); 42 U.S.C. § 2000e-3(b); 29 C.F.R. § 1625.4(a) (stating that “[h]elp wanted notices or advertisements may not contain terms and phrases” such as “age 25 to 35, young, college student, recent college graduate, boy, girl, or others of a similar nature.”); 29 C.F.R. § 1604.5 (stating “The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed “Male” or “Female,” will be considered an expression of a preference, limitation, specification, or discrimination based on sex.”).

<sup>24</sup> Tami Kim, Kate Barasz, & Leslie K John, *Why Am I Seeing This Ad? The Effect of Ad Transparency on Ad Effectiveness*, *Journal of Consumer Research*, Vol. 45, Issue 5 (Feb 2019), <https://academic.oup.com/jcr/article-abstract/45/5/906/4985191?redirectedFrom=fulltext>.

<sup>25</sup> Complaint ¶ 3, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. Dec. 20, 2017), Dkt. No. 1.

selected audience. And, as we alleged in federal court, Facebook has told its advertisers and customers that Facebook uses the demographics of Facebook users—like age and gender—to decide which ads are relevant to which people and, in turn, which people will receive them.<sup>26</sup> This means that even when an employer does not specifically want to exclude older workers or women from receiving their ads, Facebook’s own ad delivery algorithm may still disproportionately send the job ads to younger people or men to the exclusion of older people or women.

Academic researchers, lawyers, and technologists have studied Facebook’s ad delivery algorithm and have observed significant disparities based on protected statuses, especially gender and race, in terms of which Facebook users are shown certain ads and that both Facebook’s algorithmic analysis of the content and images of the ads likely contribute to these disparities. In fact, even when the advertiser targets the same audience but uses different content or images, there may be an enormous difference in the distribution of who receives the ads based on protected statuses. For example, the researchers created one ad focusing on bodybuilding and another on cosmetics, and sent the ad to the same audience (all users in the United States 18 and older). They “observe[d] dramatic differences in ad delivery, even though the bidding strategy [wa]s the same for all ads, and each pair of ads target[ed] the same gender-agnostic audience. In particular, the bodybuilding ad ended up being delivered to over 75% men on average, while the cosmetics ad ended up being delivered to over 90% women on average.”<sup>27</sup> I strongly encourage the Committee’s members to review this study, as well as other research and briefings from a non-profit group called Upturn that investigates bias in technology.

Facebook’s CEO Mark Zuckerberg has repeatedly told Congress that Facebook wants ads to be relevant. As a general matter, it is hard to disagree with that goal. We all want to receive ads that present opportunities that we are more likely to be interested in pursuing than ones that are irrelevant. But when it comes to ads for jobs, housing, credit, or other valuable economic opportunities, it is highly problematic—and in many cases illegal—to decide who will be presented with these economic opportunities based on each person’s age, gender, race, or other protected traits. That is why many federal, state, and local laws prohibit discrimination in the advertising of jobs, housing, and other valuable opportunities, and why federal and state regulators are very concerned with this phenomenon.

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<sup>26</sup> Fourth Amended Complaint, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. June 5, 2019), Dkt. No. 140. In Facebook’s Help Center that educates advertisers and consumers about advertising on Facebook, Facebook answers the question “How does Facebook decide which ads to show me?” by stating that “We want the ads you see on Facebook to be as interesting and useful to you as possible. *These are examples of things we use to decide which ads to show you: . . . information about you from your Facebook account (example: for age, your gender, your location, the devices you use to access Facebook).*” How does Facebook decide which ads to show me?, Facebook Help Center (emphasis added), <https://www.facebook.com/help/562973647153813>.

<sup>27</sup> Muhammad Ali, Piotr Sapiezynski, Miranda Bogen, Aleksandra Korolova, Alan Mislove, and Aaron Rieke, *Discrimination through optimization: How Facebook’s ad delivery can lead to biased outcomes*. In *Proceedings of the ACM on Human-Computer Interaction*, Vol. 3, CSCW, Article 199 (Nov. 2019), <https://arxiv.org/pdf/1904.02095.pdf>.

## Legal Actions Challenging Digital Discrimination in Job Advertising on Facebook

From 2016 to 2018, my clients and I filed a class action lawsuit and two class charges against Facebook to challenge how Facebook had allegedly allowed and assisted employers in excluding workers from receiving job ads based on their race, age, and gender.<sup>28</sup>

In addition, in December 2017 my clients and I filed a lawsuit against T-Mobile and Amazon for denying their job ads to older workers.<sup>29</sup> And in 2018, we filed EEOC charges against more than 65 companies that engaged in age-restricted or gender-restricted job advertising, such as Capital One, Citadel, Fairfield Residential, Ikea, and Leidos. In 2019, we filed a similar age-bias charge against Target. The companies that we found to have engaged in age-restricted job advertising span across nearly every major industry in the United States: e-commerce, telecommunications, financial services, retail, government contracting, construction, and food services. Even a number of governments engaged in age-biased job advertising, such as the U.S. Secret Service and the Washington Metropolitan Area Transit Authority.

In these lawsuits and charges, my clients have alleged that age-restricted and gender-restricted advertising violates the Age Discrimination in Employment Act, which bars age bias in employment, and Title VII of the Civil Rights Act, which prohibits sex discrimination in employment. We have invoked a range of laws that Congress passed as far back as the 1860s to promote equal employment opportunity, including 42 U.S.C. § 1981 (which prohibits race and national origin discrimination in contracting).

When Congress enacted the ADEA and Title VII, it was commonplace for employers to place job ads in newspapers that stated specific age requirements or a preferred or required gender for the position. Newspapers even had classified sections with separate columns that listed “male” jobs and “female” jobs.<sup>30</sup> Sometimes employers identified the preferred gender, and in other cases the newspaper itself would determine which jobs would be classified as male or female jobs.

The publication provisions that Congress enacted in the ADEA and Title VII were intended to eradicate discriminatory advertising, because these types of biased ads directly impacted who would apply for jobs, and, in turn, be hired. For example, if women are told that certain jobs are for men, they will be less likely to apply. The U.S. Supreme Court upheld these types of civil rights protections as a valid restraint on commercial speech in *Pittsburgh Press Co. v. Pittsburgh Comm’n on Human Relations*, 413 U.S. 376 (1973).

To my clients, age-restricted and gender-restricted job ads on Facebook implicate the same problem as the discriminatory ads in classified sections more than 50 years ago. Not only do these Facebook ads expressly specify the age or gender that the employer wants to reach, just like the biased ads of the 1950s and 1960s, but these exclusionary ads are not even shown to older people or women. They are literally denied the opportunity to receive the job ads because of age or gender. This exclusionary advertising practice is arguably more harmful than the segregated classified ads of a half-century ago,

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<sup>28</sup> First Amended Complaint, *Onuoba v. Facebook, Inc.*, No. 16 Civ. 06440 (N.D. Cal. Feb. 13, 2017);

ACLU, Facebook EEOC Complaints (Sept. 18, 2018), <https://www.aclu.org/cases/facebook-eeoc-complaints>.

<sup>29</sup> Complaint, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. Dec. 20, 2017), Dkt. No. 1.

<sup>30</sup> See *Brush v. S.F. Newspaper Printing Co.*, 315 F. Supp. 577 (N.D. Cal. 1970); Worker: Age Discrimination in Employment (June 1965), at 6, 9-10, [https://www.eeoc.gov/eeoc/history/adea50th/upload/wirtz\\_report.pdf](https://www.eeoc.gov/eeoc/history/adea50th/upload/wirtz_report.pdf);

because at least in the 1960s a woman could still see and respond to an ad that said the employer preferred a man and an older worker could still see and respond to an ad that said the employer preferred younger workers.

While the EEOC has not yet issued regulations expressly addressing the issue of exclusionary advertising campaigns (as opposed to ads with discriminatory words), HUD specifically addressed this issue 40 years ago and concluded that not sending people housing ads because of their race or sex is just as unlawful as publishing an ad that states a preference based on race or sex.<sup>31</sup>

Thankfully, in July 2019, the EEOC issued a number of cause findings in which the EEOC found that employers had violated Title VII or the ADEA by excluding women or older persons from their job advertisements on Facebook. These EEOC cause findings responded to the charges that my clients, including the Communications Workers of America and several individual workers, had filed in 2018 with the EEOC. As ProPublica reported, in its “rulings, the EEOC cited four companies for age discrimination: Capital One, Edwards Jones, Enterprise Holdings and DriveTime Automotive Group. Three companies were cited for discrimination by both age and gender: Nebraska Furniture Mart, Renewal by Andersen LLC and Sandhills Publishing Company.”<sup>32</sup>

In addition, in 2018, in an analogous case involving housing advertisement on Facebook, the Department of Justice expressed the same view as the EEOC and HUD—that ad campaigns on Facebook that exclude people from receiving ads based on a protected status violate the Fair Housing Act<sup>33</sup>—and in March 2019 the HUD Secretary, Dr. Ben Carson, filed a charge against Facebook for engaging in housing discrimination on its ad platform.<sup>34</sup> Thus, at this time, the three federal agencies responsible for enforcing most of our employment and housing discrimination laws are in agreement that denying workers or potential housing applicants ads based on a protected status violates federal law.

