National Fair Housing Alliance
1331 Pennsylvania Avenue, NW, Suite 650, Washington, DC 20004 • (202) 898-1661 • Fax: (202) 371-9744 • www.nationalfairhousing.org

July 31, 2026

Andrew Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580
Submitted via Regulations.gov

Re: Federal Trade Commission's Proposed Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems, Docket # FTC-2026-0859-0001

The National Fair Housing Alliance (NFHA) and the undersigned civil rights and consumer advocacy organization thank you for the opportunity to comment on the Federal Trade Commission's (FTC) Proposed Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems (FTC Proposal).[1] NFHA leads a coalition that works to build inclusive, well-resourced, and resilient communities; expand equitable opportunities; and end housing discrimination.

The FTC Proposal asserts that as matter of federal law that AI systems cannot comply with state laws that address discrimination or bias and not run afoul of federal law. However, deceptive acts or practices law (Deception) under Section 5 of the Federal Trade Commission Act (FTC Act)[2] is not in opposition to state fair housing, fair lending, and other laws that protect consumers from discrimination in housing and lending (state fair housing laws)[3] by artificial intelligence systems (AI systems).[4] These laws co-exist and have done so for many years. New technologies like AI systems do not change this legal dynamic, nor do new laws passed to establish protections related to AI systems.

Further, the FTC proposal fails to meet the legal standards under Deception to justify the compliance requirements articulated, and it fails to meet the standards under

---

[1] FTC, Proposed Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems (July 07, 2026), available at: https://www.federalregister.gov/documents/2026/07/07/2026-13628/policy-statement-concerning-the-suppression-of-accuracy-in-artificial-intelligence-systems
[2] 15 U.S.C. 4545.
[3] These laws include, but are not limited to: state and local laws that prohibit discrimination in housing or housing-related credit transactions similar to the federal Fair Housing Act (42 U.S.C. 3601 *et seq.*) and Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), and state and local laws designed to establish protections related to AI systems that cover housing and lending within their scope.
[4] While the FTC Proposal focuses primarily the law of Colorado, it makes clear that its intended application is to similar purported steering of outputs from AI systems and potential other laws. Because of this broader asserted application, this comment discusses the interaction with state fair housing laws broadly.

Constitutional law for the FTC's asserted pre-emption of state laws. For these reasons, the FTC proposal should be withdrawn.

I. The FTC Proposal's Justification Does Not Meet the Established Elements of Deception under the FTC Act

The FTC Proposal applies the traditional elements of Deception laid out in the FTC Policy Statement on Deception – (1) misleading representations or omissions; (2) reasonable consumer expectation; and (3) materiality.[5] Neither the first or the second element have been met by the FTC proposal, and the FTC's case for the third element is significantly based on its analysis of the first two elements and so this comment does not address it.

A. The FTC's Statements About Reasonable Consumer Expectations are Unsupported and Wrong

The FTC Proposal makes various assertions about reasonable consumer expectations regarding AI systems, including that:

- "AI companies aggressively market themselves as building products and services that distill all of human knowledge to solve problems, large and small, in furtherance of users' given objectives;" and
- "consumers accept AI system outputs without conducting any further fact checking over 90% of the time, even though these systems purport to only strive for, rather than guarantee, complete accuracy."

The FTC concludes that therefore these represent widely held and "eminently reasonable" consumer expectations.[6] Yet the logic of the FTC's assertions does not hold.

Contrary to the asserted widespread reasonable consumer understanding that AI systems have currently "distill[ed] all of human knowledge to solve problems," the FTC itself has held companies accountable for unsupported and overstated claims about AI systems' capabilities, accuracy, and reliability and even cites these matters within the FTC Proposal.[7]

---

[5] FTC Policy Statement on Deception ("Deception Policy Statement"), 103 F.T.C. 174, 183 (1984), (appended to *In re Cliffdale Assocs., Inc.,* 103 F.T.C. 110 (1984)), available at: https://www.ftc.gov/legal-library/browse/ftc-policy-statement-deception.

[6] FTC Proposal at 41640.

