

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

Bulletin 2021-03: Consumer Reporting of Rental Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Enforcement compliance bulletin and policy guidance.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this Enforcement compliance bulletin and policy guidance (Bulletin) regarding consumer reporting of rental information in light of upcoming heightened risks to renters associated with inaccurate consumer reporting information. As pandemic-related government interventions aimed at protecting renters begin to expire over the coming months, the Bureau will be paying particular attention to consumer reporting agencies' (CRAs') and furnishers' compliance with their accuracy and dispute obligations under the Fair Credit Reporting Act (FCRA) and Regulation V with respect to rental information. Specifically, the Bureau intends to look carefully at the accuracy and dispute-handling practices of CRAs that report rental information, including whether their procedures to match information to consumers are reasonable; whether they report eviction information that is inaccurate, incomplete, or misleading (such as may result from a failure to have reasonable procedures to report information about the disposition of an eviction filing, to prevent the inclusion of multiple entries for the same eviction action in the same consumer report, or to prevent the inclusion of eviction information that has been sealed or expunged); and whether they conduct timely and reasonable investigations of consumer disputes. The Bureau also intends to look carefully at the accuracy and dispute-handling practices of furnishers providing rental information to CRAs, including whether they provide information

about rental arrearages that include amounts that were already paid on behalf of a tenant or fees or penalties that are prohibited by law and whether they are conducting timely and reasonable investigations of consumer disputes. The Bureau will hold CRAs and furnishers accountable for failing to comply with the FCRA and Regulation V. The economic recovery of renters and their ability to secure new rental housing should not be impeded by noncompliance with the law.

DATES: This bulletin is applicable on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Susan Stocks, Assistant Deputy Enforcement Director for Policy and Strategy, Office of Enforcement; Amanda Quester, Pavneet Singh, Laura Stack, or Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Rental information in consumer reports plays a critical role in consumers' access to rental housing, credit, and other opportunities.¹ As the eviction moratoria and other government interventions aimed at alleviating the economic and public health impacts of the 2019 novel coronavirus (COVID-19) pandemic begin to expire, the Bureau anticipates that many renters will

¹ The term "rental information" in this Bulletin is used to refer to consumer reporting information about a rental relationship, including eviction information and information about unpaid rent. Other types of information, including criminal background information and credit information, have important impacts on the ability of renters to secure housing and access other opportunities, but are not the focus of this Bulletin. Rental information is included in consumer reports issued by tenant-screening companies and other CRAs. Sources of rental information include public records and information provided by furnishers, including debt collectors and landlords. Consumer reports issued by tenant-screening companies may include automated scores or recommendations provided to users as well as rental payment, eviction, and other information.

face eviction from their homes, rental arrearages, and collection attempts to recover unpaid rent.² Consumers have complained to the Bureau about the financial impacts of the pandemic on their ability to stay current on rental payments and about negative rental information related to the pandemic in consumer reports.³ An increase in negative rental information in the consumer reporting system, combined with an increase in the number of consumers seeking rental housing, may create new risks that inaccurate negative rental information will be included in tenant-screening reports and that such inaccuracies will affect increased numbers of consumers. Inaccurate rental information in tenant-screening reports can have devastating impacts on consumers, including impairing the ability of renters negatively impacted by the pandemic to secure new rental housing and otherwise recover from the pandemic's economic effects. An increase in housing instability caused by inaccurate rental information could undermine the nation's efforts to recover from the pandemic.

On January 31, 2020, the Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to the COVID-19 pandemic.⁴ On March 13, 2020, then-President Trump declared a national emergency concerning the COVID-19 pandemic, citing the strain on the healthcare

² See generally Eviction Lab, Princeton Univ., <https://evictionlab.org/eviction-tracking/> (last visited June 21, 2021).

³ Bureau of Consumer Fin. Prot., *Complaint Bulletin: COVID-19 issues described in consumer complaints* (July 2021), https://files.consumerfinance.gov/f/documents/cfpb_covid-19-issues-described-consumer-complaints_complaint-bulletin_2021-07.pdf (CFPB Complaint Bulletin).