Although the federal government is in agreement that exclusionary advertising is unlawful, dozens of major employers have told federal courts and the EEOC that federal law does not prohibit them from denying job or housing ads to people based on protected statuses (provided that they publicly display their job ads on a web site). And Facebook and other employers have attempted to avoid taking legal responsibility for discriminatory job advertising by invoking legal doctrines that would prevent workers from having their day in court. For example:

- T-Mobile and Amazon have moved to dismiss CWA’s lawsuit challenging age-restricted job advertising, claiming that the ADEA only bars ads with discriminatory

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<sup>31</sup> See 24 C.F.R. § 100.75(c)(3)-(4); 45 Fed. Reg. 57,102 (Aug. 26, 1980).

<sup>32</sup> Ariana Tobin, *Employers Used Facebook to Keep Women and Older Workers From Seeing Job Ads. The Federal Government Thinks That’s Illegal*, ProPublica (Sept. 24, 2019), <https://www.propublica.org/article/employers-used-facebook-to-keep-women-and-older-workers-from-seeing-job-ads-the-federal-government-thinks-thats-illegal>.

<sup>33</sup> Statement of Interest of the United States, *National Fair Housing Alliance v. Facebook, Inc.*, No. 18 Civ. 2689 (S.D.N.Y. Aug. 17, 2018). The Department of Justice also argued that Facebook does not have immunity under the Communications Decency Act, 47 U.S.C. § 230(c). See *id.*

<sup>34</sup> Charge of Discrimination, *Secretary, U.S. Dep’t of Housing & Urban Development v. Facebook, Inc.*, FHEO No. 01-18-0323-8 (Mar. 28, 2019), [https://www.hud.gov/sites/dfiles/Main/documents/HUD\\_v\\_Facebook.pdf](https://www.hud.gov/sites/dfiles/Main/documents/HUD_v_Facebook.pdf).

content and that they are free under federal and state law to exclude older workers from receiving their job ads.<sup>35</sup>

- Facebook, T-Mobile, and Amazon have argued that older workers who were denied job ads do not have standing to challenge exclusionary advertising practices, because those workers have not been harmed enough to have standing to take legal action.<sup>36</sup>
- Facebook argued that it cannot be held responsible for employment discrimination under Title VII, because Title VII does not apply to platforms like Facebook that advertise jobs for employers, since workers denied job ads are not harmed enough to have standing and Facebook is immune from suit under the Communications Decency Act, 47 U.S.C. § 230(c).<sup>37</sup>

In March 2019, Facebook agreed to settle the legal actions that my clients had filed against it. Though Facebook denied that its conduct was unlawful,<sup>38</sup> it agreed to take significant steps to curb discrimination on its platform with respect to the advertising of jobs, housing, and credit. But as described in the following section, Facebook still has work to do to stop discrimination on its platform.

Going forward, my clients will continue to pursue their age and gender bias claims against dozens of employers that engaged in digital discrimination, because they believe it is important to hold employers accountable for denying equal opportunity to workers and develop the law so that employers and platforms alike will understand that they cannot use demographic data to deny opportunity.

### **The Facebook Settlement and Unfinished Business on Algorithmic Bias**

In March 2019, my clients, led by the Communications Workers of America, settled their digital discrimination actions with Facebook in a landmark settlement that ushered in sweeping changes to Facebook’s ad platform to prevent discrimination in employment, housing, and credit advertising.<sup>39</sup> Among the many reforms that apply to job, housing, and credit advertisements in the settlement, Facebook has agreed it will:

- Create a separate portal for job, housing, and credit ads with a much more limited set of targeting options so that advertisers cannot target ads based on Facebook users’ age, gender, race, or categories that are associated with membership in protected groups, or based on zip code or a geographic area that is less than a 15-mile radius, and cannot consider users’ age, gender, or zip code when creating “Lookalike” audiences for advertisers.

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<sup>35</sup> See Opposition to Motion to Dismiss Fourth Amended Complaint at 14-21, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. Sept. 24, 2019), Dkt. No. 147 (describing and responding to the defendants’ arguments).

<sup>36</sup> *Id.* at 2-6 (describing and responding to defendants’ arguments on standing).

<sup>37</sup> Opposition to Motion to Dismiss the First Amended Complaint, *Onuoha v. Facebook, Inc.*, No. 16 Civ. 06440 (N.D. Cal. Feb. 13, 2017), Dkt. No. 41 (describing and responding to Facebook’s arguments).

<sup>38</sup> Nothing in my testimony is asserting or should be construed as asserting that Facebook has admitted that it engaged in any wrongdoing or liability.

<sup>39</sup> ACLU, Facebook Agrees to Sweeping Reforms to Curb Discriminatory Ad Targeting Practices (Mar. 19, 2019), <https://www.aclu.org/press-releases/facebook-agrees-sweeping-reforms-curb-discriminatory-ad-targeting-practices>



- Implement a system of automated and human review to catch advertisements that aren't correctly self-certified as job, housing, and credit ads.
- Require all advertisers creating such ads to certify compliance with anti-discrimination laws, and provide education for advertisers on those laws.
- Study the potential for unintended biases in algorithmic modeling on Facebook.
- Meet with plaintiffs and their counsel every six months for three years to enable them to monitor the implementation of the reforms that Facebook is undertaking.<sup>40</sup>

As of December 2019, Facebook has implemented the substantial reforms that it agreed to make in the settlement. At the same time, there is cause for concern that Facebook's own ad delivery algorithm may be replicating the same discrimination problems that were caused by employers who expressly excluded workers from getting their job ads based on age, gender, or other protected classes. A recent academic study suggests that there are still significant demographic disparities in how advertisements are delivered to Facebook users.<sup>41</sup>

We hope that Facebook will not only study algorithmic bias, but also take bold action to eliminate algorithmic bias from all of its platforms, especially when it comes to job, housing, and credit advertising. At the same time, as described in the next section, Congress can and should take action to clarify that platforms like Facebook are subject to our federal civil rights laws and that those laws prohibit all technology companies from engaging in digital discrimination and algorithmic bias.

### **Legislative and Regulatory Reforms Are Needed to Stop Digital Discrimination and Algorithmic Bias in the Recruitment and Hiring of Workers**

The landmark laws that Congress enacted to promote equal opportunity in the workplace—Title VII of the Civil Rights Act and the Age Discrimination in Employment Act—are now more than a half-century old. Even the most significant amendments to Title VII, which occurred in 1991, are nearly 30 years old. Likewise, the Americans with Disabilities Act, which bans disability discrimination in the workplace, was enacted 30 years ago.

Although Congress could not have specifically anticipated how the internet would affect the implementation or enforcement of these civil rights laws, these laws clearly apply to the conduct of employers wherever they advertise to recruit, hire, and employ workers within the United States. When Congress legislates, it is cognizant that the American economy is dynamic and that remedial legislation like Title VII, the ADEA, and the ADA must be broad enough to protect workers even when practices change markedly or when the medium of communication changes rapidly.

As described above, civil rights advocates and federal agencies believe that our federal civil rights laws, as currently written, are broad enough to prohibit a range of employment practices that constitute

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<sup>40</sup> ACLU, Summary of Settlements Between Civil Rights Advocates and Facebook (Mar. 19, 2019), <https://www.aclu.org/other/summary-settlements-between-civil-rights-advocates-and-facebook>.

<sup>41</sup> Ava Kofman & Ariana Tobin, *Facebook Ads Can Still Discriminate Against Women and Older Workers, Despite a Civil Rights Settlement*, ProPublica (Dec. 13, 2019); Piotr Sapiezynski, Avijit Ghosh, Levi Kaplan, Alan Mislove, & Aaron Rieke, *Algorithms that "Don't See Color": Comparing Biases in Lookalike and Special Ad Audiences* (Dec. 17, 2019), <https://arxiv.org/pdf/1912.07579.pdf>.

digital discrimination and algorithmic bias. Nevertheless, there are many ways in which federal civil rights laws can be amended and reformed to more fully and effectively protect against these new and emerging forms of digital bias. All of these reforms can be accomplished through legislation and some can be implemented by the issuing of agency regulations.

Potential reforms that will help stamp out digital discrimination and algorithmic bias fall into several categories.

***First, our civil rights laws must be clarified to expressly and directly apply the law to platforms like Facebook, Twitter, Indeed, Zip Recruiter, and LinkedIn that play a role in advertising jobs and helping employers to advertise, recruit, analyze, and hire workers, and to establish aiding and abetting liability for entities that assist employers in engaging in civil rights violations.***

The primary federal laws that prohibit workplace discrimination such as Title VII of the Civil Rights Act and the Age Discrimination in Employment Act only apply to employers, employment agencies, and labor organizations.<sup>42</sup> This is different and narrower than the Fair Housing Act, which does not limit *which persons or entities* are subject to the substantive prohibitions of the law.<sup>43</sup>

In the new digital economy, technology platforms are playing a robust and direct role in advertising and recruiting workers for employers, including in some cases deciding which workers should be advertised to, considered for jobs, or even hired. But technology platforms continue to argue that they are not employers or employment agencies, so they need not comply with federal anti-discrimination laws. For starters, it is unlikely that such technology platforms could be considered employers other than with respect to the workers they directly employ and pay. Moreover, technology platforms like Facebook claim that they are not employment agencies when they advertise jobs to workers on behalf of employers and then connect workers to employers' careers web sites via links in job ads.

