

Consumer Snapshot: Tenant background checks

Tenant screening issues described in
consumer complaints and interviews

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Executive summary

Renting a home is increasingly costly and challenging for many.¹ Landlords often use a prospective renter's application fee to purchase a tenant screening report, also known as a tenant background check, from a tenant screening company or through a property management company. Tenant screening reports can make a would-be renter's path even more costly and challenging.² This bulletin outlines difficulties prospective renters encountered in connection with a landlord's use of a tenant screening report, based on complaints submitted to the Consumer Financial Protection Bureau (CFPB) and CFPB-commissioned qualitative research.³

- The CFPB received approximately 26,700 complaints related to tenant screening from January 2019 through September 2022, and complaint volumes increased year-over-year. In January 2019, the CFPB received approximately 300 complaints per month and by September 2022, the CFPB received almost 700 complaints per month related to tenant screening.
- The vast majority of complaints, more than 17,200, were related to incorrect information appearing on a prospective renter's report. This was followed by another 5,000 complaints about a problem a renter was experiencing with the company's investigation into an existing issue. The third most common issue renters complained about, with more than 3,200 complaints, was about the improper use of their reports.

¹ See, e.g., Nat'l Low Income housing Coalition, *The Gap: A Shortage of Affordable Homes* (April 2022), https://nlihc.org/sites/default/files/gap/Gap-Report_2022.pdf (analyzing the systemic shortage of affordable rental homes for the lowest-income households). While general trends have been going up, recent indicators suggest rents are starting to decline, but only after reaching record rates See, e.g., *Will Parker, Rents Drop for First Time in Two Years After Climbing to Records*, *The Wall Street Journal* (Sept. 26, 2022), <https://www.wsj.com/articles/rents-drop-for-first-time-in-two-years-after-climbing-to-records-11664135107>.

² See, e.g., Nat'l Consumer Law Ctr, *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing* (Dec. 2019), <https://www.nclc.org/wp-content/uploads/2022/09/report-broken-records-redux.pdf>.

³ See discussion *infra* Section 1 (Data sources)

- Renters who submitted complaints to the CFPB about tenant screening reports described difficulties finding stable and secure housing due to negative information that was inaccurate, misleading, or obsolete. These issues included:
 - problems with negative information that wholly did not belong to them and was erroneously included in their report;
 - the reporting of outdated information that legally should have been excluded; and
 - the appearance of inaccurate or misleading details about arrest or other criminal records, eviction records, and more.
- Focus groups and interview participants also indicated that the tenant screening industry was opaque, and they did not know where to get help addressing any problems that might arise.
- Complaints and interviews showed that landlords who took adverse action did not consistently inform prospective tenants of their right to dispute information in reports or provide them the information necessary to do so, as required under the Fair Credit Reporting Act (FCRA).
- Renters who attempted to correct their tenant screening reports struggled to address errors with tenant screening companies, including having the same errors appear on future tenant screening reports.
- Prospective renters were not able to dispute errors or misleading information quickly enough to avoid a denial from the housing of their choice. Some prospective renters with inaccurate negative information in their tenant screening report faced repeated denials in their housing search based on the same erroneous information.

Ultimately, the reporting of inaccurate negative information can contribute to difficulty finding affordable, quality housing and result in people living farther from school or work, paying more in rent or fees, and undermining their overall financial stability. The issues described in CFPB complaints and qualitative research suggest that some tenant screening companies are not meeting the legal requirements under the FCRA to “follow reasonable procedures to assure maximum possible accuracy” of the information in the reports they compile.

1. Introduction

Tenant screening reports are a type of consumer report that are used by landlords to help make decisions about rental applicants. These reports are marketed by tenant screening companies as a means to reduce the likelihood of accepting tenants seen as “unqualified” or “risky”. However the efficacy of these reports in predicting future renter behavior remains unproven. These reports can include a variety of information about an applicant, such as credit histories, rental histories, and criminal records. Tenant screening companies acquire this data from a variety of sources, including public records, and often use automated and unsatisfactory methods to collect data. The procedures utilized by many tenant screening companies can lead to the appearance of inaccurate, outdated, and misleading information appearing in an applicant’s tenant screening report. Those who attempt to dispute errors with a tenant screening company describe the processes as long and complex, sometimes ending with no resolution or the reappearance of incorrect information that was previously removed.⁴

Errors in tenant screening reports have created barriers to safe and affordable housing. Such housing insecurity can lead to multiple adverse downstream impacts, such as physical and mental health problems among youth, poorer educational outcomes, employment disruptions, and declining social networks.⁵

⁴ See, e.g., Consumer Fin. Prot. Bureau, Tenant Background Check Market (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf, (discussing data collection procedures leveraged in the tenant screening marketplace).

⁵ See, e.g., D.B Cutts, A.F Meyers et al., *Housing Insecurity and the Health of Very Young Children*, American Journal of Public Health 101, no. 8 (2011):1508-1514, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3134514/>; Jason M. Fletcher, Tatiana Andreyeva, & Susan H. Busch, *Assessing the Effect of Increasing Housing Costs on Food Insecurity*, SSRN Scholarly Paper, Rochester, NY: Social Science Research Network (Sept. 9, 2009), <http://papers.ssrn.com/abstract=1593043>; Yong Liu et al., *Relationships Between Housing and Food Insecurity, Frequent Mental Distress, and Insufficient Sleep Among Adults in 12 U.S. States*, Prev Chronic Dis. (2009), <https://pubmed.ncbi.nlm.nih.gov/24625361/>.