⁴ Press Release, U.S. Dep't of Health & Human Servs., *Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus* (Jan. 31, 2020), <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>. By the end of August 2020, there were over 5,500,000 COVID-19 cases identified in the United States and over 174,000 deaths related to the disease. See 85 FR 55292, 55292 (Sept. 4, 2020). As of June 27, 2021, the Centers for Disease Control and Prevention (CDC) estimates a total of 601,221 deaths related to COVID-19 in the United States. Ctrs. for Disease Control & Prevention, *United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction*, https://covid.cdc.gov/covid-data-tracker/#cases_totaldeaths (last visited June 27, 2021).

system and the need for additional measures to contain and combat the spread of COVID-19.⁵ Income shocks resulting from the pandemic, such as a job loss, reduced work hours, or the death or illness of a family member, contributed to an increase in housing and financial insecurity for many households.⁶ The financial impact of the pandemic was especially pronounced for renters.⁷ Survey data indicate that about half of all renters saw their incomes fall during the pandemic due to lost employment or reductions in hours worked.⁸ In August 2020, some estimates projected that up to 30 to 40 million individuals in 13 to 17 million renter households were at risk of eviction over the course of the pandemic.⁹ In comparison, approximately 900,000 renter households are evicted in a typical year.¹⁰

On September 4, 2020, the Centers for Disease Control and Prevention (CDC) published an agency order entitled “Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19” (CDC Order).¹¹ Citing the historic threat to public health posed by the COVID-19 pandemic, the CDC Order established an eviction moratorium that generally limits the

⁵ 85 FR 15337 (Mar. 18, 2020). The national emergency was continued on February 24, 2021. 86 FR 11599 (Feb. 26, 2021).

⁶ See Bureau of Consumer Fin. Prot., *Housing Insecurity and the COVID-19 Pandemic*, at 5 (Mar. 1, 2021), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf (CFPB Housing Insecurity Report).

⁷ See *id.* at 6.

⁸ See, e.g., Joint Ctr. for Hous. Studies, Harvard Univ., *Renters’ Responses to Financial Stress During the Pandemic* 1, 14-15, 19-20 (Apr. 2021), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_renter_responses_covid_airgood-obrycki_etal_2021.pdf.

⁹ CFPB Housing Insecurity Report, *supra* note 6, at 15 (citing Aspen Inst., *The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk* (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>).

¹⁰ *Id.* (citing Eviction Lab, Princeton Univ., <https://evictionlab.org/national-estimates/> (May 11, 2018)).

¹¹ 85 FR 55292 (Sept. 4, 2020).

circumstances in which certain persons may be evicted from residential property.¹² The CDC Order initially was set to expire on December 31, 2020.¹³ The CDC Order has been extended four times and currently is set to expire on July 31, 2021.¹⁴

In addition to the CDC's eviction moratorium, Federal, State, and local governments have taken a variety of other actions to alleviate the rental housing-related impacts of the COVID-19 pandemic, including establishing other eviction moratoria and rental assistance programs. For instance, section 4024 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)¹⁵ provided a temporary moratorium on eviction filings¹⁶ as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing.¹⁷ In addition, as discussed in more detail below, the Federal Emergency Rental Assistance (ERA) programs established by the U.S. Department of the Treasury (Treasury) have made billions of dollars available to eligible households by funding rental assistance programs administered by State and local governments.¹⁸ State and local governments have also

¹² *See id.*; *see also* 42 U.S.C. 264 and its implementing regulation 42 CFR 70.2.

¹³ 85 FR 55292, 55297 (Sept. 4, 2020).

¹⁴ Section 502 of title V, Division N of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182, 2078 (2020), extended the original CDC Order until January 31, 2021. On January 29, 2021, following an assessment of the ongoing pandemic, the CDC Director renewed the CDC Order until March 31, 2021. 86 FR 8020 (Feb. 3, 2021). On March 29, 2021, the CDC Director extended the CDC Order until June 30, 2021. 86 FR 16731 (Mar. 31, 2021). On June 24, 2021, the CDC Director extended the CDC Order until July 31, 2021. 86 FR 34010 (June 28, 2021).