I believe that Facebook and other intermediaries are wrong and that under current law Facebook and other technology platforms that advertise jobs to workers are "employment agencies," because through their advertising and recruiting services they "procure employees for an employer" (the standard for being an "employment agency").<sup>44</sup> The primary precedents on whether entities that publish job advertisements are employment agencies involve newspapers, and since the enactment of Title VII federal courts have taken different positions on whether a newspaper that helps an employer advertise jobs can be held as liable as an "employment agency."<sup>45</sup> But it may take some time for federal courts to sort out what level of involvement technology platforms must have in employment advertising,

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<sup>42</sup> See, e.g., 42 U.S.C. § 2000e-3(b) (prohibiting employers, employment agencies, and labor organizations from publishing discriminatory advertisements and notices); 29 U.S.C. § 623(e) (same).

<sup>43</sup> 42 U.S.C. § 3604(c) (prohibiting discriminatory publications, notices, and statements without limiting the FHA's coverage to housing providers or any other entities).

<sup>44</sup> 42 U.S.C. § 2000e(c) (definition of employment agency); 29 U.S.C. § 630(c) (same).

<sup>45</sup> Compare *Brush v. S.F. Newspaper Printing Co.*, 315 F. Supp. 577, 578 (N.D. Cal. 1970) (holding newspaper is not an employment agency), with *Morrow v. Miss. Publishers Corp.*, No. 72 Civ. 17, 1972 WL 236, at \*1-4 (S.D. Miss. Nov. 27, 1972) (concluding that newspaper can be an employment agency if it takes affirmative acts to classify ads in a discriminatory way, such as creating two separate columns for "Female" and "Male" jobs and honoring advertisers' designation of ads for a specific group); see also EEOC Compliance Manual § 631.2(b)(1) Private Employment Agencies, 2006 WL 4672853 (2006) (newspaper "is not liable as an employment agency" "[t]o the extent that a newspaper doesn't exercise control, or actively classify advertisements") (citing *Morrow*, 1972 WL 236, at \*1-4, and Commission Decision No. 74-117, CCH EEOC Decisions (1983) ¶ 6429 n.2 (*Morrow* suggests a newspaper is an employment agency "if a newspaper actively participates in classifying the advertisement which it publishes"))).

recruiting and hiring decisions before they can be considered employment agencies that must follow laws like Title VII, ADEA, ADA and other federal employment laws.

There are two ways in which Congress could hold responsible technology companies that play a role in advertising, recruiting, hiring, and analyzing workers.

First, Congress can establish aiding and abetting liability for entities that knowingly assist employers or employment agencies in committing violations of federal anti-discrimination laws. Some states like California already have aiding and abetting liability in their anti-discrimination laws that are patterned after Title VII.<sup>46</sup> Establishing aiding and abetting liability at the federal level will ensure that all entities that are playing a significant role in advertising, recruiting, and hiring workers will think critically about their actions in promoting or undermining equal employment opportunity.

Second, Congress could create a new category of entities that are subject to anti-discrimination laws (such as an “employment services provider”) or simply expand the definition of “employment agency” or “employer” to make it clearer these terms encompass the types of services that technology platforms and companies provide for traditional employers and employment agencies—such as publishing job advertisements, suggesting or deciding which workers will receive ads or recruiting, or suggesting or analyzing which workers should be considered for employment or actually hired.

If one believes that employers should not be allowed to exclude older persons or women from receiving their job ads, then it is equally necessary to expressly cover companies like Facebook that make decisions every second about which workers will receive job ads.

***Second, the substantive rules that regulate the conduct of employers and employment agencies must be clarified or made more explicit to prohibit certain types of digital discrimination and algorithmic bias.***

The internet, technology, and availability of massive data on workers have caused a seismic shift in how employers recruit, hire, and treat workers. While I believe that our current laws can and should be interpreted to prohibit many types of digital discrimination and algorithmic bias, new and more specific rules can be enacted to protect against the types of abuses that we are seeing today and are likely to see in the future.

**A. Congress should clarify that employers and employment agencies cannot use protected statuses or demographics, such as race, national origin, sex, age, or religion to exclude workers from receiving job advertisements or recruiting, and cannot selectively publish job ads in certain media or locations to accomplish the same result.**

This practice of exclusionary advertising has been prohibited under the Fair Housing Act for decades, pursuant to HUD regulations that were in part designed to address the fact that housing advertising was often directed towards certain locations and media that would exclude African Americans in order to perpetuate and deepen racial segregation in housing. In addition, in 2019 the EEOC issued a number of cause findings that concluded that job advertising that excludes older persons or women violates the ADEA and Title VII. But few courts have considered these principles in the context of employment discrimination law, and companies like T-Mobile and Amazon are taking the position that federal employment discrimination law does not prohibit exclusionary advertising.

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<sup>46</sup> See, e.g., Cal. Gov. Code § 12940(i).

To ensure that biased job advertising does not proliferate and wipe out equal opportunity, Congress should expressly bar exclusionary advertising under Title VII, the ADEA, and other federal employment discrimination laws. Congress can accomplish this by amending the publication provisions of Title VII (42 U.S.C. § 2000e-3(b)), the ADEA (29 U.S.C. § 623(e)), and other laws to state that discriminatory publications or notices include those in which content indicates a preference based on a protected status or in which the advertising campaign is directed towards persons due to the person's protected status, including through selecting media or locations for advertising that deny particular segments of the labor market information about the opportunities based on a protected status.

**B. Congress should prohibit the targeting of job advertisements based on categories that are not job-related.** Many targeting options that technology platforms provide to employers who are seeking workers are not related to the job for which the employer is recruiting. For example, until very recently, when advertising on Facebook an employer could advertise a job for a supermarket store clerk position to only people who are interested in video games or Hanukkah. These categories would likely disproportionately target the advertisement to younger people (in the case of video games) or Jews (in the case of Hanukkah). If the targeting category has little to nothing to do with the job (here, a supermarket store clerk), there is no legitimate basis for an employer to use such a targeting category. In many instances, however, there may be a significant risk that targeting certain categories will exclude people based on age, gender, race, religion, and other categories. By imposing a bright line rule—most likely in the publication provisions of anti-discrimination employment laws—that employers cannot publish job advertisements where the targeting category is unrelated to the position, Congress can ensure that employers cannot use proxies for sex, age, race, religion, or other categories.

**C. Congress should mandate algorithmic fairness in the delivery of job advertisements.** Either in the publication sections of workplace discrimination laws or in a new section, Congress should adopt an algorithmic fairness rule that requires all job ads to be fairly distributed to workers based on age, sex, race, and other protected categories for which technology companies can collect information or proxies for such information. For example, under this algorithmic fairness rule, any job ad that Facebook delivers on behalf of an employer would need to be delivered to persons of all ages with an age distribution based on the population of persons who use Facebook, and to persons of all genders with a gender distribution based on the population of persons who use Facebook.

**D. Congress should prohibit technology companies from creating lookalike audiences for employers or employment agencies when advertising or recruiting workers.**

As I describe above, a lookalike audience is a tool in which technology companies identify which users of a platform are similar to persons whom an employer or other advertiser identifies in a “seed” data set. As a recent study has shown, these lookalike tools tend to replicate the demographics of the “seed” data set when creating the larger lookalike audience.<sup>47</sup> Thus, when an employer’s “seed” data set is not sufficiently diverse, using that data set to create a larger lookalike audience may create a feedback loop that reinforces and exacerbates both gender and age disparities. Congress could amend the publication provisions of federal anti-discrimination laws to prohibit the creation of lookalike audiences or similar applications.

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<sup>47</sup> Piotr Sapiezynski, Avijit Ghosh, Levi Kaplan, Alan Mislove, & Aaron Rieke, *Algorithms that “Don’t See Color”*: *Comparing Biases in Lookalike and Special Ad Audiences* (Dec. 17, 2019), <https://arxiv.org/pdf/1912.07579.pdf>.

**E. Congress should clarify that discrimination in recruiting is unlawful.**

In litigation concerning digital discrimination, employers like T-Mobile and Amazon have suggested that discrimination in recruiting workers is not actionable under federal law and that only advertising discrimination and hiring discrimination is actionable. I do not believe that this accurately states current law, because discrimination in recruiting necessarily leads to an artificial reduction in the hiring of people in the class who are disadvantaged by the recruiting discrimination. For example, as my clients have pointed out in litigation over discriminatory advertising and recruiting on Facebook, if any employer sends all of its job advertisements on social media to men who are under 40, it will mean that fewer women and people 40 and older will hear about the job, apply for the job, and be hired for the job. Given the importance that recruitment plays in the hiring of workers, it would advance civil rights in the digital era to make clear that anti-discrimination laws bar any bias in the recruitment of workers, regardless of whether an individual worker can prove that she was denied a job. This can be accomplished by inserting the phrase “to recruit” before the phrase “to hire” in Title VII, 42 U.S.C. § 2000e-2(a), the ADEA, 29 U.S.C. § 623(a), and other similar statutory provisions.

