

February 19, 2025

California Privacy Protection Agency  
Attn: Legal Division – Regulations Public Comment  
2101 Arena Blvd.  
Sacramento, CA 95834

Sent via email: [regulations@cpha.ca.gov](mailto:regulations@cpha.ca.gov)

**SUBJECT: Public Comment on CCPA Updates, Cyber, Risk, ADMT, and Insurance Regulations**

To Whom It May Concern:

The following comments concerning proposed new rules interpreting the California Consumer Privacy Act (CCPA) for Automated Decision-making Technology (ADMT) in relation to rental housing are submitted by the [Real Estate Technology & Transformation Center](#) (RETTTC),<sup>1</sup> the [National Multifamily Housing Council](#) (NMHC),<sup>2</sup> and the [National Apartment Association](#) (NAA).<sup>3</sup> We comment here on rental housing providers' prioritization of consumer data privacy and security. We also respectfully request the existing contours of CCPA exemptions under the Fair Credit Reporting Act (FCRA)<sup>4</sup> and Gramm-Leach-Bliley Act (GLBA)<sup>5</sup> are maintained – and thereby consistent, timely decision-making about rental housing eligibility by housing providers is continued and effective applicant fraud prevention remains readily available.

RETTTC, NMHC and NAA partner on behalf of America's rental housing providers and technology suppliers that are driving innovation and helping assist in addressing our long-term housing challenges. Drawing on the knowledge and policy expertise of staff in Washington, D.C., as well as the advocacy power of over 140 NAA state and local affiliated associations, RETTTC, NMHC and NAA provide a single voice for rental housing developers, owners and operators and the technology suppliers that are driving innovation and helping assist in addressing our long-term housing challenges. One-third of all Americans call a rental property home—where, increasingly, technology solutions are being leveraged to modernize property operations, improve housing affordability, and enhance the resident experience.

### **Rental Housing Background**

One-third of all Americans rent their housing and 40 million of them live in an apartment home. The following data underscores rental housing's importance in the U.S. consumer economy:

- 21.7 million U.S. households live in an apartment home (renter-occupied unit in a structure with five units or more). That is 47.5% of all renter-occupied households and 16.5% of all households.
- 40.3 million people, approximately 12.3% of all Americans, live in apartment homes.

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<sup>1</sup> <https://rettc.org/>

<sup>2</sup> <https://www.nmhc.org/>

<sup>3</sup> <https://naahq.org/>

<sup>4</sup> 15 USC 1681 *et seq.*

<sup>5</sup> 15 USC 6801 *et seq.*

- Approximately 45.6 million U.S. households rent their housing (whether in an apartment home or single-family home). This is 34.8% of all households.
- Upwards of 100 million people, 31.4% of Americans, live in rental homes (whether in an apartment home or single-family home).

### **Core Commitment to Residents' Digital Privacy and Security**

At the core of rental housing is a focus on service to residents and a commitment to provide a safe and secure community that residents call home. That commitment extends to ensuring that information collected, used, or retained about apartment residents is secure and their privacy is safeguarded.

The consumer engagement lifecycle with a rental housing provider typically begins when an individual explores moving into a rental housing community. As the relationship between the renter and the apartment manager may span years, rental housing providers collect various types of information, some on a static basis, such as during initial resident screening in the leasing process, and some continuously, such as via rental and utilities payments or other interactions. Rental housing is somewhat unique in that its collection of information on consumers includes dynamic and non-traditional data types in order to provide quality housing to residents and enhance their living experience. Consumer data contained in screening reports and data generated regularly and held by property managers and their service providers is crucial in accounting for rental history, tenure, and payment data, which makes up an important part of a resident's profile and can serve as a tool to improve a resident's housing opportunities in the future. It is important to note for regulators and policymakers that new limits on access to such data could have unintended consequences for consumers.

In the ever-expanding cyber-threat landscape, the rental housing providers have made defense against these vulnerabilities a top priority. Rental housing providers have invested significantly in protecting data, mitigating cybersecurity and data privacy risks, and implementing policies to bolster cyber defenses to protect data. Rental housing providers are challenged by the patchwork of 50 different state laws governing data security and breach notifications, various federal cybersecurity incident reporting requirements, and, for some, foreign laws. The lack of harmonization among these governmental entities increases costs and causes confusion as agencies and consumers receive notifications at different times concerning the same cybersecurity incident.

