



May 30, 2023

Via www.regulations.gov

The Honorable Lina Khan
Chair, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rohit Chopra
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Request for Information on Tenant Screening, P235400

Dear Chair Khan and Director Chopra:

The National Consumer Law Center (on behalf of our low-income clients) submits the following comments¹ in response to the Tenant Screening Request for Information (RFI) issued by the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB). We appreciate that the FTC and CFPB are engaging in an extensive examination of the practices of tenant screening consumer reporting agencies (CRAs), the problems caused by tenant screening reports and scores, and the outsized role of tenant screening in excluding renters from safe, decent and affordable housing. Put simply, tenant screening is a key contributor to the ever-worsening housing crisis for renters in the United States.

However, we urge the FTC and CFPB to do more than examine tenant screening. We urge your agencies to take strong and decisive measures to reduce the harms inflicted by this industry on vulnerable renters, including Black and Latino renters, domestic violence survivors, immigrants, and low- and moderate-income renters. And we urge the FTC and CFPB to use their influence and persuasive authority with other policymakers, such as the U.S. Department of Housing and Urban Development (HUD) and state and local lawmakers, to regulate the use of tenant screening by landlords.

¹ These comments were written by Chi Chi Wu, April Kuehnhoff, Steve Sharpe, and Ariel Nelson, along with Equal Justice Works Fellow Caroline Cohn and Skadden Fellow Nicole Cabañez. Carolyn Carter of NCLC provided editorial oversight. Student intern Jay Sweitzer-Shalit assisted with sorting complaints from the CFPB Complaints Database. Eric Dunn, Marie Claire Tran-Leung, and others from the National Housing Law Project assisted with development of the survey on tenant screening issues referenced throughout these comments. NCLC is hugely grateful to NHLP for allowing us to survey members of NHLP's Housing Justice Network, and to the HNJ members and others who answered the survey.

Table of Contents

EXECUTIVE SUMMARY	1
I. INTRODUCTION	3
A. OVERVIEW	3
B. NCLC SURVEY OF ATTORNEYS, ADVOCATES, AND COUNSELORS	5
II. TENANT SCREENING GENERALLY	7
A. NCLC SURVEY: LANDLORDS' RELIANCE ON SCORES AND RECOMMENDATIONS FROM TENANT SCREENING CRAS	7
B. NCLC SURVEY: DISCLOSURE OF SCREENING CRITERIA	11
C. APPLICATION FEES	13
D. NCLC SURVEY: MITIGATING OR EXTENUATING CIRCUMSTANCES	15
E. NCLC SURVEY: DISPUTED INFORMATION	18
III. PUBLIC RECORDS	22
A. COMMON PROBLEMS WITH CRIMINAL AND EVICTION RECORDS	22
B. CRIMINAL RECORDS IN TENANT SCREENING	25
1. Overview	25
2. NCLC survey: barriers created by criminal records	27
3. Lack of predictiveness	28
4. Perpetuation and reinforcement of racial and other disparities	33
5. Inaccuracies in criminal records	35
6. Undermining of state law and policy	39
C. EVICTION RECORDS IN TENANT SCREENING	40
1. Inaccuracies in eviction records	40
2. Racial disparities and other policy issues with eviction records	42
3. NCLC survey: barriers created by eviction records	43
4. NCLC survey: consideration of additional context and outcomes	47
IV. CREDIT INFORMATION	51
A. OVERVIEW	52
B. NCLC SURVEY: USE OF CREDIT REPORTS AND SCORES	52
C. LACK OF PREDICTIVENESS	54
D. IMPACT OF CREDIT REPORTING ERRORS	56
E. RACIAL DISPARITIES IN CREDIT SCORING	58
F. RENTAL DEBT	59
V. ADVERSE ACTION NOTICES	62
A. NCLC SURVEY: SIGNIFICANT NONCOMPLIANCE WITH FCRA REQUIREMENTS	63
B. NCLC SURVEY: LACK OF MEANINGFUL INFORMATION ON REASONS FOR REJECTION	67
VI. LANGUAGE ACCESS	73
A. BARRIERS FACED BY LEP TENANTS IN SECURING RENTAL HOUSING	73
B. REQUIREMENTS FOR RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE TO PROVIDE LANGUAGE	

ACCESS TO LEP TENANTS.....	75
C. NCLC SURVEY RESULTS: SCANT AND INCONSISTENT LANGUAGE ASSISTANCE IN THE RENTAL MARKET	76
D. LEP RENTERS NEED MEANINGFUL ACCESS TO INFORMATION IN THEIR PREFERRED LANGUAGE	78
VII. ALGORITHMS	79
VIII. POLICY RECOMMENDATIONS	81
A. THE FTC SHOULD USE ITS UNFAIRNESS AUTHORITY TO PROMULGATE REGULATIONS PROTECTING RENTERS	81
B. RECOMMENDATIONS FOR CFPB REGULATION AND GUIDANCE	82
C. ENFORCEMENT RECOMMENDATIONS FOR FTC AND CFPB	83
D. OTHER RECOMMENDATIONS FOR BOTH CFPB AND FTC	84
 APPENDIX A: SAMPLE TENANT SCREENING REPORTS	
APPENDIX B: SHRIVER CENTER NOV. 2021 LETTER TO FTC	

Executive Summary

Landlords in the United States almost always engage in some form of screening for rental applicants. This screening often involves reports or scores purchased from specialized tenant screening consumer reporting agencies (CRAs). The reports typically combine information about eviction filings, criminal records, and credit history. Often the reports include a score or recommendation based on these records, and in some cases, the score or recommendation is the only information conveyed to the landlord.

Each of the components of tenant screening reports is highly problematic and also creates a disparate impact on Black and Latino renters. The manner in which the components are combined to generate scores or recommendations, and then used by landlords, is also harmful to renters. These comments discuss some of the most significant problems with tenant screening, including:

- **Heavy reliance on scores and recommendations.** Landlords often make leasing decisions based solely on these scores or recommendations, rather than the underlying information. In a survey of attorneys, advocates, and counselors who assist renters, 46% of respondents said private landlords rarely or never reviewed the underlying information in a tenant screening report. Subsidized housing providers were a bit better, with only one-third of respondents reporting that these providers rarely or never reviewed the underlying information.
- **Lack of transparency of screening criteria.** Many landlords fail to inform applicants of their criteria for selecting tenants, creating a lack of transparency in the tenant selection process. For private housing, the majority of respondents to the NCLC survey said that landlords disclosed screening criteria rarely (50%) or never (13%). Subsidized housing providers were better about disclosure, likely because they are required to have and disclose admission policies. Lack of transparency is especially harmful when renters apply for and waste money on application fees when they are ineligible for a rental unit according to the landlord's undisclosed criteria.
- **Failure to consider mitigating information or additional context.** Respondents were asked several questions about whether landlords considered the following factors when screening tenants: personal hardship/extenuating circumstances; additional context regarding eviction actions; and outcome of eviction actions.
 - For private housing, landlords are unlikely to consider mitigating factors. Most respondents reported that landlords rarely (54%) or never (24%) considered personal hardship/extenuating circumstances. About three-quarters of respondents reported that private landlords do not consider additional context or the outcome of evictions either on their own or when an advocate intervenes, or they rarely or never consider such information.
 - Subsidized housing providers appear to consider personal hardship/extenuating circumstances more often, with half of respondents reporting that these providers were usually (12%) or sometimes (34%) willing to consider these factors. About

half of respondents reported that subsidized housing providers will consider additional context or outcome of an eviction when an advocate intervenes.

- **Disputes are ineffective.** Disputing information in tenant screening reports is mostly ineffective to impact landlord decisions. Respondents reported that the most common response of landlords to a dispute (86% reported observing) was to ignore the existence of the dispute and reject the renter.
- **Criminal records are not predictive, are often inaccurate, perpetuate racial disparities and undermine state policy.** Over half (54%) of respondents reported observing a conviction or charge that was dismissed, dropped, or reversed on appeal creating a barrier to renting. Respondents also observed criminal records being reported on the wrong consumer's report (43%); reporting of sealed, expunged, or set-aside convictions (41%); reporting of arrests older than seven years (50%); the same criminal record appearing multiple times on a report (19%); and misclassification of offenses (26%). Yet empirical research does not establish that criminal records are predictive of success as a tenant, while their use perpetuates serious racial disparities and undermines state policies to remove barriers for people with criminal records and their families.
- **Eviction records are plagued with inaccuracies and racial disparities.** Respondents reported seeing problems with eviction records being reported on the wrong consumer's report (47% of respondents); reporting of sealed or expunged records (31%); missing or incorrect dispositions/outcomes (76%); evictions older than seven years (53%); reporting evictions where the tenant prevailed (81%); and mischaracterized evictions (62%). Eviction records also exhibit racial disparities; an ACLU study found that landlords file eviction cases against Black tenants at twice the rate of white tenants.
- **Use of credit reports and scores is widely prevalent but problematic.** The vast majority of respondents to the NCLC survey reported observing the use of credit scores to deny applicants for private housing (84%); for voucher holders in the private market (65%); and even in subsidized housing (40%). Yet credit scores are designed to predict only whether a borrower will be late on a loan obligation, and there is no evidence of its predictiveness for rent payments. Credit reports have unacceptably high error levels, and there are large and troubling racial disparities with credit scores.
- **Failure to provide adverse action notices.** There is significant noncompliance with the adverse action notice requirement of the Fair Credit Reporting Act (FCRA). The FCRA requires landlords to provide a notice when they reject a renter on the basis of a tenant screening or credit report. For private housing, nearly half of respondents reported that adverse action notices were provided rarely (34%) or never (14%), with a third (34%) reporting they were provided only sometimes. Subsidized housing providers appear to provide notices more often, with only a minority of respondents reporting that they observed such providers giving them rarely (16%) or never (2%). Subsidized housing providers are also more likely to give a statement of reasons for rejecting an applicant. Both private and subsidized housing providers are unlikely to provide copies of information they receive about an applicant.

- **Scant and inconsistent language assistance.** NCLC survey respondents observed little language assistance is offered for the 8.2% of the U.S. population who are limited English proficient. Most respondents observed that there was no assistance by private landlords (79%) or subsidized housing providers (55%), despite federal requirements for certain subsidized housing providers. A minority of respondents observed bilingual staff employed by private landlords (17%) and subsidized housing providers (34%), but there was significant turnover for these employees.

Given the significant and widespread problems with tenant screening, we recommend that the FTC use its unfairness authority under Section 5 of the FTC Act to promulgate regulations governing the use of tenant screening by landlords. We recommend that the CFPB, which has announced it will undertake an FCRA rulemaking, to include provisions addressing the inaccuracies and problems of tenant screening documented in these and other comments, as well as the Bureau’s own reports and research. Both FTC and CFPB should undertake enforcement actions for violations of the FCRA and empirical research into the error rate and predictiveness of the information used by tenant screening CRAs. Detailed recommendations are in Section VIII of these comments.

I. Introduction

A. Overview

Prospective tenants almost always need to undergo an extensive screening process to rent an apartment.² To evaluate applicants, landlords often purchase tenant screening reports from specialized tenant screening consumer reporting agencies (CRAs). Landlords typically pass the cost of screening on to tenants in the form of application fees, discussed in Section II.C.

Estimates for the tenant screening industry range from \$1.3 billion³ to \$3 billion⁴ in revenue, with about 650 companies providing reports.⁵ Well-known tenant screening CRAs include:

- Experian RentBureau

² TransUnion SmartMove, *TransUnion Independent Landlord Survey Insights* (Aug. 7, 2017) (85% of landlords run an eviction report on all applicants and 90% run credit and criminal background checks on all applicants), www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page [hereinafter “TU SmartMove 2017 Landlord Survey”].

³ CFPB, *Tenant Background Checks Market 10* (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf [hereinafter “CFPB, Tenant Background Checks Market”].

⁴ Cyrus Farviar, *Tenant screening software faces national reckoning*, NBC News (Mar. 14, 2021), www.nbcnews.com/tech/tech-news/tenant-screening-software-faces-national-reckoning-n1260975; Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. Times (May 28, 2020), www.nytimes.com/2020/05/28/business/renters-background-checks.html [hereinafter “Kirchner & Goldstein, Automated Background Checks, N.Y. Times”].

⁵ CFPB, *Tenant Background Checks Market* at 10.

- TransUnion Rental Screening Solutions, Inc. (a.k.a. TransUnion SmartMove)
- SafeRent Solutions, LLC (formerly CoreLogic Rental Property Solutions, LLC)
- AppFolio, Inc.
- RealPage, Inc. (Leasing Desk)
- On-Site (acquired by RealPage)
- RentGrow Inc.
- Rentspre
- RentPrep
- TurboTenant
- FirstAdvantage
- National Tenant Network
- Yardi⁶

Tenant screening CRAs are not the only players in the industry. Many tenant screening CRAs purchase information, such public records information, from other CRAs, third-party vendors, or data brokers.⁷

Tenant screening reports typically contain the following:

- a credit report that comes from one of the nationwide CRAs (TransUnion, Experian, and Equifax) and credit header information (i.e., name and address history);
- background check information, including criminal records, sex offender registry information, and national terrorist watch list information;
- housing court records, including eviction records;⁸ and
- in some cases when available, rental history information.⁹

Many tenant screening CRAs do not simply provide a report and then leave landlords to reach their own conclusions about which prospective tenants to accept or reject. Instead, tenant screening companies commonly offer products that “adjudicate” or “score” the applicant, a topic discussed in Section II.A. Relying on tenant screening reports and scores, landlords often automatically reject prospective tenants if they have:

⁶ See CFPB, List of Consumer Reporting Agencies 20–25 (2023), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list_2023.pdf.

CFPB, Tenant Background Checks Market at 4, n. 1. Other tenant screening CRAs include AmRent, Avail, BetterNOI, Entrata, E-Renter, FABCO, and MRI, National Credit Reporting. *Id.*

⁷ See, e.g., Complaint for Civil Penalties, Permanent Injunction, and Other Equitable Relief at 5, U.S. v. AppFolio, Inc., No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020), www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf (explaining that tenant screening company, AppFolio, obtained criminal records from a third party vendor, CoreLogic National Background Data, LLC or CoreLogicScreening Services, LLC).

⁸ Tex Paisley, 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 3–4 (2021), www.povertylaw.org/wp-content/uploads/2021/01/tenant-screening-final-report.pdf.

⁹ At least one tenant screening CRA, AppFolio, now appears to include rent payment history information on its tenant screening reports, provided by Experian RentBureau. See Sample Tenant Screening Report, AppFolio, <https://profastpropertymanagement.com/wp-content/uploads/2017/11/ProFast-Example-Tenant-Screening.pdf>.

- low credit scores or alleged debts to former landlords (referred to as “rental debt”), discussed in Section IV.
- eviction records—regardless of the outcome, context, or how long ago the case was filed, discussed in Section III.C.
- any criminal records, discussed in Section III.B.

Tenant screening can present formidable, sometimes insurmountable, barriers to decent, affordable housing for millions of renters. If the United States had an adequate supply of rental housing, renters who have negative marks from eviction records, criminal records, or low credit scores could still find housing. But with this nation short 6.5 million housing units,¹⁰ tenant screening could result in these renters getting substandard yet expensive housing, such as extended stay motels,¹¹ or not getting any housing at all.

Tenant screening is also significantly flawed in two major respects: (1) a lack of empirical evidence that the information and criteria included in reports and upon which scores/recommendations are based have any predictive value for determining whether a renter will be a good tenant; and (2) significant systemic errors and flaws, such as tagging the wrong person with a criminal or eviction record, reporting of incomplete or misleading records, and reporting of sealed or expunged records.¹² These flaws are discussed extensively in the comments that follow.

B. NCLC survey of attorneys, advocates, and counselors

To obtain detailed information about the experience of tenant screening in the field, NCLC conducted a survey of attorneys, advocates and counselors in April 2023. Our survey asked 15 questions, which were developed in consultation with the National Housing Law Project. These questions were based on a selected number of the questions in the FTC/CFPB Request for Information. For many questions, respondents were asked for responses for both private housing and subsidized housing.

We received 253 responses from 35 states and Washington, DC. The majority of responses (69%) were received from legal services and nonprofit attorneys. We also received a number of responses from private attorneys (7%) and housing counselors (12%). “Other” respondents included law school clinical professors; paralegals; fair housing organization staff; and advocates for unhoused persons, domestic violence survivors, and other vulnerable populations.

¹⁰ Anna Bahney, The US housing market is short 6.5 million homes, CNN.com, March 8, 2023 www.cnn.com/2023/03/08/homes/housing-shortage/index.html.

¹¹ See Mya Frazier, When No Landlord Will Rent to You, Where Do You Go?, N.Y. Times, May 23, 2021, www.nytimes.com/2021/05/20/magazine/extended-stay-hotels.html?referringSource=articleShare.

¹² See generally, Ariel Nelson, NCLC, Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing (Dec. 2019), www.nclc.org/images/pdf/criminaljustice/report-broken-records-redux.pdf. [hereinafter “Broken Records”].

Table 1: Survey Respondent Distribution According to Type of Practice (n=253)

Type of Practice	No. of Respondents	Percent
Housing counselor ¹³	30	12%
Legal services attorney ¹⁴	174	69%
Private attorney	18	7%
Other	31	12%

The 253 respondents represented a broad array of jurisdictions. The following table gives a breakdown of responses received from these jurisdictions

Table 2: Survey Respondent Distribution According to State of Practice (n=252)¹⁵

State(s)	No. of Respondents Per State	Percent*
Illinois	19	8%
California / North Carolina	16 (x2 states)	13%
Massachusetts / Michigan / New York	15 (x3 states)	18%
Florida / Pennsylvania	12 (x2 states)	10%
Alaska / Arizona	11 (x2 states)	9%
Georgia	10	4%
Maine / Washington	9 (x2 states)	7%

¹³ The survey category was “housing counselor or advocate.” We have shortened throughout.

¹⁴ The survey category was “legal services / nonprofit attorney.” We have shortened throughout.

¹⁵ One respondent did not provide information about their state.

Alabama	7	3%
Connecticut / New Jersey / Ohio / Oregon	6 (x4 states)	10%
Colorado / Maryland / Texas / Virginia / Washington, DC	5 (x5 states)	10%
Louisiana / South Carolina	4 (x2 states)	3%
Minnesota	3	1%
Arkansas / Delaware / New Mexico / Oklahoma / Wisconsin	2 (x5 states)	4%
Iowa / Indiana / Missouri / Montana / Vermont	1 (x5 states)	2%

*Totals do not equal 100% due to rounding.

Survey responses will be discussed in the sections of these comments that discuss the relevant issue. Respondents were provided with a free-form text field to add narrative responses, and some of these narrative responses are included below or paraphrased. One caveat is that for each survey question, there were a number of narrative responses stating that the responding did not have much knowledge regarding the issue. Furthermore, all questions were optional and, for each question, a significant number of respondents (from 82 to 124 per question) skipped it.

II. Tenant Screening Generally

A. NCLC survey: landlords' reliance on scores and recommendations from tenant screening CRAs

In many cases, tenant screening CRAs will provide a tenant screening score or recommendation/decision that is in addition, or in lieu of, a full report with the underlying data. Research reports and anecdotal information indicate landlords often make leasing decisions based solely on these scores or recommendations, rather than the underlying information.¹⁶ In

¹⁶ See, e.g., TransUnion SmartMove, ResidentScore, www.mysmartmove.com/SmartMove/landlord-credit-check-service.page (last visited May 18, 2023); SafeRent Solutions, SafeRent Score, <https://saferentsolutions.com/saferent-score/> (last visited May 18, 2023); see also Erin Smith & Heather Vogell, How Your Shadow Credit Score Could Decide Whether You Get An Apartment, ProPublica (Mar. 29, 2022), www.propublica.org/article/how-your-shadow-credit-score-could-decide-whether-you-get-an-apartment; Michele Gillman, Poverty Lawgorithms: A Poverty Lawyer's Guide to Fighting Automated Decision-Making Harms on Low-Income Communities, Data & Soc'y 30–33 (Sept. 15, 2020), <https://datasociety.net/wp-content/uploads/2020/09/Poverty-Lawgorithms-20200915.pdf>.

fact, landlords are sometimes advised, or believe, that relying on the scores or recommendations will aid in compliance with fair housing laws.¹⁷

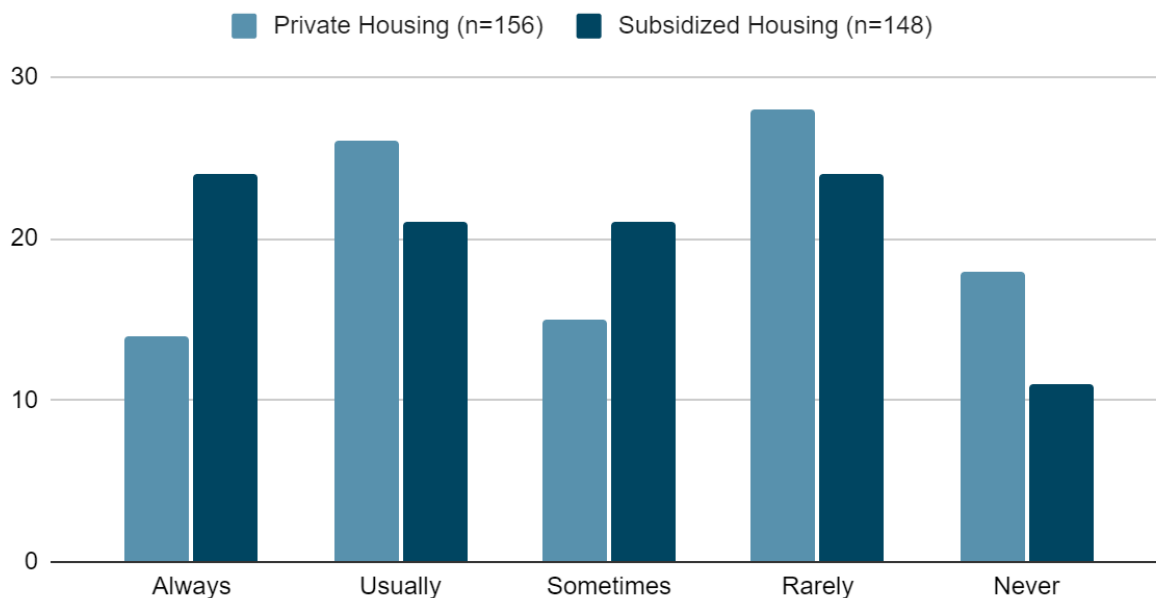
The NCLC survey attempted to obtain more broad-based information on this issue. The survey asked respondents the following, for both private and subsidized housing:

“When landlords use tenant screening reports that provide a recommendation or score, to what extent do they review the underlying data*?

* credit, eviction, or criminal records data”

There were 156 responses to this question for private housing and 148 responses for subsidized housing. For private housing, about half (46%) of respondents said they observed that landlords Rarely or Never considered the underlying information and another 15% said landlords considered the information only Sometimes. Subsidized housing providers tended to look at the underlying information more often. Almost half (45%) of respondents said that these providers Always or Usually considered the underlying information; however, one-third said that even these providers considered the information Rarely or Never (35%).

Chart 1: Do Landlords Review Underlying Data When Using Tenant Screening Reports (% of Respondents)



Some of the narrative comments from respondents described significant reliance on scores or recommendations. For example, a legal services attorney from Louisiana reported:

Our experience is that housing providers always adopt the recommendation of the tenant screening report (sometimes expressed through a score, but usually as a recommendation

¹⁷ Family Housing Fund and Housing Justice Center, Opening the Door, at 25, March 2021, www.fhfund.org/report/opening-the-door/ (“Sometimes landlords are advised to use only ‘objective’ screening criteria, with no allowance for the exercise of discretion, on the grounds that the best way to avoid liability is ‘to treat everyone the same.’) [hereinafter “FHF & HSJ, Opening the Door].

to “admit” or “deny”) without any review of the report itself, let alone the “underlying data.” Many applicants simply move on to the next property, and it is only when an applicant pushes back and asks for a reconsideration of the denial based on a specific reason that the landlord (or more specifically the property manager/leasing agent) is prompted to review the actual information in the report. At this point there is sometimes a process by which the applicant can request a “screening override” by providing more information.