**F. Congress should clarify that the segregation or classification of workers or applicants based on a protected status can establish disparate treatment liability, and not just disparate impact liability, and that older applicants can bring disparate impact claims under the ADEA.**

In ongoing litigation, employers have claimed that the provisions of federal anti-discrimination laws that prohibit segregating or classifying workers only bar facially neutral policies that have a disparate impact, and they do not bar intentional discrimination. While I believe this is a misguided view of the law, Congress could clarify that the very act of segregating or classifying applicants or employees expressly based on a protected status offends the dignity of workers and is unlawful, whether or not the policy is facially discriminatory or facially neutral.

Relatedly, over the past several years, two federal courts of appeals have held that the ADEA’s hiring discrimination ban in § 623(a)(2) does not apply to the claims of applicants—i.e., that older applicants cannot challenge a facially neutral policy that has an unjustified, disparate impact on older workers.<sup>48</sup> In my view, and the view of the EEOC and other federal courts, these two appellate court decisions are contrary to the text, legislative history, and primary purposes of the ADEA—to promote the hiring of older workers and end arbitrary policies that limit the employment opportunities of older workers.<sup>49</sup>

***Third, greater transparency must be given to workers and federal regulators about the digital technologies that employers are using to advertise to, recruit, hire, fire, and otherwise make employment decisions, as well as the role of technology platforms, data, and algorithms in those processes and decisions.***

One of the biggest obstacles that workers face in challenging digital discrimination and algorithmic bias is learning about employers’ practices and how workers are impacted by them. Despite the large number of employers that have already engaged in digital discrimination, there have been very few lawsuits or legal actions filed—because most workers do not know what technologies employers have used to advertise, recruit, hire, fire, promote, or set compensation. Nor have regulators had access to information regarding digital discrimination that has impacted the labor market. In fact, in the case of

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<sup>48</sup> See *Kleber v. Carefusion Corp.*, 888 F.3d 868 (7th Cir. 2018); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958 (11th Cir. 2016).

<sup>49</sup> See *Rabin v. PricewaterhouseCoopers LLP*, 236 F. Supp. 3d 1126 (N.D. Cal. 2017).



exclusionary advertising, millions of workers were likely denied job ads by employers due to their age, gender, or race, but they've never learned that they were excluded from ads they could not see in the first place.

There are different types of disclosures that would improve the knowledge that workers and regulators have about the use of technology, algorithms, and data in the workplace, and that would encourage employers to use such digital technologies prudently. Congress has previously enacted statutes that require employers to disclose information to workers about hiring, such as the Fair Credit Reporting Act, which requires employers to provide disclosures to workers when their criminal or credit history reports are being retrieved and analyzed in hiring.<sup>50</sup> In addition, the EEOC already has authority to require employers to disclose demographic information on their applicants and employees.<sup>51</sup>

I would recommend that Congress require the following types of disclosures by employers, employment agencies, and technology companies that provide advertising and other services for employers and employment agencies:

- Require ad platforms like Facebook, Twitter, and Google to publicly disclose information about all job ads that are published via their platforms, including the content and images of the ads, the demographics (age, gender, and others) and geographic reach of the people who were targeted, shown, and clicked on the ads, the dates the ads were published, the amount each ad campaign cost, and all targeting options that the advertiser selected for the audience of the ad campaign. The same disclosures could be required for employers and employment agencies that purchase the advertisements. Facebook has already begun to disclose many of these types of information for political ads, and will be disclosing some of these types of information for housing advertisements in the future. The same can easily be done for employment ads, because Facebook—and most likely other ad platforms—have identified which ads relate to employment through its “classifiers” system.
- Require employers and employment agencies to publicly disclose the media and platforms on which they have placed job ads and the extent to which they used any protected classes to restrict or target the audience of their job ads or used any lookalike tools to generate audiences.
- Require employers and employment agencies to disclose to prospective applicants, applicants, employees, and federal, state, and local regulators all digital programs, systems, software, applications, or processes that they use to identify and recruit workers, consider and hire workers for positions, evaluate workers' performance, promote or demote workers, establish compensation and employee benefits, and fire workers; and upon request, to disclose to the same groups of people and regulators detailed information about the operation of those programs, systems, software, applications, or processes.

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<sup>50</sup> 15 U.S.C. § 1681 *et seq.*; Federal Trade Commission, Background Checks, <https://www.consumer.ftc.gov/articles/0157-background-checks>.

<sup>51</sup> Equal Employment Opportunity Commission, EEO-1 Frequently Asked Questions and Answers, <https://www.eeoc.gov/employers/eeo1survey/faq.cfm>.

***Fourth*, the remedies for legal violations must be improved to reflect the nature of the harm caused by digital discrimination and algorithmic bias and to ensure that there is proper deterrence for entities that disregard the law. Most significant, there must be minimum penalties—as some state laws already provide—for violations of civil rights laws, since without such penalties employers, employment agencies, and tech platforms will not believe that they face meaningful liability even when they violate the rights of millions of American workers.**

When millions of people are impacted by digital discrimination or algorithmic bias, there is clearly substantial harm. However, some employers and technology platforms have questioned whether it is possible to identify which specific people were, in fact, harmed and how much they were harmed. For example, when millions of people are excluded from seeing a job ad because of their age or gender, it is possible that not all of those people would have actually received the job ad. Nevertheless, each was denied the opportunity to ever receive the job ad because of their age. Some employers, including Amazon and T-Mobile, have argued, for example, that for them to be held liable for denying job ads to older workers, each worker would have to prove that he or she would have received the ad, clicked on the ad, applied for a job, and received the job.<sup>52</sup> While my clients believe it is possible to prove the overall harm that such digital discrimination caused to older workers without such individual inquiries, the very fact that employers believe that damages will be difficult to prove in cases of digital discrimination means that employers will be less concerned about liability when they engage in biased advertising and recruiting. Establishing modest penalties for each violation of our civil rights laws would ensure that all employers take their obligations seriously. For example, California’s Unruh Civil Rights Act imposes a penalty of at least \$4,000 for each violation of the state’s public accommodations law.<sup>53</sup>

***Fifth*, Congress should ensure that Title II of the Civil Rights Act, the federal law that bars discrimination in places of public accommodation, applies to the internet, so that online businesses are no less responsible than brick-and-mortar establishments to follow the principle that businesses should not discriminate against their customers.**

In 1964, Congress enacted Title II of the Civil Rights Act to integrate hotels, restaurant, and other places of public accommodation. In doing so, it recognized that separate but equal—and even worse, outright denial of services to people based on race, color, religion, or national origin—was inconsistent with the values of our country, including equal protection under the law. Over the past 56 years, many Americans have taken it for granted that invidious discrimination or bias will not determine who can enter public spaces, who will be served, and on what terms people will receive service.

But in recent years, as commerce has shifted from brick-and-mortar stores to the internet and as social interactions increasingly take place online rather than in physical places, it is no longer the case that places of public accommodation are open, equal, and fair to all. While some state public accommodation laws have been held to apply to online businesses and communities,<sup>54</sup> there is

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<sup>52</sup> See Opposition to Motion to Dismiss Fourth Amended Complaint at 22-24, *Communications Workers of America et al. v. T-Mobile US, Inc. and Amazon.com, Inc.*, No. 17 Civ. 07232 (N.D. Cal. Sept. 24, 2019), Dkt. No. 147 (describing and responding to the defendants’ arguments on hiring discrimination).

<sup>53</sup> Cal. Civ. Code §§ 51, 52(a).

<sup>54</sup> *White v. Square, Inc.*, 446 P.3d 276 (Cal. 2019).

disagreement among federal courts over whether Title II of the federal Civil Rights Act applies to online establishments.<sup>55</sup>

Congress should not wait for the federal courts to resolve whether online establishments are subject to anti-discrimination protections. Because so much of modern American life has shifted to the internet, it is paramount that Congress declare that Title II's illustrations of places of public accommodation, *see* 42 U.S.C. § 2000a(b), are not limited to physical spaces and that Title II's non-discrimination protections apply to online spaces too. In addition, Congress could further modernize Title II by adding additional protected classes that are present in many states' public accommodation laws and by clarifying that Title II bars disparate impact discrimination, not just intentional discrimination.

***Sixth, the United States needs strong privacy laws to protect the data and information of American consumers and protect our people against overzealous and monopolist technology companies that are indifferent to consumers' rights. Part of any privacy law must be strong protections that promote equality in the workplace and other economic opportunities and ensure that a person's demographic data is not being used to discriminate against that person.***

There's no reason why a person should be denied a job, an apartment, a mortgage, a student loan, or car insurance, or receive such things on inferior terms, because a company uses data, technologies, or algorithms in a discriminatory way. A privacy law that has general applicability can effectively bar discrimination, including in the area of employment.

***Seventh, Congress should reform the Communications Decency Act, 47 U.S.C. 230(c), so that web sites and technology platforms can be held fully accountable when they profit from discrimination against workers.***

In 1996, Congress passed 47 U.S.C. § 230 as part of the Communications Decency Act. This provision was intended to protect web sites from liability when the users of those web sites violate laws or harm other users without the web sites creating or developing the offending material. For example, Congress did not want America Online to be held liable when two people make defamatory statements about each other in a chatroom, because it would be difficult for AOL to control what their users are saying in real time to each other or remove those defamatory statements on a timely basis.<sup>56</sup> Likewise, Congress wanted to give immunity to web sites to remove online content provided by their users without being liable to those users.<sup>57</sup> A key part of this federal internet immunity provision is that the web site loses immunity if it creates or develops *even in part* the information or content that violates the law.<sup>58</sup>

Section 230(c) provides immunity to web sites that non-digital publishers do not have. For example, under federal law it has long been illegal for a newspaper to publish a housing advertisement in a classifieds section that indicates a preference based on gender or age. But if a web site does the same thing—for example, if Craigslist allows a user to publish an ad that states he does not want to rent to African Americans or women—courts have uniformly held that the web site is immune from liability.<sup>59</sup>

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<sup>55</sup> *See* Nancy Leong & Aaron Belzer, The New Public Accommodations: Race Discrimination in the Platform Economy, 105 Georgetown Law Journal 1271 (2017).