Data sources

To identify the range of issues faced by renters, this report relies on complaints handled by the CFPB from January 2019 through September 2022.⁶ The report also relies on findings from a set of focus groups and interviews conducted with 44 renters from low-to-medium income households in early 2022. From January 2019 to September 2022, the CFPB handled more than 26,700 credit or consumer reporting complaints related to tenant screening (“tenant screening complaints”).⁷ Tenant screening is not currently a product option on the CFPB’s consumer complaint form.⁸ Therefore, for this report, we define tenant screening complaints as (1) consumer and credit reporting complaints submitted about one of the tenant screening companies listed on the CFPB’s list of consumer reporting companies⁹, and (2) consumer and credit reporting complaints with certain keywords or word stems in their narrative text (i.e., rent, lease, rental, apartment, property manage, leasing, evict, tenant).

Complaints, interviews, and focus group data is not intended to provide a statistical sample of all consumers’ experiences and, therefore, this report does not draw conclusions about the frequency with which the reported issues occur in the entire marketplace. This report highlights how errors in a tenant screening report, whether minor or major, can have an outsized impact on an individual’s life. The issues identified in this report are consistent with those raised by

⁶ See Consumer Fin. Prot. Bureau, Submit a complaint, <https://www.consumerfinance.gov/complaint/> (discussing the complaint process). See also Consumer Fin. Prot. Bureau, Consumer Response Annual Report (Mar. 2022) at Section 1, https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf (discussing how collecting, investigating, and responding to consumer complaints is one of the primary functions of the CFPB). The CFPB makes a subset of this data publicly available in the Consumer Complaint Database. See Consumer Fin. Prot. Bureau, Consumer Complaint Database, <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

⁷ Complaint data in this report are current as of November 1, 2022. This report excludes some complaints that the CFPB received, including multiple complaints submitted by a given consumer on the same issue (i.e., duplicates), whistleblower tips, and complaints in which the CFPB discontinued processing because it had reason to believe that a submitter did not disclose their involvement in the complaint process. Complaint numbers are rounded throughout the report; therefore, numbers and percentages may not sum to subtotals or 100%.

⁸ See Consumer Fin. Prot. Bureau, Consumer Complaint Form Product and Issue Options (Apr. 2017), https://files.consumerfinance.gov/f/documents/201704_cfpb_Consumer_Complaint_Form_Product_and_Issue_Options.pdf. The list of product and service categories and subcategories on the CFPB’s complaint form is intended to enhance usability for the consumer, rather than to reflect legal determinations by the CFPB, and complaints may lack sufficient information to make legal determinations. See Consumer Fin. Prot. Bureau, Note on user experience, <https://portal.consumerfinance.gov/consumer/s/login/>.

⁹ Those companies are AmRent; Experian RentBureau TransUnion Rental Screening Solutions, Inc. (TransUnion SmartMove); SafeRent Solutions; Real Page, Inc. (LeasingDesk); Screening Reports, Inc.; Contemporary Information Corp. (CIC); First Advantage Resident Solutions; AppFolio, Inc; RentGrow, Inc.; and Corelogic. See Consumer Fin. Prot. Bureau, List of Consumer Reporting Companies (Jan. 2022) at pp. 19-23, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list_2022-01.pdf. Currently, Real Page, Inc. (LeasingDesk) and RentGrow, Inc. are not responding to CFPB complaints; therefore, complaints about these companies are not being added to the public Consumer Complaint Database. See Disclosure of Consumer Complaint Narrative Data, 80 FR 15572 (Mar. 24, 2015), <https://www.federalregister.gov/documents/2015/03/24/2015-06722/disclosure-of-consumer-complaint-narrative-data>.

housing advocates, media reports, and lawsuits. This report provides insight into the diverse set of challenges renters experience in the context of tenant screening reports to inform industry actors, states and localities, and organizations assisting renters.

Complaint trends

Complaint volume related to tenant screening has increased since 2019 (Figure 1), albeit at a slower rate than the volume of complaints about consumer and credit reporting generally.¹⁰ The vast majority of the 26,700 complaints were about incorrect information in reports, followed by complaints about a company’s investigation into an existing issue (Figure 2).

FIGURE 1: TENANT SCREENING COMPLAINTS BY MONTH, JAN. 2019 TO SEPT. 2022

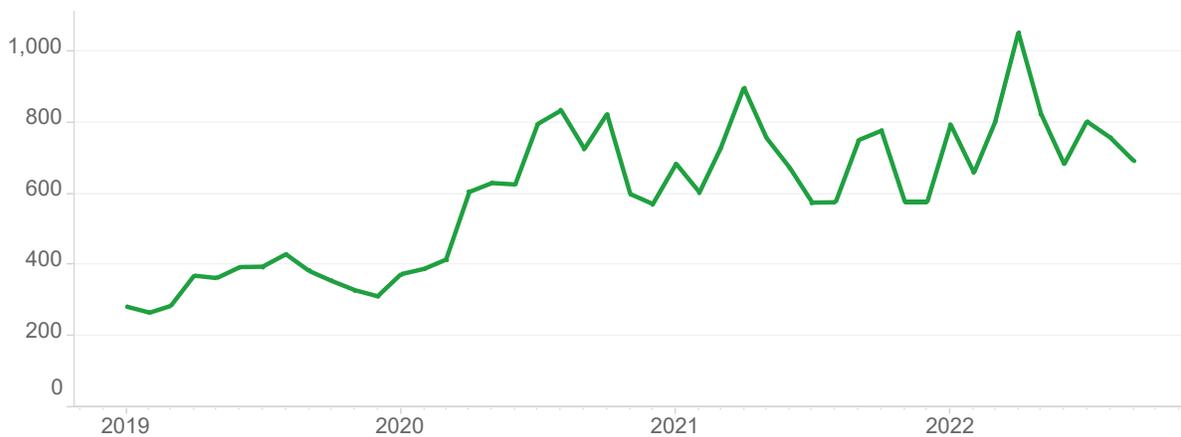


FIGURE 2: TENANT SCREENING COMPLAINTS BY ISSUES, JAN. 2019 TO SEPT. 2022

¹⁰ See, e.g., Consumer Fin. Prot. Bureau, Annual report of credit and consumer reporting complaints (Jan. 2022) Section 3.1, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf (discussing the increase in consumer and credit reporting complaints). Credit reports are a more widely used product, and the volume of complaints about credit reports rose at a much more rapid rate than those about specialty consumer reports from 2019 to 2022.