¹⁵ CARES Act section 4024, Pub. L. 116-136, 134 Stat. 281, 492 (2020).

¹⁶ The temporary eviction moratorium under the CARES Act expired in July 2020. *Id.*

¹⁷ These protections included a prohibition on charging fees, penalties, or other charges to the tenant related to the nonpayment of rent while the temporary moratorium was in place. CARES Act section 4024(b)(2), 134 Stat. 494.

¹⁸ *See infra* note 31.

implemented temporary eviction moratoria, rent freezes, and additional rental assistance programs.¹⁹

These governmental actions have reduced evictions so far.²⁰ However, the Bureau is aware of concerns that some landlords may have evicted tenants in violation of applicable eviction moratoria and that other tenants may have preemptively moved out of rental housing to avoid an eviction filing or been subject to other types of informal evictions outside the judicial eviction process.²¹ The Bureau's analysis of recent consumer complaints indicates that renters have expressed concerns about debt collection activities following evictions, including attempts to collect questionable charges and fees.²² These reports and complaints are an area of concern for the Bureau, and Bureau staff will be monitoring and investigating eviction practices to ensure that they are complying with the law. Evicting tenants in violation of the CDC Order, State, or local moratoria, or evicting or threatening to evict them without apprising them of their legal

¹⁹ See, e.g., Eviction Lab, *COVID-19 HOUSING POLICY SCORECARD*, <https://evictionlab.org/covid-policy-scorecard/> (last visited June 17, 2021); Perkins Coie LLP, *COVID-19 Related Eviction and Foreclosure Orders/Guidance 50-State Tracker* (June 17, 2021), <https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html>.

²⁰ CFPB Housing Insecurity Report, *supra* note 6, at 3.

²¹ See, e.g., 86 FR 21163, 21166-67 (Apr. 22, 2021); see also Ashley Balcerzak, *NJ renters still being locked out by landlords despite COVID eviction freeze* (Mar. 11, 2021), <https://www.northjersey.com/story/news/2021/03/11/njrental-assistance-covid-eviction-freeze-ignoresome-landlords/6892203002/>; Annie Nova, *The CDC banned evictions. Tens of thousands have still occurred*, CNBC (Jan. 14, 2021), <https://www.cnbc.com/2020/12/05/why-home-evictions-are-still-happeningdespite-cdc-ban.html>; Jeff Ernsthausen et al., *Despite Federal Ban, Landlords Are Still Moving to Evict People During the Pandemic*, ProPublica (Apr. 16, 2020), <https://www.propublica.org/article/despite-federal-ban-landlords-are-still-moving-to-evict-people-during-the-pandemic>.

²² CFPB Complaint Bulletin, *supra* note 3.

rights under such moratoria, may violate prohibitions against deceptive and unfair practices under the Fair Debt Collection Practices Act and the Federal Trade Commission Act.²³

Moreover, as the CDC Order and other measures begin to expire, many households will face difficulties navigating significant rental payment arrearages.²⁴ Low-income and minority renters have been disproportionately affected by the economic effects of the COVID-19 pandemic, including job losses.²⁵ Although economic conditions have improved in recent months,²⁶ 13 percent of adult renters were behind on rent in May 2021.²⁷ Renters in low-income households were more likely to report they were behind on rental payments than those in higher-income households. As of May 2021, more than one in six renters with household incomes under \$25,000 reported that they were behind on their rent.²⁸ An estimated 19 percent of renters

²³ 86 FR 21163, 21163-64 (Apr. 22, 2021); *see also, e.g.*, Press Release, Bureau of Consumer Fin. Prot., *CFPB Acting Director Uejio & FTC Acting Chairwoman Slaughter Issue Joint Statement on Preventing Illegal Evictions* (Mar. 29, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-acting-director-uejio-and-ftc-acting-chairwoman-slaughter-issue-joint-statement-on-preventing-illegal-evictions/>.

