Comments of Consumer Reports
In Response to the
California Privacy Protection Agency's
Invitation for Comment on
Proposed Regulations on CCPA Updates, Cybersecurity Audits, Risk Assessments, Automated Decisionmaking Technology (ADMT), and Insurance Companies

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Consumer Reports[1] appreciates the continued work of the California Privacy Protection Agency (CPPA) staff and board to implement the California Consumer Privacy Act and safeguard the privacy rights of Californians. The rulemaking process around automated decisionmaking technology (ADMT) and risk assessments is both timely and essential; these systems increasingly influence access to critical opportunities, like admissions into school,[2] applicant selection for rental units[3] or job opportunities,[4] work scheduling,[5] and more.

In previous comments,[6] we expressed concern that the scope of the proposed ADMT regulations was too limited and that the ambiguity in terms like "key factor"—combined with businesses' strong incentive to interpret the rules as narrowly as possible—would result in companies withholding information on ADMT that shape consumers' life opportunities. Unfortunately, the May draft narrows the scope much further, making clear that many ADMT recommendation tools are not covered. Several other revisions remove due diligence requirements for companies and provisions that would make it easier for consumers to exercise their rights.

This direction is particularly concerning given the sustained engagement from privacy, labor, and other civil society advocates, many of whom have offered specific recommendations to strengthen transparency and accountability in the use of ADMT. The May draft—if adopted—will result in fewer Californians gaining insight into how their personal data is being processed in consequential decisions, as compared to earlier drafts.

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[1] Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. For over 80 years, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers' interests, including their interest in securing effective privacy protections. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

[2] Liam Knox, *Inside Higher Education*, "Admissions Offices Deploy AI," October 9, 2023 https://www.insidehighered.com/news/admissions/traditional-age/2023/10/09/admissions-offices-turn-ai-application-reviews

[3] Patrick Sisson, *Bloomberg,* "For Tenants, AI-Powered Screening Can Be a New Barrier to Housing," September 11, 2024, https://www.bloomberg.com/news/features/2024-09-11/ai-powered-tenant-screening-tech-worries-fair-housing-advocates

[4] Hilke Schellman, *The Algorithm*, January 2024, Hachette Books

[5] Ben Rand, *Harvard Business School - Working Knowledge,* "Bad Data, Bad Results: When AI Struggles to Create Staff Schedules", February 27th 2025, https://www.library.hbs.edu/working-knowledge/bad-data-bad-results-when-ai-struggles-to-create-staff-schedules

[6] Grace Gedye, Stacey Higgenbotham, Matt Schwartz, Justin Brookman, "Comments of Consumer Reports In Response to the California Privacy Protection Agency's Invitation for Comment on Proposed Regulations on CCPA Updates, Cybersecurity Audits, Risk Assessments, Automated Decisionmaking Technology (ADMT), and Insurance Companies," February 19th, 2025. https://advocacy.consumerreports.org/research/consumer-reports-comments-on-california-privacy-protection-agency-draft-rules-regarding-cybersecurity-audits-risk-assessments-and-automated-decision-making-technology/

There are some improvements in this draft that are worth noting. We are pleased to see that Pre-Use Notices must now inform consumers how decisions will be made if they choose to opt out of ADMT use[7]—an improvement we specifically called for in our last round of comments.[8] This will provide consumers with information they need in order to weigh the benefits and drawbacks of opting out. We also appreciate the clarification in the Request to Access provisions that businesses must disclose the outcome of any significant decision;[9] this is essential information for affected individuals and it was previously ambiguous.

Nonetheless, the overall contraction in scope and the rollback of key protections is disappointing. As CR and other organizations such as the American Civil Liberties Union of Northern California have articulated in previous comments, these rules are well within the CPPA's authority.[10] The remainder of our comments outlines our specific concerns with the May draft of the automated decisionmaking technology and risk assessment regulations, as well as suggestions for how the CPPA might better align the final rule with the statute's consumer protection goals. They include:

- Revised definition of "automated decisionmaking technology" leaves many Californians unprotected
- Restore requirements for businesses to assess whether their physical or biological profiling is actually working, and whether it is discriminating.
- Remove trade secret protections for Pre-Use Notice and Right to Access
- Restore opt-out of behavioral advertising
- Restore reminder of Right to Access after adverse decisions

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[7] May draft, Section 7220. Pre-use Notice Requirements, (c)(5)

