The Federal Trade Commission and the Consumer Financial Protection Bureau invite interested individuals to submit comments about background screening issues affecting individuals who seek rental housing in the United States. The agencies request comments and information about the use of credit reports, credit scores, and criminal and civil (including eviction) public records in tenant screening; the use of algorithms in making tenant screening decisions; the use of tenant screening recommendation products developed, marketed, or sold by consumer reporting agencies; and other tenant screening issues. In particular, the agencies welcome comments addressing the following issues:

Tenant Screening Generally

1. How are landlords and property managers currently setting criteria for prospective tenants and using background screening products to assess prospective tenants? For example, how do landlords and property managers determine whether and to what extent to consider past criminal and eviction records in making a decision about a tenant or prospective tenant?

2. How and to what extent are landlords and property managers informing tenants and prospective tenants about their tenant screening criteria? What are the potential harms and benefits from the current level of disclosure?

3. To what extent do landlords and property managers address barriers for tenants and prospective tenants with limited English proficiency or disabilities?

4. What (if any) information should landlords and property managers be required to provide to prospective tenants in advance of collecting rental applications and fees? For example, should landlords and property managers be required to disclose in advance their criteria for approving a prospective tenant (e.g., any disqualifying factors, such as poor credit history, prior evictions or criminal history), the information they will consider and the sources of that information (e.g., background information from tenant screening reports), the involvement of any third parties in the evaluation of the prospective tenant's application (e.g., whether the landlord or property manager uses a tenant screening company to provide screening reports or to make recommendations, and the identity of that company), and any procedures landlords or property managers provide for disputing screening information or appealing their decisions?
   a. How would such disclosures affect prospective tenants, landlords/property managers, and other industry participants?
   b. Would requiring such disclosures create competitive advantages or disadvantages for landlords/property managers or other industry members? What are those advantages or disadvantages?

5. Are there mechanisms that could make the tenant selection process more objective? For example, such mechanisms might require landlords and property managers to accept qualified tenants in the order they apply, rather than selecting a preferred tenant from a

group of applicants. Should more objectivity in the tenant selection process be a regulatory goal? What are the costs and benefits of that approach?

6. Are landlords or property managers requesting that prospective tenants disclose their credit, criminal

criminal background reports (as part of a tenant screening report or as a stand-alone report), browse mugshot databases, or through other means?

b. What types of criminal records are being used in evaluating tenants? For example, are landlords and property managers focusing on records from a particular part of the criminal process (e.g., arrest records, charging records, conviction records, or a combination) or relating to particular criminal activity (e.g., felonies, misdemeanors, records related to specific types of offenses)?

c. Do landlords and property managers review and consider records about traffic violations (whether reported as infractions, misdemeanors, or otherwise) in evaluating a prospective tenant?

d. What steps, if any, do landlords, property managers, and other industry participants take to avoid discriminatory impacts from their use of criminal records in assessing prospective tenants?

e. What steps, if any, do landlords, property managers, and other industry participants take to ensure their use of criminal records complies with fair housing laws?

f. What steps, if any, do landlords, property managers, and other industry participants take to verify criminal record information with prospective tenants?

18. What are the potential benefits and harms of considering criminal records in making

a.

37. What steps, such as auditing, are taken to ensure that algorithms that evaluate, grade, or make recommendations about prospective tenants are not discriminating against prospective tenants on the basis of race, sex (which includes sexual orientation and gender identity), disability, or other protected class, and how are such steps carried out?
38. What steps are consumer reporting agencies taking to ensure that the tenant screening recommendations provided by algorithms are explainable to landlords, property managers, and prospective tenants?
    a. To what extent do consumer reporting agencies inform landlords, property managers, and/or prospective tenants about (1) the factors that an algorithm relied on in producing or arriving at a particular determination and the weighting of each factor; and (2) the limitations of each algorithm and its outputs, including any factors that could affect the accuracy or reliability of the algorithm?
39. How are landlords and property managers using recommendations or scores from consumer reporting agencies in deciding whether to rent to prospective tenants?
    a. How often do landlords or property managers receive a recommendation or score when considering a prospective tenant?
    b. To what extent do landlords or property managers know or understand the basis of recommendations, scores, or predictions provided by consumer reporting agencies? What guidance or information do landlords and property managers receive?
    c. To what extent do landlords or property managers review and consider the underlying data (including credit, eviction, and criminal records) before using a recommendation or score in evaluating a prospective tenant?
    d. Are landlords and property managers able to access algorithmically-generated scores, recommendations, and predictions about prospective tenants without accessing an underlying credit report or tenant screening background report? Are there benefits to using those products instead of or in addition to more traditional credit reports and tenant screening background reports?
40. To what extent are landlords and property managers involved in setting the recommendation or scoring criteria? To what extent does that vary by consumer reporting agency?
41. To what extent are landlords, property managers, or consumer reporting agencies sharing the recommendations or scores with prospective tenants? What steps, if any, are they taking to explain to prospective tenants the basis for a recommendation or score?
    a. How commonly do adverse action notices explain the criteria that the recommendation or scoring product considered or the reason(s) the algorithm rejected the prospective tenant?
42. To what extent do consumer reporting agencies allow tenants the opportunity to dispute, seek review of, or seek a non-automated alternative to the use of a recommendation, prediction, or score produced by an algorithm? To what extent do landlords or property managers re-assess housing applications following a tenant's dispute or correction of scoring criteria or underlying data?