Legal services attorneys in Florida, Illinois, Ohio, and Texas reported similar exclusive reliance on scores and recommendations, as did a housing counselor in Massachusetts.

A lawsuit against SafeRent Solutions, LLC (formerly CoreLogic Rental Property Solutions, LLC) in Massachusetts provides similar information, with one property manager explaining that:

CoreLogic sends us a number, and if it is above the predetermined “approved” number we move forward with the process. If the number comes back under the “approved” number, we send the prospect a letter with CoreLogic’s contact information. We do not know why they were denied other than their score was not high enough.¹⁸

In another lawsuit in Connecticut, the plaintiffs provided evidence that the housing provider’s leasing staff “reflexively implemented” the tenant screening company’s decline decisions, “as did most housing providers.”¹⁹

In contrast, a legal services attorney in Minnesota reported: “Most of the cases we see landlords are not requesting reports with tenant scores and even when the reports do include credit scores, most landlords (not all) base their decisions on underlying data rather than the score.”

Several advocates noted that review of the underlying data might vary according to the type of housing provider. Consistent with the survey results, several advocates in Maine, Ohio, and Pennsylvania reported that subsidized housing providers are more likely to review the data. However, the Ohio and Pennsylvania advocates said it was only in the context of an appeal. Other comments included:

I am unaware of private landlords ever reconsidering or reviewing underlying data and I believe they take the report at face value and nothing more. I have seen some applicants with subsidized housing have an opportunity to contest or provide more information when the housing provider raises a more specific concern (usually related to criminal records data). - Nonprofit attorney from LA

¹⁸ Complaint, *Louis v. SafeRent Solutions, LLC*, No. 1:22-cv-10800 (D. Mass. May 26, 2022), at 9, www.cohenmilstein.com/sites/default/files/Complaint%20-%20Louis%20v%20SafeRent%2005252022.pdf [hereinafter “Complaint, *Louis v. SafeRent*”].

¹⁹ Pls.’ Proposed Findings of Fact and Conclusions of Law at 24, *Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, No. 3:18-cv-00705-VLB (D. Conn. March 4, 2022), ECF No. 252; *see also id.* at 14–16.

I think a divide here can be made between corporate/larger landlords and property managers and mom and pop landlords renting one, two, or just a handful of units. - Legal services attorney from SC

It depends on the type of subsidized housing. I think [public housing authorities] and project based [Section 8] are more likely to review than LIHTC [housing built with Low-Income Housing Tax Credits] - Legal services attorney from NC

In some cases, the only information that a housing provider or its leasing agent receives is the score or recommendation, and it cannot access the full tenant screening report or underlying data.²⁰ A housing counselor in Oregon reported: “I have been a housing provider. The companies I worked for would not allow sharing of the underlying data with the property managers and discouraged applicants from appealing.” A legal services attorney in Texas similarly noted “I’ve had landlord representatives tell me that their complex’s software only gives them a green “go” or red “stop-do not lease” response upon receipt of the screening report.” A housing provider involved in the Massachusetts SafeRent case similarly explained that the “Leasing Manager does not receive the detailed credit information at the time of the running the applicant screening.”²¹

An exclusive reliance on tenant screening scores and recommendations can make it difficult for renters to determine why a landlord rejected them.²² It can also make it impossible to discover certain errors, like those arising out of how an algorithmic scoring system classified certain public records, aged them, or filtered them through the landlord’s acceptance criteria.²³ For example, if a denial resulted from an arrest record being erroneously treated by the algorithm as a conviction or a ten-year-old crime being mis-aged as a five-year-old crime, the applicant may have no way to discover the error.

Even though tenant screening CRAs claim that housing providers can override the recommendations, housing providers commonly defer to the CRA’s recommendation²⁴ or even

²⁰ CFPB, Tenant Background Checks Market, at 42 (“Some reports do not include the data used to generate the report and therefore the landlord cannot review the underlying information”). *See also* Kirchner & Goldstein, Automated Background Checks, N.Y. Times; Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC, 478 F. Supp. 3d 259, 275 (D. Conn. 2020) (describing how CoreLogic Rental Property Solutions tenant screening product allows users to suppress full reports from on-site staff and only provide them with an automated decision report).

²¹ Complaint, Louis v. SafeRent Solutions, at 10.

²² Erin Smith & Heather Vogell, How Your Shadow Credit Score Could Decide Whether You Get An Apartment, ProPublica (Mar. 29, 2022), www.propublica.org/article/how-your-shadow-credit-score-could-decide-whether-you-get-an-apartment.

²³ *See* CFPB, Tenant Background Checks Market, at 3 (“Risk scores or pass or fail recommendations that exclude the underlying information can conceal data errors and may magnify the impact of erroneous or outdated information.”)

²⁴ *See* Wonyoung So, Which Information Matters? Measuring Landlord Assessment of Tenant Screening Reports, Housing Policy Debate, at 16, August 2022, <https://doi.org/10.1080/10511482.2022.2113815> (research study using Amazon Mechanical Turk (MTurk) workers who identified themselves as U.S. landlords; MTurks were given sample tenant screening reports with and without scores; finding

claim they are not permitted to deviate from it. As alleged in the same lawsuit against SafeRent, one housing provider explained that “we do not accept appeals and cannot override the outcome of the Tenant Screening.”²⁵

In some cases, this means the renter is left confused as the housing provider’s staff claims the tenant screening CRA made the decision, while the CRA’s position is that the housing provider made the decision. A complaint to the CFPB reflects a consumer’s frustration over this very situation, especially given that the report involved inaccurate information:

Rejection Letter for rental apartment. The leasing agent told me her company had nothing to do with decision for rental apartment. But XXXX stated in letter to me that property management make final decision for rental approval. I did not receive credit score from XXXX XXXX XXXX or property management. ... Then the management used Experian for collecting the data on my accounts. Horrible decision : Experian had collected 70 % of misinformation, inaccuracies, and accounts not belonging to me. On the report many things were incorrect.

Source: Excerpt of CFPB Complaint No. 4041658, filed December 31, 2020

B. NCLC survey: disclosure of screening criteria

Q2. How and to what extent are landlords and property managers informing tenants and prospective tenants about their tenant screening criteria? What are the potential harms and benefits from the current level of disclosure?

In order to obtain data to answer this question, the NCLC survey asked respondents the following, for both private and subsidized housing:

“Do landlords in your area inform tenants and prospective tenants about their screening criteria with sufficient detail that a potential tenant can make an informed decision about applying?

There were 171 responses for private housing and 158 responses for subsidized housing. For private housing, the vast majority responded that screening criteria were disclosed Rarely (50%) or Never (13%), with a minority (33%) responding that criteria are disclosed Sometimes.

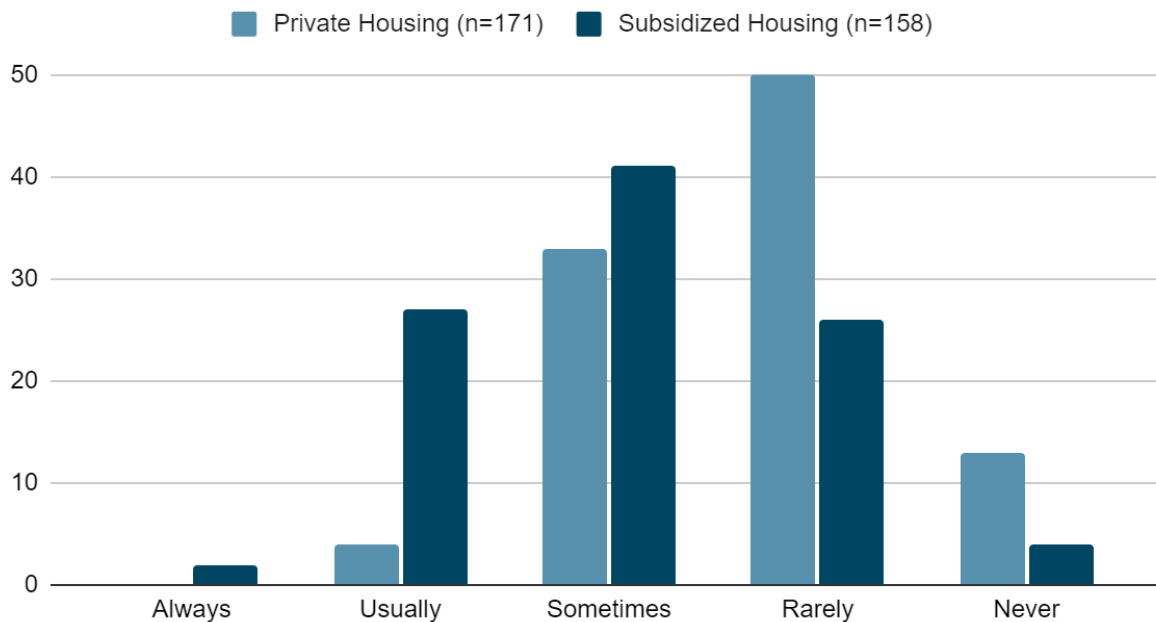
Subsidized housing providers appear to disclose screening criteria more often. More survey respondents reported that these providers Usually (27%) or Sometimes (41%) disclosed the criteria. This is likely because various types of subsidized housing providers, such as public housing authorities, are required to have and disclose admission policies.²⁶ However, a legal services attorney from NY noted that applicants for private housing who have a Housing Choice Voucher (“HCV” a.k.a. Section 8 voucher) generally do not get a lot of information.

statistically that “landlords were less influenced by the details of a criminal or eviction record and more influenced by the risk score of the reports.”) [hereinafter “Wonyoung So, Which Information Matters”]

²⁵ Complaint, *Louis v. SafeRent Solutions*, at 11.

²⁶ National Housing Law Project, HUD Housing Programs: Tenants’ Rights (The Green Book), § 2.8.2 (2017), updated at www.nclc.org/library (“Applicants for public housing, Vouchers, and other HUD-assisted and subsidized housing are entitled to know the pertinent admission policy and criteria.”)

Chart 2: Do Landlords Inform Tenants about Screening Criteria with Sufficient Detail to Allow Tenant to Make an Informed Decision about Applying (% Respondents)



Respondents noted that even with the disclosure requirements for subsidized housing, renters did not have adequate information about screening criteria.

Screening criteria for subsidized housing is always available in policy+admin plans, but most laypeople do not understand the nuances of the criteria if they are applying on their own. Many will wait years on the waitlist before realizing they were ultimately ineligible based on their application selections - Housing counselor from MA

Lack of transparency was a common theme in narrative comments. For example, one narrative comment noted:

The application process in Columbus is typically very opaque. I have rarely seen a landlord clearly lay out criteria that would result in denial. I have even seen tenants ask landlords if a certain thing would cause denial, the landlord says no, and then the tenant ends up being denied for that very thing. - Legal services attorney from OH

Respondents from Illinois, Louisiana, Oregon, Philadelphia and the District of Columbia reported that their jurisdiction now requires disclosure of screening criteria. However, several respondents noted poor compliance. Respondents also reported that the disclosure of screening criteria is not detailed enough to give renters adequate information whether to apply or not.

In DC, housing providers are required to provide a list of eligibility criteria to potential applicants, but rarely do. The list is usually not detailed enough for a potential applicant

to make an informed decision about whether they would be approved. - Housing counselor from DC.

Philadelphia, where I practice, enacted the Renters' Access Act in 2021, which requires landlords to give all applicants a list of uniform screening criteria. That uniform screening criteria is further prohibited from containing blanket prohibitions on any eviction history, prohibits on eviction cases that didn't result in judgments against the tenant or are more than 4 years old, a determination that's based solely on credit score, and several other features. However, education and enforcement of the Renters' Access Act remains an ongoing project, and we continue to see many online listings that either don't include screening criteria or list prohibited exclusions - Legal services attorney from PA

Louisiana state law requires landlords who charge an application fee to give written notice of “whether the lessor considers credit scores, employment history, criminal history, or eviction records in deciding whether to rent or lease to the applicant.” La. Rev. Stat. 9:3258.1. However, merely telling an applicant that these factors will be “considered”—as many private landlords do—does not necessarily provide enough guidance to prospective tenants to make an informed decision about applying. Many subsidized housing providers do a better job of providing more precise details about their screening criteria (i.e., “if an applicant has been evicted in the past 48 months, the application will not be approved ... Previous landlord debt or unpaid utility account debt must be paid in full in order to be considered for conditional approval. Conditional approval may require an additional security deposit.”) - Legal services attorney from LA

There is low compliance with a Cook County law called the Just Housing Amendment, which requires a two-step screening process (wherein the first step cannot screen for criminal background). The understanding of this law is poor - Fair housing advocate from IL

Several respondents noted that renters waste valuable funds paying application fees when the landlord fails to inform them of screening criteria for which they are clearly ineligible, discussed in Section II.C below

C. Application fees

Q.11 What types of application and screening fees do landlords and property managers charge prospective tenants and what do these fees cover (e.g., expenses related to processing applications, overhead for staff to review screening reports, etc.)?

Landlords typically pass the cost of tenant screening on to applicants. In November and December 2022, NCLC conducted a survey of legal services and nonprofit attorneys asking whether they had seen certain fees assessed as part of rental housing.²⁷ Almost all survey

²⁷ Ariel Nelson, et al., NCLC, Too Damn High: How Junk Fees Add to Skyrocketing Rents, Mar. 13, 2023, www.nclc.org/resources/too-damn-high-how-junk-fees-add-to-skyrocketing-rents/ [hereinafter “Too Damn High”].

respondents (89%) reported observing that landlords impose rental application fees. These respondents came from 26 states.²⁸ A 2022 survey by Zillow found that 68 percent of renters pay application fees.²⁹

These ubiquitous, nonrefundable fees—which landlords typically charge per adult applicant—can be higher than the housing provider’s actual cost to process the application and may be assessed even when no rental unit is in fact available.³⁰ Advocates reported seeing application fees ranging from \$25 to as high as \$350.³¹ Other studies have reported estimated application fees between \$40³² and \$59 on average, although nine percent of applicants reported paying more than \$100.³³ In comparison, the CFPB has reported that tenant screening CRAs charge approximately \$25-\$35 for each report, though prices may be as high as \$55.³⁴

Thus, fees over \$35 or \$55 may constitute a profit center for landlords. Some jurisdictions cap these fees, though some advocates have reported seeing non-compliance with these laws.³⁵ Renters often must pay multiple application fees, which can be a serious drain on their finances.³⁶

Some advocates reported that landlords charge application fees even if they know the application will never be approved. For example, a Georgia advocate stated that landlords charge application fees even if they know the applicant will never be eligible—for example, because they never rent to anyone with a criminal record. A South Carolina advocate similarly noted that landlords will often say that an applicant will be approved even though they have an eviction record, seemingly to convince the applicant to pay the fee, and then ultimately will reject the applicant. A Maryland advocate similarly stated that landlords charge application fees even when the landlord knows they will deny the applicant.³⁷

²⁸ AK, AL, AR, AZ, CA, CO, DC, FL, GA, IL, IN, LA, MA, MD, MN, MT, NE, NM, NY, OH, PA, SC, TX, UT, VA, and WA. Too Damn High at 10.

²⁹ CFPB, Tenant Background Checks Market, at 7, citing Manny Garcia and Edward Berchick, Zillow, Renters: Results from the Zillow Consumer Housing Trends Report 2022 - Zillow Research (July 2022), www.zillow.com/research/renters-consumer-housing-trends-report-2022-31265/ [hereinafter “Zillow 2022 Study”].

³⁰ CFPB, Tenant Background Checks Market, at 23. For more on application fees, see Eric Dunn, *The Case Against Rental Application Fees*, 30 Geo. J. on Poverty L. & Pol’y 21 (2022).

³¹ Too Damn High at 10.

³² FHF & HSJ, Opening the Door, at 6 (“The typical rental application fee is approximately \$40.00 *per adult* in the household.” (emphasis added)).

³³ CFPB, Tenant Background Checks Market, at 7 (citing Zillow 2022 Study).

³⁴ *Id.* at 22.

³⁵ Too Damn High at 10.

³⁶ CFPB, Tenant Background Checks Market at 22. The CFPB noted that the Zillow 2022 study found that younger renters, urban renters, and renters of color reported paying higher median fees, and renters of color were more likely to pay multiple application fees. *Id.* at 23. See also FHF & HSJ, Opening the Door, at 7 (“Among tenants surveyed, the average tenant had to apply and pay the application fee for four (4) apartments before being accepted for an apartment, and some tenants reported submitting as many as ten (10) applications before being accepted”).

³⁷ Too Damn High at 11.

An Ohio advocate explained that most of the time, the landlord does not disclose its screening criteria up front, meaning that tenants do not know what will disqualify them when they apply.³⁸ As is the case in other states, this results in applicants paying fees even if they would be automatically rejected.

The NCLC survey conducted for these comments had similar responses:

Tenants are often notified about issues with their applications after submitting and paying nonrefundable application fees. - Legal services attorney from AL

Tenants who have a known history of eviction are applying for housing units, paying the application fee and then being denied because they have a pending eviction. - Housing counselor from CT

Private landlords are especially bad at giving screening criteria before tenants have to pay hundreds of dollars in application fees. - Legal services attorney from GA

Advocates also reported that landlords may accept more applications and thus application fees than the amount of vacancies may justify. A Georgia advocate who observed this posited that the landlords do this to generate revenue through application fees. Similarly a California advocate posited, if 100 people apply for one apartment and each one pays \$40 or \$50 to the landlord, what amount of money does the landlord actually spend on credit checks?³⁹

As discussed more fully in Section VIII.A on policy recommendations, the FTC should issue rules under Section 5 of the FTC Act to regulate application fees. The FTC should also investigate whether landlords commit an unfair practice by imposing unavoidable and exploitative application fees that are excessive in amount or greater than the landlord's cost for a service.

D. NCLC survey: mitigating or extenuating circumstances

Q8. Do landlords and property managers have procedures by which tenants can explain and the housing provider can consider personal hardship or other circumstances (such as a natural disaster) that may have affected the tenant's prior income, credit, criminal, or rental history?

In order to obtain data to answer this question, the NCLC survey asked respondents:

“Do landlords consider personal hardship or other extenuating circumstances (such as a natural disaster) that may have affected the tenant's income, credit profile, criminal record, or rental history?”

(In addition, the survey asked whether landlord's consider certain supplemental information specifically regarding eviction lawsuits, such as the outcome or additional context, which is discussed in Section III.C.4)

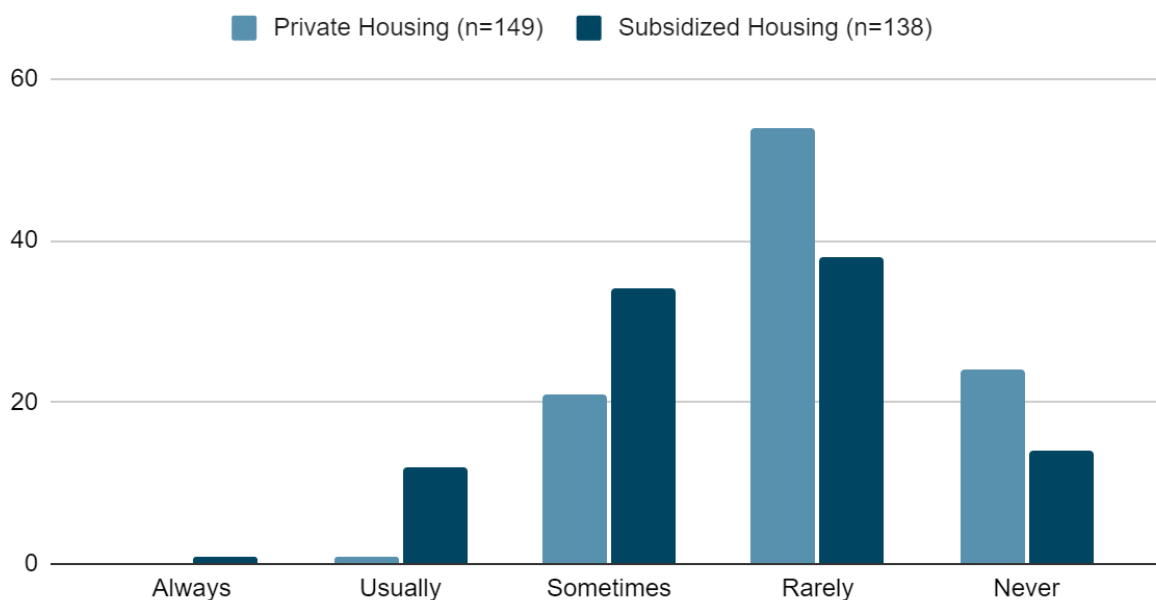
³⁸ *Id.*

³⁹ *Id.*

With respect to the general question regarding personal hardship or extenuating circumstances, there were 149 responses for private housing and 138 responses for subsidized housing. For private housing, the vast majority responded that hardship/extenuating circumstances were considered Never (24%) or Rarely (54%).

Responses regarding subsidized housing providers showed somewhat more flexibility, with almost half of respondents reporting that housing providers were willing to consider hardship/extenuating circumstances Sometimes (34%) or Usually (12%) but the other half reporting that such providers Rarely (38%) or Never (14%) did so.

Chart 3: Do Landlords Consider Personal Hardship/Extenuating Circumstances (% of Respondents)



Several narrative comments confirmed that subsidized housing providers were somewhat better on this issue than private landlords.

Sometimes letters of support/advocacy are effective in certain subsidized housing eligibility review screenings, but not always. Almost never in private housing. - Housing advocate from MA

I work with very good housing authorities, so I see more tenant friendly policies than other advocates may. - Legal services attorney from CO

Smaller “Mom & Pop” landlords also appear to be more willing to consider extenuating circumstances than larger corporate landlords.

There is a difference here between corporate landlords and individual owner landlords. Corporate landlords will not consider anything beyond what the screening algorithm determines, and the algorithm gives no consideration to hardship. - Legal services attorney from OH

Smaller landlords (Eg 2-3 units under rental or management) perhaps. Not larger ones - Legal services attorney from SC

A few jurisdictions required consideration of certain extenuating circumstances, especially the COVID-19 pandemic, but the effectiveness of such provisions is mixed.

Housing providers really [sic - rarely?] look at personal hardships but DC law offers some protections for people that suffered hardship due to COVID and local landlords are prohibited from denying housing based on negative line on a consumer report that was the result of COVID hardship. This law is temporary and may expire soon. - Legal services attorney in DC

[I]f required to do so by law, such as when COVID was declared a national emergency, but not when natural disaster caused damage and a person vacated because the unit was unlivable but landlord still reporting unpaid balances or eviction - Legal services attorney from TX

Louisiana's state legislature amended our state law on residential lease application requirements in 2021 to mandate that lessors who collect application fees must give applicants written notice of their right to share a statement of financial hardship resulting from a state or federally declared disaster or emergency (including the pandemic). The law provides immunity from any cause of action for an alleged violation, however. Our office has seen no evidence that landlords (private or subsidized) are considering this information when presented by applicants. - Legal services attorney from LA

Finally, several respondents noted that providers only consider extenuating circumstances when an advocate becomes involved, especially in cases involving domestic violence:

Again, advocacy usually necessary here. Subsidized housing requires a hearing so better chance to present this kind of information to someone who can consider it. - Nonprofit attorney from VA

Tenants almost always need an advocate to utilize VAWA [Violence Against Women Act] protections, although some housing authorities will provide information if the tenant specifically raises DV [Domestic Violence] issues. - Legal services advocate from PA

Only, when we submit an RAR [Request for Administrative Review], stating the extenuating circumstances, like DV survivor, etc. - Legal services housing advocate from CA

Even with subsidized housing this type of in depth consideration typically only occurs with advocate intervention. - Legal services attorney from FL

This last set of comments shows the importance of advocacy for renters with personal hardship or extenuating circumstances. This is one reason, among several, to support requirements for a right counsel for tenants. We urge the FTC and CFPB to recommend support for state and local laws that provide a right to counsel for tenants.