2. Navigating the tenant screening process

There are multiple roadblocks that a rental applicant may experience when navigating the tenant screening process. The following outlines the rental application process from the applicant's perspective and illustrates challenges they may face due to inaccuracies and misleading information in a tenant screening report.

Application submission and fee

When searching for a rental unit, prospective renters typically pay a fee to submit an application to a landlord or property manager. In a recent study, application fees are estimated between \$40 and \$59 on average, although nine percent of applicants reported paying more than \$100.¹¹ Landlords typically use some or all of an application fee to purchase a tenant screening report from a background screening company as a way to vet prospective tenants.¹² Landlords' screening criteria is rarely proactively shared with prospective tenants according to participants in the CFPB's interviews and focus groups.

In their complaints, applicants described spending hundreds of dollars in application fees due to repeated denials by landlords in response to negative information contained in their reports. Most interviewees did not know what information went into tenant screening reports and did not understand the impact on their rental prospects. Rental applicants typically do not see the tenant screening report because the report is delivered to the landlord.

¹¹ See Zillow, Renters: Results from the Zillow Consumer Housing Trends Report 2022 - Zillow Research (July 2022), <https://www.zillow.com/research/renters-consumer-housing-trends-report-2022-31265/>.

¹² See Law District, Rental Application Fees in All 50 States & Examples, <https://www.lawdistrict.com/articles/rental-application-fees-by-states>.

The screening process

After receiving information about the applicant from the landlord or a property management company, the tenant screening company collects information that they assert belongs to the applicant. Tenant screening reports can include, but aren't limited to:

- identity verification,
- income and employment verification,
- credit reports and scores,
- criminal record checks,
- eviction records,
- rental payment history,
- bankruptcies and other civil judgments, and
- information from sex offender registries and the national terrorist watchlist.¹³

The company provides the landlord with a report that may include a summary of their findings, sometimes with a score or recommendation that rates whether an applicant is eligible to rent at the property.¹⁴

Adverse action notices

The FCRA requires landlords to provide an adverse action notice to an applicant if they are denied or required to take on lease terms that are not required of others due to information in a screening report. These notices:

- inform applicants about their right to acquire a tenant screening report from the company that compiled it,
- inform applicants about their right to dispute any inaccurate information in the report directly with the company, and

¹³ See Consumer Fin. Prot. Bureau, "What is a tenant screening report?," <https://www.consumerfinance.gov/ask-cfpb/what-is-a-tenant-screening-report-en-2102/>.

¹⁴ See Consumer Fin. Prot. Bureau, *supra* note 4.

- provide the company's contact information.¹⁵

Tenants should review tenant screening reports for errors and initiate the dispute process with the company that compiled the report, as appropriate. However, interviews and complaints indicate that landlords do not always provide the legally required adverse action notice. As such, consumers, may be unaware of how to obtain the report used, figure out the reason they were denied, and dispute information that is inaccurate.

Disputes

The onus is then on the consumer to review the report, identify errors, and provide relevant information indicating to the landlord and tenant screening company that the information is incorrect or misleading. After filing a dispute with the tenant screening company, the applicant may wait up to 30 days for a response—although consumers indicate that sometimes they wait longer or never receive a response. The experiences of rental applicants indicate that it is nearly impossible for a consumer who is actively looking for rental housing to access reports, identify errors or inaccuracies, dispute them, and have them universally resolved within the timeframe of a typical rental housing search.¹⁶ This suggests that errors in a tenant screening report can greatly hinder a renter's access to housing.

¹⁵ FCRA section 615(a). However, the report they receive may not look identical to the report provided to the landlord, which can also make it difficult to identify what information impacted their potential landlord's housing decision.

¹⁶ Applicants with some awareness of the potential for errors in tenant screening reports may wish to review their report prior to submitting any applications in order to identify and dispute any errors directly with a tenant screening company, but this is virtually impossible to do in practice because tenant screening reports are commonly generated individually, for each applicant. Also, there are hundreds of screening companies using varying procedures to identify and collect information from multiple sources. Five landlords with properties within the same square block of one another could be using five different tenant screening service providers. Successfully disputing and correcting information with one company does not guarantee that reports from other companies won't report the same or different errors, depending on their data sources.

3. Inaccurate, obsolete, or misleading information

Section 607(b) of the FCRA requires that when consumer reporting companies prepare reports, they “follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”¹⁷ Nevertheless, through complaints and interviews, as well as independent reporting by outside groups, the CFPB has heard from renters about issues with inaccurate, obsolete, or misleading information being included in tenant screening reports.

3.1 Information that does not belong to the consumer

One of the most common issues consumers report in complaints is negative information that does not belong to them appears on their report. These complaints highlight the risks associated with inadequate practices used by tenant screening companies to match records with a specific individual.