<sup>56</sup> *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1163 (9th Cir. 2008) (en banc).

<sup>57</sup> *Id.*; 47 U.S.C. § 230(c)(2).

<sup>58</sup> *Roommates.com*, 521 F.3d at 1166; 47 U.S.C. § 230(c)(1), (f).

<sup>59</sup> *Chicago Lawyers' Committee For Civil Rights Under Law v. Craigslist*, 519 F.3d 666 (7th Cir. 2008).

Section 230(c) has been interpreted to override or nullify federal civil rights laws and to preempt state and local civil rights laws, even though there was no mention in the legislative history about such an implicit repeal of our civil rights laws.<sup>60</sup>

I doubt that anyone in Congress in 1996 wanted technology companies to have immunity for giving tools of discrimination to employers and executing on employers' discriminatory orders to turn a profit, or for taking a laissez-faire attitude towards employment discrimination on their platforms that could easily be stopped. But that is precisely what Facebook and other technology companies believe the CDA does. I believe that CDA immunity has led technology companies to delay taking action that could have prevented discrimination against hundreds of millions of Americans, and until we have CDA reform technology companies will not take their civil rights obligations as seriously as they should.

Facebook has claimed that the CDA (1) provides it immunity to segregate and classify all of its users based on age, gender, or race; (2) protects Facebook's creation and offering of tools to employers so that they can exclude users from receiving ads for jobs, housing, credit, and other financial services opportunities based on protected classes; and (3) allows Facebook to take money from advertisers to execute their discriminatory audience selections without taking any responsibility for such discrimination.<sup>61</sup> I do not believe that Facebook's arguments are credible, because federal courts have held that when a web site plays a role in making discrimination possible the web site does not have CDA immunity.<sup>62</sup> Nevertheless, these issues remain unsettled with regard to the current generation of digital platforms and advertising tools, and they may be the subject of years of litigation. When powerful technology companies believe they have broad immunity, they are more likely to overreach and disregard the federal laws that this Congress has enacted. Congress should step in right now to stop this from happening.

Congress has begun to consider a range of reforms for limiting the scope of the CDA. Ensuring robust enforcement of our federal civil rights laws should be a prominent part of those reform discussions and efforts. According to *Mother Jones*, in 2016 Facebook was told that it had a problem of allowing advertisers to use demographics to exclude people from receiving ads for housing and other economic opportunities, and yet Facebook did not take meaningful action to stop housing, employment, and credit discrimination on its ad platform until late 2019—and only after years of litigation by civil rights groups and a number of investigative journalists reporting on this lingering problem.<sup>63</sup>

In order to ensure non-discrimination in employment advertising and recruiting, I would recommend that Congress consider the following reforms to Section 230(c) immunity:

- Congress should end CDA immunity for paid transactions, such as sponsored advertisements or commercial search functions. When technology companies are receiving payments from third parties to publish commercial advertisements, they should be responsible for ensuring that those advertisements do not violate our federal civil rights laws.

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<sup>60</sup> See *id.*; *Roommates.com*, 521 F.3d at 1166-71.

<sup>61</sup> Opposition to Motion to Dismiss the First Amended Complaint, *Onuoha v. Facebook, Inc.*, No. 16 Civ. 06440 (N.D. Cal. Feb. 13, 2017), Dkt. No. 41 (describing and responding to Facebook's arguments).

<sup>62</sup> *Roommates.com*, 521 F.3d at 1166-71.

<sup>63</sup> Pema Levy and Tonya Riley, *Activists Couldn't Get Facebook to Tackle Its Discrimination Problem—Until the Russia Scandal Hit*, *Mother Jones* (Apr. 12, 2019), <https://www.motherjones.com/politics/2019/04/activists-couldnt-get-facebook-to-tackle-its-discrimination-problem-until-the-russia-scandal-hit/>.

- Congress should end CDA immunity where a company like Facebook has been put on actual notice or should reasonably know that its tools and business services are enabling potentially unlawful discrimination and the company does not take reasonable affirmative steps in an expeditious time frame—such as 3 to 30 days, depending on the ease or difficulty of remedying the problem—to stop the discrimination. In some cases, a reasonable affirmative step might involve removing a job advertisement that makes discriminatory statements, and in more complex cases a reasonable affirmative step might be changing the company’s algorithm or applications to eliminate a discriminatory feature.

\* \* \*



I hope that Congress will continue to investigate the growing problem of discrimination and take bold action to protect civil rights and workers in our digital economy. In my experience, we cannot let technology companies regulate themselves, especially when so much of what they do is shrouded in secrecy and hidden from workers whose rights are routinely violated. We’ve tried this approach for many years, and it has not worked well. Algorithms will not fix themselves. And technology companies like Facebook have few incentives to take discrimination out of their algorithms. Many advocates for workers and equal opportunity stand ready to work with this Committee, Congress, and federal agencies to strike the right balance between technology and civil rights.



# Exhibit A


# T-Mobile Job Ad Targeted to People 18 to 38

Suggested Post

 **T-Mobile Careers**  
Sponsored · 




LIKE PAGE

Become an Expert!







**Launch a Customer Care career with the Un-carrie...**  
ecentralmetrics.com


APPLY NOW

   35

5 Comments · 3 Shares

 Like  Comment  Share

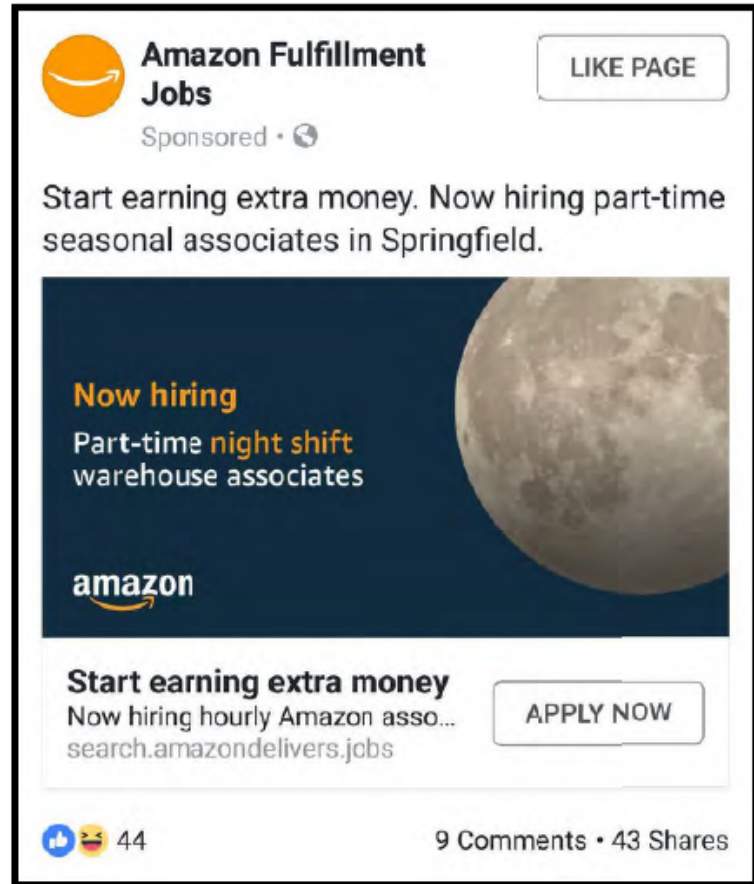
← Why am I seeing this ad? 




One reason you're seeing this ad is that **T-Mobile Careers** wants to reach people interested in **Customer service**, based on activity such as liking Pages or clicking on ads

There may be other reasons you're seeing this ad, including that T-Mobile Careers wants to reach **people ages 18 to 38 who live or were recently in the United States**. This is information based on your Facebook profile and where you've connected to the internet.


# Amazon Job Ad Targeted to People 18 to 50



**Amazon Fulfillment Jobs**  
Sponsored • 

LIKE PAGE

Start earning extra money. Now hiring part-time seasonal associates in Springfield.