[8] Grace Gedye, Stacey Higgenbotham, Matt Schwartz, Justin Brookman, "Comments of Consumer Reports In Response to the California Privacy Protection Agency's Invitation for Comment on Proposed Regulations on CCPA Updates, Cybersecurity Audits, Risk Assessments, Automated Decisionmaking Technology (ADMT), and Insurance Companies," February 19th, 2025, See "Require that businesses explain to consumers what happens if they choose to opt-out when presenting them with the right to opt-out"

[9] May draft, Section 7222 (b)(3)

[10] Grace Gedye, Stacey Higgenbotham, Matt Schwartz, Justin Brookman, "Comments of Consumer Reports In Response to the California Privacy Protection Agency's Invitation for Comment on Proposed Regulations on CCPA Updates, Cybersecurity Audits, Risk Assessments, Automated Decisionmaking Technology (ADMT), and Insurance Companies," February 19th, 2025, https://advocacy.consumerreports.org/research/consumer-reports-comments-on-california-privacy-protection-agency-draft-rules-regarding-cybersecurity-audits-risk-assessments-and-automated-decision-making-technology/ and ACLU California Action "Re: Comments on Proposed Risk Assessments and Automated Decisionmaking Technology Regulations" February 19, 2025, https://www.aclunc.org/sites/default/files/2025-02-19%20ACLU%20CA%20Action%20EPIC%20EFF%20CFA%20PRC%20CPPA%20Comments.pdf and Electronic Privacy Information Center and Consumer Federation of America, "Comments of the Electronic Privacy Information Center and the Consumer Federation of America to the California Privacy Protection Agency on Proposed Rulemaking Regarding Cybersecurity, Risk Assessments, and Automated Decisionmaking Technology" February 19, 2025 https://epic.org/documents/comments-to-the-cppa-on-proposed-regulations-regarding-cybersecurity-risk-assessments-and-admts/

- Restore prohibition on processing if risks outweigh benefits and clarify that CPPA has the authority to contest business' assessments of cost-benefit tradeoffs

Revised definition of "automated decisionmaking technology" leaves many Californians unprotected

The May draft's revision to the definition of "automated decisionmaking technology" dramatically alters the scope of the regulations, leaving many Californians completely in the dark when ADMT play an influential role in whether they land a job, receive a home loan, are suspended from school, are approved for a rental unit, and more. Unfortunately, the minimal human oversight established in the May draft is not a meaningful substitute for transparency for impacted Californians.[11] One reason is automation bias; research suggests that humans tend to view automated systems as authoritative and trustworthy and are inclined to defer to a system's recommendations even when they suspect it is malfunctioning.[12] This bias limits the efficacy of human review for catching and addressing errors.

A second reason is that companies have an incentive to speed through review processes. This has been documented in the insurance industry, where laws and regulations in many states require doctors to review claims before an insurer rejects a claim for a medical reason.[13] Doctors are supposed to examine patient records and use their expertise in the decision. Yet, an investigation by ProPublica found that health insurer Cigna set up a system that enabled doctors to reject claims without even opening patient files, and documents indicate that doctors were spending an average of 1.2 seconds on each case.[14] A second investigation by ProPublica found that Cigna was tracking its medical directors' productivity on a dashboard, and at least one doctor was warned that she would be fired if she didn't work faster.[15]

The new definition of ADMT would exempt recommendation systems that are highly influential in consequential decisions. For example, many companies that use AI hiring systems do not use them autonomously; they may use them to flag the most promising candidates out of thousands of resumes, or to analyze hours of virtual job interviews, and then have a human hiring manager look at the recommendations to make a final decision. Investigations by journalists suggest that

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[11] May draft, Section 7001, (e)(1)(A-C)
[12] See, e.g., Danielle Keats Citron, Washington University Law Review, 'Technological Due Process,' 2008 at 1271–72; https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1166&context=law_lawreview
[13] Patrick Rucker, The Capitol Forum, and Maya Miller, David Armstrong, ProPublica, "How Cigna Saves Millions by Having Its Doctors Reject Claims Without Reading Them" March 25, 2023, https://www.propublica.org/article/cigna-pxdx-medical-health-insurance-rejection-claims
[14] ibid
[15] Patrick Rucker, The Capitol Forum, and David Armstrong, ProPublica, "A Doctor at Cigna Said Her Bosses Pressured Her to Review Patients' Cases Too Quickly. Cigna Threatened to Fire Her." April 19, 2024 https://www.propublica.org/article/cigna-medical-director-doctor-patient-preapproval-denials-insurance

these systems can be alarmingly off base, or can discriminate based on protected status. For example, investigative journalists found that AI hiring startup Retorio's assessment of an applicant varied when he or she added glasses, a headscarf, or items like a painting or bookshelf in the background.[16] Another AI hiring assessment, Curious Thing, provided high scores in English proficiency even when questions were answered exclusively in German.[17] The use of systems like these by human decisionmakers may have been covered by the April draft rules; they likely would not be under the May draft.