E. NCLC survey: disputed information

Q15. How do landlords and property managers handle applications from prospective tenants who dispute information on their credit or tenant screening reports while their application is pending? a. To what extent do landlords and property managers communicate directly with the consumer reporting agency regarding the dispute?

b. To what extent do landlords and property managers take into account the initiation of a dispute when making a decision about a prospective tenant?

c. To what extent do landlords and property managers wait for a dispute to be resolved before making a decision about a prospective tenant?

d. To what extent do landlords and property managers ask consumer reporting agencies to prioritize dispute investigations for prospective tenants with pending applications?

In order to obtain data to answer this question, the NCLC survey asked respondents:

“What have you seen landlords do when tenants dispute information from a credit bureau or tenant screening agency while an application is pending?”

Respondents were given six options. They were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 139 responses to this question. The most common response (86%) was that the landlord ignored the dispute and rejected the renter or rented to someone else. Only a minority of respondents observed landlords ignoring the disputed information or considering the dispute to be a mitigating factor (27%), or waiting until the dispute was processed by the CRA (17%). Very few respondents communicated directly with the CRA about the dispute (6%) or asked the CRA to prioritize the dispute (3%).

Table 3: Landlord Actions in Response to Disputes While an Application is Pending (% of Respondents)

Landlord Actions	Percent*
Ignore the existence of the dispute and reject the tenant's application or rent the unit to someone else	86%
Wait until the dispute is processed by the credit bureau or tenant screening agency before making a decision about the tenant's application	17%
Communicate directly with the credit bureau or tenant screening agency regarding the dispute	6%
Not consider the disputed information when considering the application or consider the dispute a mitigating factor	27%
Ask the credit bureau or tenant screening agency to prioritize the dispute investigation because the prospective tenant has a pending application	3%
Other	12%

*Total is greater than 100 because respondents could select multiple responses.

Some of the “other” responses include:

After a successful dispute, many landlords will offer to “re-run” the application if the unit is still available or if it’s a large complex with frequent vacancies. Some characterize this as having the person “re-apply.” - Legal services attorney from VA

Applicants usually give up and apply somewhere else. - Housing counselor from MA

Ask the prospective tenant to get a letter from the credit bureau stating the dispute is in process. - Housing counselor from CA

Landlord receive a confirmation letter of credit dispute ... and take that along with a double deposit. - Other (legal and housing advocates) from CA

Landlord tells applicant they should not bother reapplying after dispute is processed (i.e. they are blocklisted). - Private attorney from IL

The NCLC survey asked a follow-up question:

“In cases where tenants have been able to get information on their credit or screening reports corrected, what have you seen happen?”

Respondents were given seven options. They were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 129 responses to this question. The most common response (66%) was that the dispute is futile because, by the time the error is corrected, the unit is no longer available. Another 33% reported that the landlord remained unwilling to consider the applicant. A minority of respondents observed situations where the landlord invited the renter to re-apply (22%), or was willing to consider the renter for another unit (27%) or the same unit (18%).

Table 4: What Happens When Tenants Get Information on a Credit or Screening Report Corrected? (% of Respondents)

What Happens	Percent*
Nothing, by the time the error is corrected, the unit is no longer available	66%
The landlord is willing to re-assess the tenant’s application for the unit they applied for	18%
The landlord is willing to re-assess the tenant’s application for another unit	27%
I’ve never seen a tenant get an error corrected on their tenant screening or credit report	28%
Tenant invited to re-apply to the housing	22%
Landlord remains unwilling to consider the applicant	33%
Other	5%

*Total is greater than 100 because respondents could select multiple responses.

Some of the “other” responses include:

I actually had one case in which the applicant was denied for a 13 year-old prostitution conviction in a state with a 7-year limit on reporting adult criminal records. We disputed the report and the screening company deleted it, however the screening company then

performed what I can only call a “retaliatory investigation” and called the applicant's former landlords, gathered more negative information about her, and added that to the report--and urged the LL to deny admission based on this new information. - Legal services attorney from VA

I am not sure if people know how to go about advocate for themselves and don't have the energy or the income needed to fix their credit. - Other (outreach worker) from ME

Narrative responses to both of the questions regarding disputes revealed some common themes. Several respondents noted the futility of bringing a dispute to the landlord's attention.

Again, negative information on the rental history tends to automatically cause a rejection, regardless of any other circumstances. - Legal services attorney from OH

Any time this has come up in my experience, which admittedly doesn't come across my desk often, the property manager says that they have to go with what the screening report says. - Legal services attorney from SC

Disputing debts is almost a waste of time. Most landlords have the policy of denying any tenant with a debt to a former landlord, disputed or not. - Legal services attorney from OK

Even if the landlord acknowledges that the tenant is disputing the information and is trying to resolve it, the landlord will just go to the next applicant. The market is so tight that the landlord can easily find another person for the unit. - Legal services attorney from OH

I cannot imagine a property manager or LL in Florida caring about such information. - Legal services attorney from FL

Many landlords use integrated property management software that does not permit them to set up a new tenant account unless and until the screening program has accepted the applicant. - Legal services attorney from VA

Unfortunately, it seems that once a landlord has denied an applicant, there are some landlords who become psychologically committed to that decision. They lose sight of the reason(s) for denial and will do [or] say whatever they need to in order not to accept the applicant. - Legal services attorney from VA

Respondents from a number of states (CA, DE, IL, IN, LA, OH, PA) noted that the speed of rental decisions does not allow a dispute to be processed in time for the renter to seek a reconsideration from the landlord. Comments include:

In Philadelphia, the time frame for rental housing is shorter than the time frame for a disputed record. We therefore often see the housing someone originally applied for

become unavailable while they are working to correct the record. - Legal services attorney from PA

In our office's experience there is no participation by prospective landlords in the dispute process with credit bureaus or screening companies. Rather than attempting to dispute something with the screening company, we will frequently present supplemental information directly to the prospective landlord. The dispute process is too removed from the review of the application and the landlord is likely to move on to another applicant while we are disputing with a screening company. - Legal services attorney from LA

The process of correcting a credit or screening report is long and arduous. In Columbus, low cost rental units do not sit on the market, they are in constant demand. - Legal services attorney from OH

I've advised tenants on how to access a report and had CRAs be unresponsive or untimely in responses. Even if timely, the housing search timeline is much faster than the credit-reporting regime, which means it may not make a difference to contest. - Nonprofit attorney from IL

Other respondents noted the difficulty of getting erroneous information corrected, or that renters do not have the time or ability to do so:

I have not seen the credit company be helpful. - Housing counselor from OR

Many are struggling to make ends meet and don't have the income or the knowledge to improve their credit. If they could do something they may not know that or where to go for help. - Other (outreach worker) from ME

One major issue is getting screening reports corrected. We regularly see folks dispute things like charges the landlord has sent to collections and the reporting agency will just list the charges as "disputed" and there isn't anything else the tenant can do. - Legal services attorney from WA

III. Public Records

A. Common problems with criminal and eviction records

Criminal histories and eviction records are two major components of tenant screening reports. These public records commonly contain a variety of inaccuracies. These errors appear to be so prevalent that the CFPB itself remarked that:

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.⁴⁰

Some of the most common inaccuracies include:

- reporting of somebody else’s eviction or criminal record;
- reporting of sealed or expunged eviction or criminal records;
- reporting of “obsolete” eviction or criminal records (under the FCRA, tenant screening CRAs may report eviction and non-conviction criminal records for seven years but can report conviction records forever);
- misclassification of criminal offenses (e.g., reporting a misdemeanor as a felony); and
- omitting disposition or other information about an eviction or criminal case (e.g., failing to state that a case was dismissed or resolved in the consumer’s favor).⁴¹

Many errors occur because tenant screening companies use inadequate, often automated, procedures to match an individual applicant to public records.⁴² For example, a company may erroneously tag an applicant with someone else’s record based only on whether the applicant’s first and last names were identical or similar to the names associated with the record, and perhaps also sharing the same date of birth.⁴³ The FTC enforcement action against RealPage revealed that some CRAs were using matching criteria that required “an exact match on the applicant’s last name only,” and “a ‘soft’, or non-exact, match for the first name, middle name, and date of birth,” resulting in reports that contained criminal record information for individuals other than the renter.⁴⁴ The FTC enforcement action against AppFolio revealed similar issues.⁴⁵ Such errors will hopefully become less common after the CFPB’s issuance of its Advisory Opinion on Name-Only Matching Procedures.⁴⁶

⁴⁰ CFPB, Consumer Snapshot: Tenant background checks 3 (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf [hereinafter “CFPB, Snapshot: Tenant background checks”]; *id.* at 10 (“the CFPB has heard from renters about issues with inaccurate, obsolete, or misleading information being included in tenant screening reports.”).

⁴¹ *See generally* Broken Records; *see also* CFPB, Snapshot: Tenant background checks, at 3.

⁴² *See* Broken Records at 17–18.

⁴³ *See* Fair Credit Reporting; Name-Only Matching Procedures, 86 Fed. Reg. 62468, 62469, 62471 (Nov. 10, 2021), www.federalregister.gov/documents/2021/11/10/2021-24471/fair-credit-reporting-name-only-matching-procedures.

⁴⁴ Complaint at ¶¶ 13–23, Fed. Trade Comm’n v. RealPage, Inc., No. 3:18-cv-02737-N (N.D. Tex. Oct. 16, 2018), www.ftc.gov/system/files/documents/cases/152_3059_realpage_inc_complaint_10-16-18.pdf.

⁴⁵ *See also* Complaint at ¶¶ 22–23, U.S. v. AppFolio, No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020), www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf (AppFolio had insufficient procedures to assess the accuracy of the information it obtained from a third-party vendor before including the information in tenant screening reports, resulting in tenant screening reports with records for individuals with a different name from the applicant, records for individuals with a different date of birth or other identifier from the applicant, and records for multiple individuals with different identifiers, such as names and dates of birth).

⁴⁶ Fair Credit Reporting; Name-Only Matching Procedures, 86 Fed. Reg. 62468, 62469, 62471 (Nov. 10, 2021), www.federalregister.gov/documents/2021/11/10/2021-24471/fair-credit-reporting-name-only-matching-procedures.

Other common errors in tenant screening reports stem from reliance on outdated records and stale data, reliance on public records information that did not come directly from the courthouse, and reliance on automated record scraping that ignores subsequent developments in a legal case.⁴⁷ Thus, for example, the report might include the filing of an eviction case without noting that the case was vacated or otherwise decided in the tenant's favor.

Landlords appear willing to tolerate, and may even prefer, overinclusive and inaccurate reports (e.g., a report that tags the applicant with someone else's eviction or criminal record or a sealed record), especially when the tradeoff is a near-instantaneous tenant screening report.⁴⁸ As the CFPB has noted:

Tenant screening companies may cater to landlords' assumed loss aversion by over-including less verified negative information on a report even if that information might be inaccurate. As a result, there may be a high potential that tenant screening reports overstate the risk of renting to any given applicant.⁴⁹

No comprehensive, scientifically rigorous study assessing accuracy in tenant screening reports has ever been conducted, unlike in the credit reporting context.⁵⁰ This lack of data makes it difficult to know precisely how prevalent errors are. We urge the FTC and CFPB to conduct a comprehensive, scientifically rigorous study assessing accuracy in tenant screening reports, similar to the FTC's study on accuracy in the credit reporting context published in December 2012. We provide information from a survey of attorneys and advocates on their observations regarding errors in criminal and eviction records in Sections III.B.2 and III.C.3 below.

⁴⁷ See Broken Records at 19–20.

⁴⁸ See Tinuola Dada & Natasha Duarte, How to Seal Eviction Records: Guidance for Legislative Drafting 18-19 (2022), www.upturn.org/static/files/how-to-seal-eviction-records-071322.pdf [hereinafter "Dada & Duarte, How to Seal Eviction Records"].

⁴⁹ CFPB, Tenant Background Checks Market, at 22.

⁵⁰ Fed. Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012), www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf.

In addition to our survey, the information that is available from private lawsuits,⁵¹ enforcement actions by the FTC and the CFPB,⁵² and CFPB reports⁵³ all confirm that errors are pervasive and harmful to prospective tenants.⁵⁴ Tenant screening-related complaints submitted to the CFPB Complaint Database, which numbered 26,700 from January 2019 through September 2022, also show the scope of the problem.⁵⁵ Complaint volumes increased year-over-year; the CFPB received around 300 complaints per month in January 2019 and received almost 700 complaints per month by September 2022.⁵⁶ Specific examples of complaints were included in the CFPB's Tenant Background Checks Market report and we include several in Section B and C below.

B. Criminal records in tenant screening

Q17. How are landlords and property managers currently requesting criminal record information and using criminal records in making housing decisions about prospective tenants?

a. How do landlords and property managers obtain criminal record information? For example, do they ask prospective tenants about their backgrounds, purchase criminal

⁵¹ See, e.g., Todd Feathers, Lawsuits allege gig-economy workers fall victim to Checkr's artificial intelligence, New Hampshire Union Leader (Mar. 2, 2019), www.unionleader.com/news/business/lawsuits-allege-gig-economy-workers-fall-victim-to-checkr-s/article_37df2830-df83-5b19-b090-31556804d8d4.html (over 40 FCRA lawsuits have been filed against Checkr alone); Williams v. First Advantage LNS Screening Sols., Inc., 238 F. Supp. 3d 1333, 1340 (N.D. Fla. 2017) (of 3.5 million reports prepared between 2010 and 2013, 17,431 were disputed, 14,346 resulted in a revised background report, and 13,346 of those revised reports were based on disputes where the consumer complained that a public record in their report belonged to another individual); Dodgson v. First Advantage Background Servs. Corp., 2018 WL 18 07014, at *6 (N.D. Ga. Mar. 28, 2018) (in five-year period, there were 3,726 instances where someone disputed the sex offender finding; in 3,594 instances, defendant determined that the sex offender notation should be removed); Plaintiff's Motion for Class Cert. at 4–5, Jones v. RealPage, No. 1:190-cv-000501-JG (N.D. Ohio Aug. 26, 2019), ECF No. 38 (stating that discovery revealed over 11,000 inaccurate background reports; many thousands more likely exist).

⁵² See, e.g., Stipulated Order for Permanent Injunction and Civil Penalty Judgment, U.S. v. AppFolio, Inc., No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020), ECF No. 2; Proposed Stipulated Final Judgment and Order, Bureau of Consumer Fin. Prot. v. Sterling InfoSystems, Inc., No. 1:19-cv-10824-AJN (S.D.N.Y. Nov. 22, 2019); Stipulated Order for Permanent Injunction and Civil Penalty Judgment, Fed. Trade Comm'n v. RealPage, Inc., No. 3:18-cv-02727-N (N.D. Tex. Oct. 16, 2018), ECF No. 3-1; Consent Order, In re General Information Services, File No. 2015-CFPB-0028 (C.F.P.B. Oct. 29, 2015); Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other Equitable Relief, U.S. v. HireRight Solutions, Inc., Case No. 1:12-cv-01313 (D.C. Cir. Aug. 8, 2012), ECF No. 2-1.

⁵³ CFPB, Snapshot: Tenant background checks, at 2; see also Fair Credit Reporting; Name-Only Matching Procedures, 86 Fed. Reg. at 62469; CFPB, Complaint Bulletin: COVID–19 issues described in consumer complaints 15 (July 2021), https://files.consumerfinance.gov/f/documents/cfpb_covid19-issues-described-consumer-complaints_complaint-bulletin_2021-07.pdf (some consumers have reported being denied applications for housing because of inaccurate information in their tenant screening reports).

⁵⁴ For a discussion about why claims from individual tenant screening companies that they have very low error rates are misleading and fail to tell the full story, see Broken Records at 16.

⁵⁵ CFPB, Snapshot: Tenant background checks, at 2.

⁵⁶ *Id.*

- background reports (as part of a tenant screening report or as a stand-alone report), browse mugshot databases, or through other means?*
- b. What types of criminal records are being used in evaluating tenants? For example, are landlords and property managers focusing on records from a particular part of the criminal process (e.g., arrest records, charging records, conviction records, or a combination) or relating to particular criminal activity (e.g., felonies, misdemeanors, records related to specific types of offenses)?*
 - c. Do landlords and property managers review and consider records about traffic violations (whether reported as infractions, misdemeanors, or otherwise) in evaluating a prospective tenant?*
18. *What are the potential benefits and harms of considering criminal records in making housing decisions?*

1. Overview

Tenant screening reports typically contain background check information,⁵⁷ including criminal records, sex offender registry information, and national terrorist watch list information. And as noted above in Section II.A, landlords frequently adopt policies or practices that exclude people with criminal records.⁵⁸

With respect to screening products that provide a score or recommendation, some tenant screening CRAs give landlords some ability to determine which criminal records will lead to rejection of an applicant. For example, SafeRent Solutions, LLC allows a housing provider to select the maximum number of years back that the CRA should consider felonies or misdemeanors or records for a given category of crime (known as the “lookback period”) for which applicants will be disqualified.⁵⁹ Apparently, SafeRent’s default lookback period for all categories of crimes is ninety-nine years for convictions and seven years for charges (the FCRA’s maximum time for reporting).⁶⁰ SafeRent allegedly “incorporates no criminology data or other information that might relate to protecting safety or property into these consultations.”⁶¹

⁵⁷ About 90% of landlords run criminal background checks on all applicants. TU SmartMove 2017 Landlord Survey.

⁵⁸ Memorandum from Principal Deputy Assistant Sec’y for Fair Hous. and Equal Opportunity, U.S. Dep’t of Housing and Urban Dev., to Office of Fair Hous. & Equal Opportunity, Fair Hous. Assistance Program Agencies, Fair Hous. Initiatives Program Grantees, at 3 (June 10, 2022), available at www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf [hereinafter “HUD Memo”]; *see also* Pls.’ Proposed Findings of Fact and Conclusions of Law at 40, Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC, No. 3:18-cv-00705-VLB (D. Conn. March 4, 2022), ECF No. 252 (“CoreLogic RPS also retained a blanket ban as the default CrimSAFE configuration, under which ‘basically any criminal record will cause a decline.’”).

⁵⁹ Pls.’ Proposed Findings of Fact and Conclusions of Law at 44, Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC, No. 3:18-cv-00705-VLB (D. Conn. March 4, 2022), ECF No. 252.

⁶⁰ *Id.* at 17–18..

⁶¹ *Id.* at 18.

The current practices in reporting and using criminal records are misguided and harmful for a number of reasons, including that they (1) perpetuate and reinforce racial and other disparities (Section III.B.4); (2) are not predictive of whether an applicant will be a good tenant (Section III.B.3); (3) are often inaccurate (Section III.B.5); and (4) undermine state law and policy intended to limit the harmful effects of criminal records (Section III.B.6).

As with the use of eviction records and credit information, the use of criminal records can lead to dire long-term consequences at the individual level, especially for low-income renters and members of other marginalized groups.⁶² The harms of tenant screening also have collateral consequences on the societal level. For example, the link between housing instability and increased risk of recidivism is well-documented.⁶³ Thus, although public safety is often cited as the reason that criminal records *should be* considered in tenant screening, their use is in fact likely to make our communities less safe.

2. NCLC survey: barriers created by criminal records

To get a better sense of how criminal record reporting is creating barriers to rental housing, the NCLC survey asked respondents:

“Have any of the following records created a rental barrier for a client or other tenant?”

Respondents were given eleven response options. We received 152 responses to this question. Respondents were allowed to choose more than one option, so the percentages below total greater than 100%. In calculating the percentages, we included respondents who selected “none” or “other.”

⁶² See, e.g., HUD Criminal Records Guidance 1–2 (April 4, 2016), www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF (“Yet many formerly incarcerated individuals, as well as individuals who were convicted but not incarcerated, encounter significant barriers to securing housing . . . because of their criminal history. In some cases, even individuals who were arrested but not convicted face difficulty in securing housing based on their prior arrest.”); 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* 2–3, 9 (2021), www.povertylaw.org/report/tenant-screening-report/; Mya Frazier, *When No Landlord Will Rent to You, Where Do You Go?*, N.Y. Times Magazine (Oct. 1, 2021), www.nytimes.com/2021/05/20/magazine/extended-stay-hotels.html; Lucius Couloute, Prison Policy Initiative, *Nowhere to Go: Homelessness Among Formerly Incarcerated People* (August 2018), www.prisonpolicy.org/reports/housing.html.

⁶³ See, e.g., Leah Jacobs & Aaron Gottlieb, *The Effect of Housing Circumstances on Recidivism: Evidence From a Sample of People on Probation in San Francisco*, *Crim Justice Behav* (Sept. 2020), 47(9):1097-1115. doi: 10.1177/0093854820942285, available at www.ncbi.nlm.nih.gov/pmc/articles/PMC8496894/ (using longitudinal analyses and finding that housing insecurity is associated with an increased risk of recidivism among people on probation, above and beyond an array of other recidivism risk factors); see also Matthew Doherty, *Incarceration and Homelessness: Breaking the Cycle*, COPS Off. Newsletter (Dept. of Justice/U.S. Interagency Council on Homelessness, Wash. D.C.), Dec. 2015, www.cops.usdoj.gov/html/dispatch/12-2015/incarceration_and_homelessness.asp.

The most common type of problem observed was a conviction or charge that created a barrier to renting, even though the conviction or charge had been dismissed, dropped, or reversed on appeal (54%). Significant numbers of respondents observed criminal records that should not have appeared in a tenant screening report, either because they had been sealed, expunged, or set-aside (41%) or because they were arrests that were more than seven years old (50%). Errors such as the same criminal record appearing multiple times on a single report (19%) or an offense that was misclassified (26%) were also common. Most problematically, 43% of respondents had observed a mismatched criminal record that did not belong to the tenant.

Table 5: Criminal Record Screening Issues Encountered by Clients or Other Tenants that Created a Rental Barrier (% of Respondents)

Problems	Percent*
A “mismatched” criminal record (i.e., criminal record information that belongs to a different person but was mistakenly attributed to your client)	43%
A conviction that had been sealed, expunged, or set-aside	41%
A conviction or charge that had been dismissed, dropped, or reversed on appeal	54%
An offense that was misclassified (e.g., a misdemeanor reported as a felony, or a non-criminal offense (such as a traffic ticket) reported as a criminal offense)	26%
An arrest that was more than 7 years old	50%
An arrest that was 7 years old or less	44%
Juvenile adjudication	11%
Same criminal record appeared multiple times on a single report	19%
Criminal record appeared on report despite being unlawful to report under state or local law	14%
Other	14%
None of the above	9%

*Total is greater than 100 because respondents could select multiple responses.

Respondents to the NCLC survey also provided a number of narrative comments; these are discussed in the relevant Sections below.

3. Lack of predictiveness

Q20. Are there issues with the overall accuracy or completeness of criminal records that impact their usefulness in assessing individuals for housing or the benefits of considering them in making housing decisions? What research (statistical or otherwise) exists to show whether criminal records (or particular types of criminal records) are useful or relevant to assessing whether a particular individual is more likely to have a negative housing outcome (for example, to damage property, harm other residents, or otherwise violate their lease) when compared to the general population?