### **Technological Transformation in Rental Housing**

Increasingly, technology solutions are being leveraged to enhance the resident experience, modernize property operations, and improve housing affordability. Rental housing providers are turning to these tools to combat rising operational threats that are difficult to address using traditional methods. When implemented properly, these technologies can greatly assist with management and other housing-related obligations and ensure residents receive the best living experience possible.

Technology – including emerging technologies like Artificial Intelligence (AI) – also have the potential to make housing more affordable and accessible for millions of Americans who struggle to access the rental housing market. From development to financing to the resident experience, technology has a critical role to play in driving solutions to address many of our housing challenges.

As the California Privacy Protection Agency continues to protect consumer privacy, we ask that CCPA also avoid stifling the growth of tech-driven solutions that have significant pro-consumer and pro-housing benefits.

### **Case Study: Fraud in the Application and Leasing Process**

Consumer reporting and risk evaluation are used by housing providers to ensure accurate calculation of applicant risk, enabling a more inclusive application process and affordable up-front costs for renters, while protecting the long-term financial viability of the community.

The rise in fraud in the application and leasing process presents a notable case study on the benefits of real estate technology applications, such as artificial intelligence. NMHC and NAA surveys and reports have found staggering increases in application fraud. NMHC's "Pulse Survey: Analyzing the Operational Impact of Rental Application Fraud and Bad Debt" showed that a vast majority of property management respondents (93.3%) experienced fraud in 2023. Most firms (70.7%) also reported experiencing an increase in fraudulent applications and payments - where the person utilized fraudulent documentation, financial statements and even identities. Individuals who submit fraudulent applications and subsequently fail to pay rent account for roughly 1 in 4 (23.8%) of eviction filings. This fraud drives up housing costs broadly due to nonpayment, with apartment owners, developers and managers forced to write off an average of roughly \$1 million in bad debt per responding firm stemming from nonpayment due to fraudulent applications. By integrating AI technologies into the screening process, housing providers are pursuing new avenues to better identify and combat application fraud. Over time, this will reduce evictions, lower costs, and prevent renters from fraudulently securing unsustainable leases that result in bad debt.

### **FCRA and GLBA Activities in Rental Housing Exempt from Title 11**

As proposed, [Title 11](#) (CCPA Updates, Cyber, Risk, ADMT, and Insurance Regulations) articulates new rules to govern certain uses of Automated Decision-making Technology (ADMT) for "significant decisions" including housing, for extensive profiling of a consumer for behavioral advertising and other uses, and for training uses of automated decision-making technology for significant housing and other decisions or to establish individual identity. Proposed § 7200 (a) Under proposed Title 11, briefly, where a covered business uses covered ADMT, it shall provide a Pre-Use Notice, receive, and honor covered requests from consumers to opt-out from the use of the ADMT, and explain the purpose and use of the ADMT.

Under the proposed rule, "Automated Decision-making Technology (ADMT) means "any technology that processes personal information and uses computation to execute a decision, replace human decision-making, or substantially facilitate human decision-making." Proposed §7001 (f) "Technology is further defined to include "software or programs, including those derived from machine learning, statistics, other data-processing techniques, or artificial intelligence." Proposed § 7001 (f)(1) "Substantially facilitate human decision-making" is further defined to mean "using the output of the technology as a key factor in a human's decision-making. This includes, for example, using automated decision-making technology to generate a score about a consumer that the human reviewer uses as a primary factor to make a significant decision about them." Proposed § 7001 (f)(2) "Automated decision-making technology covered under the rule includes "profiling," but "does not include the following technologies, provided that the technologies do not execute a decision, replace human decision-making, or substantially

facilitate human decision-making: web hosting, domain registration, networking, caching, website-loading, data storage, firewalls, anti-virus, anti-malware, spam and robocall-filtering, spellchecking, calculators, databases, spreadsheets, or similar technologies.” Proposed § 7001 (f)(3),(4)

A “significant decision” under the proposed rule “means a decision using information that is not subject to the exceptions set forth in Civil Code sections 1798.145, subdivisions (c)-(g)...that results in access to, or the provision or denial of...housing...” Proposed § 7200 (a)(1)