[7] *Id.* (*citing* Consent Order, *In re Workado, LLC,* No. C-4822 (F.T.C. Aug. 21, 2025) (deceptive claims regarding accuracy or efficacy of its AI-content detection products), https://www.ftc.gov/system/files/ftc_gov/pdf/ContentatScaleAI-DecisionandOrder.pdf; Stipulated Order, *FTC* v. *TheFBAMachine Inc.,* No. 24-cv-6635-JXN-LDW (D.N.J. July 31, 2025), Dkt. No. 162 (falsely guaranteeing consumers could make money operating online storefronts using AI-powered software); Consent Order, *In re DoNotPay, Inc.,* FTC Docket No. C-4812 (Jan. 14, 2025) (deceptive claims about the ability of its AI chatbot to replace the services of a human lawyer), https://www.ftc.gov/system/files/ftc_gov/pdf/2323042_donotpay_decision_and_order_0.pdf; Consent Order, *In re Intellivision Techs. Corp.,* No. C-4809 (F.T.C. Jan. 8, 2025) (deceptive claims regarding accuracy or efficacy of its AI-powered facial recognition software), https://www.ftc.gov/system/files/ftc_gov/pdf/

Additionally, the statistics regarding consumers not conducting further fact checking over 90 percent of the time are not an accurate representation of the underlying findings. The researchers noted that the data is only based on behavior observed from users engaging in further fact checking *within the AI system conversation*, and that an equally valid explanation may be that users are fact checking "through channels we can't observe—running code, testing an app elsewhere, sharing a draft with a colleague—rather than expressing their evaluation within that same initial conversation."[8] This is a far cry from concluding that consumers are "accepting" an AI system output as truthful and the final word on a matter without further follow-up. The data was based on user data from a single AI system from a single week in January 2026.[9] This is a thin set of data upon which to make broad conclusions to support a novel theory of preemption under Deception.

In contrast, other data not cited in the FTC proposal shows consumers have significant concerns about AI systems' accuracy, and the use of AI systems for sensitive and important decisions. For example, a 2024 Consumer Reports nationally representative survey found that a majority of consumers were somewhat or very uncomfortable with AI systems being used to screen them for housing, loans, or jobs.[10] A 2025 YouGov survey found that only 5 percent of respondents have "a lot" of trust in AI systems to make recommendations and provide information, and only 26 percent trust AI systems "somewhat." As noted in the findings summary, "while many are using AI chatbots to get quick answers to their queries, most people are not convinced they're getting accurate answers."[11]

B. An AI System's Legal Compliance with State Fair Housing Laws is Not a Misleading Representation or Omission

The FTC asserts that objectives like compliance with state fair housing laws are "unexpected objectives" and therefore inconsistent with the FTC's asserted reasonable consumer expectations.[12] FTC reasons from this that companies would need to adopt significant disclosures about legal compliance with state fair housing laws to shift consumers' reasonable expectations and avoid Deception liability.[13]

2323023c4809intellivisionfinalorder.pdf; Stipulated Order, *FTC* v. *Evolv Techs. Holdings, Inc.,* No. 1:24-cv-12940-PGL (D. Mass. Nov. 26, 2024), Dkt. No. 2 (false claims about the efficacy of its AI-powered security screening system for detecting weapons).

[8] Anthropic, Anthropic Education Report: The AI Fluency Index (Feb. 23, 2026), available at: https://www.anthropic.com/research/AI-fluency-index

[9] *Id.*

[10] Consumer Reports survey: Many Americans concerned about AI, algorithms (July 25, 2024), available at: https://advocacy.consumerreports.org/press_release/consumer-reports-survey-many-americans-concerned-about-ai-algorithms/

[11] YouGov, Most Americans use AI but still don't trust it (Dec. 9, 2025), available at: https://yougov.com/en-us/articles/53701-most-americans-use-ai-but-still-dont-trust-it

[12] FTC Proposal at 41640.

[13] *Id.* at 41641-2.

In contrast to the FTC's thin case for its asserted consumer expectations discussed above, consumers' expectations and desires for AI systems to address bias and discrimination are well documented and not at all "unexpected." A poll from the Leadership Conference on Civil and Human Rights (The Leadership Conference) found that:

- 75 percent of adults support requiring companies that use AI for decisions about jobs, loans, and housing to prove that their AI systems do not discriminate based on race, gender, or disability;
- 73 percent support preventing uses of AI that would discriminate based on income, race, or gender; and
- 66 percent support testing AI systems for racial and gender bias before they can be used in hiring, housing, and lending decisions.[14]

Polling from Ipsos in 2025 found that only 37 percent of U.S. respondents currently trust AI systems not to discriminate or show bias towards any group of people.[15] Because of the false premise on which the FTC Proposal's asserted need for disclosure rests, no such disclosure is necessary.