²⁴ *See generally* Eviction Lab, Princeton Univ., <https://evictionlab.org/eviction-tracking/> (last visited June 21, 2021). For many households, a return to pre-pandemic levels of income may allow them to make rental payments going forward, but may not permit them to pay back rent owed. According to one report, almost half of all renter households were rental cost-burdened at the time the pandemic hit, based on 2018 numbers. *See* Emily Benfer *et al.*, *The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk*, Aspen Inst. (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/> (citing https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf). Rental cost burden is defined as households that pay over 30 percent of their income towards rent. *Id.* Also in 2018, 10.9 million renter households (25 percent of all renter households) were spending over 50 percent of their income on rent each month. *Id.*

²⁵ *See* CFPB Housing Insecurity Report, *supra* note 6, at 8, 18; *see also* Pew Research Ctr., *Economic Fallout From COVID-19 Continues To Hit Lower-Income Americans the Hardest* (Sept. 24, 2020), <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>.

²⁶ *See, e.g.*, Press Release, Board of Governors of the Fed. Reserve Sys., *Federal Reserve Issues FOMC Statement* (June 16, 2021), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20210616a.htm>.

²⁷ CFPB analysis of U.S. Census Bureau, Census Household Pulse Survey, Week 30 (May 12 – May 24, 2021), https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk30/housing1b_week30.xlsx.

²⁸ *Id.*

with children report being not caught up on rent, compared to 10 percent not living with anyone under 18.²⁹ Minority renters were more likely to report that their household was not caught up on rent: 21 percent of Black renters, 17 percent of Hispanic renters, and 17 percent of Asian renters said they were not caught up on rent, compared to 9 percent of white renters.³⁰

Accordingly, low-income and minority renters are more likely to be affected by the expiration of the CDC's eviction moratorium and other temporary measures aimed at reducing evictions and supporting renters unable to make their rental payments.

The Federal ERA programs were established to address the concerns about rental arrearages.³¹ ERA funds may be used to provide assistance to eligible households and their landlords to pay rent, utilities, and certain other housing costs, including arrearages for rent and

²⁹ *Id.*

³⁰ *Id.*

³¹ Eligible grantees of ERA funds include States (including the District of Columbia), U.S. territories, local governments with more than 200,000 residents, the Department of Hawaiian Home Lands, and Indian tribes or the tribally designated housing entity of an Indian tribe, as applicable. *See* U.S. Dep't of the Treasury, *Emergency Rental Assistance Program*, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last visited June 25, 2021). Treasury has established two separate ERA programs: ERA1, which provides up to \$25 billion in rental assistance under the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (2020), and ERA2, which provides up to \$21.55 billion in rental assistance under the American Rescue Plan Act of 2021, Pub. L. 117-2, 135 Stat. 4 (2021). *Id.* At the same time that funds were allocated for rental assistance under ERA2, the Federal government also implemented additional guidance to increase access to funds by renters most in need of assistance to avoid evictions. For example, Treasury guidance now makes clear that emergency rental assistance provided under ERA2 must be offered directly to renters when landlords do not accept payment. The new guidance also allows rental assistance programs under ERA2 to offer assistance directly to renters before reaching out to landlords. *See* U.S. Dep't of the Treasury, *Emergency Rental Assistance Fact Sheet* (May 7, 2021), https://home.treasury.gov/system/files/136/FACT_SHEET-Emergency-Rental-Assistance-Program_May2021.pdf. The Treasury guidance was updated again on June 24, 2021 to further support the deployment of ERA funds. *See* U.S. Dep't of the Treasury, *Emergency Rental Assistance Fact Sheet* (June 24, 2021), https://home.treasury.gov/system/files/136/Treasury_Fact_Sheet_6-24-21.pdf. Treasury has published frequently asked questions (FAQs) related to the ERA programs, which are available at: https://home.treasury.gov/system/files/136/ERA_FAQs_6-24-21.pdf.