Although tenant screening CRAs market their products as reducing housing providers' likelihood of accepting "risky" or "bad" tenants, available evidence does not support that claim. Indeed, as the CFPB has noted, "There is little or no empirical research showing that tenant screening report content is reliably predictive of future tenant behavior."⁶⁴

The Principal Deputy Assistant Secretary for Fair Housing and Equal Opportunity at HUD expressed similar concerns about predictability, stating in guidance about the application of the Fair Housing Act to the use of criminal records: "housing providers commonly use tenant screening companies that provide background check reports that . . . have no relationship to whether someone will be a good tenant."⁶⁵ HUD's Deputy Assistant Secretary for the Office of Research, Evaluation, and Monitoring has likewise noted the lack of empirical data demonstrating that criminal background checks reliably predict the propensity of renters to skip rental payments, damage property, or disrupt neighbors.⁶⁶

Not only have industry actors failed to present empirical support in favor of their claims about the predictive value of criminal records in tenant screening, but a growing body of evidence supports the opposite claim—that is, that criminal records demonstrably do *not* possess such predictive value that might arguably justify their use in tenant screening.⁶⁷

⁶⁴ The Fair Credit Reporting Act's Limited Preemption of State laws, 87 Fed. Reg. 41042, 41045 (July 11, 2022), www.govinfo.gov/content/pkg/FR-2022-07-11/pdf/2022-14150.pdf; see also CFPB, Tenant Background Checks Market 36 (2022), available https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf ("There is limited evidence that individuals with criminal records, including arrests, are categorically more problematic tenants.").

⁶⁵ HUD Memo at 2.

⁶⁶ See HUD, "Tenant Screening With Criminal Background Checks: Predictions And Perceptions Are Not Causality," May 17, 2022, www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html.

⁶⁷ See CFPB, Snapshot: Tenant background checks, at 4; Suzanne Zerger, Q&A with Daniel Malone: Criminal History Does Not Predict Housing Retention, Homeless Hub, 2009, www.homelesshub.ca/resource/qa-daniel-malone-criminal-history-does-not-predict-housingretention, referencing Malone DK, Assessing criminal history as a predictor of future housing success for homeless

- **Low-Level Offenses.** Low-level offenses, such as failure to appear in court, being a minor in possession of alcohol (particularly because the rental applicant presumably is no longer a minor), and driving related offenses bear little to no conceivable relationship to tenancy suitability, especially weighed against the massive harms consideration of such offenses causes. Even an expert for SafeRent agreed that “traffic accidents involving damage” bear no relationship to suitability for tenancy.⁶⁸ And yet, people continue to face rental barriers for these types of offenses.⁶⁹
- **Arrests.** As the EEOC has stated, “[t]he fact of an arrest does not establish that criminal conduct has occurred. Arrest records are not probative of criminal conduct[.]”⁷⁰ In fact, arrests without charges are consistent with the applicant being innocent of wrongdoing.

adults with behavioral health disorders. Psychiatr Serv. 2009;60(2):224–230 (finding “absolutely no criminal background predictors of housing success or failure.”); Cael Warren, Wilder Found., Success in Housing: How Much Does Criminal Background Matter? ii, 19–22 (2019) (in a study of more than 10,500 households living in 4 nonprofit housing providers, (1) finding that out of 15 broad categories of offense, conviction records for 11 have no statistically significant consequences for housing outcomes; and even within the 4 remaining categories, a misdemeanor conviction has no statistically significant predictive effect after 2 years, and a felony has no statistically significant predictive effect after 5; and (2) stating “the study results overall tend to overstate the magnitude and significance of the impact of criminal background on housing outcomes,” in part because the researchers were unable to control for a number of factors (emphasis in original)); Valerie Schneider, *Locked Out by Big Data: How Big Data, Algorithms and Machine Learning May Undermine Housing Justice*, 52 Colum. Hum. Rts. L. Rev. 251, 273 (2020) (discussing how court records and “rap sheets” used by tenant screening companies provide “little or no data that would be predictive of success as a tenant”); see also Tex Pasley et al., Shriver Ctr. on Poverty Law, Screened Out: How Tenant Screening Reports Deprive Tenants of Equal Access to Housing (2020); Rebecca Vallas & Sharon Dietrich, Ctr. For Am. Progress, One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records 19 (2014).

⁶⁸ Pls.’ Proposed Findings of Fact and Conclusions of Law at 44, Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC, No. 3:18-cv-00705-VLB (D. Conn. March 4, 2022), ECF No. 252.

⁶⁹ *Id.*; see also Jackson v. Genuine Data Servs., LLC, No. 3:21CV211 (DJN), 2022 WL 256281, at *2 (E.D. Va. Jan. 26, 2022): (“Plaintiff’s prospective landlord ordered a background check from RealPage[.] . . . RealPage included Plaintiff’s July 2000 traffic infraction in the background check that it provided to [the prospective landlord]. As a result, [the prospective landlord] denied Plaintiff’s rental application.” (internal citations omitted)).

⁷⁰ U.S. Equal Employment Opp’ty Comm’n, Questions and Answers about the EEOC’s Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII (last visited May 11, 2023), available at [www.eeoc.gov/laws/guidance/questions-and-answers-about-eeocs-enforcement-guidance-consideration-arrest-and#:~:text=The%20fact%20of%20an%20arrest,individual%20for%20a%20particular%20position](http://www.eeoc.gov/laws/guidance/questions-and-answers-about-eeocs-enforcement-guidance-consideration-arrest-and#:~:text=The%20fact%20of%20an%20arrest,individual%20for%20a%20particular%20position.). See also *Schwabe v. Bd. of Bar Exam’rs*, 353 U.S. 232, 241 (1957) (“The mere fact that a [person] has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct.”); *United States v. Hynes*, 467 F.3d 951, 957 (6th Cir. 2006) (upholding a preliminary jury instruction that stated that a “defendant is presumed to be innocent unless proven guilty. The indictment against the Defendant is only an accusation, nothing more. It’s not proof of guilt or anything else.”).

Whatever meager information they may offer does not outweigh the harms—including the disproportionate scrutiny of people of color—they cause. Yet as described in Section III.B.2, 44% of respondents to the NCLC survey reported that arrests that were seven years old or less had served as a barrier to housing, and 50% reported that arrests older than seven years old had served as such a barrier. A complaint to the CFPB described how Transunion reported records of their arrests that were 17 years old.⁷¹

- **Convictions or Charges that Were Dismissed, Dropped, Vacated, Overturned, or Reversed on Appeal.** As described in Section III.B.5, tenant screening CRAs fail to report disposition information, such as whether a conviction or charge was dismissed, dropped, or reversed. But even when the report *includes* the disposition information, landlords may reject a renter, which is problematic because such records offer *de minimis* probative value; they are consistent with the person being entirely innocent of any sort of wrongdoing. Given the relatively high rates of dismissals in the United States,⁷² this practice is likely to cause widespread harm. As described in Section III.B.2, over half (54%) of respondents in the NCLC survey reported observing such records serving as a barrier to housing.
- **Old convictions.** Criminology researchers have found that the risk of committing a future crime presented by a person with a conviction rapidly decreases as years pass without another conviction; the recidivism risk drops significantly after a short time, and then drops so low after four to seven years that a convicted person poses about the same risk of committing a crime in the future as a person without a record.⁷³ The EEOC has issued enforcement guidance on the use of criminal history records in employment that cites this research approvingly.⁷⁴

⁷¹ Source: Excerpted from CFPB Consumer Complaint 5283333, filed March 3, 2022 (describing Transunion Intermediate Holdings, Inc.’s “reporting of . . . criminal record [information] in my rental history” of “arrest[s] (not convictions) . . . from 17 years ago”).

⁷² See, e.g., Brian A. Reaves, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Felony Defendants in Large Urban Counties*, 2009, at 22, Table 21 (2013), www.bjs.gov/content/pub/pdf/fdluc09.pdf (in the 75 largest counties in the United States in 2009, approximately one-third of felony arrests did not result in conviction, with about one-quarter of all cases ending in dismissal); Issa Kohler-Hausmann, *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing* 68–69 (2018) (in New York City between 2010 and 2015, more than 50 percent of misdemeanor arrests were dismissed).

⁷³ Kiminori Nakamura, *Redemption and Recidivism Research Implications for Act 53 of 2020* (Oct. 28, 2021), available at <https://clsphila.org/wp-content/uploads/2022/11/Kiminori-Nakamura-PA-Occupational-Licensing-and-Redemption-10-28-21.pdf>.

⁷⁴ U.S. Equal Emp. Opportunity Comm’n, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act* (Apr. 25, 2012), www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions.

Despite this evidence, housing providers continue to reject renters based on old convictions. For example, a complaint to the CFPB describes how a renter was rejected based on convictions that were all over 8 years old.⁷⁵ Several narrative comments from NCLC's survey also focused on the harms from older convictions. A legal services attorney from Illinois, for example, explained that a county law prohibits housing providers from considering convictions that are over three years old, yet violations of this lookback limitation "are common and have not been incorporated into tenant screening tools." A legal services attorney from South Carolina reported observing a rental denial being triggered by a 10-year-old drug-possession misdemeanor that had been pardoned.⁷⁶ And a legal services attorney from Ohio reported that: "old convictions are often used to deny applications."

- **Juvenile Adjudications.** Over 1 in 10 respondents to the NCLC survey (11%) reported observing the reporting of juvenile records serving as a barrier to rental housing for their clients or other tenants. Allowing conduct from a person's youth to follow them into adulthood and impede their ability to access stable housing stands out as particularly objectionable. It severely harms consumers without a substantial countervailing benefit.⁷⁷
- **Records that Have Been Sealed, Expunged, Set Aside, or Otherwise Made Unavailable to the Public.** As mentioned in Section III.A, the reporting of expunged and similar records often occurs due to the bulk dissemination of records and the subsequent failure to update those records to remove those that no longer legally exist.⁷⁸ There is no public safety justification for reporting cleared criminal records. Recent empirical research has found that people with expunged records pose a lower safety risk

⁷⁵ CFPB Consumer Complaint 3959383, filed Nov 17, 2020.

⁷⁶ The landlord ultimately approved the applicant's tenancy following a written request from a legal services attorney.

⁷⁷ *Miller v. Alabama*, 567 U.S. 460, 471–73 (2012) (citing Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 *Am. Psychologist* 1009, 1014 (2003)) (discussing problems with using criminal juvenile history); Andrea R. Coleman, Expunging Juvenile Records: Misconceptions, Collateral Consequences, and Emerging Practices, *Dept. of Justice Office of Juvenile and Delinquency Prevention* 2, 8–9 (December 2020), available at <https://ojjdp.ojp.gov/publications/expunging-juvenilerecords.pdf> ("[C]riminal and juvenile justice systems, educational institutions, employers, landlords, and the public all have an ongoing role to play in ensuring that youthful transgressions do not lead to permanent collateral consequences.").

⁷⁸ CFPB, *Market Snapshot: Background Screening Reports* 12 (2019) ("If a background company's external or internal databases do not align with the frequency of a court's record update, it could lead to incomplete reporting or reporting of expunged or dropped cases."); Jenny Roberts, *Expunging America's Rap Sheet in the Information Age*, 2015 *Wis. L. Rev.* 321, 341 (2015). For a discussion of whether background screeners may lawfully report expunged records, see Collateral Consequences Resource Center Staff, *May Background Screeners Lawfully Report Expunged Records?* (Feb. 6, 2018).

not only compared to other people with justice involvement, but also *compared to people with no justice involvement whatsoever*.⁷⁹

Reporting these records deprives people of their legal right to a fresh start, yet *over 40%* of respondents to the NCLC survey said that the reporting of sealed, expunged, or set-aside criminal records had created a barrier to housing for their clients or for other tenants. This issue has also arisen repeatedly in litigation.⁸⁰

4. Perpetuation and reinforcement of racial and other disparities

Q14. Do tenant screening practices have unique impacts on certain groups or communities? For example, are there unique impacts on historically underserved populations, such as Black, Indigenous, and people of color; the LGBTQI+ community (especially trans and gender nonconforming individuals); military service members; immigrants; public housing voucher recipients; renters with disabilities; or others?

The use of criminal records disproportionately harms people of color due to the racial bias that infects every stage of the criminal legal system. Black, Latino, and Native people are massively overrepresented in the criminal legal system.⁸¹ For instance, Black Americans are twice as likely to be arrested as white Americans,⁸² and are more likely to be stopped by the police, detained,

⁷⁹ J.J. Prescott & Sonja B. Starr, Expungement of Criminal Convictions: An Empirical Study, 133 Harv. L. Rev. 2460, 2466 (2020) (“We find very low rates of recidivism: just 7.1% of all expungement recipients are rearrested within five years of receiving their expungement (and only 2.6% are rearrested for violent offenses), while reconviction rates are even lower: 4.2% for any crime and only 0.6% for a violent crime. Indeed, expungement recipients’ recidivism rates compare favorably with those of the Michigan population as a whole.”). *See also id.* at 2521–22 (“[N]o similarly plausible empirical support exists for the opposite claim . . . that sealing records increases recidivism risk. To our knowledge, those raising this objection have never presented evidence supporting it, and its rationale is not obvious.” (emphasis omitted)).

⁸⁰ *See, e.g., Stokes v. RealPage, Inc.*, 2:15-cv-1520-JP (E.D. Pa. Mar. 25, 2015), Class Action Compl. (Helen Stokes had two arrests stemming from domestic disputes with her then-husband, which were dismissed and expunged. When Ms. Stokes was 63 years old, two senior living centers denied her application for a residential lease when a tenant screening company wrongfully reported the expunged arrests. The screening company reported the expunged criminal charges even though more than six months had passed since the cases had been eliminated from all public records); Sharon Dietrich, Preventing Background Screeners from Reporting Expunged Criminal Cases, Sargent Shriver Nat’l Ctr. On Poverty Law (Apr. 2015), available at <https://perma.cc/8JTN-YHZL> (listing class action lawsuits).

⁸¹ *See* HUD Memo at 2 (“Disparities throughout the United States’ criminal justice system are well established and persistent. . . . Research shows that these disparities cannot be simply attributed to certain groups committing more crimes and are better explained by biases in the criminal justice system.”).

⁸² Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times*, Consumer Reports (Mar. 11, 2021), www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/; Beth Avery et al., Nat’l Employment Law Proj. Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions 18 (2018), www.nelp.org/wp-content/uploads/Toolkit-Fair-Chance-Licensing-Reform.pdf; Elizabeth Hinton and others, *An Unjust Burden: The Disparate Treatment of Black*

charged with more serious crimes, and sentenced more harshly than whites.⁸³ Latino people are 1.3 times more likely to be incarcerated in state prisons than white people.⁸⁴ As the EEOC has noted, “African Americans and Hispanics were more likely than Whites to be arrested, convicted, or sentenced for drug offenses even though their rate of drug use is similar to the rate of drug use for Whites.”⁸⁵ Native people are incarcerated in jails more than double the rate of white people, and in state and federal prisons at a rate more than four times that of white people.⁸⁶

One federal district court has already held that tenant screening CRAs can be held liable under the FHA under a disparate impact theory.⁸⁷ In *Connecticut Fair Housing Center v. Corelogic Rental Property Solutions, LLC*, the court denied defendant’s motion for summary judgment and permitted plaintiff’s disparate impact claims alleging race discrimination to proceed to trial, including claims underpinned by national and state-level statistical evidence.⁸⁸ Another district court recently denied summary judgment, holding that a reasonable factfinder could find that a policy of banning tenants with criminal records created a disparate impact on the basis of race.⁸⁹

Renters of color are not only disproportionately harmed by the reporting of *accurate* criminal record information, they are also impacted more frequently by *inaccurate* information. This is because the risk of reporting errors is disproportionately high in Latino, Asian, and Black

Americans in the Criminal Justice System 1, 7–10 (2018), www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf.

⁸³ See, e.g., Broken Records, at 8–9; see also Valerie Schneider, *Locked Out by Big Data: How Big Data, Algorithms and Machine Learning May Undermine Housing Justice*, 52 Colum. Hum. Rts. L. Rev. 251, 274 (2020); Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC, 478 F. Supp. 3d 259, 276–77 (D. Conn. 2020) (citing data and research on racial disparities in the criminal justice process).

⁸⁴ HUD Memo at 2 (citing research).

⁸⁵ U.S. Equal Emp. Opportunity Comm’n, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act (Apr. 25, 2012), www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions.

⁸⁶ Prison Policy Initiative, Native incarceration in the U.S. (last visited May 12, 2023), available at www.prisonpolicy.org/profiles/native.html#:~:text=In%20the%20United%20States%2C%20Native,of%200763%20per%20100%2C000%20people. These statistics discuss the impact of the criminal legal system on people identified by the Census Bureau as “American Indian/Alaska Native.”

⁸⁷ Conn. Fair Hous. Ctr. v. Corelogic Rental Prop. Sols., LLC, 369 F. Supp. 3d 362, 374 (D. Conn. 2019).

⁸⁸ Conn. Fair Hous. Ctr. v. Corelogic Rental Prop. Sols., LLC, 478 F. Supp. 3d 259, 292–94 (D. Conn. 2020). The case has proceeded through cross-motions for summary judgment and to a bench trial which concluded in late November 2022, with a final ruling pending with the court. See Case No. 3:18-CV-705 (VLB).

⁸⁹ Fortune Soc’y v. Sandcastle Towers Hous. Dev. Fund Corp., 388 F. Supp. 3d 145, 170 (E.D.N.Y. 2019).

populations as compared to among the non-Latino white population. As discussed in Section III.B.5 below, this is because these communities tend to have fewer unique surnames.

Finally, people with disabilities⁹⁰ and members of the LGBTQ community are also disproportionately impacted by the criminal legal system and are at risk of being disproportionately denied access to housing as a result of unnecessary reliance on criminal records in tenant screening. According to the U.S. Commission on Civil Rights, “[i]ncarcerated people are twice as likely to have an intellectual disability, four to six times more likely to have a cognitive disability, twice as likely to have a mobility disorder, three to four times more likely to be blind or have a vision impairment, and two to three times more likely to have a hearing impairment than the general population.”⁹¹ The incarceration rate of LGBTQ individuals is more than three times that of the U.S. adult population.⁹²

5. Inaccuracies in criminal records

Q.19. How accurate (including complete) are criminal records, both from public records sources like courts and as provided by tenant screening companies? Where there are inaccuracies, where do these errors originate?

Criminal record information contained in tenant screening reports is commonly inaccurate. As even the CEO of TransUnion acknowledges: “inaccurate data doesn’t help anyone—not tenants or property owners.”⁹³ Errors in criminal records primarily fall into five categories: (1) mismatched criminal records, (2) misclassified offenses (3) the same criminal record being reported multiple times on the same report, (4) incomplete disposition information, and (5) errors regarding the recency of criminal records.

- **Mismatched Criminal Records.** Mismatched reports are reports that contain the criminal history of a person other than the subject of the report. As the CFPB has explained, CRAs’ use of unsophisticated or over-inclusive matching criteria, along with the use of incomplete data and the failure to use all available information, leads to these

⁹⁰ See U.S. Comm’n on Civ. Rts., *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* 21 (2019), available at www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf (listing additional statistics concerning the overrepresentation of people with disabilities in the criminal justice system).

⁹¹ *Id.* at 21.

⁹² *Id.* at 22 (“Although 4.1 percent of American adults identify as LGBT, 9.3 percent of male prisoners and 42.1 percent of female prisoners identified as LGBT or reported having same-sex encounters before incarceration. . . . Twenty-one percent of transgender women and 10 percent of transgender men report that they have spent time in jail or prison.”).

⁹³ Testimony of TransUnion CEO Chris Cartwright, U.S. Sen. Comm. on Banking, Housing and Urban Affairs 2 (Apr. 7, 2023), available at www.banking.senate.gov/imo/media/doc/Cartwright%20Testimony%204-27-23.pdf.

mismatched reports.⁹⁴ In other words, CRAs typically have or can access information necessary to make a better match, yet choose not to.⁹⁵ Over 40% of our survey respondents reported observing mismatched criminal records creating a barrier for renters. Recent litigation⁹⁶ and complaints to the CFPB confirm that these errors continue to pose problems for consumers.⁹⁷

This type of inaccuracy is particularly likely to harm consumers with common last names, disproportionately impacting communities of color who tend to have fewer unique surnames.⁹⁸ This disparate effect was confirmed by respondents of our survey. As one housing counselor from Oregon explained, “I have observed that some cultures have people with similar names and negative reports for one person are used to deny housing to multiple people unrelated to the record.” Even when the name *and date of birth* match, false positives are common.⁹⁹

⁹⁴ See CFPB, Market Snapshot: Background Screening Reports 14 (2019). See Section III.A.

⁹⁵ *Id.*; cf. *Williams v. First Advantage LNS Screening Sols., Inc.*, 238 F. Supp. 3d 1333, 1339–41, 1348 (N.D. Fla. 2017) (in a case involving employment, the court explained: “First Advantage made a business decision to shift the burden to more than 14,000 innocent consumers to ensure the quick turnaround and low price that earned it a large market share. What is so pernicious is that First Advantage will continue shifting that burden— and, by extension, strip thousands of low-wage, hourly employees of job opportunities—so long as it makes good business sense to do so”).

⁹⁶ See, e.g., *Smith v. Result Matrix, Inc.*, No. C21-5380-BHS-SKV, 2022 WL 2237289, at *1 (W.D. Wash. June 22, 2022) (“This matter involves RMI’s issuance of . . . reports containing information belonging to individuals other than Plaintiffs. In this instance, the other individuals included in the reports had criminal histories as sex offenders . . . leading to, among other things, the rejection of their application to rent property.”); *Fernandez v. RentGrow, Inc.*, 341 F.R.D. 174, 185 (D. Md. 2022) (Rentgrow reported Mr. Fernandez had been convicted of one felony and three misdemeanors, even though he has no criminal record, and reported he was a “possible match” to an individual on the OFAC list, even though he was not this individual, which caused him to initially be denied an apartment); *Jones v. Realpage, Inc.*, No. 3:19-CV-2087-B, 2021 WL 852218, at *1 (N.D. Tex. Jan. 27, 2021) (Ms. Jones was denied housing because her background check report contained criminal records that belonged to a woman named Toni Taylor).

⁹⁷ See CFPB Consumer Complaint 3071386/3071387, filed Nov. 10, 2018, stating that:

I applied for a rental property, and they used Transunion and XXXX to complete a tenant screening. The credit agencies included false criminal information in my record that didn’t belong to me. There were multiple cases that weren’t mine, the people that were involved shared the same name as me. This type of confusion causes a lot of problems when applying for rental properties and etc.

⁹⁸ Lauren Kirchner & Matthew Goldstein, *New York Times* & the Markup: Locked Out Series (May 28, 2020), available at <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>.