**Now hiring**  
Part-time **night shift** warehouse associates

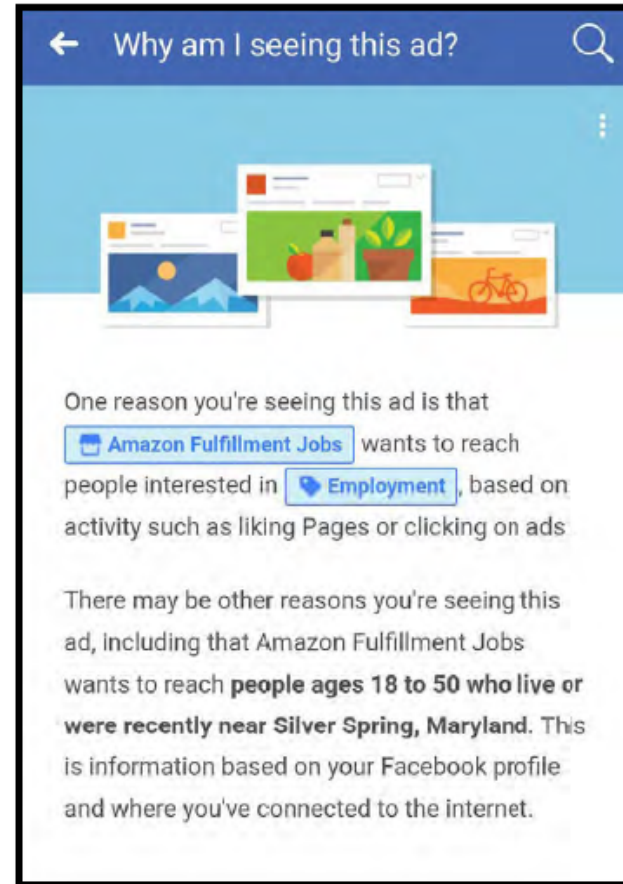
amazon


**Start earning extra money**  
Now hiring hourly Amazon asso...  
search.amazondelivers.jobs


APPLY NOW

  44

9 Comments • 43 Shares



← Why am I seeing this ad? 



One reason you're seeing this ad is that **Amazon Fulfillment Jobs** wants to reach people interested in **Employment**, based on activity such as liking Pages or clicking on ads

There may be other reasons you're seeing this ad, including that Amazon Fulfillment Jobs wants to reach **people ages 18 to 50 who live or were recently near Silver Spring, Maryland**. This is information based on your Facebook profile and where you've connected to the internet.

# Facebook Job Ad Targeted to People 21 to 55

 **Facebook Careers**  
Sponsored · 

Wonder what it's like to work on the Facebook recruiting team? Meet a few of our recruiting leaders and learn about our work, culture, and opportunities. We're hiring!


**#FacebookLife #FBRecruiting #Careers #JoinUs**





**Inside Facebook Recruiting: It All Starts Here**  
Facebook's mission is to bring the world closer together...  
facebook.com

   2.1k      192 Comments · 145 Shares

 Like     Comment     Share

← Why am I seeing this ad? 




One reason you're seeing this ad is that  **Facebook Careers** wants to reach **people who may be similar to their customers**. Learn more.

There may be other reasons you're seeing this ad, including that Facebook Careers wants to reach **people ages 21 to 55 who live or were recently in the United States**. This is information based on your Facebook profile and where you've connected to the internet.

# Defenders Job Ad Targeted to Men 20 to 40

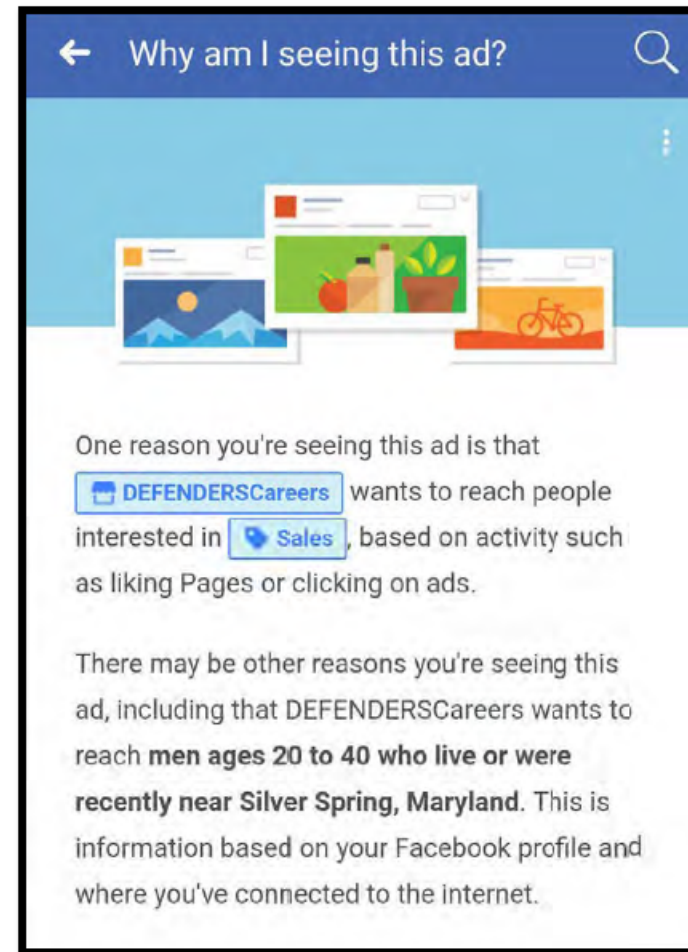



**DEFENDERSCareers** Sponsored •  [LIKE PAGE](#)


LEARN FROM THE BEST! If you are driven and have a passion for sales, DEFENDERS will provide you with the resources and PAID training you need to be successful. DEFENDERS has an immediate opening for a Sales Representative in your local area! This position includes outside sales to existing customers, relationship development, and account management... [Continue Reading](#)



**Defenders Jobs**  
DEFENDERS is a leader in the h...  
defendersjobs.com [LEARN MORE](#)



← Why am I seeing this ad? 



One reason you're seeing this ad is that [DEFENDERSCareers](#) wants to reach people interested in [Sales](#), based on activity such as liking Pages or clicking on ads.

There may be other reasons you're seeing this ad, including that DEFENDERSCareers wants to reach **men ages 20 to 40 who live or were recently near Silver Spring, Maryland**. This is information based on your Facebook profile and where you've connected to the internet.



# Rice Tire Job Ad Targeted to Men 18 to 55

Suggested Post

 **Rice Tire**  
Sponsored • 


LIKE PAGE


We are now accepting applications for a Heavy Duty Mechanic for our **Rice Tire Gaithersburg, Maryland** location.



For more information and to apply please visit:  
<http://www.ricetire.com/careers.aspx>

or apply in person to Jim Hoover  
8309 Snouffer School Road  
Gaithersburg, MD ... [Continue Reading](#)

 RICETIRE.COM  
**Careers | Rice Tire**  
Learn about current job openi... LEARN MORE

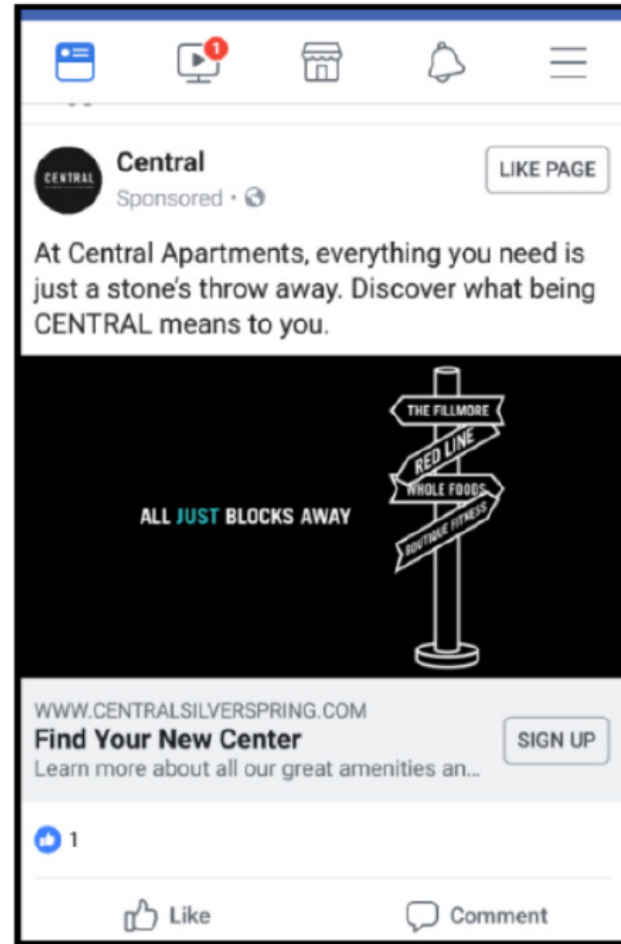
← Why am I seeing this ad? 



One reason you're seeing this ad is that  **Rice Tire** wants to reach people interested in  **Trucks**, based on activity such as liking Pages or clicking on ads.

There may be other reasons you're seeing this ad, including that Rice Tire wants to reach **men ages 18 to 55 who live near Silver Spring, Maryland**. This is information based on your Facebook profile and where you've connected to the internet.

# Bozzuto Housing Ad Targeted to People 22 to 40



The screenshot shows a Facebook sponsored ad for Central Apartments. At the top, there are navigation icons for messages, video, marketplace, notifications, and a menu. The ad header includes the Central logo, the name 'Central', and a 'LIKE PAGE' button. The main text reads: 'At Central Apartments, everything you need is just a stone's throw away. Discover what being CENTRAL means to you.' Below this is a black image with a white signpost pointing to 'THE FILLMORE', 'RED LINE', 'WHOLE FOODS', and 'MOUNTAIN FITNESS'. The text 'ALL JUST BLOCKS AWAY' is overlaid on the image. At the bottom of the ad, the website 'WWW.CENTRALSILVERSPRING.COM' is listed, along with the text 'Find Your New Center' and a 'SIGN UP' button. Below the ad, there is a '1' like count and 'Like' and 'Comment' buttons.