utility payments.³² Grantees of ERA funds have been working to ramp up their deployment of funds.³³ As the CDC has noted, though there are indications that emergency rental assistance has started to reach increasing numbers of households over recent months, there are likely hundreds of thousands of applications for assistance that currently remain outstanding as programs accelerate their activity.³⁴ The Bureau is concerned that renters may be evicted for nonpayment of rent even as they are attempting to access these funds. The Bureau encourages landlords and renters to consider their options under these programs. In addition to the extensive information about rental assistance programs under the ERA available on Treasury's website,³⁵ information about rental assistance programs under the ERA is also available on the Bureau's website.³⁶

The Bureau anticipates that many tenants who face eviction or have experienced economic shocks during the pandemic will seek alternative housing in the rental market. In addition to current renters seeking new housing, the Bureau also anticipates a likely rise in consumers who are currently homeowners seeking rental housing as pandemic-related mortgage forbearance programs and foreclosure moratoria come to an end.³⁷

³² See U.S. Dep't of the Treasury, *Emergency Rental Assistance Program*, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last visited June 25, 2021).

³³ See U.S. Dep't of the Treasury, *Emergency Rental Assistance Fact Sheet* (June 24, 2021), https://home.treasury.gov/system/files/136/Treasury_Fact_Sheet_6-24-21.pdf.

³⁴ 86 FR 34010, 34013 (June 28, 2021).

³⁵ U.S. Dep't of the Treasury, *Emergency Rental Assistance Program*, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last visited June 28, 2021).

³⁶ See Bureau of Consumer Fin. Prot., *Federal Help With Paying Your Rent*, <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/emergency-rental-assistance-for-renters/> (last visited June 25, 2021).

³⁷ Under the CARES Act, if a homeowner attests to a hardship related directly or indirectly to the COVID-19 pandemic, homeowners with mortgages backed by the government-sponsored enterprises (GSEs) and federally

The Bureau is concerned that information concerning evictions and rental payment arrearages related to the pandemic's effects may not be a reliable predictor of a consumer's future performance given the extent of the economic dislocation caused by the pandemic. The use of pre-pandemic relationships and scoring models on pandemic data may lead to unreliable conclusions regarding a consumer's future performance and may hinder public policy efforts to protect consumers during the pandemic and promote an equitable recovery from the pandemic. Some States and local governments have taken steps to prevent the reporting or use of information related to evictions and rental arrearages arising during the pandemic.³⁸ For example, some States have taken or are considering taking steps to make it easier to seal or expunge eviction records.³⁹

In the upcoming transition period during which the Bureau anticipates both an increase in negative rental information in the consumer reporting system and an increase in consumers seeking rental housing, the Bureau is concerned that existing problems with the accuracy of tenant-screening and other consumer reports will be exacerbated. According to a 2019 report by

backed mortgages have the right to request and obtain a forbearance for up to 180 days, and an extension for another 180 days. CARES Act section 4022(b), 134 Stat. 490. Guidance from the GSEs and Federal agencies allow up to 18 months of forbearance. Many servicers and investors of privately owned mortgages not covered by the CARES Act offer similar protections. Further, the CARES Act and guidance from the GSEs and Federal agencies have prohibited lenders and servicers of GSE and federally backed loans from beginning foreclosures through July 2021. When forbearance periods and the foreclosure moratoria end, some homeowners who are significantly behind on their mortgage payments may have limited options to avoid foreclosure if they do not reach agreement with their servicers on a workout option. *See* CFPB Housing Insecurity Report, *supra* note 6, at 11-13. To the extent these homeowners enter foreclosure and lose their homes, many are likely to seek housing options in the rental market.