The April draft rules also had several provisions which might have prompted appropriate scrutiny. For example, Section 7201 ("Requirement for Physical or Biological Identification or Profiling") likely would have required a company using Retorio's application to assess whether the software was working as intended, and whether it was discriminating—an assessment that might have revealed the issues the journalists found. That section was cut entirely from the May 1st draft. The April draft also prohibited companies from processing data when the risks outweighed the benefits; that provision might have applied to these flawed systems, but it has now been weakened. Lastly, the information contained in the Pre-use Notice and Request for Access might have prompted Californians impacted by these flawed systems to reach out to the hiring entity or file a complaint with the CPPA or the Attorney General. Now, so long as companies using systems like Retorio and Curious Thing apply at least some human review, Californians won't receive those disclosures. Taken together, the previous draft provided several important junctures at which flawed systems would come under scrutiny; the current draft removes many of these checks.

Restore requirements for businesses to assess whether their physical or biological profiling is actually working, and whether it is discriminating.

The May draft completely cuts Section 7201, "Requirements for Physical or Biological Identification or Profiling." Previously, businesses that were using physical or biological identification or profiling for a significant decision or for extensive profiling would have had to evaluate the profiling to ensure it works as intended and does not unlawfully discriminate, and implement policies to ensure that both of those things happen. This was an important requirement; inaccurate or discriminatory biometric profiling systems are a documented problem. For example, in 2023 the Federal Trade Commission banned Rite Aid from using facial recognition for in-store surveillance because it failed to implement reasonable procedures to reduce harm.[18] About the decision, the FTC wrote: "Employees, acting on false positive alerts,

[16] Elisa Harlan, Oliver Schnuck, BR24, "Objective or Biased" February 16th 2021 https://interaktiv.br.de/ki-bewerbung/en/

[17] Sheridan Wall, Hilke Schellmann, MIT Technology Review, "We tested AI interview tools. Here's what we found." July 7, 2021 https://www.technologyreview.com/2021/07/07/1027916/we-tested-ai-interview-tools/

[18] Federal Trade Comission, "Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards" December 19, 2023,

followed consumers around its stores, searched them, ordered them to leave, called the police to confront or remove consumers, and publicly accused them, sometimes in front of friends or family, of shoplifting or other wrongdoing, according to the complaint."[19] Fourteen Uber couriers shared evidence with *Wired* in 2021 that Uber's facial identification software, used to confirm a courier's identity, failed to recognise their faces.[20] Some of these drivers were threatened with termination, or were fired after their selfies failed the company's "Real Time ID Check."[21]

The previous requirements to evaluate and implement practices to prevent unintended consequences and unlawful discrimination were reasonable and not overly burdensome. They should be restored.

Remove trade secret protections for Pre-Use Notice and Right to Access

The May draft regulations also added trade secret and security-related exemptions to the Pre-Use Notice and the Right to Access. The trade secret exemptions in particular threaten to completely undercut the utility of the Pre-Use Notices and Right to Access—two of the most important provisions for consumers who want to understand how their data is being used to make major decisions about them.

The only technology-specific disclosures required in the Pre-Use Notice are 1) how the automated decisionmaking technology processes personal information to make a significant decision; 2) the categories of personal information that affect the output; and 3) the type of output the system generates.[22] This is essential information for consumers, and sharing it does not require a company to disclose its code, its weights, or non-personal data the system relies on. Indeed, one would expect these basic categories of information to be included in marketing pitches to clients. What Fortune 500 company is going to buy a hiring recommendation algorithm without asking what information about the candidates the recommendation is based on, or whether the output is a score from 1-10, a qualitative summary of the applicant's strengths and weaknesses, or something else?

These trade secret exemptions are ripe for abuse, particularly by companies that are using information of dubious validity or quality and who have a strong incentive to keep those shortcomings secret. Theranos founder Elizabeth Holmes famously invoked trade secret protections as the rationale for withholding from investors and journalists the fact that her

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https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without

[19] ibid

[20] Andrew Kersley, *Wired,* "Couriers say Uber's 'racist' facial identification tech got them fired" March 1, 2021 https://www.wired.com/story/uber-eats-couriers-facial-recognition/

[21] ibid

[22] Section 7220 (c)(5)(A-B)

company was not using proprietary "finger prick" blood testing devices and was instead using equipment purchased from other companies.[23]

The case that either of these notices would require a company to disclose their trade secrets is weak. Moreover, the public interest rationale for these disclosures, we believe, outweighs these weak trade secret claims. We suggest striking the trade secret exemptions from the Pre-Use Notice and Right to Access.