Name-only matching occurs when a company uses only the first and last name of an applicant to determine whether an item of information relates to a particular consumer, without the use of any other personally identifying information like a Social Security number. Research suggests that the risk of error from name-only matching is likely greater for Hispanic, Asian, and Black individuals because there is less last-name diversity in those populations than among the non-Hispanic White population.¹⁸ Similarly, some tenant screening companies have been known to

¹⁷ FCRA Section 607(b) [15 USC § 1681e(b)].

¹⁸ See, e.g., Joshua Comenetz, Frequently Occurring Surnames in the 2010 Census (Oct. 2016), <https://www2.census.gov/topics/genealogy/2010surnames/surnames.pdf> (noting that 14 of the 15 most rapidly increasing last names that were among the top 1,000 most common last names in both 2000 and 2010 were predominantly Asian or Hispanic). See also 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>; U.S. Census, What’s in a Name (Dec. 15, 2016), https://www.census.gov/newsroom/blogs/random-samplings/2016/12/what_s_in_a_name.html.

use “wildcard” searches, gathering information from people who share the same few letters of a name.¹⁹ This practice is conducted in order to access a large pool of matches in public records databases, but there are few to no procedures in place to assess the accuracy of those matches.²⁰ A recent CFPB Advisory Opinion reaffirms that name-only matching practices do not meet the standard of following reasonable procedures to assure maximum possible accuracy as required by the FCRA.²¹

Reporting of information that does not belong to a consumer happens across most types of records that tenant screening companies include in reports, including eviction and criminal records. For example, one applicant reported:

I have things on my credit report that [have] caused me to not get a rental agreement for an apartment due to my twin brother’s info being on my report. It even has me listed as living at his address in Georgia when I have never lived in Georgia and some criminal records, I believe could be his.²²

Another renter noted:

On [date], [apartment name] Apartments in [city, state] ran my credit with [tenant screening company]. I was denied housing. When asked why, I was shocked because it was stated that there was an eviction on my consumer report. On [date], I asked for a copy of the report and filed a dispute because the report contains an eviction for [name] in [year], from [different apartment name] Apartments in [city]. I [don’t] know [name on file] nor have I been associated with him. I called the complex and asked why was this associated with my account. They gave me the number to their collection company. When I called the collection company, I was told this was a mistake and [tenant screening company] should fix it. It’s been over a week. I need to find housing [as soon as possible] but have not heard from [tenant screening company] about this matter.²³

¹⁹ See, e.g., FTC RealPage complaint, (p. 5-8) against RealPage for inadequate matching procedures <https://www.ftc.gov/news-events/news/press-releases/2018/10/texas-company-will-pay-3-million-settle-ftc-charges-it-failed-meet-accuracy-requirements-its-tenant>. See also, How Automated Background Checks Freeze Out Renters, The New York Times, (May 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>.

²⁰ See Consumer Fin. Prot. Bureau, *supra* note 4.

²¹ See Consumer Fin. Prot. Bureau, Fair Credit Reporting: Name-only Matching Procedures, (Nov. 2021), https://files.consumerfinance.gov/f/documents/cfpb_name-only-matching_advisory-opinion_2021-11.pdf.

²² Consumer Complaint (on file with author).

²³ Consumer Complaint (on file with author).

3.2 Eviction information

People also reported inaccurate or misleading information about evictions and rental debt in their reports. The experiences of most applicants who encountered these issues indicate that the presence of eviction records—regardless of their accuracy or outcome—has a high likelihood of leading to outright denials of rental housing.²⁴

One applicant complained about having difficulty removing eviction information that did not belong to them:

[Company name] tenant screening is reporting [inaccurate] information. I have contacted them several times on this matter, and it still has not been corrected. They have a nonexistent eviction case number on my file. I was never evicted from that property and had already moved out before the filing date they show. The case number does not exist in the courts at all . I would like to have this removed from my file immediately.²⁵

Tenant screening reports present summary information regarding filed evictions, often without any accompanying explanatory information as to the basis of the eviction filing. Landlords may choose to file evictions against tenants for a range of reasons, which may not necessarily be relevant to a different landlord, even if the filing ultimately results in an eviction.

Reports have also found that landlords have initiated evictions as retaliation against tenants that asserted their rights, such as demanding repairs.²⁶ There are also cases of the use of eviction filings as intimidation tactics by landlords who committed sexual harassment against tenants.²⁷

²⁴ See Matthew Goldstein, *The Stigma of the Scarlet E*, *The New York Times* (Aug. 9, 2021), <https://www.nytimes.com/2021/08/09/business/eviction-stigma-scarlet-e.html>.

²⁵ Consumer Complaint 5323047, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5323047>. (permission to publish narrative obtained from the consumer).

²⁶ See Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 *Fordham Urb. L.J.* 661 (2018), <https://ir.lawnet.fordham.edu/ulj/vol45/iss3/2/>. (reporting individual tenant stories of evictions resulting from retaliatory landlords).

²⁷ See Nat'l. Housing Law Project, *Sexual Harassment and Housing: Rights and Remedies of Tenants at 1*, https://nhlp.org/files/Sexual%20Harassment%20Outline_1.pdf (“42 U.S.C. sec. 3617: Under 42 U.S.C. sec. 3617, a landlord must not interfere with, coerce, threaten or intimidate tenants in the exercise of their rights under the Fair Housing Act (FHA). Courts have held that this provision can apply where a landlord threatens or intimidates a tenant who fails to comply with sexual demands.”). See also Dept. of Justice, *Justice Department Obtains \$4.5 Million Settlement from a New Jersey Landlord to Resolve Claims of Sexual Harassment of Tenants*, <https://www.justice.gov/opa/pr/justice-department-obtains-45-million-settlement-new-jersey-landlord-resolve-claims-sexual>. In *United States v. Joseph Centanni* (D. N.J.), landlord Joseph Centanni paid “\$4.5 million in monetary damages and a civil penalty to resolve an FHA lawsuit concerning his sexual harassment of tenants and housing applicants for more than 15 years.” Among the violations were complaints that the landlord “initiated or threatened to initiate eviction actions against tenants who objected to or refused his sexual advances.”