³⁸ *See, e.g.*, 2021 Or. Laws Ch. 39 (S.B. 282) (preventing landlords from reporting to a CRA nonpayment of rent, charges, and fees accrued on or after April 1, 2020, and before July 1, 2021, and from considering, when evaluating a rental applicant, an action to recover possession if entered on claims that arose on or after April 1, 2020, and before March 1, 2022, or an applicant's unpaid rent, including rent reflected in judgments or referrals of debt to a collection agency, that accrued on or after April 1, 2020, and before March 1, 2022).

³⁹ *See, e.g.*, 735 Ill. Comp. Stat. 5/9-122 (providing that the court file shall be sealed upon the commencement of any residential eviction action during the period beginning March 9, 2020, and ending March 31, 2022).

the National Consumer Law Center (NCLC), the vast majority of landlords use tenant-screening reports to screen rental-housing applicants.⁴⁰ These reports, which are obtained from one of the nation’s many tenant-screening companies,⁴¹ may include traditional credit report data, criminal background history, and rental information. Inaccuracies in negative rental information included in consumer reports can have significant damaging consequences for tenants’ future access to rental housing, credit, and other opportunities. For example, an applicant whose tenant-screening report shows past litigation or a poor rental payment history may find it difficult or more expensive to rent property, and many landlords will not rent to an applicant if their screening report shows an eviction filing.⁴² Concerns about lack of access to rental housing are further heightened during the continuing pandemic. For example, a basis for the CDC’s eviction moratorium is the concern that individuals moving into close quarters in congregate or shared living settings, such as homeless shelters, puts individuals at higher risk of contracting COVID-19.⁴³ CRAs and debt collectors and landlords that furnish information for inclusion in consumer reports have important obligations under the FCRA and Regulation V relating to the accuracy of

⁴⁰ The NCLC report states that 90 percent of landlords run background checks on prospective tenants. Nat’l Consumer Law Ctr., *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing* 3 (Dec. 2019), <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>.

⁴¹ See, e.g., Tex Pasley *et al.*, Shriver Ctr. on Poverty Law, *Screened Out: How Tenant Screening Reports Undermine Fair Housing Laws and Deprive Tenants of Equal Access to Housing in Illinois* (Jan. 2021), <https://www.povertylaw.org/report/tenant-screening-report/>.

⁴² See, e.g., CFPB Complaint Bulletin, *supra* note 3 (noting that, in their complaints to the Bureau, consumers have expressed concerns that an eviction would have detrimental effects on their ability to secure future housing and have reported facing homelessness because an eviction had negatively affected their credit, making it more difficult to secure housing); Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times*, Consumer Reports (Mar. 11, 2021), <https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times/>.

⁴³ 86 FR 16731, 16733-34 (Mar. 31, 2021). See also 86 FR 34010, 34013 (June 28, 2021) (noting that “[e]victed renters must move, which leads to multiple outcomes that increase the risk of COVID-19 spread”).

information included in consumer reports,⁴⁴ and the Bureau urges CRAs and furnishers to ensure they are complying with these obligations.

Concerns about the accuracy of information included in consumer reports are long-standing,⁴⁵ and the Bureau is especially concerned about the effects of these accuracy problems in light of the economic and public health impacts of COVID-19. The Bureau has received consumer complaints alleging that inaccuracies in tenant-screening reports have caused landlords to deny some consumers rental housing and charge others higher security deposits than they would have otherwise.⁴⁶ The Bureau is particularly concerned that the procedures that some tenant-screening companies use to match public records and other rental information to specific consumers may create a high risk that inaccurate data will be included in tenant-screening reports,⁴⁷ a risk that may be further heightened by increased volumes of negative rental information resulting from the pandemic. The risk of mismatching may be greater among

⁴⁴ See, e.g., 15 U.S.C. 1681e(b), 1681i, 1681s-2; 12 CFR pt. 1022.

⁴⁵ See, e.g., Fed. Trade Comm'n, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 2012), <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf> (finding that one in five consumers had an error on at least one of their three nationwide credit reports). More recently, the Bureau and the Federal Trade Commission hosted a full-day public workshop to discuss issues affecting the accuracy of both traditional credit reports and employment and tenant background screening reports. Fed. Trade Comm'n, *Accuracy in Consumer Reporting Workshop* (Dec. 10, 2019), <https://www.ftc.gov/news-events/events-calendar/accuracy-consumer-reporting-workshop>.