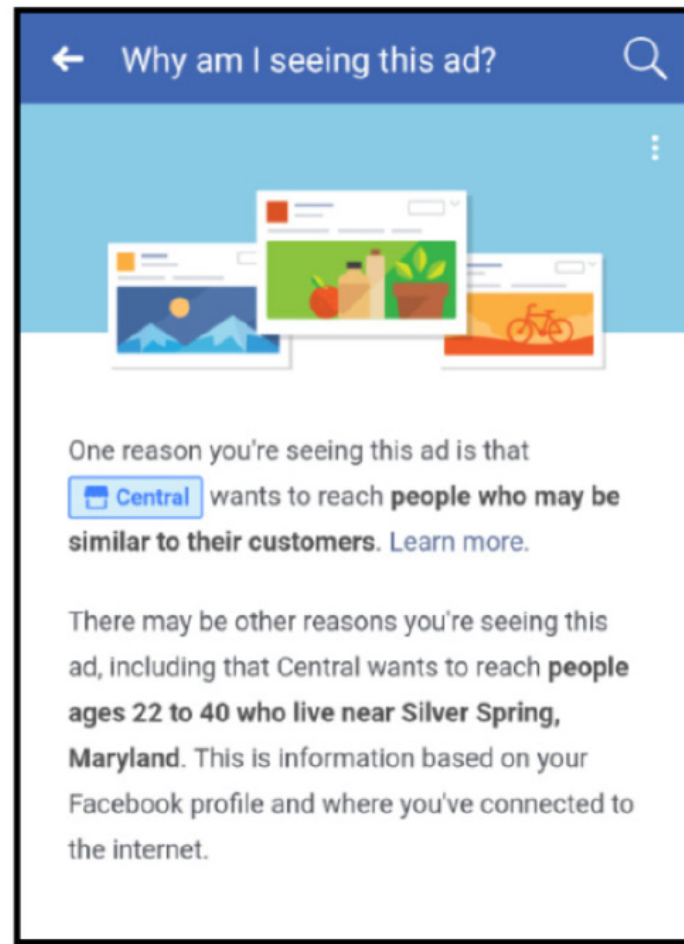
Central  
Sponsored · 🌐 LIKE PAGE

At Central Apartments, everything you need is just a stone's throw away. Discover what being CENTRAL means to you.

ALL JUST BLOCKS AWAY

WWW.CENTRALSILVERSPRING.COM  
Find Your New Center  
Learn more about all our great amenities an... SIGN UP

1  
Like Comment



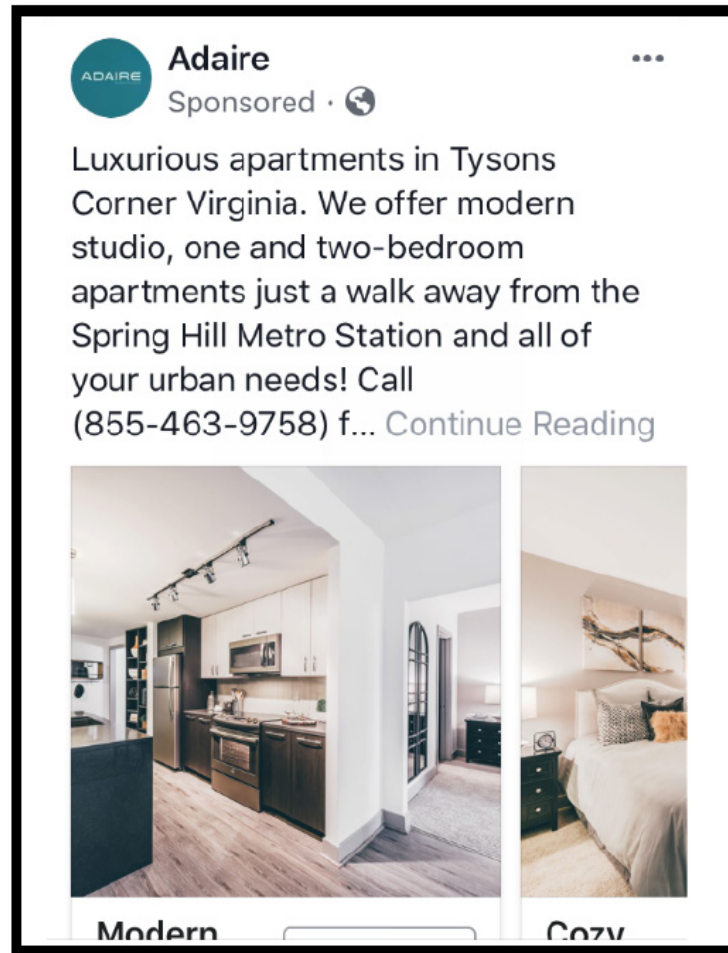
The screenshot shows the 'Why am I seeing this ad?' page on Facebook. The title bar is blue with a back arrow, the text 'Why am I seeing this ad?', and a search icon. Below the title bar is a blue header with three white icons representing different ad categories. The main text explains: 'One reason you're seeing this ad is that Central wants to reach people who may be similar to their customers. Learn more.' Below this, it states: 'There may be other reasons you're seeing this ad, including that Central wants to reach people ages 22 to 40 who live near Silver Spring, Maryland. This is information based on your Facebook profile and where you've connected to the internet.'

Why am I seeing this ad?

One reason you're seeing this ad is that **Central** wants to reach **people who may be similar to their customers**. [Learn more](#).


There may be other reasons you're seeing this ad, including that Central wants to reach **people ages 22 to 40 who live near Silver Spring, Maryland**. This is information based on your Facebook profile and where you've connected to the internet.

# Greystar Housing Ad Targeted to People 22 to 40

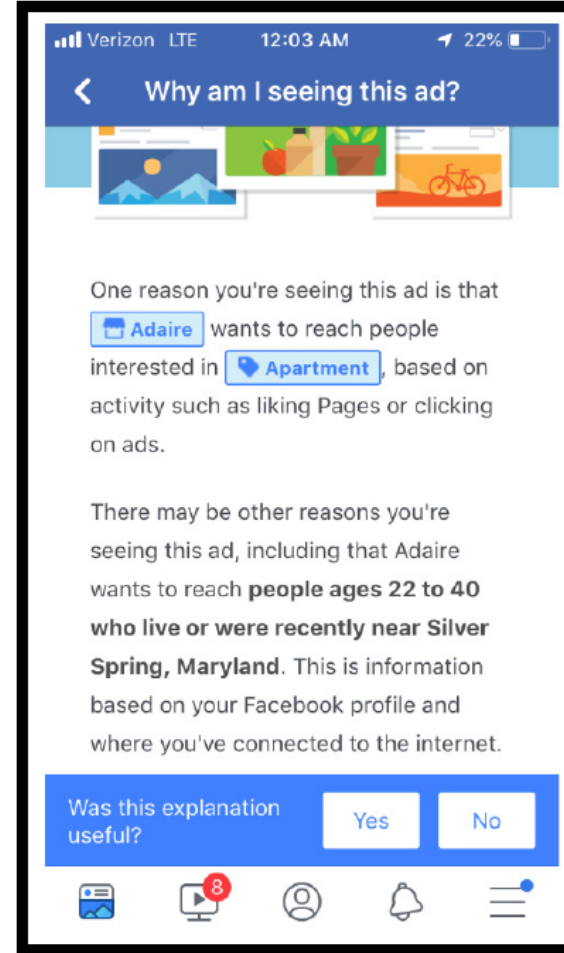


**Adaire**  
Sponsored · 🌐

Luxurious apartments in Tysons Corner Virginia. We offer modern studio, one and two-bedroom apartments just a walk away from the Spring Hill Metro Station and all of your urban needs! Call (855-463-9758) f... [Continue Reading](#)



**Modern** **Cozy**



Verizon LTE 12:03 AM 22%

### Why am I seeing this ad?

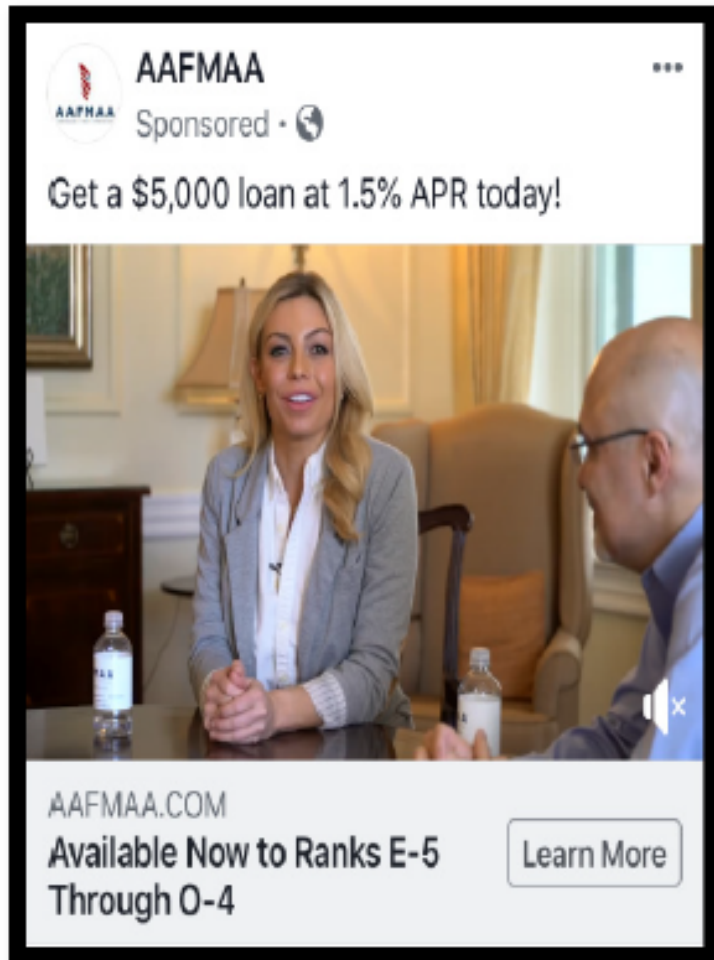
One reason you're seeing this ad is that **Adaire** wants to reach people interested in **Apartment**, based on activity such as liking Pages or clicking on ads.