Restore opt-out of behavioral advertising

The May draft regulations removed proposed privacy protections for behavioral advertising based on first party data. This runs counter to the text of the CCPA and should be reversed: California consumers should have the ability to turn off first-party ad targeting if they wish.

The CCPA directs the CPPA to issue "regulations governing access and opt‑out rights with respect to businesses' use of automated decision‑making technology, including profiling . . . ."[24] Profiling itself is defined broadly to include "any form of automated processing of personal information . . . to evaluate certain personal aspects relating to a natural person, and in particular to analyze or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements . . . ."[25] Clearly, first-party ad targeting is logically included within that definition, and the CPPA should follow the statute's directive to give consumers a way to opt-out of such profiling.

The CCPA already provides a mechanism for consumers to opt out of *cross-context* targeted advertising, including through the use of universal opt-out mechanisms such as the Global Privacy Control. However, it does not explicitly provide for an opt-out for first-party targeting, other than the general directive to the CPPA to create opt-out rights for profiling. While first-party targeting should not be subject to a global opt-out as consumers are more likely to have varying preferences for personalization for individual companies, they still should have the ability to turn off personalization of offers if they so desire. Companies already offer individuals tools to manage first-party advertising as required by laws such as CAN-SPAM and the TCPA. The CPPA should further require those companies to let consumers turn off first-party ad behavioral profiling.

Restore reminder of Right to Access after adverse decisions

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[23] James Pooley, *IP Watchdog*, "Lessons From Theranos and the Trade Secret Defense" Janruary 30, 2022, https://ipwatchdog.com/2022/01/30/lessons-theranos-trade-secret-defense/ and Sara Randazzo, *Wall Street Journal,* "Prosecutor Takes Aim at Holmes's Trade-Secret Defense" December 16, 2021 https://www.wsj.com/livecoverage/elizabeth-holmes-trial-theranos/card/prosecutor-takes-aim-at-holmes-s-trade-secret-defense-tQjRekJB1f5w9UUJM6PZ

[24] Cal. Civ. Code § 1798.185(a)(16).

[25] Cal. Civ. Code § 1798.140(z).

The April draft included provision (k) in Section 7222 "Requests to Access ADMT" that required companies to remind consumers of their Right to Access additional information after an ADMT is used in an adverse significant decision.[26] (We refer to this as the "reminder notice"). This was an important protection; often consumers are not aware of their privacy rights, and therefore do not use them.[27] The reminder notice would have prompted consumers to consider their right to receive more information precisely when they would be most interested in using it—in the immediate aftermath of being denied a rental unit or a home loan, or being terminated or demoted at work. Importantly, this reminder had to be delivered "as soon as feasibly possible but no later than 15 business days from the date of the adverse significant decision."[28] If a consumer was denied a home or a loan, or was fired based on faulty information, this reminder notice might cause them to request information that would reveal the problem and enable them to talk to the landlord, bank, or employer about reevaluating the decision before the harms, such as lost wages, had accrued.

This provision is not particularly burdensome for businesses. The reminder notice could be automated, requiring limited ongoing costs once a process is set up. Additionally, these notices are not individualized; the same notice could be used for many consumers.

In our February 19th comments on this rulemaking, Consumer Reports advocated for strengthening this provision and making it easier for consumers to use.[29] We wrote:

> The pre-use notice paired with a post-decision explanation ("right to access") are two of the most critical provisions of Article 11. The additional information consumers will receive as a result of these provisions will help consumers understand how their personal data is being used to make decisions that impact their lives, exercise their right to appeal if necessary, and in some cases, may enable them to exercise rights under existing laws,

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[26] April draft, Section 7222 (k)

[27] Consumer Reports Survey Research Department, "Consumer Reports American Experiences Survey: A Nationally Representative Multi-Mode Survey, September 2024 Omnibus Results." https://article.images.consumerreports.org/image/upload/v1728423752/prod/content/dam/surveys/Consumer_Reports_AES_September_2024.pdf The survey asked the following question: "Some states have laws that regulate how companies can collect, store, share, and use people's personal data, like their shopping habits, internet history, and personal information like age, race/ethnicity, and where they live. To the best of your knowledge, does your state have a law like that?" 54% said "I don't know if there's a law like that at all" and 25% said "I think there is a law like that, but I don't know if it's state or federal."