⁹⁹ A search of a website called howmanyofme.com estimated that 45,878 people in the United States have the name “Robert Smith.” Researchers estimated that, for every 325 instances of Robert Smith, five of them will share the same full date of birth. Michael P. McDonald and Justin Levitt, *Seeing Double*

- **Misclassified Offenses.** Another common error occurs when CRAs (or their vendors or subcontractors) miscategorize offenses. For example, they may categorize a misdemeanor as a felony, or a non-criminal offense (such as a traffic ticket) as a misdemeanor. Over a quarter of survey respondents (26%) reported observing this issue, and the issue has arisen in recent litigation.¹⁰⁰ State criminal justice systems all work differently, and these mistakes sometimes happen due to CRAs' failure to ensure they understand how a particular state reports and classifies information.
- **Same Criminal Record Reported Multiple Times.** Some tenant screening CRAs report single arrests or incidents multiple times. As the CFPB and FTC have recognized, such duplicative reporting gives the impression that the tenant has committed multiple offenses.¹⁰¹ Nearly 1 in 5 survey respondents (19%) reported seeing this type of misleading information causing rental barriers for their clients or other tenants. This type of prejudicial formatting could be the result of uninformed or sloppy practices by CRAs, such as the failure to recognize that multiple sources are reporting the same case or the failure to invest in quality control processes to filter out duplicative information.
- **Incomplete Disposition Information.** Tenant screening CRAs sometimes omit final disposition data regarding arrests, charges, or convictions.¹⁰² A CRA may report, for example, the fact that a person was arrested or that charges were filed, but not that a dismissal ultimately occurred instead of a conviction, which wrongfully gives the appearance that the charges are still pending. A renter convicted on one or two charges may not have been convicted of all charges. Overcharging is common, and charges are often dropped. A renter may be exonerated, or a conviction may be reversed on appeal.

Voting: An Extension of the Birthday Problem, 7 Election L.J. 111, 112, 119 (2008); cf. Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections* at 2 (Jan. 17, 2019), available at <https://scholar.harvard.edu/files/morse/files/1p1v.pdf> (estimating that, in study concerning voter fraud and double voting in particular, “[i]n the national voter file, . . . 97% of the votes cast with the same first name, last name, and date of birth were cast by two distinct individuals”).

¹⁰⁰ See *Wiley v. Screening Reps., Inc.*, 2022 WL 1438963, at *2 (S.D. Iowa Mar. 1, 2022) (Ms. Wiley's rental application was denied after Screening Reports Inc. reported a felony instead of an aggravated misdemeanor); cf. Class Action Compl. ¶¶ 42–52, *Harris v. First Advantage Background Servs. Corp.*, No. 2:19-cv00677 (E.D. Pa. Feb. 15, 2019), ECF No. 1 (First Advantage reported to Mr. Harris's prospective employer that he had a misdemeanor, causing him to be denied the job; in fact, he had a summary offense, which is the lowest grade of offense in Pennsylvania and which Pennsylvania employers are not permitted to consider when making hiring decisions).

¹⁰¹ CFPB, Market Snapshot: Background Screening Reports 14 (2019); see also U.S. Gov't Accountability Off. 15-162, *Criminal History Records: Additional Citations Could Enhance the Completeness of Records Used for Employment-Related Background Checks* 35 (2015) (discussing FTC complaint alleging that background screener failed to follow reasonable procedures to prevent the company from including the same criminal offense information in a consumer report multiple times).

¹⁰² CFPB, Market Snapshot: Background Screening Reports 11, 15 (2019).

As with sealed or expunged records, tenant screening CRAs often fail to report final disposition data because they buy records in bulk and then fail to properly update their data. The omission of final disposition data also occurs because screeners continue to rely on sources known to provide inaccurate and incomplete records, including certain government-operated repositories.¹⁰³

The CFPB has repeatedly highlighted this issue,¹⁰⁴ and recent decisions confirm its continued prevalence.¹⁰⁵ A housing counselor from Massachusetts responded to our survey explaining that they had seen a criminal charge mislabeled as “open/pending” when in fact it had been closed for 30 years.

- **Errors Regarding Recency.** In narrative responses to our survey, multiple respondents expressed concern that the reporting of criminal records gave the false impression of the recency of an arrest or conviction. Specifically, legal services attorneys from two different states noted they had observed older criminal record information being reported as being more recent.¹⁰⁶ The CFPB has reported receiving complaints about this type of error, as well.¹⁰⁷

6. Undermining of state law and policy

Q10. To what extent do landlords and property managers tailor their criteria for how they assess prospective tenants to their locality?

Tenant screening practices regarding the use of criminal records often frustrate state and local policy. Recognizing that lingering criminal records are a barrier to housing, jobs, and economic stability and are not useful predictors, 45 states now allow people to expunge, seal, or set aside certain convictions in some circumstances, and nearly all states authorize sealing of certain non-

¹⁰³ Broken Records at 20; *see also* Market Snapshot: Background Screening Reports 11–12 (2019) (discussing disparities in accuracy and reporting of dispositions to repositories).

¹⁰⁴ CFPB, Market Snapshot: Background Screening Reports (2019); CFPB, Snapshot: Tenant background checks at 15.

¹⁰⁵ *See, e.g.* White, III v. RentGrow, Inc., 2020 WL 8174378, at *1 (M.D. Tenn. Nov. 19, 2020), *report and recommendation adopted sub nom.* White v. RentGrow, Inc., 2021 WL 130586 (M.D. Tenn. Jan. 14, 2021) (Mr. White was denied housing because his tenant screening report stated he had been convicted of a felony and failed to note that the conviction had been subsequently dismissed); Wiley v. Screening Reps., Inc., 2022 WL 1438963, at *2 (S.D. Iowa Mar. 1, 2022) (Ms. Wiley’s rental application was denied because her tenant screening report stated she had been convicted of a felony and failed to note the charge had been dismissed).

¹⁰⁶ Specifically, an Illinois legal services attorney stated: “Dates on criminal records report [are] reported as more recent than accurate.” And a Virginia legal services attorney reported seeing “criminal records being aged based [on] post-conviction docket entries related to LFO [i.e., legal financial obligations] payments.”

¹⁰⁷ CFPB, Snapshot: Tenant background checks, at 15.

conviction records.¹⁰⁸ Yet tenant screening CRAs too often report criminal records that have been sealed, expunged, or set aside. Once a landlord is aware of someone’s past—even a past that has been legally erased—it is virtually impossible to unring the bell.

Reporting of sealed or expunged records may also violate federal law. Specifically, reporting records that have been expunged or sealed does not “assure maximum possible accuracy” of reported information, and may therefore violate Sections 1681e(b) of the FCRA (and if the report was used for employment purposes, Section 1681k). We urge the CFPB to issue a rule or guidance to clarify and reinforce that the reporting of sealed or expunged records violates Section 1681e(b).

Another reason that reporting of criminal records undermines state laws involves the Seventh Circuit decision in *Aldaco v. Rentgrow, Inc.*, 921 F.3d 685 (7th Cir. 2019), which held that federal law overrides state law on the issue of whether a state criminal adjudication counts as a criminal conviction for purposes of the FCRA. The *Aldaco* decision involved what counted as a criminal conviction for purposes of the FCRA’s obsolescence provision, 15 U.S.C. 1681c(a), but its reasoning could easily be expanded to the reporting of expunged or otherwise cleared cases, thereby undermining the effectiveness of these important state laws. We urge the CFPB to promulgate a rule in its upcoming FCRA rulemaking stating that whether a disposition of a state criminal case is considered a conviction should be determined by state law.

C. Eviction records in tenant screening

1. Inaccuracies in eviction records

Q27. How accurate (including complete) are eviction records, both from public records sources like courts and as provided by tenant screening companies? Where there are inaccuracies, where do these errors originate?

Eviction records play an enormous role in tenant screening. Landlords often automatically reject applications with eviction records—regardless of the outcome, context, or how long ago the case was filed.¹⁰⁹ Eviction records can be problematic for a variety of reasons.

Legal cases, CFPB consumer complaints, CFPB reports, and other research all indicate that inaccuracies are all too prevalent. As the CFPB has noted, “the nature of eviction proceedings and the approaches taken by tenant screening companies to capture and report eviction records

¹⁰⁸ Margaret Love, Collateral Consequences Res. Ctr., Restoration of Rights Project, 50-State Comparison: Expungement, Sealing & Other Record Relief (2020), available at <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/>.

¹⁰⁹ Dada & Duarte, How to Seal Eviction Records, at 7 & n.1; *see also* Rudy Kleysteuber, Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records, 116 Yale L.J. 1344, 1344–45 (2007). *See generally*, Sections II.A (landlords’ automatic reliance on tenant screening CRA recommendations) and III.C.4 (minority of landlords consumer additional context or outcomes).

can result in missing, outdated, or misleading information appearing on a report, undermining its purported predictive value.”¹¹⁰

As mentioned above, one common problem with eviction records in tenant screening reports occurs when the CRA fails to report subsequent developments.¹¹¹ Thus, for example, the report might include the filing of an eviction case without noting that the case was vacated or otherwise decided in the tenant’s favor,¹¹² or that was later sealed.¹¹³

Another problem is that the underlying data from court records might not be reliable.¹¹⁴ There is also significant variability in eviction records from state to state, which the tenant screening CRAs may fail to account for.¹¹⁵ And as discussed in Section III.A, overly loose matching criteria may result in a renter being wrongfully tagged with the eviction record of someone with a similar name or other identifiers.

CFPB complaints provide examples of the struggles renters face from inaccurate eviction records.

I am a XXXX mother and recent widow. I was on an affordable housing wait list in our community. In XXXX my credit was pulled Trans Union XXXX XXXX (XXXX) and approved and we were put on the move in list. We packed our entire house and we were calling weekly for a move in Date. In XX/XX/XXXX I received an alert that my credit had been pulled again via Trans Union XXXX XXXX (XXXX) and I also received an email the same day that we had now been moved into denied status with (XXXX Housing) affordable housing. After reteaching and receiving a copy of my Tenant screening report, I saw that they showed 2 eviction filings under my name. One of which was not in the state I live in. I disputed with them and told them I have never had any evictions and I've only lived at my current address in XXXX Hawaii since XXXX. This is a terrible situation to be in because I have been taken off the waitlist for affordable housing and lost our unit. We had already given notice at our current property. We are at risk of XXXX. I expected the items to be removed after the dispute but I just heard back from trans union XXXX XXXX that they show one as a dismissal in Hawaii and the one from Florida is still on my report. I don't know what to do because I cant get any information from a state XXXX miles away where I don't live. I believe my name could have been used and this could be identity theft (fraud). I have never had an eviction.

Source: Excerpt of CFPB Complaint No. 3985898, filed December 2, 2020

LexisNexis keeps reporting my credit card judgement as a landlord tenant dispute which has caused me to be denied housing on several occasions. Ive been trying to resolve this

¹¹⁰ CFPB, Tenant Background Checks Market, at 29.

¹¹¹ See Broken Records at 19–20.

¹¹² See, e.g., McIntyre v. RealPage, Inc., 336 F.R.D. 422 (N.D. Tex 2020); McIntyre v. RentGrow, Inc., 34 F.4th 87 (1st Cir 2022).

¹¹³ See, e.g., O’Connor v. RealPage Inc., 2022 WL 1487374 (N.D. Ill. 2022).

¹¹⁴ CFPB, Tenant Background Checks Market, at 32 (“A study of 3.6 million eviction court records from 12 states found that ‘on average, 22% of state eviction cases are ambiguous or false records.’”)

¹¹⁵ *Id.* (“Different originating courts may also record and report outcome information differently”).

issue since XXXX it is now XXXX and Ive had no luck in having them correct their information. Ive even gone down to the courthouse and it isnt filled as a landlord tenant dispute yet Lexis nexis keep reporting it does im at the end of my rope and taking legal action is my only option Im having to stay in XXXX and hotels because I couldnt relocate for work because of lexisnexis

Source: Excerpt of CFPB Complaint No. 6075897, filed October 12, 2022

I am a XXXX, elderly woman living in XXXX Nevada. I have had some issues with my rental credit in the past, however, I have made amends to the establishments and have even gotten the court judges to drop my case from their files. The courts also supplied me with letters and documentation as proof of my actions. ... I have disputed incorrect, outdated information, and provided explicit proof for about 8 months straight trying to pass a rental property credit check that these affordable, brand new apartments rejected me in after hundreds of dollars in credit checks just trying to move into a safer, cleaner neighborhood for half the price of where I live now. They continue to this day to take my dispute and reply that they basically don't care and are not ever going to remove the outdated and incorrect information from my XXXX/LEXISNEXIS renter report.

Source: Excerpt of CFPB Complaint No. 5052311, filed December 29, 2021

A dispute with a landlord due to pests in the apartment was reported by TransUnion as a judgment of eviction. However the dispute was a tenant dispute that required the landlord to resolve the vermin in the apartment and rent was withheld until the landlord resolved the issue. The motion went to court but no judgement was given to the landlord. Transunion is reporting it was a judgement for eviction but it was not and the case was dismissed once the landlord agreed to resolve the issue as order by the court.

Source: Excerpt of CFPB Complaint No. 5445189, filed April 13, 2022

TransUnion rental screening also known as Smartmove by TransUnion released a application that I filled out as a possible tenant fir a property on XXXX XXXX XXXX XXXX, TnXXXX. The agent is XXXX XXXX and she works for remix. I applied and was denied rental fir EViCTION. I have never been evicted and knew nothing about this until now. I have lived at the same residence for 3 years. ... I contacted the Tennessee civil circuit clerks office and they supplied me with a document that shows in XXXX when I was living at my current address that someone filed a judgment but it was dismissed

Source: Excerpt of CFPB Complaint No. 4081508, filed January 20, 2021

Transunion tenant screening refuses to remove Case # XXXX (civil dismissal) from my record. This case number does not exist at all in Maryland 's court system. I have disputed this item with them several times. I was never evicted from this or any other property. It is illegal for them to have a non existent record on my screening report. Can you please assist me in having this item removed.

Source: Excerpt of CFPB Complaint No. 5545811, filed May 5, 2022

Found out there were two wrongful evictions on my public records report. I contacted both companies and made efforts to pay in order to have the reports removed. One was removed and the other was verified as accurate.

The one that verified me as accurate was XXXX at XXXX XXXX XXXX. I was NOT evicted. There is no proof of eviction ; only that one was filed wrongfully. I had no control over the filing as I was not living there when it was filed. I was not on the property as of XX/XX/XXXX. The eviction was filed in XXXX.

I have evidence that I was moved out voluntarily and paid a lease termination agreement to XXXX XXXX At XXXX XXXX XXXX. Upon finding out additional balance was due I made efforts to reach out and pay the money required.

I was told that I can not do that and instead they directed me to go to the courts because the company who filed an evection wrongfully is no longer the management company there at XXXX XXXX XXXX.

Source: Excerpt of CFPB Complaint No. 3826186, filed September 2, 2020

As discussed more fully in Section VIII.B on policy recommendations, the CFPB should address these inaccuracies and problems with respect to eviction records as part of its upcoming FCRA rulemaking.

2. Racial disparities and other policy issues with eviction records

Another problem with the use of eviction records is that they are plagued with racial disparities. Black and Latinx renters—and women in particular—have a disproportionately high risk of eviction.¹¹⁶ An ACLU study from 2020 revealed that in at least seventeen states, landlords filed eviction cases against Black tenants at double the rate or higher of white tenants.¹¹⁷ However, the same ACLU study found that Black women were more likely to have an eviction filing that resulted in dismissal, indicating many of these eviction cases may not have been meritorious.

In Massachusetts, Black women renters were three times more likely to have their eviction case dismissed.¹¹⁸ Thus, the research indicates that Black women are more likely to be subject to illegitimate eviction filings.¹¹⁹ Recent guidance from HUD also stated that “non-white

¹¹⁶ Edwin Rios, New Data Shows Who, Exactly, Got Evicted the Most During the Pandemic, Mother Jones (Apr. 15, 2022), www.motherjones.com/crime-justice/2022/04/eviction-coronavirus-racism-california/; Cmty. Legal Servs. of Phila., Breaking the Record: Dismantling the Barriers Eviction Records Place on Housing Opportunities 5 (2020), https://clsphila.org/wp-content/uploads/2020/12/Breaking-the-Record-Report_Nov2020.pdf (“Eviction records, and consequently, blacklisting, in Philadelphia disproportionately impacts Black communities and Black women in particular.”).

¹¹⁷ Sophie Beiers, Sandra Park, & Linda Morris, Am. C.L. Union, Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color (Jan. 10, 2020), www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/.

¹¹⁸ *Id.*

¹¹⁹ *Id.*; see Dada & Duarte, How to Seal Eviction Records, at 24–25.

households may be more likely to face eviction actions, even for the same housing history as white counterparts.”¹²⁰

Eviction records also had a disproportionate impact on youth. As one report noted, “young people’s lack of support systems and vulnerability to financial stress put them at particular risk of being evicted.”¹²¹

The increasing purchase of rental properties may result in greater numbers of eviction records, harming tenants. Corporate landlords are prone to filing evictions at much greater rates than “mom & pop” landlords.¹²² This of course raises the possibility that evictions are more predictive of the practices of the renter’s previous landlord rather than inherent characteristics of the tenant.¹²³

3. NCLC survey: barriers created by eviction records

To get a better picture of the prevalence of errors with eviction records, the NCLC survey asked respondents:

“Have any of the following created a rental barrier for a client or other tenant?”

Respondents were given seven options. They were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 143 responses to this question. The most common types of problem observed were eviction records that created a problem even though the tenant prevailed (81%) or the outcome was either missing or incorrect (76%). An eviction record mischaracterized by a report was another common problem, with 62% of respondents having observed it. Most troubling, nearly half of respondents (47%) had observed a mismatched eviction record that did not belong to the tenant.

Significant numbers of respondents observed eviction records that should not have appeared in a tenant screening report, either because it either had been sealed or expunged (31%) or was more than seven years old (53%). However, some of the latter respondents may have been referring to

¹²⁰ U.S. Dep’t of Housing & Urban Dev., Office of Fair Hous. & Equal Opportunity (FHEO) Guidance on Compliance with Title VI of the Civil Rights Act in Marketing and Application Processing at Subsidized Multifamily Properties at 6–7 (Apr. 21, 2022), www.hud.gov/sites/dfiles/FHEO/documents/HUD%20Title%20VI%20Guidance%20Multifamily%20Marketing%20and%20Application%20Processing.pdf.

¹²¹ Brett M. Merfish, Texas Appleseed, The Long-Lasting Impact of Eviction Records, June 2022, www.texasappleseed.org/sites/default/files/ImpactofEvictions_Final.pdf.

¹²² CFPB, Tenant Background Checks Market, at 33 (citing 2016 Federal Reserve study finding that “corporate landlords file evictions at ‘substantially higher’ rates than smaller ones, ‘even after controlling for property quality, location, and foreclosure history,’”)

¹²³ *Id.* (“large numbers of eviction records may not be indicative of tenant behavior and instead may reflect power imbalances between landlords and tenants, and even reinforce discriminatory or illegal actions by a prior landlord.”)

situations where the landlords consulted the actual court records and not a tenant screening report, as discussed below.

Table 6: Problems Encountered by Clients or Other Tenants that Created a Rental Barrier (% of Respondents)

Problems	Percent*
A “mismatched” eviction record (i.e., eviction record information that belongs to a different person but was mistakenly attributed to the wrong tenant)	47%
An eviction record that had been sealed or expunged	31%
An eviction record with missing or incorrect disposition/outcome	76%
An eviction record more than 7 years old	53%
A record of an eviction case where the tenant prevailed	81%
An eviction record mischaracterized by the report (e.g., as to grounds for eviction or finding of tenant culpability)	62%
An eviction record with another type of error	13%

*Total is greater than 100 because respondents could select multiple responses.

Some of the “other” responses include:

When you sue a landlord to, for example, turn on utilities it shows up as an "emergency possession" case, which looks like an eviction even though it was filed by the tenant - Legal services attorney from NC

Juvenile [household] member “dinged” with the eviction even though not signatory to lease. - Legal services attorney from FL

Several advocates (Florida, Massachusetts, Georgia) noted problems stemming from cases where an eviction was filed *after* a dispute was resolved or the tenant had already moved out. The Florida advocate reported “evictions filed months after a tenant moved and the tenant was not properly served, if at all. (They learn of the eviction by looking at their credit report)”

Other advocates (Connecticut, Delaware, Georgia) noted problems posed by eviction records that were voluntarily withdrawn. A Georgia legal services attorney reported that problems occur

when “the tenant signs a consent to leave voluntarily, thinking that means the record will not show up as an eviction (but it often does).

Other narrative comments about incomplete records include

Eviction records routinely fail to show denied claims for rent or other money owed. - Legal services attorney from OK

Landlord never marked judgment paid. - Legal services attorney from PA

The information that is provided on tenant screening reports regarding evictions is extremely limited and often uses terminology that is not used in Louisiana (i.e., “forcible entry/detainer”). Our office regularly sees eviction records create barriers even where the tenant has prevailed or the case was resolved through a settlement (consent judgment). - Legal services attorney from LA

The most common barrier is an eviction that was filed but never resulted in an outcome (for instance, where the landlord used it as a collection tool and just abandoned the case after the tenant paid rent and fees that were being demanded) - Legal services attorney from GA

Advocates commented on how eviction records could be more problematic than even criminal records for a renter:

As you can see, eviction errors are much much more prevalent in my experience than criminal mismatches. - Legal services attorney from FL

One project based section 8 apartment complex in Greenville, SC (Towers East) has a tenant selection plan that says in relevant part, “An applicant household and/or any additional household member who is proposed to reside in the unit will be refused occupancy for one or more of the following reasons:P. Eviction granted for any household member in last 10 years”. This is a longer look back period than for most criminal activity under that same tenant selection plan. - Legal services attorney from SC

In a recent study, an MIT researcher was able to recruit test subjects by using the Amazon Mechanical Turk (MTurk) platform.¹²⁴ MTurk workers who identified themselves as U.S. landlords were asked to review tenant screening reports. This study found these MTurk landlords treated eviction records worse than criminal records, noting:

Overall, MTurk landlords answered that they gave more latitude in considering criminal records than eviction records. They maintained blanket screening policies more frequently in relation to eviction records than criminal records, meaning that landlords tended to conflate eviction filings with executed evictions. Furthermore, many landlords

¹²⁴ Amazon Mechanical Turk (MTurk) is a crowdsourcing website that businesses can use to hire remote workers to perform discrete on-demand tasks that computers are currently unable to do as economically. Amazon Mechanical Turk, www.mturk.com/ (visited May 22, 2023).

noted that they consider eviction records to represent a higher risk than criminal records.¹²⁵

Advocates in a few states noted that there was no process for expungement or sealing eviction records in their states (Delaware, North Carolina, and Vermont). In contrast, a legal services attorney from the District of Columbia reported:

In DC a housing provider can not deny an applicant because of an eviction that is more than 3 years old. Evictions over 3 years old are supposed to be sealed. This is a new law and the clerk has not been able to seal all evictions over 3 years old yet. It sometimes shows up on some tenant screening reports even though it shouldn't. Also, the tenant screening companies will show an eviction that has been sealed because they have not updated their records after the eviction has been sealed.

In some cases, landlords do not rely on tenant screening CRAs but directly search court records for eviction information. Unfortunately, this can cause even greater harm because there are no time limits for court records, unlike the FCRA's seven-year limit on most negative information. A report from Texas Appleseed noted "in Texas, these court records remain public and searchable forever, so it may be the case that landlords can search these databases themselves."¹²⁶

Several narrative comments described problems when landlords checking court records directly and not via tenant screening CRAs.

A big problem here is that eviction records exist in perpetuity and do not go away so people are adversely affected even 20 years after an eviction. - Legal services attorney from DE

I don't see landlords using CRAs much. I think they mostly get information from public records, e.g., masscourts.org - Legal services attorney from MA

Eviction records in CT are published on the judicial website for 3 years. Access to the website is free and public. Most landlords search a prospective tenant and if their name shows up on the website, they do not accept the tenant regardless of the reason for the eviction or even if the tenant won their eviction case. - Legal services attorney from CT

In St. Clair County IL, when a clients name is run, it shows up and you can click on it and then it says there is a sealed file. Landlords just assume this is an eviction, whether it is or not, now and do not rent to the client. - Legal services attorney from IL

¹²⁵ Wonyoung So, Which Information Matters, at 16.