There may be other reasons you're seeing this ad, including that Adaire wants to reach **people ages 22 to 40 who live or were recently near Silver Spring, Maryland**. This is information based on your Facebook profile and where you've connected to the internet.

Was this explanation useful?

🏠 📺 8 👤 🔔 ☰

# Loan Ad Targeted to People 22 to 40

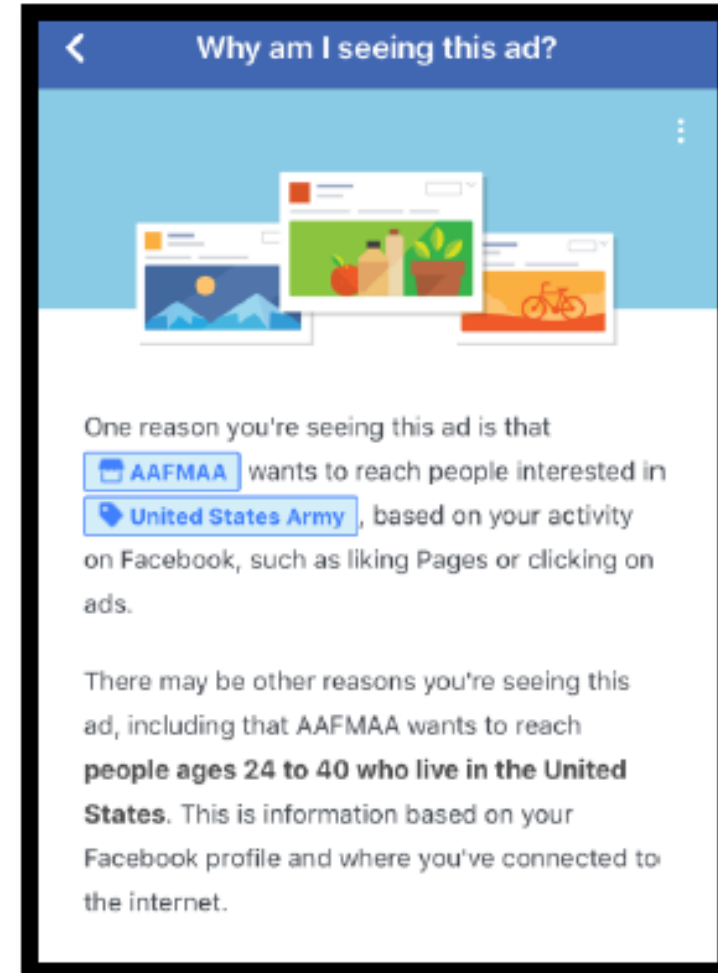


AAFMAA  
Sponsored · 🌐

Get a \$5,000 loan at 1.5% APR today!

AAFMAA.COM  
Available Now to Ranks E-5  
Through O-4

Learn More

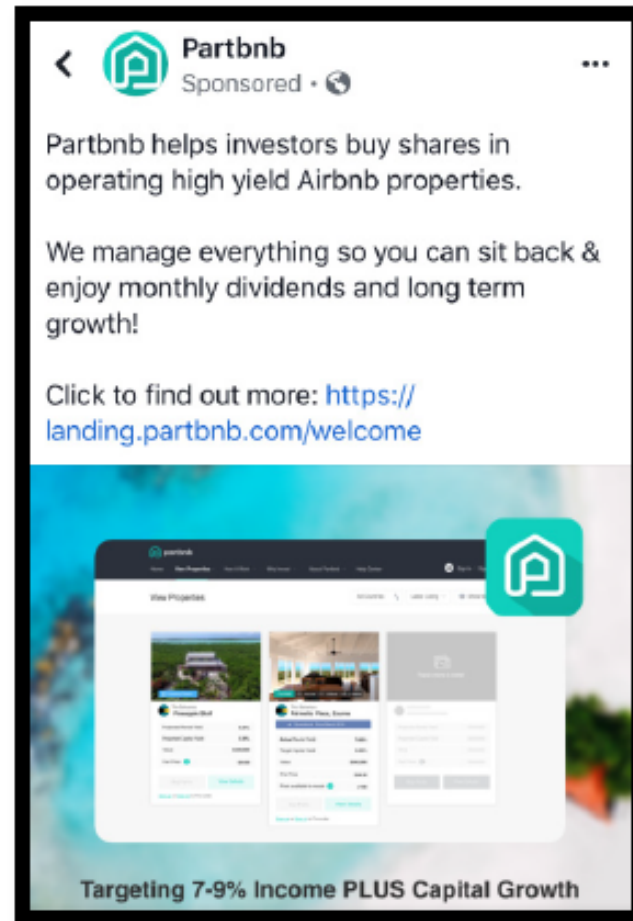




< Why am I seeing this ad?

One reason you're seeing this ad is that **AAFMAA** wants to reach people interested in **United States Army**, based on your activity on Facebook, such as liking Pages or clicking on ads.

There may be other reasons you're seeing this ad, including that AAFMAA wants to reach **people ages 24 to 40 who live in the United States**. This is information based on your Facebook profile and where you've connected to the internet.

# Investment Ad Targeted to Men 30 to 50

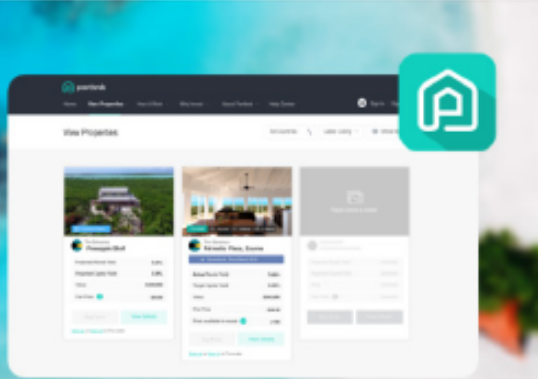


 **Partbnb**  
Sponsored · 

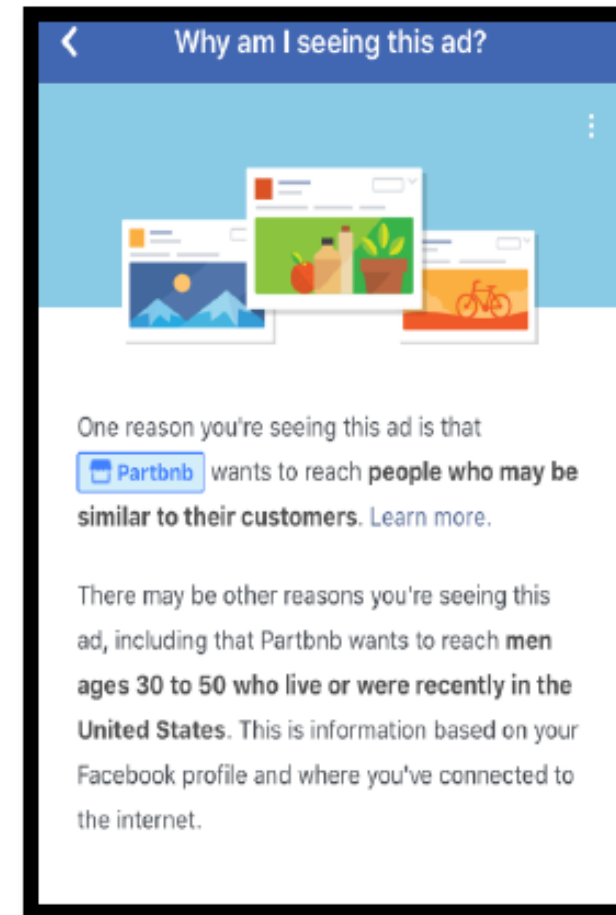
Partbnb helps investors buy shares in operating high yield Airbnb properties.


We manage everything so you can sit back & enjoy monthly dividends and long term growth!


Click to find out more: <https://landing.partbnb.com/welcome>




Targeting 7-9% Income PLUS Capital Growth



 Why am I seeing this ad?



One reason you're seeing this ad is that  wants to reach **people who may be similar to their customers**. [Learn more.](#)

There may be other reasons you're seeing this ad, including that Partbnb wants to reach **men ages 30 to 50 who live or were recently in the United States**. This is information based on your Facebook profile and where you've connected to the internet.