⁴⁶ See, e.g., CFPB Complaint Bulletin, *supra* note 3.

⁴⁷ See, e.g., Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. Times (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>; Complaint, *United States v. Appfolio, Inc.*, No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020), https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf (alleging failure to follow reasonable procedures relating to the use of identifiers to match criminal and eviction records to consumers for purposes of preparing tenant-screening reports); Complaint, *FTC v. RealPage, Inc.*, No. 3:18-cv-02737-N (N.D. Tex. Oct. 16, 2018), https://www.ftc.gov/system/files/documents/cases/152_3059_realpage_inc_complaint_10-16-18.pdf (alleging failure to follow reasonable procedures relating to the matching criteria used to match criminal records to consumers for purposes of preparing tenant-screening reports).

Hispanic, Black, and Asian individuals because there is less surname diversity than among the white population.⁴⁸

In addition, the Bureau is concerned that tenant-screening companies may report information, such as information about an eviction filing, in a consumer report without having reasonable procedures to report information about the disposition of the eviction filing or to prevent the inclusion of multiple entries for the same eviction action in the same consumer report.⁴⁹ The Bureau is also concerned that tenant-screening companies may lack reasonable procedures to exclude from consumer reports eviction information that has been sealed or expunged.⁵⁰

CRAAs frequently include rental information, such as eviction records, that comes from public records; landlords and debt collectors also furnish information about rental housing payments and debts to CRAAs. The FCRA and Regulation V set forth important requirements for furnishers concerning both the accuracy of information furnished and the handling of consumer disputes related to the accuracy of information included in consumer reports.⁵¹ The Bureau is

⁴⁸ Joshua Comenetz, U.S. Census Bureau, *Hispanic Surnames Rise in Popularity* (Aug. 9, 2017), <https://www.census.gov/library/stories/2017/08/what-is-in-a-name.html> (“Twenty-six surnames cover a quarter of the Hispanic population and 16 percent of Hispanic people reported one of the top 10 Hispanic names. The pattern is similar for Asians and blacks.”).

⁴⁹ See, e.g., Complaint, *United States v. Appfolio, Inc.*, *supra* note 47 (alleging failure to follow reasonable procedures to assure that the eviction and criminal record information included in tenant-screening reports accurately reflected the disposition, offense name, and offense type and to prevent the inclusion of multiple entries for the same criminal or eviction action in the same report).

⁵⁰ See, e.g., Consent Order, *In re Gen. Info. Servs., Inc.*, 2015-CFPB-0028 (Oct. 29, 2015), https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf (alleging that an employment background screening company violated FCRA section 607(b) by, among other things, failing to use reasonable procedures to prevent the inclusion of expunged criminal records in consumer reports).

⁵¹ See, e.g., 15 U.S.C. 1681s-2; 12 CFR 1022.40-43.

concerned that existing accuracy problems related to the furnishing of rental information may be exacerbated by the anticipated increase in the amount of negative rental information furnished.

For example, furnishers may fail to account for COVID-19-related aid or protections when reporting overdue rent amounts. In addition to providing a temporary moratorium on eviction filings for tenants in certain rental properties with Federal assistance or federally related financing, the CARES Act prohibited landlords of these rental properties from charging fees, penalties, or other charges related to the nonpayment of rent during the Act's eviction moratorium.⁵² State and local laws may also in some cases prohibit landlords from charging certain late fees or penalties to renters. The Bureau is concerned that furnishers may include prohibited penalties or fees when reporting rental arrearages. In addition, under many rental assistance programs, funds to make rental payments may be provided to landlords to pay the rent of specific tenants who are eligible for the program. If furnishers providing rental information do not appropriately account for funds received pursuant to these programs and fail to offset overdue rent amounts, this could lead to inaccuracies in consumer reports.