As complaints show, in cases where evictions were filed due to late payment, renters may not receive a notice and are often unaware that an eviction filing was ever initiated, since it was withdrawn as soon as the late payment was received.

Complaints further indicate that eviction actions and related rental debts were reported with little to no information on how they were resolved, even if the case did not go to court, the debt was paid in a timely manner, the two parties agreed to a settlement, or the ruling was vacated. Without these distinctions, the report gives an inaccurate and damaging impression of an applicant's rental history.²⁸ For example, one renter complained:

Within my credit report under the Landlord-Tenant History there is a judgment. The disposition of the judgment reads: judgment with restitution of premises... This information is inaccurate. There was a satisfaction of judgment filed on [date]. This information should have never showed up on any of my credit reports. I lived in the said address for 6 months after the original judgement was filed. There was never an eviction, yet it appears to look that way.²⁹

These complaints are not isolated incidents. Past studies and reporting have found that a great deal of eviction court records appear ambiguous or wholly inaccurate.³⁰ Concern around inaccuracies in eviction and rental debt records grew in recent years as a result of the COVID-19 pandemic.³¹ The CFPB continues to closely monitor procedures around the reporting of evictions and rental debts.

²⁸ See Consumer Fin. Prot. Bureau, *supra* note 4.

²⁹ Consumer Complaint 4116869, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4116869>.

³⁰ Desmond, et al., Inaccuracies in Eviction Records: Implications for Renters and Researchers, Housing Policy Debate, 31:3-5, 377-394, DOI: 10.1080/10511482.2020.1748084. (classifying as 22% of 3.6 million evictions records from across 12 states as having “ambiguous” outcomes).

³¹ Federal and state laws imposed various eviction moratoria and provided protection for many renters who could not afford rent due to an unavoidable loss of income during the pandemic. However, confusion over the changing legal landscape and cases of non-compliance with state, local, and federal eviction moratoria by landlords led to continued attempts to evict protected renters. See, e.g., Select Subcomm. on the Coronavirus Crisis, Examining Pandemic Evictions: A Report on Abuses by Four Corporate Landlords During the Coronavirus Crisis (July 2022), <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022-07-28%20SSCC%20Staff%20Report%20Examining%20Pandemic%20Evictions.pdf> (finding four corporate landlords filed nearly three times as many eviction cases as previously reported, totaling almost 15,000 eviction filings” during the eviction moratorium). See also Consumer Fin. Prot. Bureau, Enforcement Compliance Bulletin 2021-03: Consumer Reporting of Rental Information (March 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information_bulletin-2021-03_2021-07.pdf (Bulletin notifying certain entities the CFPB would be paying particular attention to their compliance with the accuracy and dispute obligations under the FCRA with respect to rental information).

3.3 Criminal records

The CFPB has previously reported on common errors in criminal records information used for employer background checks and tenant screening reports.³² As reflected in complaints, errors include incomplete or inaccurate records, out-of-date information, duplicative reporting, or inaccurately matched information. Inaccuracies in criminal records may have an outsized impact on Native American, Black, and Hispanic communities as they are disproportionately represented in the criminal justice system.³³ Despite known issues with inconsistent public records systems across jurisdictions, many tenant screening companies conduct minimal manual verification of information and continue to report inaccurate and incomplete civil and criminal public records.³⁴

Misclassification of criminal records

Issues identified in complaints include the misclassification of charges and offenses, as well as incorrect or missing information about the disposition or resolution of a case. For example, multiple renters and applicants complained of misdemeanors that were erroneously classified as felonies. In other cases, renters expressed concern that the date denoted on a criminal record gave a false impression of the recency of an arrest or conviction. Several complaints also identified an issue with miscoding of the status or disposition of cases. One rental applicant reported:

I was denied by [company name] when applying for a unit.... It said I was denied for criminal history when I have court docs to show that my charge was dropped to a misdemeanor.³⁵

Another renter complained that their charge was reduced but this update was not noted in their report:

I spoke with the company that pulled the background check on me on [date]. I saw on the [date] that the report they sent to the apartment complex I applied to was wrong because it listed the 2 misdemeanors as pointing/branding a firearm when

³² See Consumer Fin. Prot. Bureau, Justice Involved Individuals and the Consumer Financial Marketplace (Jan. 2022), <https://www.consumerfinance.gov/data-research/research-reports/justice-involved-individuals-consumer-financial-marketplace/>.

³³ See Nat'l Council on Crime and Delinquency, Created Equal, Racial and Ethnic Disparities in the US criminal Justice System (2009), https://www.evidentchange.org/sites/default/files/publication_pdf/created-equal.pdf.

³⁴ See Consumer Fin. Prot. Bureau, *supra* note 32.