Because tenant screening reports and permissible uses are covered by the Fair Credit Reporting Act and the Gramm-Leach Bliley Act, the exemptions of Cal. Civ. C. 1798.145 (d) and (e) apply to these transactions. Thus, use of ADMT in rental housing activities under the Cal. Civ. C. 1798.145 (c)-(g) exemptions is exempt from the pro-posed Title 11 obligations. This comment letter focuses on the Fair Credit Reporting Act (FCRA) and Gramm Leach Bliley Act (GLBA) exemptions in Cal. Civ. C. 1798.145 (d) and (e) in rental housing in more detail.

### **Some Key Rental Housing Activities Under FCRA and GLBA**

Rental housing professionals, including consumer report users, furnishers, and consumer re-reporting agencies (CRAs) have long been regulated under federal consumer data privacy laws, such as the FCRA and GLBA, and state laws, such as California’s Consumer Credit Reporting Agencies Act (CCRAA) and the Investigative Consumer Reporting Agencies Act (ICRAA). These regulations ensure consumers have substantial notice, access, transparency, privacy, appeal, and correction rights in the use of consumer reports in rental housing.

Use of ADMT in rental housing is exempt from these requirements with respect to consumer reporting agencies, furnishers, and consumer report users’ exempt activities described under Cal. Civ. C. 1798.145 (d). That FCRA exemption covers activity “involving the collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.” (d)(1) However, the exemption is limited and extends “only to the extent that such activity is subject to regulation under the Fair Credit Reporting Act and the information is not collected, maintained, used, communicated, disclosed, or sold except as authorized by the Fair Credit Reporting Act.” (Emph. added) (d)(2) Further, use of ADMT in rental housing may also be exempt from these requirements to the degree the personal information is collected, processed, sold, or disclosed subject to the Gramm-Leach-Bliley Act (GLBA) or the California Financial Information Privacy Act, et alia. Cal. Civ. C. 1798.145 (e)

In practice, rental housing professionals often are users of consumer reports, furnishers, or consumer reporting agencies, each entitled to the 145 (d) exemption.

First, as users of consumer reports, rental housing professionals may review consumer reports for one or more of the permissible purposes described in 15 USC 1681b of the FCRA. A professional may collect, maintain, disclose, communicate, or use a consumer report “in accordance with the written instructions of the consumer” applicant or renter (e.g., for the purpose of determining eligibility to rent under the property’s criteria, or for locating a resident with a past-due obligation), or because it has a “legitimate business need” for the information either in connection with a business transaction initiated by the consumer (e.g., applying to rent) or to review an account to determine if the consumer continues to meet the terms of the account (e.g., reviewing for risk of default or lease compliance). Such consumer

reports may include rental, court, credit, driver, employment, income, predictive scores, decision rules, and other consumer information bearing on the “consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.”

The consumer report information may include application-level risk scores developed for the purpose of consumer lease and credit risk evaluation for prompt, consistent decisioning. The use of such scores is fact-specific – often, a score in a transaction is not a key or primary factor in a housing provider’s determination of eligibility, such as where the applicant fails other aspects of the user’s criteria.

Decision rules, such as rent/income ratios, may also be used, where the user’s standard criteria are applied to the consumer record results to ensure consistent decision making. These decision rules are types of IF-THEN heuristics or rules of thumb, which apply user screening criteria to records returned and provide a result to that equation.

Importantly, such users further comply with both of the (d)(2) FCRA exemption limitations. Their use is subject to FCRA regulation – reports are unavailable to users unless required FCRA certifications are provided under a written agreement and permissible purpose is demonstrated; users commit to ensure adverse action notices are provided to consumers as applicable; and users engage in re-investigations as required by the law. And, per the second prong of the (d)(2) limitation, such reports are not collected, maintained, used, communicated, disclosed, or sold except as authorized by the FCRA. Thus, users are prohibited from using a report obtained from a consumer’s resident screening authorization, for example, for employment or mortgage evaluation purposes. And users are prohibited from disclosing the report to persons without permissible purpose or consumer authorization to review the information.

Second, rental housing professionals frequently are “furnishers” of information entitled to the 145 (d) exemption. This obligation takes on added importance in California, where the state legislature again in 2024 enacted laws requiring housing providers to offer renters the opportunity to furnish their rental history to consumer reporting agencies.