¹²⁶ Brett M. Merfish, Texas Appleseed, The Long-Lasting Impact of Eviction Records, June 2022, www.texasappleseed.org/sites/default/files/ImpactofEvictions_Final.pdf

4. NCLC survey: consideration of additional context and outcomes

Q 22.b. What types of eviction records are being used in evaluating tenants? Do landlords and property managers consider only the public record (e.g., records obtained from a court) or do they also consider additional context (e.g., proof of satisfaction of judgment; supporting documents that demonstrate an eviction proceeding was retaliatory or in violation of local law; or relevance of an eviction proceeding that was filed before the prospective tenant began receiving housing subsidies)?

Q 22.c. To what extent do landlords consider the outcome of an eviction proceeding in evaluating a prospective tenant? (e.g., Do landlords consider whether an eviction proceeding was dismissed versus an eviction proceeding in which the prospective tenant was ordered to vacate?)

In order to obtain data to answer this question, the NCLC survey asked respondents the following two questions, both with respect to private housing and subsidized housing:

“When evaluating eviction records, how often do landlords consider additional context*?”

* evidence that an eviction was retaliatory or illegal; or that that an eviction was due to reasons other than nonpayment or tenant fault”

“When evaluating eviction records, how often do landlords consider the outcome of the action*?”

* whether an eviction was dismissed or settled versus an eviction proceeding in which the prospective tenant was ordered to vacate, a satisfaction of judgment

For the additional context question, we received 147 responses regarding private housing. Most respondents reported that private housing landlords rarely or never consider such information (47%), and are unlikely to do so if an advocate intervenes (34%). Fewer than a fifth of respondents (18%) reported that landlords will consider additional context if an advocate intervenes.

We received 135 responses regarding subsidized housing providers, which were somewhat more positive. Nearly half of respondents (48%) reported that subsidized housing providers will consider additional context if an advocate intervenes. However, the other half reported that subsidized housing providers rarely or never consider such information (27%), and are unlikely to do so if an advocate intervenes (20%). A small handful (5%) said providers considered additional context on their own.

Table 7: How Often Do Landlords Consider Additional Context When Evaluating Eviction Records (% of Respondents)

	Landlords do not usually do this on their own, and are unlikely to do so if an advocate intervenes	Landlords rarely or never consider such information	Landlords usually do not do this on their own, but usually will if an advocate intervenes	Landlords usually do this on their own
Private Housing (n=147)	34	47	18	1
Subsidized Housing (n=135)	20	27	48	5

For the outcome question, we received 145 responses regarding private housing. Most respondents reported that private housing landlords rarely or never consider outcome information (43%), and are unlikely to do so if an advocate intervenes (26%). About a quarter of respondents (26%) reported that landlords will consider additional context if an advocate intervenes.

We received 132 responses regarding subsidized housing providers, which again were somewhat more positive. Nearly half of respondents (46%) reported that subsidized housing providers will consider outcomes if an advocate intervenes, and a not-insignificant 15% of respondents said that providers considered outcomes information on their own. Fewer than half reported that subsidized housing providers rarely or never consider such information (24%), or are unlikely to do so if an advocate intervenes (14%).

Table 8: How Often Do Landlords Consider the Outcome of the Action When Evaluating Eviction Records (% of Respondents)*

	Landlords do not usually do this on their own, and are unlikely to do so if an advocate intervenes	Landlords rarely or never consider such information	Landlords usually do not do this on their own, but usually will if an advocate intervenes	Landlords usually do this on their own
Private Housing (n=145)	26%	43%	26%	4%
Subsidized Housing (n=132)	14%	24%	46%	15%

*Due to rounding, totals may not equal 100.

For the additional context and outcomes questions, and the question in Section II.E about disputes, respondent after respondent commented that housing providers did not consider these mitigating factors, stating:

Landlords don't even understand the reports they receive, and make decisions based on the presence of any adverse record. - Private attorney from AZ

Landlords deny the application when they see the eviction without finding out the outcome or how long ago it has been. - Housing counselor from CA

An eviction filing of any kind seems to be a near complete bar to acceptance for many landlords in Columbus. - Legal services attorney from OH

In Milwaukee, it seems like landlords use the presence of ANY eviction record as a reason not to rent. - Legal services attorney from WI

Most landlords don't even care about the reason for eviction. Once it shows that they were taken to court, for whatever reason, they consider it an eviction. - Housing counselor from MA

[M]ost landlords in Mecklenburg county don't care about any of that. all they focus on is the fact an eviction was filed and/or that a judgment was entered. - Legal services attorney from NC

Landlords don't not have time or not interested to find out why - Housing counselor from CA

Even in subsidized housing, non-payment evictions were treated as a black mark. I've seen written policies with 7-year lookbacks for evictions with no exceptions. - Nonprofit attorney from IL

In our experience most landlords consider simply the filing of an eviction case as a negative regardless of outcome. - Legal services attorney from MN

Landlords don't understand or not interested to find out the if the eviction was settled or dismissed differences - Housing advocate from CA

Behavioral testing research by an MIT researcher similarly found that many landlords fail to consider the context or outcome of an eviction; instead, they conflate the filing of an eviction action with executed evictions, treating them as the same.¹²⁷ Furthermore, several respondents to the NCLC survey noted that landlords consider any indication of an eviction to be a warning sign of a “problem” tenant even when (or especially when) the tenant prevailed.

Many landlord only look to see if an eviction has been filed against a tenant and do not investigate the outcome of the hearing. If tenants do prevail, they can be seen as "problem tenants" for knowing and enforcing their rights. - Legal services attorney from NC

When determining eligibility, local LL's often will see any court appearance, regardless of reason or outcome, as a "problem applicant" and seek to deny. - Housing counselor from OR

Landlords generally don't like any eviction records, even when the tenant prevailed. They judge the tenant as a risk and problem. - Private attorney from AZ

[G]enerally only consider favorably if the eviction was later paid or vacated, but if the eviction was dismissed they may think the tenant is problematic and deny anyway - Legal services attorney from TX

Advocates in California, Delaware, Maine, and Texas noted that the tight market conditions and lack of housing supply contributed to the failure of landlords to consider additional context or the outcome of the eviction action, with comments such as:

When legal aid is involved we can force the landlords to listen, but housing, especially affordable housing, is so scarce, unless we have a legal claim to go with our efforts (like exist in subsidized housing) then landlords usually don't care. - Legal services attorney from DE

¹²⁷ Wonyoung So, Which Information Matters, at 1 (“Through a behavioral experiment with landlords using simulated tenant screening reports, this study shows that landlords use blanket screening policies, that they conflate the existence of tenant records with outcomes (e.g., eviction filings with executed evictions.”)

Some respondents did report there were landlords willing to consider additional context or outcomes, especially with some advocacy.

Our office has had mixed success with challenging denials based on eviction records by providing additional context. We are most successful when we can show the prospective landlord a dismissal of the eviction filing or an order vacating the judgment (which we are sometimes able to obtain with the prior landlord's cooperation, especially if the eviction judgment is several years old). - Legal services attorney from LA

This was hard to answer for private housing -- landlords I have contacted usually do reconsider if I intervene, but I only intervene if there is strong facts in the tenants favor - Legal services attorney from CO

With subsidized housing, I can usually advocate for the client re: particular circumstances, but I do not have any appeal rights if they say no, so there is no way to know whether what I have said is considered and rejected or not considered at all. With private housing, I will hear there is nothing to explain. We are not renting to the applicant. - Legal services attorney from GA

Most landlords are reluctant to consider individualized circumstances but some explicitly provide for this in their screening policies - Legal services attorney from MN

Intervention of some kind, with, or without (less likely) an advocate, is often necessary to parse the outcome, as suggested in the question. - Legal services attorney from NY

There were conflicting comments about whether larger or smaller landlords are more flexible.

Advocacy tends to be more useful in these scenarios when the property is a large complex. Single-family houses or other small rental properties tend to be leased to others before an advocate can get involved. - Nonprofit attorney from VA

I have heard routinely from landlords and property managers (generally larger operations—Eg managing or renting more than 10 units), with one or two exceptions, that the reason for the eviction does not matter. Smaller mom and pop landlords, on the other hand, may be willing to understand and consider the context of a prior eviction. - Legal services attorney from SC

Small landlords are more likely to be swayed by/listen to client's history than big corporate landlords. In some cases, previous landlord's reputation (e.g. slumlord) will be taken into consideration. - Legal services attorney from PA

Some, such as [large property owner], will say that they do not consider a dismissed or settled eviction. Others say that disposition does not matter. Where a landlord, as a matter of practice or policy, does not consider the eviction's disposition, then advocacy from an attorney will not make a difference. - Legal services attorney from SC

In a few jurisdictions (Oregon, District of Columbia, Philadelphia), there appear to be prohibitions against considering eviction records with certain outcomes, but compliance may be an issue.

IV. Credit Information

A. Overview

Many landlords run credit checks on prospective tenants.¹²⁸ Landlords often automatically reject prospective tenants with low credit scores as well as those who are alleged to owe rental debt to former landlords (discussed in Section IV.F below). According to Experian, a credit score of 620 is the starting point required by most landlords to qualify for an apartment.¹²⁹

Even some subsidized housing providers use credit scores, with one legal services attorney in Georgia reporting that such providers “will often give a tenant a target credit score (usually 600)”. The use of credit scores in subsidized housing is baffling given that renters who qualify for such housing are by nature low- and moderate-income, and thus experience greater financial instability.

The use of credit reports and scores in tenant screening is problematic for many reasons, some of which are discussed individually in each section below. First, there is no empirical or scientific evidence showing that credit reports and scores accurately predict a successful tenancy. Second, credit reports are riddled with errors, which makes them an unreliable tool, especially for a basic human need such as housing. Third, the use of credit reports for rental housing likely has a disparate impact on Black and Latino tenants.

Finally, landlords’ use of credit reports and scores to determine whether to accept a prospective tenant can lead to dire, long-term consequences for tenants. Tenants may be forced to turn to predatory landlords who charge above-market rates for low-quality housing (such as extended stay motels), trapping them in a spiral of debt.¹³⁰ They may also face homelessness.¹³¹

B. NCLC survey: use of credit reports and scores

To get a better picture of the prevalence of credit checks in rental housing, the NCLC survey asked respondents:

“Have you observed instances of clients or other renters denied housing due to credit scores (e.g., FICO or VantageScore)?”

¹²⁸ TU SmartMove 2017 Landlord Survey (claiming that 90% of landlords run credit checks).

¹²⁹ Brian J. Roberts, How to Get an Apartment with Bad Credit (Oct. 22, 2019), www.experian.com/blogs/ask-experian/how-to-get-apartment-with-bad-credit/#s1.

¹³⁰ Mya Frazier, When No Landlord Will Rent to You, Where Do You Go?, N.Y. Times, May 23, 2021, www.nytimes.com/2021/05/20/magazine/extended-stay-hotels.html?referringSource=articleShare.

¹³¹ *Id.*

For this question, respondents were asked specifically about the use of credit scores in three settings: private housing, public/project-based housing and Housing Choice voucher (HCV) holders in the private market.

There were 153 responses for private housing, 133 responses for public/project based housing, and 136 responses for HCV holders in the private market. For private housing, the vast majority (84%) responded that they had seen renters denied housing based on the use of credit scores. Conversely, only 40% of respondents had seen renters denied housing based on credit scores in public/project-based housing. But for HCV holders, two-thirds (65%) of respondents reported seeing credit scores used to reject renters.

Table 9: Clients Denied Different Types of Housing Due to Credit Score (% of Respondents)

	Yes	No
Private Housing (n=153)	84%	16%
Public/Project-Based Housing (n=133)	40%	60%
Voucher Holder in Private Market (n=136)	65%	35%

Several respondents noted the prevalence of the use of credit scores

Our office sees denials based at least in part on credit scores by all of these types of housing providers. It is not common that a credit score alone is the reason for denial, but it is often one factor. - Legal services attorney from LA

We have seen some cases where applicants are denied due to having a credit score below a minimum required score. - Legal services attorney from MN

I have seen people get denied due to credit score in all sectors with few options to change the result. - Housing advocate from ME

[S]ome landlords post minimum credit score in their apartment listings - Legal services attorney from MA

Two respondents from the District of Columbia noted that DC law prohibits the use of credit scores to deny HCV holders on the basis of credit score. However, one respondent noted that the practice is still occurring.

Respondents expressed specific concerns about the use of credit scores resulting in rejections for HCV holders:

I am worried about this preventing folks with vouchers from actually being able to rent apartments in neighborhoods with a lot of opportunity (good schools, jobs, etc.). - Legal services attorney from IL

Daily, the big one is the debt-to-income ratio for the denial, even though it is a voucher and the tenant's income can pay their portion. - Legal services housing advocate

Some LIHTC operators (private landlords who received a Low-Income Housing Tax Credit) still regularly use FICO scores; by now it is very uncommon for PHAs (public housing authorities), not sure about subsidized multifamily owners - Nonprofit attorney from VA

Even voucher holders get denied due to credit scores - Nonprofit attorney from CA

The Housing Choice Voucher (HCV) program was formerly known as the Section 8 program; HCV holders use their vouchers to seek rentals in the private market. The voucher means that the renter need only pay 30% of their income for rent and the government will pay the rest. Unfortunately, private landlords sometimes reject renters because they hold a Housing Choice Voucher, which has led some states to prohibit such discrimination. The use of credit scores can sometimes be a pretext for discrimination against HCV holders in such states.¹³² For example, one news article reported that in Massachusetts (which bans source of income discrimination including discrimination against HCV holders):

Skip Schloming, a landlord based in Cambridge who ran the Small Property Owners Associations for decades, notes the state already legally allows people to reject applicants because of past evictions, poor credit scores and other factors. So he says it's easy enough for landlords who don't want Section 8 tenants to find some other legal excuse to turn them away.

"You don't have to discriminate on the basis of source-of-income per se," he said. Just "go make sure you're checking on the background very well."¹³³

C. Lack of predictiveness

There are no quantitative or scientific studies showing that credit reports and scores accurately predict a successful tenancy. Landlords appear to be using credit checks as a result of successful marketing by the nationwide CRAs or untested assumptions about predictiveness. For example,

¹³² See, e.g., *Comm'n on Hum. Rts. & Opportunities ex rel. Cortes v. Valentin*, 213 Conn. App. 635, 278 A.3d 607, cert. denied, 345 Conn. 962, 285 A.3d 389 (2022) (upholding judgment against landlord who discriminated against HCV holders by asking HCV holders for credit score when landlord did not ask other applicants for score).

¹³³ Simon Rios, As housing bias in Mass. persists, advocates want tougher penalties for landlords, agents, WBUR.org, Dec. 21, 2022, www.wbur.org/news/2022/12/21/housing-discrimination-agents-brokers-testing-massachusetts.

Experian claims that “too many credit cards, loans, medical bills or unpaid taxes” are also “warning signs” to landlords, as is a “spotty payment history.”¹³⁴

Credit reports and scores were never intended to gauge whether someone will be a good tenant or pay their rent.¹³⁵ The CFPB¹³⁶ and FICO¹³⁷ both state that credit scores are designed to predict the likelihood that a borrower will become late on a *credit obligation*. What’s more, credit reports tell a story about past ability to pay in particular instances, not current ability to pay rent, which is a high-priority bill that families pay before all others.¹³⁸ As the CFPB itself noted:

Policymakers frequently reference the notion that “rent eats first.” A Fiserv survey on annual household billing practices supported this maxim, finding that consumers point to mortgage or rent as their top priority bill to pay and that, after utilities and cell phone, it was the bill they paid most.”¹³⁹

Thus, tenant screening should focus on current ability to pay, which would be shown by documentation such as paystubs, tax returns, W-2s, and bank statements. Some tenant screening CRAs have begun to use payroll data from Equifax’s Work Number as well as bank account transaction information for income verification.¹⁴⁰

Despite this lack of evidence of predictiveness, credit information plays a huge role in tenant screening. As one can see from some of the sample tenant screening reports in Appendix A, the bulk of information on a tenant screening report ends up being credit report information. Indeed, one might speculate that when a full report (and not just a score or recommendation) is provided to a landlord, credit information is being used to fill up a report so that it appears that the tenant screening CRA is producing lots of information to give the landlord “value for the money.”

¹³⁴ Brian J. Roberts, How to Get an Apartment with Bad Credit (Oct. 22, 2019), www.experian.com/blogs/ask-experian/how-to-get-apartment-with-bad-credit/#s1 (“Your payment history, rental history, debt and bankruptcy status are all important aspects of your consumer profile.”); *see also* Andrew Khouri, Depleted savings, ruined credit: What happens when all the rent comes due?, L.A. Times (Feb. 2, 2021), www.latimes.com/business/story/2021-02-02/rent-debt-worries-grow-covid-strains-tenants#null.

¹³⁵ Credit scores and reports are an especially poor predictor of tenant performance in the subsidized housing context. Letter from NCLC., Nat’l Hous. Law Project, Nat’l Low Income Hous. Coal., & Ctr. For Survivor Agency & Justice to Sec’y. Marcia L. Fudge, U.S. Dept. of Hous. & Urban Dev. (Nov. 3, 2021), www.nclc.org/wp-content/uploads/2022/08/HUD_credit_barrier_ltr.pdf.

¹³⁶ CFPB, Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation’s Largest Credit Bureaus Manage Consumer Data (2012), at 10 (“The most common credit scores rank the relative probability that a consumer will become 90 days delinquent on a new loan within two years.”)

¹³⁷ FICO, FICO® Scores — A Vital Part Of Your Credit Health, www.ficoscore.com/education (“Base FICO® Scores are designed to predict the likelihood of not paying as agreed in the future on any credit obligation, whether it’s a mortgage, credit card, student loan or other type of credit.”)(viewed May 16, 2023).

¹³⁸ Matthew Desmond, The Rent Eats First, Even During a Pandemic, N.Y. Times, Aug. 29, 2020, www.nytimes.com/2020/08/29/opinion/sunday/coronavirus-evictions-superspreader.html.

¹³⁹ CFPB, Tenant Background Checks Market, at 39.

¹⁴⁰ *Id.* at 17 and n. 54.

In some cases, tenants are rejected for information in credit reports that is not even negative, but perceived as creating too high a debt burden. For example, NCLC staff members have observed at least two cases of tenants being rejected on the basis of enrollment in Income Based Repayment (IBR) programs for their student loans. The IBRs resulted in their having high levels of student loan debts, but very minimal or no monthly repayment obligations. One advocate wrote:

I have a client who is disabled and who applied for one of these [affordable] units. The landlord used a tenant screening agency called On-Site. On-Site got the client's credit report from Trans-Union. In addition, it appears that On-Site called a former landlord and asked about her. On-Site rated my client a "1" on a scale of 0-10 (where 10 is the highest/best score) for two reasons: (1) She had a high debt to income ratio and (2) "you have a prior landlord who lists you as not recommended."

With regard to the debt/income ratio, the client has around \$XXX,000 of federal student loan debt. She has income of around \$2X00/mo in Social Security Disability benefits. The credit report shows that her student loans are "paid as agreed," but does not show that she is on an income based repayment program and her payment amount is \$0 indefinitely – Legal services attorney in New Jersey

D. Impact of credit reporting errors

Another problem with the use of credit information in tenant screening is the unacceptably high error rates in credit reports. As both the FTC and CFPB are intimately familiar with, the landmark 2012 FTC study on credit reporting errors found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious that they would be denied credit or need to pay more for it.¹⁴¹ With over 200 million Americans in the credit reporting system,¹⁴² this means that 42 million consumers have errors in their credit reports, and 10 million have errors that can be life altering.

Another indication of the massive accuracy problems is the dramatic explosion during the pandemic of complaints to the CFPB about credit reporting. The latest CFPB report found that between October 2021 and September 2022, the CFPB received nearly half a million complaints against Equifax, Experian, or TransUnion for inaccurate information or inadequate investigations for disputes over inaccuracies.¹⁴³ And according to a report from the House Select

¹⁴¹ Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012).

¹⁴² Kenneth Brevoort, Philipp Grimm & Michelle Kambara, CFPB Office of Research, CFPB Data Point: Credit Invisibles 12 (May 2015), http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

¹⁴³ CFPB, Annual report of credit and consumer reporting complaints: An analysis of complaint responses by Equifax, Experian, and TransUnion, January 2023, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2023-01.pdf.

Subcommittee on the Coronavirus Crisis, the nationwide CRAs receive disputes each year regarding 30 to 40 *million* individual items of information in the credit reports they issue.¹⁴⁴

The widespread use of credit report information in rental housing greatly magnifies the harm that errors cause. Accurate credit reporting is no longer about the ability to get a credit card or buy a house. It's now about basic human needs, the ability to keep a roof over one's head. For some renters, it could mean the difference between getting decent housing or sleeping in their car. And it's not just the renters themselves, but minor children who are left unhoused. The use of credit information in rental housing makes fixing credit reporting errors all the more important.

Yet ironically, fixing credit reporting errors has gotten harder and harder with the nationwide CRAs' habit of ignoring disputes or treating them as illegitimate credit repair.¹⁴⁵ In addition, a multitude of judicial decisions make it harder for consumers to enforce their rights under the FCRA, such as:

- cases holding that the nationwide CRAs, and in some cases the furnishers that supply information to the CRAs, have no obligation to investigate and fix errors that involve a "legal dispute."¹⁴⁶
- Experian's use of forced arbitration provisions in its clickwrap for credit monitoring products to avoid lawsuits for inaccuracies and dispute investigation failures.¹⁴⁷
- cases that interpret Article III standing requirements so strictly after the Supreme Court's decision in *TransUnion v. Ramirez* that even very real, very harmful errors that cause a decreased credit score are not sufficient for entry into federal court.¹⁴⁸

If consumers have no legal remedy to challenge egregious credit reporting errors, they will be powerless to fix such errors and can end up unable to obtain housing as a result of such errors.¹⁴⁹ That's why it is so critical for the CFPB to revise Regulation V to prevent credit reporting errors, to maximize the ability of consumers to fix errors, and to create a Credit Reporting Ombuds office to help consumers. The following example from the CFPB Complaint database is the example of a renter and their children who ended up in extended stay hotels for 20 days a month and sleeping in their car the other 10 days, all due to credit reporting errors.

I submitted several rental applications with different local Property management companies through the app folio tenant screening software. I had to pay a separate fee for

¹⁴⁴ House Select Subcommittee on the Coronavirus Crisis, Report and letter to CFPB Director Rohit Chopra, Oct. 13, 2022, https://drive.google.com/file/d/1Ps4y2p6duYXjU_Q4Ch9sCiOEiOybyoOa/view.

¹⁴⁵ CFPB, Annual report of credit and consumer reporting complaints: An analysis of complaint response by Equifax, Experian, and TransUnion, January 2022, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf.

¹⁴⁶ NCLC, Fair Credit Reporting §§ 4.5.3.4.6, 6.10.2.5 (10th ed. 2022), updated at www.nclc.org/library.
¹⁴⁷ NCLC, Credit Monitoring: A Bad Deal for Consumers, Sept. 12, 2022, www.nclc.org/wp-content/uploads/2022/09/IB_Credit_Monitoring_Arbitration.pdf.

¹⁴⁸ NCLC, Fair Credit Reporting §§ 11.3, 16.10 (10th ed. 2022), updated at www.nclc.org/library.