Finally, the dispute-resolution obligations the FCRA and Regulation V impose on CRAs and furnishers are also critical to ensuring that consumer reports are accurate. CRAs and furnishers must conduct reasonable and timely investigations of consumer disputes to verify the accuracy of the information furnished.⁵³ An increase in the amount of negative rental information in public records and furnished to CRAs is likely to lead to a corresponding increase in dispute volumes. A reasonable and timely investigation of a consumer dispute is critical to mitigating the harmful impact that inaccurate negative information in a consumer report may

⁵² CARES Act section 4024, 134 Stat. 492-94.

⁵³ 15 U.S.C. 1681i, 1681s-2; 12 CFR 1022.43.

have on the consumer. Moreover, proper handling of disputes not only ensures that inaccuracies in the disputing consumer's report are resolved, it also facilitates CRA and furnisher identification of systemic problems related to their consumer reporting and furnishing practices.⁵⁴

II. Compliance Guidance

As pandemic-related government interventions aimed at protecting renters begin to expire, the Bureau will continue to look carefully at consumer reporting agencies' and furnishers' compliance with their FCRA accuracy obligations with respect to rental information. CRAs and furnishers should take immediate steps to ensure they are fulfilling their obligations under the law. If the Bureau determines that a CRA or furnisher has engaged in any acts or practices that violate the FCRA, Regulation V, or other Federal consumer financial laws, the Bureau will take appropriate enforcement action to address violations and seek all appropriate corrective measures, including remediation of harm to consumers.

The Bureau plans to pay particular attention to the areas outlined below.

For CRAs Reporting Rental Information:

1. Whether CRAs are reporting accurate rental information.
2. Whether CRAs are using a sufficient number of identifiers to match consumer report information to the consumer who is the subject of the report, including whether CRAs are

⁵⁴ See, e.g., Fed. Trade Comm'n, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations* 67 (July 2011), <https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrrreport.pdf> (noting that "when a CRA learns or should reasonably be aware of errors in its reports that may indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise), it must review its procedures for assuring accuracy and take any necessary steps to avoid future problems").

using name-matching procedures or limited identifiers likely to heighten the risk of inaccurate matching.

3. Whether CRAs are reporting eviction information that is inaccurate, incomplete, or misleading (such as may result from a failure to have reasonable procedures to report information about the disposition of an eviction filing, to prevent the inclusion of multiple entries for the same eviction action in the same consumer report, or to prevent the inclusion of eviction information that has been sealed or expunged).
4. Whether CRAs are complying with their obligations to investigate disputed information in a consumer report, including whether they are conducting timely and reasonable investigations.

For Furnishers Providing Rental Information:

1. Whether furnishers are providing accurate rental information to CRAs.
2. Whether furnishers are providing information about rental arrearages that include amounts that were already paid on behalf of a tenant through a government grant or relief program, such as the Emergency Rental Assistance programs.
3. Whether furnishers are providing information about rental arrearages that include fees or penalties that CARES Act section 4024(b) or other laws prohibit charging.
4. Whether furnishers are complying with their obligations to investigate disputed information in a consumer report, including whether they are conducting timely and reasonable investigations.

III. Conclusion

The Bureau issues this Bulletin to highlight that the Bureau will hold CRAs and furnishers accountable if they do not comply with their accuracy and dispute obligations under the FCRA and Regulation V with respect to rental information.

IV. Regulatory Requirements

This Bulletin constitutes a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act.⁵⁵ It summarizes existing legal requirements and articulates considerations relevant to the Bureau's exercise of its enforcement discretion for institutions under its jurisdiction. It does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required in issuing this Bulletin, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis.⁵⁶ The Bureau has also determined that the issuance of this Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.⁵⁷

⁵⁵ 5 U.S.C. 553(b).

⁵⁶ 5 U.S.C. 603(a), 604(a).

⁵⁷ 44 U.S.C. 3501 *et seq.*

Dated: July 1, 2021.

/s/ David Uejio

David Uejio,

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