II. The FTC Proposal Does Not Establish the Case for Conflict Preemption Under Constitutional Law

Under the Supremacy Clause of the federal Constitution, Congress may preempt a state law through federal legislation, either through express language in a statute or implicitly through field preemption or conflict preemption.[16] In implied field preemption, Congress may have intended "to foreclose any state regulation in the *area*, irrespective of whether state law is consistent or inconsistent with federal standards."[17] Thus, Congress forbids states from taking action in the *field* that the federal statute preempts.[18] Conversely, conflict preemption exists where "compliance with both state and federal law is impossible [(impossibility preemption)], or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress [(obstacle preemption)]."[19]

The FTC Proposal argues state laws governing AI systems are preempted by a conflict preemption theory.[20] While the FTC Proposal correctly articulates the general legal rule for

[14] The Leadership Conference, POLL: American Public Supports Policies Preventing AI Discrimination and Bias (July 16, 2026), available at: https://civilrights.org/2026/07/16/new-poll-overwhelming-support-policies-preventing-ai-discrimination-bias/

[15] Stanford University, Human-Centered Artificial Intelligence, 2026 AI Index Report, Public Opinion, available at: https://hai.stanford.edu/assets/files/ai_index_report_2026_chapter_9_public_opinion.pdf

[16] U.S. Const. art. 6, cl. 2; *see also Oneok, Inc. v. Learjet, Inc*., 575 U.S. 373, 377 (2015).

[17] *Oneok*, 575 U.S. at 377 (citation modified).

[18] *Id.*

[19] *Id.* (citing *California v. ARC America Corp.*, 490 U.S. 93, 100, 101 (1989)) (citation modified).

[20] FTC Proposal at 41641 (citing *Schneidewind* v. *ANR Pipeline Co.,* 485 U.S. 293, 300 (1988)).

conflict preemption, it reaches the wrong legal conclusion with respect to its application and fails to acknowledge the significant body of case law stands in opposition to the FTC's position.

The court in *Gardner v. StarKist Company* summarized the consensus of the case law well, stating:

> [The FTC Act] has never been interpreted to give the agency exclusive jurisdiction over advertising or marketing conduct. Nor has the FTC's authority to administer the FTC Act been an obstacle to suits premised on overlapping state statutes or on common law [citation omitted]. State prohibitions of unfair or deceptive trade practices are not preempted unless they conflict with an express FTC rule. Indeed, the Agency has long *encouraged* use of overlapping state deceptive practices statutes because problems in the marketplace exceed the Agency's enforcement capabilities.[21]

Other case law is in accord, generally finding against arguments that FTC guidance under the FTC Act or similar statutes, and even more specific regulations, do not preempt state law that offer additional protections or are not in direct conflict.[22]

Further, there is longstanding agency guidance which speaks to the coexistence of Deception law with state fair housing laws. 2004 joint guidance by the Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC) clearly noted that unfair or deceptive practices under the FTC Act could also be violations of federal or state statutes, but also that compliance with other laws did not necessarily mean compliance with the FTC Act.[23] The guidance also noted that some FTC Act violations could also constitute violations of fair housing and fair lending laws.[24] The Consumer Financial Protection Bureau's (CFPB) 2012 examination procedures related to deceptive practices adopted the same position.[25] This guidance reflected a clear and widely shared view of co-existence between the FTC Act and state fair housing laws.

Because the FTC Proposal fails to make a sound case for conflict preemption and ignores relevant caselaw and longstanding agency guidance, its preemption argument fails. Without a sound conflict preemption case, the FTC Proposal is beyond its legal authority.

---

[21] *Gardner v. StarKist Co*., 418 F. Supp. 3d 443, 459 (N.D. Cal., 2019) (quoting *U.S. v. Philip Morris*, 263 F. Supp. 2d 72, 78 (D.D.C. 2003)) (citation modified).

[22] *see e.g. Altria Grp., Inc. v. Good, 555 U.S. 70 (2008); General Motors Corp. v. Abrams*, 897 F.2d 34, 39-40 (2d Cir. 1990; *American Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 989-990 (D.C. Cir. 1985)*, cert. denied*; 475 U.S. 1011 (1986); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *see also Arizona v. United States*, 567 U.S. 387 (2012).

[23] FRB and FDIC, Unfair or Deceptive Acts or Practices by State-Chartered Banks (Mar. 11, 2004), available at: https://www.fdic.gov/news/financial-institution-letters/2004/fil2604a.html.

[24] *Id*.

[25] CFPB, Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs) examination procedures (Oct. 1, 2012), available at: https://www.consumerfinance.gov/compliance/supervision-examinations/unfair-deceptive-or-abusive-acts-or-practices-udaaps-examination-procedures/.

For the reasons set forth above, NFHA and the undersigned civil rights and consumer advocacy organization urge the FTC to withdraw the FTC Proposal.

Sincerely,

National Fair Housing Alliance
Center for Responsible Lending