³⁵ Consumer Complaint 4573891, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4573891>.

what the judge found me guilty of was Disorderly Conduct. I called the [name of city or county] court and they confirmed they had the charge correct as Disorderly Conduct. They sent me the printouts of the charges on [Date] showing that the charges have been changed from brandishing to Disorderly Conduct. This needs to be corrected [as soon as possible].³⁶

Another example notes an instance when a renter identified a criminal record that was not associated with them:

On [date], I filled out an application for an apartment, but was told my application was denied due to a criminal charge present on my background check, which was completed by [company name]. I filed a dispute as the criminal background check was incorrect and neither my SSN nor full date of birth was used for verification. I am an active-duty soldier and cannot be in the Army with a felony offense.³⁷

Reporting of expunged or sealed records

In addition, complaints identified instances where the tenant screening companies reported an applicant's sealed or expunged criminal record to a landlord. In one of several examples, a renter reported:

I recently applied for an apartment at [apartment complex] and was denied due to my criminal record. I had my criminal convictions expunged almost two months ago, and it is unethical to be reporting on information that has been expunged from public [records] --especially when it is actively affecting someone's quality of life. I applied for the apartment on [date] and received word that I had been rejected due to failing the background check on [date]. After receiving my copy of the background check today, [date] I was able to ascertain the reason for my denial as being due to this inaccurate information. This failure to report accurate information cost me \$100 and will cost me another \$100 when I choose to reapply for housing.³⁸

Reporting of outdated or obsolete information

Complaints also indicated that outdated information continued to show up in reports. This includes information that is subject to time limits for inclusion in consumer reports under the

³⁶ Consumer Complaint (on file with author).

³⁷ Consumer Complaint (on file with author).

³⁸ Consumer Complaint (on file with author).

FCRA. Subject to certain exceptions, negative information that is more than seven years old cannot be included in consumer reports and bankruptcies cannot be included beyond ten years.³⁹ One renter complained:

This credit screening service made fraudulent statements that caused a denial on my apartment. ... My credit has ZERO outstanding debts and I filed bankruptcy 10+ years ago so it is illegal to continue to use it against me.⁴⁰

Complaints and qualitative research, in addition to independent reporting, indicate that tenant screening companies continue to report inaccurate and misleading information about applicants. These practices potentially fail to meet FCRA standards to assure maximum possible accuracy of the information they report, and they may also significantly harm a consumer's ability to attain rental housing.

³⁹ See generally FCRA section 605.

⁴⁰ Consumer Complaint (on file with author).

4. Dispute resolution challenges

The process of disputing and removing inaccurate negative information was described as lengthy, complex, and confusing by renters. Consumers describe receiving unclear and inconsistent guidance from landlords and tenant screening companies on how to resolve errors. One rental applicant described their attempts to dispute information they believed was inaccurate:

[Company name] shows a court case with unpaid rent attached to my information. I've submitted 3 investigation requests to [company name] since [date] regarding incorrect information they've attached to my [SSN] including a notarized [note] in the same form... There is no identifying information on the court documents beyond a first/last name and address... I've spoken to countless [company name] representatives and have been told requests have been filed, information taken down, nothing further can be done, no one else I can speak to, no further information needed, nothing I can do... I have spoken with the [a county] County Courts regarding this matter on several occasions due to your inaccurate information.... They have stated there is no identifiable information on this court case to link this inaccurate information to me. They stated they do not report information to [company name], that [company name] pulls information from their database. This was a different person . . . [a name]. I have advised [company name] of this error multiple times and the company has refused to correct their records.⁴¹

Another applicant noted that the tenant screening company had violated their right to a timely investigation by not sending results of their investigation within the 30-day period generally required by the FCRA:

⁴¹ Consumer Complaint 3779511, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3779511>.

I filed a dispute in regard to the incorrect items on my credit report and it has been well over 30 days, and I haven't received any investigation results.⁴²

Several complaints note that the renters completed the dispute resolution process, only to find that the disputed information reappeared on a report from the same company at a later date. For example:

[Company name] removed the first inaccurate report and then decided to ADD it back weeks later when it was time for me to move in.⁴³

One particular complaint illustrates how consumers can perceive the dispute process as hopelessly inefficient and needlessly confusing. The consumer accessed a copy of their report and under the header of one of the three nationwide credit reporting companies, the consumer found a vacated eviction case that appeared to be inaccurately annotated in their report. After collecting documentation of the error, the rental applicant contacted the company to have the information removed. They were then routed to the credit reporting company's rental data subsidiary company, where they were told the information needed to be corrected directly with the tenant screening company. Upon contacting the tenant screening company, they were then told that the original credit reporting company was in fact the source of the error and sent the applicant back to the original company to make a correction.

This sequence of events is repeated across multiple complaints where rental applicants are shuffled between tenant screening companies and the many companies that they use to source data for reports as they attempt to resolve an error. As a result, rental applicants can be forced to incur multiple application fees before discovering or resolving the inaccuracy in their tenant screening reports.

Responding to CFPB complaints

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the CFPB to collect, investigate, and respond to consumer complaints.⁴⁴ Consumer reporting complaints submitted to the CFPB about inaccurate information and the dispute process make up a significant share of all complaints received by the CFPB, and the complaint process provides a key backstop to dispute channels available to consumers.

⁴² Consumer Complaint (on file with author).

⁴³ Consumer Complaint (on file with author).

⁴⁴ 12 U.S.C. § 5511(c)(2).

When consumers submit complaints to the CFPB, the CFPB routes them directly to companies identified by consumers for review and response. Companies are expected to review the information provided in complaints, communicate with consumers as needed, determine what actions to take in response, and provide a written response to the CFPB and the consumer.⁴⁵

Of the ten companies included on the CFPB's list of consumer reporting companies, RealPage, Inc. (LeasingDesk or On-Site Manager, Inc.) is one of the most complained about tenant screening companies.⁴⁶ It is also the only tenant screening company among those listed that, after responding to CFPB complaints for years, stopped responding to consumers—just months before the announcement of its agreement with the Federal Trade Commission (FTC).⁴⁷ Consumers report in 85% of their complaints about RealPage that they have already tried to fix the issue with the company before they submitted a complaint to the CFPB. In addition to denying individual consumers responses to the issues raised in their complaints, RealPage's refusal to respond raises questions about its willingness and ability to address consumers' issues generally.