¹⁴⁹ See, e.g., *Suluki v. Credit One Bank*, 2023 WL 2712441 (S.D.N.Y. Mar. 30, 2023) (identity theft victim denied rental housing; granting summary judgment to furnisher credit card lender on FCRA claim because a reasonable investigation would not determine whether thief - victim's mother - had victim's permission to open account).

each screening even though it's the same exact screening. . . . I'm applying for apartments with housing assistance and could not get approved for {\$300.00} a month in rent with {\$2400.00} a month in income from government assistance due to the app folio software. . . . My credit report shows two negative accounts. One of them is completely fraudulent, not mine never heard of. I follow the steps for dispute but nothing happens. The other account is a storage company I once had a unit at and 3 months after moving out of my unit they started billing me and then 3 years later they attached a bill to my credit report . . . I've never defaulted on my rent or utilities in 24 years of my adult life. I've always paid my rent on time. The app folio screening says I'm likely to default and it doesn't even have any information input like income or housing assistance. I currently pay 100 % of my monthly income for a motel for 20 days and my kids and I sleep in our car for ten days a month.

Source: Excerpt of CFPB Complaint No. 6209752, filed November 16, 2022

As discussed more fully in the March 2023 NCLC Petition for Rulemaking,¹⁵⁰ the CFPB should create a Credit Reporting Ombuds office to help consumers, especially those with educational or literacy challenges, to fix errors. The CFPB should also adopt provisions as part of its upcoming FCRA rulemaking to restrict the application of forced arbitration clauses in credit monitoring contracts to FCRA claims for inaccuracies and disputes.

E. Racial disparities in credit scoring

The economic consequences of the nation's long history of racial discrimination—including in housing (redlining),¹⁵¹ employment,¹⁵² and debt collection¹⁵³—are the foundation of the data in credit reports. As a result, credit scores are often lower in communities of color, with huge racial disparities. An Urban Institute study found that 50 percent of white households have a FICO credit score above 700, compared with only 20.6 percent of black households,¹⁵⁴ a finding that is

¹⁵⁰ NCLC, Petition for FCRA Rulemaking: Debt Collector Furnishing, Language Access, Credit Reporting Ombudsperson Office, March 2023, www.nclc.org/resources/petition-for-rulemaking-at-cfpb-regarding-debt-collector-furnishing-language-access-credit-reporting-ombudsperson-office/.

¹⁵¹ Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, (Liveright 2017).

¹⁵² Christian E. Weller, Center for American Progress, African Americans Face Systematic Obstacles to Getting Good Jobs, Dec. 5, 2019, www.americanprogress.org/article/african-americans-face-systematic-obstacles-getting-good-jobs/.

¹⁵³ Paul Kiel and Annie Waldman, ProPublica, The Color of Debt: How Collection Suits Squeeze Black Neighborhood, October 8, 2015, www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods.

¹⁵⁴ Jung Hyun Choi, et al., Urban Inst., Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets (Nov. 2019), www.urban.org/research/publication/explaining-black-white-homeownership-gap-closer-look-disparities-across-local-markets, at 8.

similar to a dozen earlier studies on the topic.¹⁵⁵ Statistics for individual states, counties, and other jurisdictions can be found using the Urban Institute’s Credit Health app.¹⁵⁶

Using credit data for rental housing amplifies these inequities and perpetuates them. Black and Latino renters are denied housing based on their credit scores, which are a legacy from when their forebears were denied housing and employment explicitly based on race. This is a perfect example of how structural racism works, how seemingly objective criteria such as credit scores can perpetuate and even amplify past discrimination – in this case residential racial segregation – whether or not there is any racial animus.

The use of credit reports and scores in rental housing is likely to cause a disparate impact for Black and Latino renters, and without any evidence of its predictiveness for rent payments, the legitimate business justification for its use is questionable. We urge the FTC and CFPB to recommend the U.S. Department of Housing and Urban Development (HUD) issue a rule or guidance that the use of credit reports and scores has a disparate impact on renters of color under the Fair Housing Act. As more fully discussed in Section VIII on policy recommendations, we also urge the FTC to use its authority under Section 5 of the FTC Act to prohibit the use of credit scores and credit history because of its disparate impact on renters of color.

F. Rental debt

Rental debt is money allegedly owed due to a current or prior tenancy.¹⁵⁷ In addition to past due rent such as back rent from the pandemic, rental debt may include claims for fees associated with breaking a lease, alleged damages to the rental property, and junk fees in general. Rental debt is often referred to debt collectors, who then furnish the debts to the nationwide CRAs.¹⁵⁸

Based on data from the CFPB, there are about 4.55 million rental debt items on credit reports.¹⁵⁹ There are 44 million renter households in the US,¹⁶⁰ so potentially 1 in 10 households could find it difficult to obtain decent rental housing due to the presence of rental debt on credit reports.

¹⁵⁵ Earlier studies are listed in National Consumer Law Center, Policy Brief: Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination, May 2016, www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

¹⁵⁶ <https://apps.urban.org/features/credit-health-during-pandemic/>

¹⁵⁷ NCLC, Salt in the Wound: How Eviction Records and Back Rent Haunt Tenant Screening Reports and Credit Scores, Aug. 1, 2020, www.nclc.org/resources/salt-in-the-wound-how-eviction-records-and-back-rent-haunt-tenant-screening-reports-and-credit-scores/.

¹⁵⁸ See generally April Kuehnhoff, et al., Unfair Debts With No Way Out: Consumers Share Their Experiences With Rental Debt Collectors, Oct. 7, 2022, www.nclc.org/resources/unfair-debts-with-no-way-out/.

¹⁵⁹ CFPB, Market Snapshot: An Update on Third-Party Debt Collections Tradelines Reporting, Feb. 2023, at 16, https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-third-party-debt-collections-tradelines-reporting_2023-02.pdf (showing that rental debt collection items comprise 2.6% of debt collection tradelines), *id.* at 18 (175 million debt collection tradelines). Multiply 175 million times 0.026 is 4.55 million.

¹⁶⁰ U.S. Census Bureau, Housing Inventory Estimate: Renter Occupied Housing Units in the United States [ERNTOCUSQ176N], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/ERNTOCUSQ176N>, May 16, 2023.

Rental debt likely increased significantly during the COVID-19 pandemic due to the economic disruptions combined with eviction moratoria. At various times during the pandemic, between 6 million¹⁶¹ and 13 million households¹⁶² were behind in rent but likely were able to stay in their homes due to various eviction moratoriums. Many of these households may have accumulated rental debt. Rental debt also likely disproportionately impacts renters of color; for example, in September 2020, about 1 in 4 Black and Asian renters and 1 in 5 Latinx renters said they were not caught up on rent, compared to just 1 in 9 white renters.¹⁶³ The Urban Institute has found even starker statistics, i.e., that 45% of Black renters missed or were late on at least one rent payment during a one-year period during the pandemic.¹⁶⁴

The number of third-party debt collectors collecting rental debt has increased dramatically. According to a report commissioned by TransUnion, “[t]he most significant change” in the type of debt collected by third-party debt collectors during 2022 was in tenant-related debt “given the end of the eviction moratorium.”¹⁶⁵ The report found that 33% of the 113 third-party debt collection companies surveyed collected “tenant/landlord or rental debt” in 2022, compared to just 7% in 2021,¹⁶⁶ 5% in 2020,¹⁶⁷ and 8% in 2019.¹⁶⁸ In 2022, 24% of survey respondents listed rental debts as one of the three types of debts most commonly collected by that collection agency.¹⁶⁹

In the Fall of 2021, NCLC conducted a survey of legal aid and non-profit attorneys on the impact of rental debts on their clients.¹⁷⁰ NCLC received 82 responses from 27 states and the District of Columbia. 71% of survey respondents reported an increase in consumers with alleged rental debt from June to August of 2021.

¹⁶¹ Sarah Treuhaft, et al., Rent Debt in America: Stabilizing Renters Is Key to Equitable Recovery, National Equity Atlas, September 16, 2021, <https://nationalequityatlas.org/rent-debt-in-america>.

¹⁶² Joseph Llobrer, et al., Center on Budget and Policy Priorities, New Data: Millions Struggling to Eat and Pay Rent, September 23, 2020, www.cbpp.org/research/poverty-and-inequality/new-data-millions-struggling-to-eat-and-pay-rent.

¹⁶³ *Id.*

¹⁶⁴ Jung Hyun Choi, Urban Institute, Reducing the Black-White Homeownership Gap through Underwriting Innovations, at 15, www.urban.org/sites/default/files/2022-10/Reducing%20the%20Black-White%20Homeownership%20Gap%20through%20Underwriting%20Innovations.pdf#page=15.

¹⁶⁵ AiteNovarica, Charting the Course and Steering Toward Success: The Collections Industry in 2022, at 5 (2022).

¹⁶⁶ AiteNovarica, A Transition to the Next Normal: The Collections Industry in 2021, at 13 (2021).

¹⁶⁷ Aite, A Year of Pivots, Challenges and Opportunities: The Collections Industry in 2020, at 13 (2021).

¹⁶⁸ Aite, Challenges, Trends and Innovations: The State of Third-Party Collections, at 10 (2019).

¹⁶⁹ AiteNovarica, Charting the Course and Steering Toward Success: The Collections Industry in 2022, at 18 (2022).

¹⁷⁰ NCLC, Assisting Consumers with Rental Debt During COVID-19: Legal Aid and Non-Profit Attorneys Share Their Experiences (2021), www.nclc.org/images/pdf/credit_reports/Rental-Debt-Survey-Issue-Brief.pdf.

Survey respondents wrote:

“I have . . . seen massive increases in rental debt due to COVID-19 layoffs and loss of income.”

“The amount of rental debt is much larger than what we have seen in the past.”

“I’ve been seeing an increased number of evictions and rental debt cases.”

Nearly half (49%) of respondents said their clients had trouble finding housing as a result of alleged rental debt reported on a credit report. Respondents reported:

“[Rental] debts. . . related to an eviction judgment or simply reported as a debt in collection on [a] consumer report, create an insurmountable housing barrier. Unless the tenant has resources to pay . . . they will not . . . qualify for most housing and will be forced into substandard housing or homelessness.”

Respondents noted the questionable amounts of rental debts, stating

Landlords report debts that haven't been reduced to judgment to collection agencies. These debts plus eviction related debts prevent tenants from obtaining rental housing. The debts appear inflated at best

[Landlords . . .] ask for exorbitant costs for damages and keep the security deposit, [and] then send a 14 day notice to pay the rest as though it were rent and forward it to a collection agency to try and collect that money from tenant.

And although we did not include a question about rental debts in the NCLC survey conducted for these comments, we received the following:

I have observed many clients turned down for housing based on an alleged debt owed to a former landlord that is not accurate (the client disputes the debt, but it appears on their credit/tenant screening report). - Legal services attorney from MN

The legitimacy of rental debts, or the amount of the debt, can sometimes be questionable, as documented in our report *Unfair Debts with No Way Out*.¹⁷¹ Legal cases provide additional examples of illegitimate rental debts.¹⁷² However, it is difficult to challenge rental debts on credit reports¹⁷³ because of decisions under the FCRA holding that CRAs, and in some cases

¹⁷¹ April Kuehnhoff, et al., *Unfair Debts With No Way Out: Consumers Share Their Experiences With Rental Debt Collectors*, Oct. 7, 2022, www.nclc.org/resources/unfair-debts-with-no-way-out/

¹⁷² See, e.g., *Gao v. Campus 150 Venture II*, 2022 WL 294749, (C.D. Cal. Jan. 31, 2022) (rental debt item on credit report for \$135 cleaning fee that renter already timely paid); *Shipley v. Equifax Information Services, LLC*, 2022 WL 1055183 (N.G. Ga Jan. 25, 2022)(rental debt due to identity theft; summary judgment to CRA).

¹⁷³ See, e.g., *Batterman v. BR Carroll Glenridge, L.L.C.*, 829 Fed. Appx. 478 (11th Cir. 2020)(plaintiff terminated lease early due to flooding and mold but landlord claimed that he owed \$2,816 as liquidated

furnishers, are not required to investigate errors that supposedly involve legal disputes.¹⁷⁴ The CFPB has filed several amicus briefs rejecting this “legal dispute” exception¹⁷⁵ and we urge the Bureau to promulgate a legislative rule eliminating it once and for all.

The CFPB Complaints Database also contains examples of illegitimate rental debt harming consumers, such as:

I recently applied for renting an apartment and found out there are collection accounts showing under my rental history that does not belong to me. I have only seen one of them appear in my credit report and has been successfully disputed with Experian in XXXX. It was removed from my report in XXXX. There are no other collection accounts on my credit report from Experian.

However, when I went through the tenant screening process. The screening company XXXX used data from RentBureau (which also belong to Experian) showing I have two collection accounts in my rental history. It turned out that the two collection accounts all belong to someone who has a similar name to me and lived with similar properties to me. The person 's name and address are combined with my profile on Experian.

Source: Excerpt of CFPB Complaint No. 5646563, filed June 8, 2022

Rented an apartment for one year at " XXXX XXXX " in XXXX, Texas. Vacated the apartment on XX/XX/2017. The apartment was in clean and rentable condition upon moving out. Five months later, I receive a collection notice from XXXX XXXX, a collection agency acting on behalf of " XXXX XXXX ". In that collection notice, they state {\$660.00} owed them for ; two full apartment cleanings, one for {\$75.00} another for {\$81.00}, water/sewer/trash totaling {\$120.00}, these charges were already included in the last month 's rent, {\$50.00} for refrigerator clean (was cleaned prior to moving out), pest reimbursement for {\$5.00}, Utility admin fee of {\$3.00}, couch removable for {\$200.00} and on and on. I worked with the collection agency, they even stated this was a bit unusual, especially five months after the fact. In working with the collection agency, I came o find that I was charged a {\$200.00} pet deposit and {\$10.00} per month pet fee, I never had a pet in the apartment. Additionally, they never refunded my {\$250.00} deposit, this totals {\$570.00}. . . . I am in process of moving and find that XXXX, the tenant screening company has this issue listed on my credit report and I have been denied housing. I tried to work with XXXX and sent them papers that I sent to the collection agency to resolve this issue. I received a do-not-reply email from XXXX stating they can not ever change the credit reporting status.

Source: Excerpt of CFPB Complaint No. 2974860, filed July 27, 2018

damages; upholding dismissal of FCRA claim against CRA and debt collector as allegedly a “legal dispute”); Mohnkern v. Equifax Information Services, LLC, 2021 WL 5239902 (W.D.N.Y. Nov. 10, 2021)(rental debt on credit report for \$7,008.00 despite fact that plaintiff never moved into the unit and found replacement tenants; dismissing FCRA claim against debt collector as “legal dispute”).

¹⁷⁴ NCLC, Fair Credit Reporting §§ 4.5.3.4.6, 6.10.2.5 (10th ed. 2022), updated at www.nclc.org/library.

¹⁷⁵ See, e.g., Sessa v. TransUnion, LLC., No. 22-87 (2nd Cir. May 5th 2022) (CFPB brief of amicus curiae), available at www.consumerfinance.gov; Gross v. CitiMortgage, Inc., No. 2017160 (9th Cir. 2021) (brief of amicus curiae CFPB), available at <https://files.consumerfinance.gov>

Rental debt is almost always furnished to the nationwide CRAs by debt collectors, who are disproportionately responsible for errors in credit reporting. We have made recommendations in a Petition for Rulemaking that the CFPB impose strict requirements on the furnishing of debt collection items,¹⁷⁶ which we believe will help reduce errors in the reporting of rental debts and we reiterate these recommendations in these comments.

V. Adverse action notices

Q9. How and to what extent do landlords and property managers communicate with applicants for rental housing about their applications when the landlord or property manager has determined not to accept the applicant?

- a. How do landlords and property managers provide adverse action notices (e.g., orally or in writing)? If orally, how do landlords and property managers ensure their adverse action notices comply with the requirements of the Fair Credit Reporting Act?*
- b. How and to what extent do landlords and property managers currently disclose to an applicant for rental housing the reason(s) for the applicant not being accepted to rent the unit?*
- c. Do landlords and property managers currently provide to the applicant a copy of any credit reports, screening reports, scores, or recommendations they received about the applicant? If not, what are the barriers to landlords and property managers providing that information to the applicant?*

A. NCLC survey: significant noncompliance with FCRA requirements

As the FTC and CFPB know, the FCRA requires users of consumer reports, including landlords using tenant screening reports, to provide an adverse action notice to an applicant if they deny or terminate a tenancy based in whole or in part on that report. The adverse action notice can be provided in writing, electronically, or orally. It must contain certain information, including the name, address, and telephone number of the CRA.¹⁷⁷ However, unlike adverse action notices under the Equal Credit Opportunity Act,¹⁷⁸ the FCRA does not require disclosure of the reasons an action was taken.

As the CFPB has noted, there appears to be significant noncompliance with adverse action requirements.¹⁷⁹ The NCLC survey confirmed this phenomenon. The NCLC survey asked respondents the following, for both private and subsidized housing:

“Do landlords provide adverse action notices when they deny housing to an applicant based on:

- a tenant screening report/recommendation,
- credit report/score, or
- commercial criminal background check”

¹⁷⁶ NCLC, Requests for FCRA Rulemaking: Debt Collector Furnishing, Language Access, Credit Reporting Ombudsperson Office, March 7, 2023, <https://www.regulations.gov/document/CFPB-2023-0021-0001>.

¹⁷⁷ 15 U.S.C. § 1681m(a).

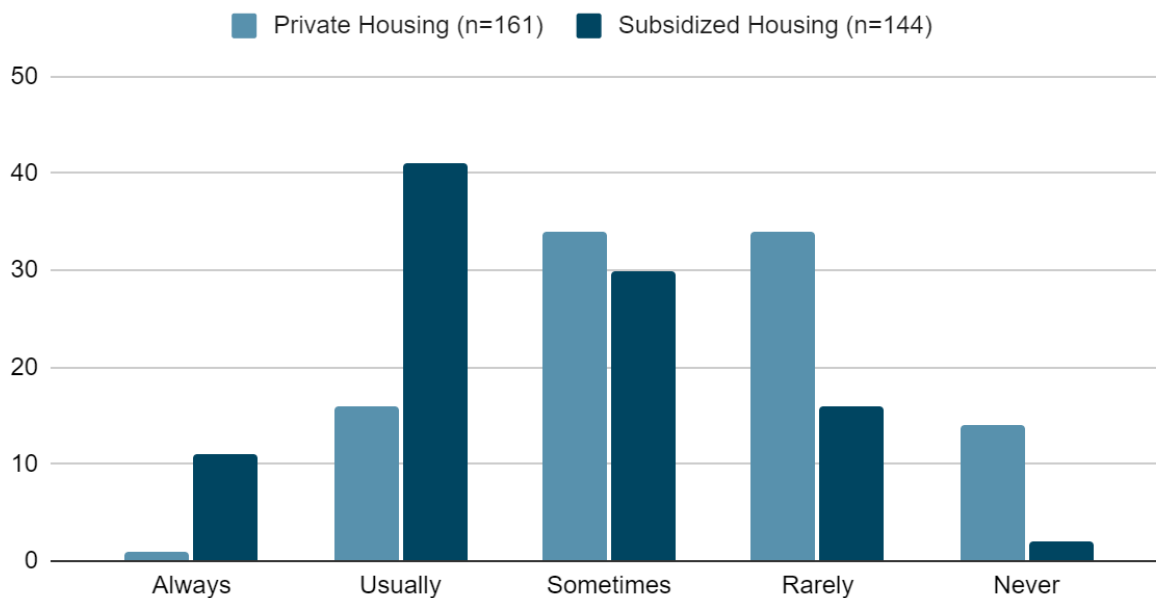
¹⁷⁸ 15 U.S.C. § 1691(d).

¹⁷⁹ CFPB, Snapshot: Tenant background checks, at 10 (“interviews and complaints indicate that landlords do not always provide the legally required adverse action notice”).

There were 161 responses for private housing and 144 responses for subsidized housing. Significant noncompliance was reported for private housing, with nearly half of respondents reporting that adverse action notices were provided Rarely (34%) or Never (14%), and one-third reporting that notices were provided only Sometimes (34%).

Subsidized housing providers appear to give adverse action notices more often, as over half reported that notices were provided Always (11%) and Usually (41%), with another almost one-third responding Sometimes (30%) and fewer than one-fifth responding Rarely (16%) or Never (2%). The greater compliance by subsidized housing providers is likely because HUD regulations require them to give an applicant a notice of rejection that includes a statement of reasons for the rejection.¹⁸⁰ However, the fact that about half of respondents observed notices only being given Sometimes, Rarely, and Never does indicate a significant amount of noncompliance.

Chart 4: Do Landlords Provide Adverse Action Notices When They Deny Housing (% of Respondents)



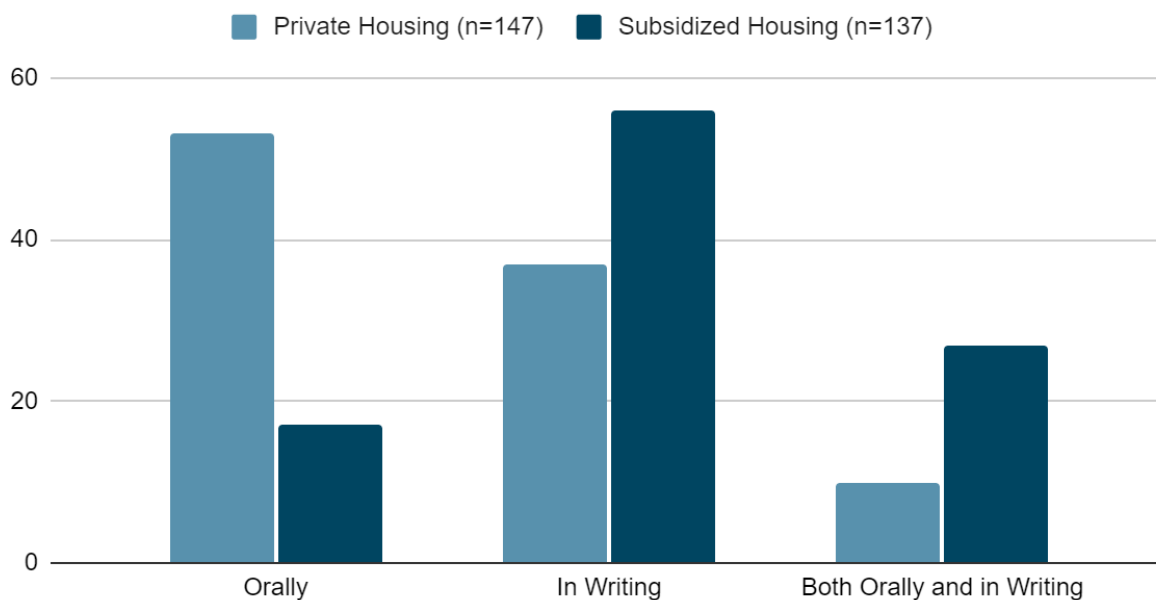
¹⁸⁰ 42 U.S.C § 1437d(c)(3); 24 C.F.R. §§ 880.603(b)(2), 960.208, 982.201(f)(1), 982.554(a). See generally National Housing Law Project, HUD Housing Programs: Tenants' Rights (The Green Book), § 2.8.7 (2017), updated at www.nclc.org/library ("In the event of rejection, the PHA (for public housing and Vouchers) and the owner (for HUD-assisted and subsidized housing) must promptly inform the applicant with a notice stating the reasons. The statement of the reasons for the rejection must be provided in advance of any hearing and be sufficiently specific so as to allow an applicant to prepare rebuttal evidence").

Survey respondents were also asked, for both private and subsidized housing:
“If your clients have received adverse action notices are these usually provided:
Orally
In writing
Both orally and in writing”

For private housing, there were 147 respondents. Over half of these respondents (53%) reported that adverse action notices are provided orally, while only somewhat over one-third (37%) reported notices usually being provided in writing and a small minority (10%) reported both oral and written notices.