[28] April draft, Section 7222 (k)

[29] Grace Gedye, Stacey Higgenbotham, Matt Schwartz, Justin Brookman, "Comments of Consumer Reports In Response to the California Privacy Protection Agency's Invitation for Comment on Proposed Regulations on CCPA Updates, Cybersecurity Audits, Risk Assessments, Automated Decisionmaking Technology (ADMT), and Insurance Companies," February 19th, 2025. See "Send post-decision explanations to consumers by default; ensure explanations are sufficiently detailed and put in context" https://advocacy.consumerreports.org/wp-content/uploads/2025/02/CR-comments-re_-CPPA-cyber-risk-asessment-ADMT-rulemaking.pdf

such as civil rights laws, consumer protection laws, and labor laws. For these disclosures to live up to their promise, they must be easy for consumers to access, detailed, and easy for them to understand.

Currently, in order for a consumer to receive information about how an adverse significant decision was made about them, the regulations require consumers to take a proactive step to exercise their right to "access." Many consumers will not take this step even when doing so may benefit them; they may not see the additional notice required under 7222(k); consumers may not understand the potential upside of receiving the information provided by their access right, and therefore may not choose to spend time requesting it. We recommend that instead of requiring consumers to take a proactive step when an adverse decision is made about them, businesses should instead be required to provide the information to consumers by default via their typical means of communicating with consumers.

Instead of lightening the burden on consumers as we suggested, the CPPA has moved in the opposite direction, removing the reminder notice altogether making it less likely that consumers will utilize this right. We stand by the recommendation in our February 19th comment. If the CPPA does not adopt that recommendation, it should restore the reminder notice at the very least.

Risk Assessments

Restore prohibition on processing if risks outweigh benefits and clarify that CPPA has the authority to contest businesses' assessments of cost-benefit tradeoffs

Another disappointing change made in the May draft was to weaken the prohibition on processing consumers' personal data if the risks of doing so outweigh the benefits. The April draft contained a clear prohibition in Section 7154; the May draft revised that prohibition to be a statement that "The goal of a risk assessment is restricting or prohibiting the processing of personal information . . ." when the risks outweigh the benefits. This change should be reversed for several reasons. The first is that the new text is ambiguous; If a business reaches the conclusion that the risks of the processing outweigh the benefits, do they have a legal obligation to do anything at all? It is unclear—especially in the context of the regulatory history on this particular provision.

This specific revision from a clear prohibition to a goal statement also does not seem to fulfill the requirement laid out in the CPRA. Section 1798.185(a)(15)(B) specifically instructs the CPPA to issue regulations requiring companies whose data processing presents a significant risk to privacy or security "to submit to the California Privacy Protection Agency on a regular basis a risk assessment with respect to their processing of personal information . . .with the goal of

restricting or prohibiting such processing if the risks to privacy of the consumer outweigh the benefits resulting from processing to the consumer, the business, other stakeholders, and the public." That goal was served by the prohibition in the April draft. The May draft, however, does not fulfill this goal, it merely restates it.

We recommend that this provision is modified not only to make clear that businesses are prohibited from processing data when the risks outweigh the benefits, but to also make clear that the CPPA has the formal ability to challenge businesses' assessments of the tradeoffs between the benefits of their processing activities and the harms, as we suggested in our February comments.[30] Businesses will have a strong incentive to downplay risks if they believe there is no chance their analysis will be questioned.

We propose the following language, based on the statutory damages provisions in Section 1798.155(a), creating an explicit mechanism for the CPPA to question and take action against deficient risk assessments:

> Upon review of a business's Risk Assessment, if the Agency has a cause to conclude that the benefits of the processing do not outweigh the costs as required by statute, the Agency may require additional documentation or evidence from the business. If the Agency determines, after reviewing any further materials as necessary, that there is probable cause for believing that the benefits of the processing do not outweigh the costs in violation of the statute, the Agency may hold a hearing pursuant to Section 1798.199.55(a) to determine if a violation has occurred. If the Agency so determines that a violation has occurred, it may issue an order requiring the violator to restrict the processing to address such costs or prohibiting the business from such processing.

[30] Grace Gedye, Stacey Higgenbotham, Matt Schwartz, Justin Brookman, "Comments of Consumer Reports In Response to the California Privacy Protection Agency's Invitation for Comment on Proposed Regulations on CCPA Updates, Cybersecurity Audits, Risk Assessments, Automated Decisionmaking Technology (ADMT), and Insurance Companies," February 19th, 2025. https://advocacy.consumerreports.org/wp-content/uploads/2025/02/CR-comments-re_-CPPA-cyber-risk-asessment-ADMT-rulemaking.pdf