Though RealPage does not currently respond to complaints, the CFPB continues to accept complaints about RealPage. Indeed, the CFPB received the majority of complaints about RealPage after it stopped responding.

⁴⁵ See Consumer Fin. Prot. Bureau, Consumer Response Annual Report, *supra* note 6 at Section 2.3.

⁴⁶ See Consumer Fin. Prot. Bureau, *supra* note 9.

⁴⁷ See Fed. Trade Comm'n, *supra* note 19.

5. Problems accessing tenant screening reports

Limited awareness of tenant screening reports and consumer rights

In interviews and focus groups, people who had applied for rental housing in recent years demonstrated limited awareness of the role of tenant screening companies, the information included in reports, and the potential for inaccuracies. Some assumed a tenant screening report was identical to a credit report. In one case, an interviewee believed it was impossible for an error to come up on their report because they believed that all information was verified with their Social Security number. Unaware of this potential for inaccuracies, interviewees noted that they seldom requested access to their reports—even when denied rental housing—and had never seen a copy of their tenant screening report.

Lack of transparency around reports and scoring models

Consumers complained about an inability to access the information that a landlord received about them when reviewing their report. This is particularly true for reports that include tenant scores or ratings. Some tenant screening companies use a proprietary scoring model or algorithm to classify a renter as more or less “risky.” Landlords may receive this score with limited access to the underlying negative information. Renters rarely receive their scores and are not informed about how these scores are calculated or used to make housing decisions. One consumer expressed confusion and frustration about the use of tenant scores in her housing decision:

I tried to rent an apartment and was denied even though my credit score is 678. Apparently, something not known to the public is that a credit score doesn't matter anymore instead there is a separate credit score called a residential report. My residential report [score] is 628 even though I have never had an eviction or made any late payments on any rental that I have occupied. This residential score can't even be viewed on the [company name] report. This is an obscure unknown report

that is being hidden from consumers and should not. Everyone should have access to their residential report.⁴⁸

These automated scores may mask errors in the data and are not always made available to the applicant, making it difficult for consumers to dispute inaccurate information.⁴⁹

Inconsistent use of adverse action notices

The FCRA requires landlords to provide an adverse action notice orally, electronically, or in writing to an applicant if they denied their tenancy based, in part or in whole, on information from a tenant screening report.⁵⁰ Adverse action requirements for tenant screening reports are notably less comprehensive than those expected of employers.⁵¹ For example, employers who use consumer reports for employment purposes are also required to provide applicants with a pre-adverse action notice, a copy of the report, and a summary of the applicant's rights before a final decision is made.⁵²

Within 60 days of a landlord denying an applicant rental housing based on information contained in a screening report, an applicant has the right to obtain a free copy of the tenant screening report from the company that compiled it.⁵³ Consumers also have the right to dispute errors in the report and are typically entitled to results from an investigation in 30 days.⁵⁴ In interviews and complaints, there were a limited number of consumers who indicated that their rights in this space were clearly outlined in the application paperwork or in an adverse action notice. Some consumers were only made aware of their rights when a denial, or string of denials, spurred them to pursue legal advice.

The inconsistent use of adequate adverse action notices by landlords may contribute to the challenges consumers experience when facing repeated denials due to information in their tenant screening report. Interviewed renters noted that they rarely received any information

⁴⁸ Consumer Complaint 4269293, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4269293>.

⁴⁹ See Broken Records, Nat'l Consumer Law Ctr, Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing (Dec. 2019), <https://www.nclc.org/images/pdf/criminaljustice/report-broken-records-redux.pdf>.

⁵⁰ See FCRA Section 615(a)(1).

⁵¹ See FCRA Section 615 (a) for full Adverse Action Notice requirements for tenant screening reports.

⁵² See FCRA Section 604(b), 15 U.S.C. § 1681b(b), and Section 615(a)), 15 U.S.C. § 1681m(a); these sections outline obligations expected of employers, in addition to those outlined in Sec 615 (a).

⁵³ See FCRA Section 612(b), 15 U.S.C. § 1681j(b).

⁵⁴ In some cases, the deadline is extended to 45 days for results of an investigation into a dispute. See 15 U.S.C. § 1681i(a)(1)(B).

about why they were being turned down. Typically, rental applicants were simply told whether they were approved or they never heard back about the application at all. In some cases, landlords refused to provide all of the required information. Complaints also showed these issues. For example, one rental applicant reported:

On [date], I paid [name] a \$75 application fee after touring the property at [street name]. She was aware of my credit [score] and said that as long as I didn't have evictions or landlord judgments, and [proof of] income, I was first and a good candidate for rental. That evening she said I had an eviction. Thursday, she sent a report from her vendor, [company name] incorrectly showing an open eviction case. It's a public record so I showed that the case was dismissed. At which time she [pivoted] and [said] my credit score [was] too low. I asked her for her vendor contact information so I could correct any misinformation and she has since ignored me.⁵⁵

Inadequate use of adverse action notices, limited consumer-friendly guidance, and complexities in data sourcing for tenant screening reports make it difficult for rental applicants to exercise their rights.

⁵⁵ Consumer Complaint 4333940, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4333940>.

6. Recent CFPB Actions

In light of persistent reports of inadequate data collection and matching practices, the CFPB continues to take action to help renters and rental applicants exert their consumer reporting rights. In 2022, the CFPB took action in the following areas.