As furnishers, rental housing professionals may collect, maintain, or use rental payment information and disclose such information to a consumer reporting agency, consistent with (d)(1).

Complying with both prongs of the (d)(2) limitation, such furnishing activities are subject to FCRA regulation under 15 USC 1681s-2 (accuracy requirements, COVID-19 information, and identity theft-related information) and related rules and interagency guidance. And furnishers typically engage in the covered activities only as authorized by the FCRA: consumers may withdraw from reporting through a particular furnisher, corrections of inaccurately furnished information, if any, are made and prior reports to CRAs are updated.

Third, some rental housing service providers are consumer reporting agencies under this section, either as resellers of consumer reports or as consumer reporting agencies that maintain a file about a consumer subject to the FCRA. These companies evidence their CRA status in their contracts and, where applicable, license registrations. These entities would also obtain the FCRA exemption for their activities.

CRAs provide third-party information to housing professionals with permissible purpose to facilitate more informed rental eligibility decisions. They do not act on behalf of housing providers in making eligibility decisions but rather supply data that housing providers use to make eligibility determinations

per their criteria. As users of the data, housing providers require accurate information to ensure housing opportunity for renters and support efforts to ensure consumer protection in this space.

Finally, rental housing professionals may also use and provide certain personal information under the Gramm-Leach-Bliley Act (GLBA) exemptions under Cal. Civ. C. 1798.145 (e).

For example, GLBA information, may be used or shared by rental housing professionals to combat prevalent applicant fraud, a major industry concern, as noted above. Reliable data sources used to identify and combat fraudulent identity and employment information before the resident applies to rent may be subject to GLBA but not FCRA. The GLBA report information may include scores developed for the purpose of applicant identity verification to reduce applicant fraud. The use of such scores is fact-specific – often, a score in a transaction is not a key or primary factor in a housing provider’s determination of identity, such as where alternative evidence of identity is reviewed.

### **General Considerations for the FCRA and GLBA Activities**

The signatories recommend that any final rule reflects a broad scope to the 1798.145 exemptions. Specifically, with respect to agents and service providers and representations about CCPA compliance, our organizations make these recommendations for inclusion in a final rule.

### **Agents and Service Providers**

The signatories recommend that any final rule reflects those entities covered under the 1798.145 (d) and (e) FCRA and GLBA exemptions may include agents or service providers under agreement with the user or furnisher that assist with the delivery, maintenance, analysis, and storage of consumer report information provided to the user and/or furnished by the furnisher.

### **Reliance on a Party’s CCPA Compliance**

Where a CRA, User, or Furnisher represents that it complies with the CCPA, including the 1798.145 exemptions, a counterparty or consumer should be expected to be able to rely on such assertion. The presence of litigation or enforcement activity – for example, over a vendor’s reporting or dispute processes under the FCRA or GLBA - should not limit the right of the vendor to represent its compliance with the 1798.145 exemptions, and its customers to rely on such representation. The signatories recommend this clarification too be reflected in any final rule.

### **Conclusion**

On behalf of the owners, developers, and operators of rental housing, as well as rental housing technology partners, we appreciate the opportunity to submit comments on the Proposed Rule. We value the California Consumer Privacy Protection Agency’s continued focus on promoting data privacy and security.

As noted above, the privacy and security of consumers’ information is of utmost importance to RETTC, NMHC and NAA and we stand ready to work with the California Privacy Protection Agency to ensure regulations recognize the unique nature and needs of rental housing while ensuring consumers’ privacy rights are protected. Care should be taken as the rulemaking process progresses to ensure that new rules do not inadvertently impose new costs on rental operations and renters that could worsen housing affordability. Further, we ask that the California Privacy Protection Agency proceed cautiously with any

type of rulemaking that could disrupt essential data collection, retention and compliance provisions of various federal laws and regulations that govern housing operation and renter protection.

Contact with the undersigned organizations with respect to this comment letter may be made to Julianne Goodfellow at [jgoodfellow@rettc.org](mailto:jgoodfellow@rettc.org).

Sincerely,

Real Estate Technology and Transformation Center  
National Multifamily Housing Council  
National Apartment Association