Limited preemption of state laws interpretive rule

On June 28, 2022, the CFPB released an interpretive rule relating to the FCRA’s limited preemption of state law. In the rule, the CFPB clarified the targeted scope of the FCRA’s preemption of state laws, noting that the federal authority of the FCRA does explicitly preempt certain state laws but that states have the flexibility to pass laws around consumer reports in order to meet the needs of local economies and residents. The rule explicitly outlines where preemption would not apply to state laws regarding tenant screening reports, stating, “A State law prohibiting a consumer reporting agency from including information (or certain types of information) about a consumer’s eviction, rental arrears, or arrests on a consumer report would generally not be preempted.”⁵⁶

Permissible purposes for furnishing, using, and obtaining consumer reports

In July of 2022, the CFPB released an Advisory Opinion addressing the FCRA’s permissible purpose requirements.⁵⁷ The Opinion reiterates that consumer reporting companies can only provide consumer reports for permissible purposes. The Opinion also notes that users of reports (such as landlords) can only access consumer report information for the applicants whose information they have a permissible purpose to receive (including tenant screening in connection with a business transaction initiated by the consumer), and not any other consumer. As the Opinion states, “Consumers suffer harm when consumer reporting agencies provide consumer reports to persons who are not authorized to receive the information or when recipients of consumer reports obtain or use such reports for purposes other than permissible purposes.” This again highlights the issue of weak data matching practices. If the use of poor

⁵⁶ See Consumer Fin. Prot. Bureau, *The Fair Credit Reporting Act’s Limited Preemption of State Laws* (June 2022), https://files.consumerfinance.gov/f/documents/cfpb_fcra-preemption_interpretive-rule_2022-06.pdf.

⁵⁷ See Consumer Fin. Prot. Bureau, *Fair Credit Reporting; Permissible Purposes for Furnishing, Using, and Obtaining Consumer Reports* (July 2022), https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting_advisory-opinion_2022-07.pdf.

identifiers leads to consumer report information that belongs to another consumer appearing in a rental applicant's report, this would not only harm the consumer whose report includes information that does not belong to them, but also violate the privacy rights of the consumer who was inaccurately matched with the applicant.

Facially false data

On October 20, 2022, the CFPB released an Advisory Opinion that highlighted that any consumer reporting company that does not implement internal controls to prevent the inclusion of facially false data in consumer reports is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the FCRA. This includes data that is logically inconsistent, such as the appearance of information about an account that predates the birth of the consumer.⁵⁸

Reasonable investigation of consumer reporting disputes

On November 10, 2022, the CFPB released a Circular that focused on dispute investigation requirements under the FCRA. The Circular reasserts that consumer reporting companies are liable to the FCRA if they do not comply with statutory or regulatory requirements to investigate non-frivolous disputes. It also notes that consumer reporting companies must promptly provide to the furnisher all relevant information regarding a person's dispute.⁵⁹

⁵⁸ See Consumer Fin. Prot. Bureau, Fair Credit Reporting: Facially False Data (Oct 2022), https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting-facially-false-data_advisory-opinion_2022-10.pdf

⁵⁹ See Consumer Fin. Prot. Bureau, Consumer Financial Protection Circular 2022-07 Reasonable investigation of consumer reporting disputes (Nov 22), <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-07-reasonable-investigation-of-consumer-reporting-disputes/>.

7. Conclusion

Renters continue to report challenges accessing and disputing information in tenant screening reports. Insufficient notices from landlords make it difficult for prospective tenants to review the basis for their denial or identify potential errors in reports. The use of weak matching procedures by tenant screening companies leads applicants to receive denials and other adverse actions due to the inclusion of information that may not belong to them. Criminal and eviction reporting in particular are often inaccurate, including outdated and misleading information about the nature and outcome of each case. In addition, summary reports, including “rental risk scores,” make it particularly difficult for tenants to address inaccuracies. The challenges renters experience when attempting to dispute an error with a tenant screening company make it unlikely that an applicant will successfully resolve issues in their reports before being denied or charged more to rent a property. The experiences documented in this report illustrate that tenant screening reports are an increasing area of concern for many across the country.

8. Consumer resources

The CFPB provides information and resources to help consumers understand their rights in the tenant screening space and to assist consumers, advocates, and intermediaries in navigating the tenant screening marketplace. The CFPB website, consumerfinance.gov, houses information to help them understand and exercise their rights.

Tenant screening resources

- Consumers can learn more about what information is likely to appear on a tenant screening report.
- Consumers can learn more about what steps to take prior to beginning their rental search to prepare for the tenant screening process.
- Consumers can learn more about their rights when their rental application is denied due to a tenant screening report.
- Consumers can learn more about how long can eviction actions and lawsuits can stay tenant screening records.

Credit reporting resources

- Consumers should check their credit reports at least once a year to make sure there are no errors that could keep them from getting credit or the best available terms on a loan.
- If consumers identify an error on their consumer report, they should dispute that information with the consumer reporting companies. Under the Fair Credit Reporting Act (FCRA), consumers have a legal right to dispute credit history errors for free. They do not have to pay a credit repair company to dispute errors.
- If a consumer reporting company doesn't respond—or doesn't respond adequately—to a dispute, consumers have rights. Some of these rights only apply under certain circumstances. There are also time limits on exercising those rights.

Submitting complaints

- Consumers having issues with a consumer financial product or service can submit a complaint to the CFPB. Consumers that cannot submit online can call the CFPB at (855)411-CFPB (2372), toll free, 8 a.m. to 8 p.m. ET, Monday – Friday.