For subsidized housing, there were 137 respondents. Written adverse action notices seem to be more common in this setting, with over half of these respondents (56%) reporting that adverse action notices are provided in writing, while about a quarter (27%) reported both written and oral notices and only a minority (17%) reported oral notices. Some of the requirements for subsidized housing providers to provide an adverse action notice specify that the notice must be in writing,¹⁸¹ which means that an oral notice would not be in compliance.

Chart 5: Method of Providing Adverse Action Notices (% of Respondents)



A number of respondents made narrative comments to both of the above survey questions, confirming that they rarely see adverse action notices:

¹⁸¹ See, e.g., 24 C.F.R. §§ 880.603(b)(2), 982.201(f)(1). See generally National Housing Law Project, HUD Housing Programs: Tenants’ Rights (The Green Book), § 2.8.7 (2017), updated at www.nclc.org/library.

Private housing typically won't even comment, but just say the unit was already rented. - Housing advocate from MA

The only times I've seen an adverse action notice provided to a prospective tenant is when I've demanded it on behalf of the prospective tenant. My clients have never been given the adverse action notice otherwise. - Legal services attorney from TX

Tenants are rarely provided the adverse action notice from private landlords. Tenants must specifically request this and are often still not given the notice. - Legal services attorney from GA

IF the tenant gets an adverse action notice that complies with the statute, it is most likely to be in writing (but that's a big IF) - Legal services attorney from GA

I've never seen one in writing, but I have had clients tell me that the potential landlord told them in person they were denied due to credit score or tenant screening - Legal services attorney from IL

Tenants are often unaware of why they were denied. They may be told that it is due to an eviction on their record, but they are rarely told where the landlord is getting that information. - Legal services attorney from OH.

I've had a few clients in my career get denied for housing and not have received an adverse action notice, so we have been unable to even determine who issued the screening report so that we might request a copy. And in these cases the landlord itself (or property manager) is unwilling to provide a copy of the screening report. - Legal services attorney from SC

Very often, landlords simply do not respond to applications so the resident-applicant is ghosted rather than being formally denied. - Nonprofit attorney from IL

A legal services attorney in Indiana reported that renters usually receive adverse action notices by text. This raises the question of whether the text notice complies with the FCRA in terms of disclosing the required information, such as the name and contact information of the CRA and the right to a free report. Oral notices present a similar issue:

When applicants receive oral notice that they were denied based on information in a tenant screening report, they do not receive information about their right to obtain the report for free within 60 days or to dispute inaccurate information as required under the FCRA. Typically the applicant will simply be told they were denied because they owe money to a prior landlord, because of "their credit," or because of eviction records, with no further information. - Legal services attorney from LA

When advised orally that they didn't get the housing it usually does not come with any reason. - Nonprofit attorney from LA

Most tenants tell me they just got a verbal denial from the landlord. That verbal denial almost never contains the adverse action information required by the statute. Even when landlords send them a copy of the screening company's score/recommendation, it rarely comes with an adverse action notice. - Legal services attorney from GA

Even written notices appear to be noncompliant in some cases:

I say usually with Subsidized housing because, as it relates to Public Housing and HCV specifically as administered by our local PHA, the tenant most often does at least get a letter saying they have been denied for XYZ reason. However, the letters are often procedurally deficient in that it does not disclose the source of the adverse information, how to get a copy of the report, inform the applicant that a consumer report was used, etc. - Legal services attorney from FL

A couple of narrative comments suggested that renters who apply online may be more likely to get notices

Notices are provided through electronic portals, usually. - Housing advocate from CA

If an applicant was told to apply online, then they will get an adverse action notice, but if they apply in person with paper copies, hardly ever get anything written and may or may not be told which CRA was used. - Legal services attorney from TX

A few respondents noted that adverse notices may get sent because they are automatically generated by the tenant screening CRAs' software, but renters might not receive them or remember they were received.

We see very mixed results on whether landlords provide adverse action notices to applicants. Many tenant screening report companies automatically generate a denial letter that gets sent to the applicant by email or mail (though the address used by tenants on rental applications may very likely not be a good address for receiving mail, especially if they are unhoused). Tenants may not know to open or review the notice when they receive it since it is not being sent by the property where they applied. Sometimes applicants receive denials over the phone and sometimes they hear nothing back at all. When we are contacted by someone who was denied based on a tenant screening report but did not receive an adverse action notice, our office sends a request for a "denial letter" to the property. The property will usually reply with one of the automatically generated notices from the screening company itself. - Legal services attorney from LA

B. NCLC survey: lack of meaningful information on reasons for rejection

The FCRA's adverse action notice informs renters when a tenant screening, credit, background check or other "consumer" report is involved in the decision to deny them housing. However, that notice does not provide information about the specific reasons for the denial, *e.g.*, that the renter had a low credit score, eviction record, or criminal record.

Another problem involves the fact that, as discussed in Section II.A above, landlords primarily rely on the scores and recommendations generated by the tenant screening CRAs algorithms. Yet as the CFPB noted “Renters rarely receive their scores...”¹⁸² The FCRA specifically does not require the disclosure of risk scores other than credit scores.¹⁸³

In contrast to the FCRA, the Equal Credit Opportunity Act does require a creditor to provide a statement of reasons for a rejection, or that the applicant has a right to one. However, the sole federal Court of Appeals¹⁸⁴ and handful of other courts¹⁸⁵ to consider the issue have ruled that residential rental leases are not considered “credit” under the ECOA. We urge the CFPB to promulgate a regulation that residential rental leases are “credit” for the specific, limited purpose of the ECOA’s adverse action requirements.

The NCLC Survey asked the following question to see if renters were receiving information about the reasons their applications for housing were rejected, for both the private housing and subsidized housing:

“Do landlords disclose their reasons for rejecting an applicant to the applicant?”

For private housing, there were 168 respondents. Responses were fairly evenly distributed between Sometimes (40%) and Rarely/Never (39%), with a minority reporting Usually/Always (20%).

For subsidized housing, it appears that reasons for rejection are provided more frequently. Of 155 respondents, over half responded Usually/Always (56%) and a third responded Sometimes (32%), with a smaller minority (13%) responding Rarely/Never. As discussed in Section V.A, HUD rules require subsidized housing providers to give an applicant a notice of rejection that includes a statement of reasons. The fact that 45% of respondents observed a statement of reasons only being given Sometimes, Rarely, and Never does indicate a substantial amount of noncompliance.

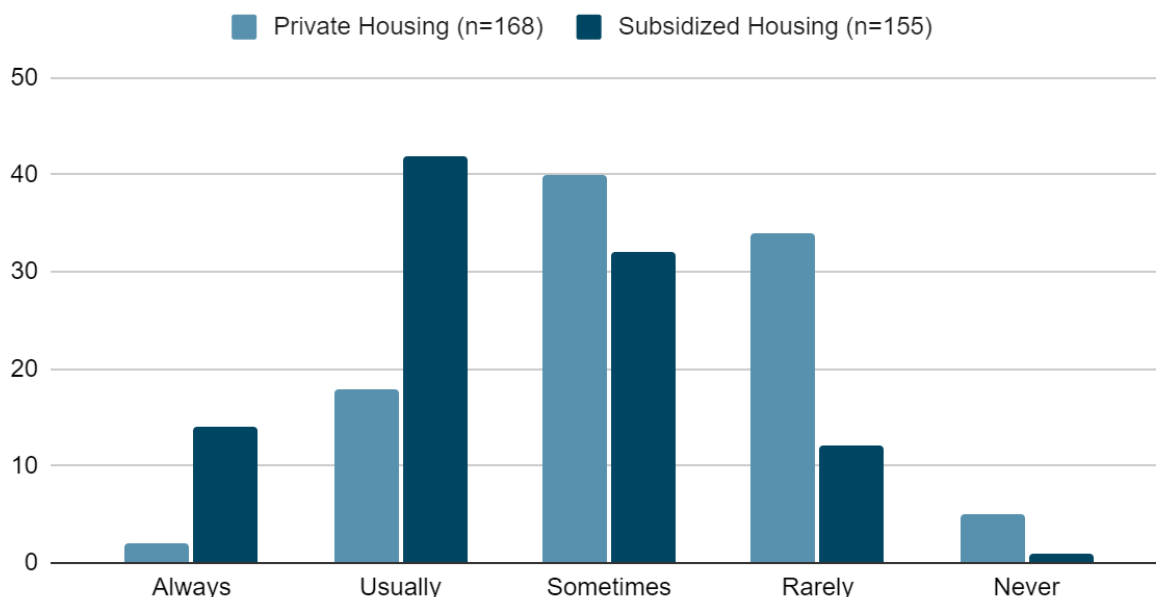
¹⁸² CFPB, Snapshot: Tenant background checks, at 20.

¹⁸³ 15 U.S.C. § 1681g(a)(1)(B).

¹⁸⁴ *Laramore v. Richie Realty Mgmt. Co.*, 397 F.3d 544 (7th Cir. 2005).

¹⁸⁵ *Olli v. Waypoint Homes, Inc.*, 104 F. Supp. 3d 1012, 1014–1015 (N.D. Cal. 2015)(because typical residential lease is not credit, ECOA adverse action notice not required); *Portis v. River House Assocs.*, 498 F. Supp. 2d 746 (M.D. Pa. 2007) (applying *Laramore* to find that “typical residential lease” is not covered by the ECOA). *See generally*, NCLC, Credit Discrimination § 2.2.2.2.4 (8th ed. 2022), updated at www.nclc.org/library.

Chart 6: Do Landlords Disclose Their Reasons for Rejecting an Applicant to the Applicant (% of Respondents)



About a dozen respondents from a variety of states (CA, FL, GA, LA, MA, NY, NC, OH, OR, TX) provided narrative comments noting that even when a renter receives a statement of reasons, it may not provide meaningful information or the renter might not be able to understand it. Some of these include:

We also see very mixed results in the frequency and specificity of disclosures by landlords of reasons for application denials. Sometimes tenants hear nothing back at all, and sometimes they are told a vague explanation verbally (i.e., “your credit is not good enough,” or “something came back on your credit”). Often when applicants receive an automatically generated adverse action notice from a tenant screening company, it will include a list of factors that impacted the recommendation or the score provided by the screening company to the landlord. These factors are very vague and provide little guidance to tenants who may have inaccurate or misleading information they would like to dispute (i.e., “Rental History Does Not Meet Property Requirements”). The notices will also sometimes include several factors that “contributed” to the denial, when in reality there was only one factor that excluded the applicant from eligibility for the property, like an eviction record or a debt to a prior landlord. This can lead to confusion and a sense of hopelessness for an applicant who is rejected, rather than providing a roadmap on how to challenge a denial. - Legal aid attorney from LA

Subsidized housing may disclose all of their decisions formally, but most applicants do not have sufficient literacy, regardless of language, to comprehend letters or what recourse they may have, such as filing an appeal. - Housing advocate from MA

If there's a reason provided it is usually vague and insufficient for the person to know what the specific issue was - usually just "bad credit" or "something" came back on the

report. The denial letters are equally unhelpful and do not state directly or specifically what the issue was that caused denial. - Nonprofit attorney from LA

Subsidized landlords may say they always disclose the reason(s) for a rejection, and the difference may be that they don't clearly articulate the reason(s) to the applicant, which can effectively be a non-disclosure. - Legal services attorney from NY

They usually just say that the screening report recommended a denial. They are not usually making an independent determination as to whether that recommendation was proper. - Legal services attorney from GA

[T]hey normally just say it because of their rental record but do not provide any other information or detail and their [sic] is no way to dispute the information on the report to get housed. The only option tenant has is to contact the agency that ran the report and try to dispute the information they provided directly with them. However, by then, the tenant is looking for a new place because the landlord has already told them no. The problem is, each landlord uses a different agency so even if you dispute it with one agency and they correct it, there is no guarantee the next landlord will use that same agency or use a different agency - Legal services attorney from NC

A respondent reported that the tenant screening CRA can be an impediment to renters getting information about the reasons for their denials:

I have noticed that landlords are discouraged by the screening companies for sharing the reason. And when a tenant asks the reason the landlord often claim that they do not have the reason and ask the tenant to contact the screening company to get the reason. Often the tenants are not given information about how to reach the screening company. - Housing advocate from OR

One set of information that might help renters better understand why their rental applications were rejected would be copies of the information that the landlord received from the tenant screening CRA. In order to obtain information about whether landlords actually supplied such information, the NCLC survey asked a follow-up question, for both the private housing and subsidized housing:

“Do landlords give applicants copies of information they received about the applicant, such as:

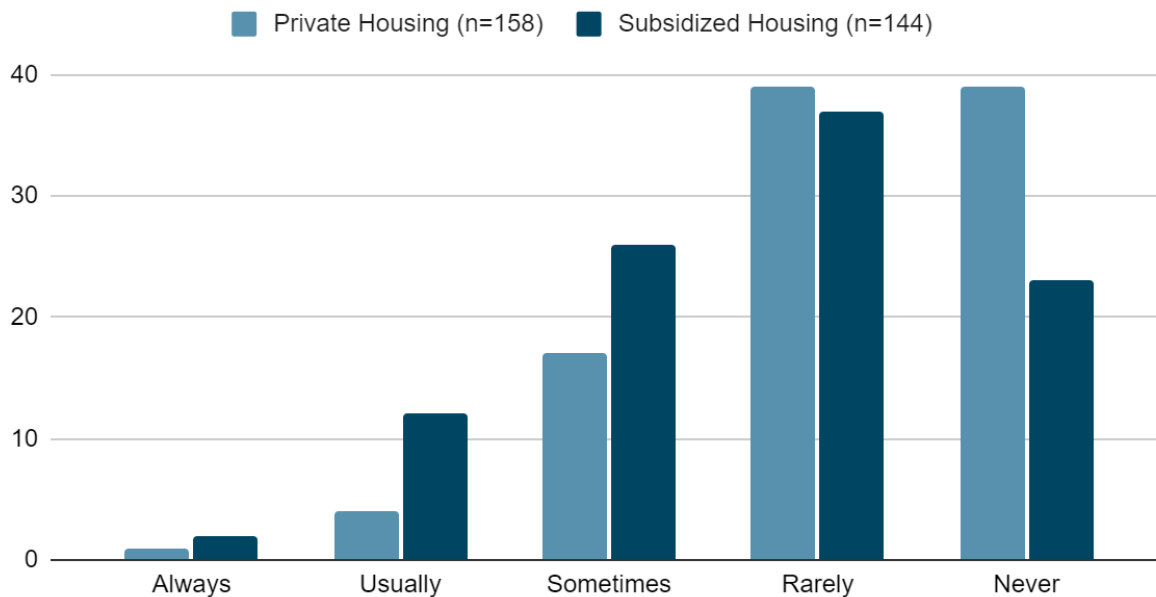
- credit reports,
- tenant screening reports,
- credit/tenant screening scores, or
- tenant screening recommendations”

For private housing, there were 158 responses. The overwhelming majority responded that landlords Rarely (39%) or Never (39%) gave copies of reports or scores to renters.

For subsidized housing, there were 144 responses. Slightly more respondents reported seeing subsidized housing providers give copies of reports, with a quarter responding Sometimes (26%)

and 14% responding Usually/Always. Still, a large majority responded that subsidized housing providers Rarely (37%) or Never (23%) provide copies of information.

Chart 7: Do Landlords Give Applicants Copies of Information They Receive About the Applicant (% of Respondents)



In narrative comments, numerous advocates confirmed that copies of screening reports and scores are never provided. If the renter or advocate asks for it, the landlord may or may not respond.

I have only had clients get this information when I advise them to ask for it specifically and state that they were advised by an attorney they are entitled to ask and receive this information. - Nonprofit attorney from LA

Even when a tenant asks for it, the landlord often tells them to go directly to the screening company for the report. I've had some landlords even tell a tenant that they are not allowed to share the report with the tenant directly. - Legal services attorney from GA

If tenant submit a request numerous times [and] comes to our office for help - Legal services attorney from FL

Sometimes, if asked, they will give copies to the tenant but tenants rarely ask. - Legal services attorney from DE

In my 30 years of doing this, I have only had one client who got this information. In talking to legal services and clinical advocates around the state, only one other attorney had ever seen a written disclosure and she had only seen one in her career. - Nonprofit attorney from IN

It is extremely uncommon for landlords to provide copies of information they received about the applicant, and this typically only happens when a tenant proactively asks the property manager/leasing agent for a copy of the report that lead to the denial. . . . Our office will sometimes request a copy of a screening report directly from a landlord, and we also request the reports on behalf of clients from the screening companies directly. - Legal aid attorney from LA

[L]egal discovery usually necessary to get this information in connection with private housing; subsidized housing applicants usually still need to ask for it and may or may not receive it - Nonprofit attorney from VA

Subsidized housing--tenants have a right to request an informal hearing. Few do without our help. Getting documentation from the housing authority is often like pulling teeth. - Legal services attorney from OK

Often “upon request” and often ignored. - Housing advocate from OR

It is likely only to be provided because the tenant asked and insisted upon receiving it. Rarely is it every provided without a request. - Legal services attorney from MI

I don't have a large enough sample size here either, but the report was not provided by the landlord or the CRA until after a lawsuit was filed. - Private attorney from WA

In the past when CRA reports were used they were usually not provided to the tenant. Many landlords say they are prohibited from providing them - Legal services attorney from MA

A private attorney from Arizona noted the more extensive requirements for employment use of consumer reports and argued they should be applied to tenant screening reports:

Tenant consumer reports are just as inaccurate, difficult to correct, and injurious to tenants as they are to job applicants. Without a requirement that the initial report be maximally accurate, there is going to remain this problem. All tenant reporting companies rely on the accuracy of the information they obtain from the vendors. The reports are generated instantaneously. Tenants have to order their reports separately, receiving them days, weeks or even months after the landlord makes a decision. Tenant consumer reports should have the same protections as employment purposed reports. - Private attorney from AZ

We support such a proposal and urge the CFPB to adopt a regulation establishing notification requirements for tenant screening use similar to the pre-adverse action notice requirements for employment use of consumer reports.

Respondents in several jurisdictions noted that there were state or local laws requiring landlords to provide a statement of reasons for a rejection, but also observing noncompliance.

Colorado law requires that a copy of the tenant screening report be provided, that does not always happen. - Legal services attorney from CO

Minnesota has a state law requiring that if you charge an application fee, you must provide a reason for a denial. Some landlords do not charge such fees and so do not necessarily provide a reason. A few charge a fee but don't comply with the statute. - Legal services attorney from MN

Cook County law requires a notice if they deny someone based on criminal background, and there are stringent regulations around when housing providers can consider this. However, housing providers usually just tell applicants they are rejected due to a background check, and don't include the required disclosures - and often applicants are wrongfully denied. - Legal services attorney from IL

There are requirements around this process in our local laws that are not often met. Denials based on criminal record are supposed to be detailed in writing, so that a demonstrable risk of harm based on the criminal record can be illustrated. Sometimes reasons are given, sometimes they are not (and sometimes the reasons that are given by tenant screening - Fair housing advocate from IL

In DC, landlords are required to provide written notices of denial that include the reason an applicant was denied, but frequently landlords only provide notice of denial via a phone call and are unable to specify the exact reasons for denial. - Housing advocate from DC

In DC, landlords are required to provide a copy of all application materials reviewed upon an applicant's request. However, landlords frequently refuse, stating that an applicant can get a copy of their credit report by contacting a third party agency. - Housing advocate from DC

The 2021 Renters' Access Act in Philadelphia requires a landlord denying a tenant to provide notice and a reason in writing, along with a copy of any third-party documentation that formed the basis of the decision. However, in our experience, this happens infrequently. - Legal services attorney from PA

[T]hey are required to provide if requested, but not sure [tenants] know they have this right - Legal services attorney from OR

VI. Language access

Q3. To what extent do landlords and property managers address barriers for tenants and prospective tenants with limited English proficiency or disabilities?

A. Barriers faced by LEP tenants in securing rental housing

About 25.5 million individuals in the United States, roughly 8.2% of the U.S. population over the age of five, are limited English proficient (“LEP”), meaning they have a limited ability to read, write, speak, or understand English.¹⁸⁶ These individuals face many unique challenges in navigating our financial system, including understanding and completing key financial documents, managing bank accounts, resolving problems with financial products and institutions, and accessing financial education and money management tools.¹⁸⁷ In addition to these challenges, individuals with limited English proficiency often navigate various systems with an increased vulnerability to abuse, face poorer outcomes, and have difficulty accessing information about how to act in their best interest.¹⁸⁸

These issues are particularly salient in the rental housing context. A lack of language access could lead to vulnerabilities at each stage of the process in obtaining and maintaining safe and

¹⁸⁶ Census Bureau, American Community Survey 5-Year Estimates, Why We Ask about Language Spoken at Home, www.census.gov/acs/www/about/why-we-ask-eachquestion/language/.

¹⁸⁷ CFPB, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, 4 (Jan. 2021), www.nclc.org/wpcontent/uploads/2023/02/Comments-WH-Financial-Access-Subcommittee-on-Language-Access.pdf; CFPB, Spotlight on serving limited English proficient consumers: Language access in the consumer financial marketplace (Nov. 2017), available at www.consumerfinance.gov/dataresearch/research-reports/spotlight-servinglimited-english-proficient-consumers/; Federal Deposit Insurance Corporation, 2013 FDIC National Survey of Banked and Underbanked Households, 16-17 (Oct. 2014), available at www.fdic.gov/householdsurvey/2013report.pdf (finding that 34.9 percent of households where Spanish is the only language spoken are “unbanked,” compared to just 7.1 percent of households where Spanish is not the only language spoken); U.S. Government Accountability Office, Factors Affecting the Financial Literacy of Individuals with Limited English Proficiency, GAO-10-518 (May 2010), available at www.gao.gov/assets/310/304561.pdf.

¹⁸⁸ See e.g., Asian Pacific Institute on Gender-Based Violence, Survivors with Limited English Proficiency: Barriers to Access, (2016), available at <https://api-gbv.org/wp-content/uploads/2019/05/LEP-survivors-accessibility-9-2016-formatted-20191.pdf>; Kleinmann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report, 16-17 (Apr. 2017) (observing that LEP consumers often felt vulnerable when presented with English-only materials, and that study participants were often concerned about fraud) fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf. Disparities between LEP populations and English speakers have been closely studied in healthcare and public health contexts. See e.g., Yuri Jang, Hyunwoo Yoon, & David Chiriboga, Health Vulnerability of Immigrants with Limited English Proficiency: A study of Older Korean Americans, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5441559/>; Alexander R. Green & Chikoke Nze, Language-Based Inequity in Health Care: Who Is the “Poor Historian”?, American Medical Association Journal of Ethics, (Mar. 2017), available at <https://journalofethics.ama-assn.org/article/language-based-inequity-health-care-who-poor-historian/2017-03>.

sustainable rental housing for LEP tenants. For instance, a lack of language access may make the search for affordable rental housing more onerous if online advertisements and descriptions of available units are in English-only. While landlords might not provide their screening criteria to applicants often, for those who do so, prospective tenants with LEP may not be able to understand the screening criteria before they apply for a unit.

Similarly, LEP tenants without access to qualified interpreters may not have a meaningful opportunity to understand why a housing provider denied their rental application. Moreover, without qualified interpreters, housing providers may not accurately convey information about the unit before the prospective tenant signs the lease. If housing providers fail to translate lease agreements, LEP tenants are at a greater risk of misunderstanding their rights and obligations under a lease. Once they move in, LEP tenants may encounter difficulties in communicating with their landlords about matters such as paying rent and submitting requests for maintenance and repairs. Finally, in eviction proceedings or subsidy termination hearings, LEP tenants without interpreters are likely to be misunderstood and face worse outcomes.¹⁸⁹

These barriers are especially concerning when limited English proficient tenants are also recent immigrants or refugees. In addition to the high costs that come with renting an apartment, new arrivals often do not have usable credit histories, references, a cosigner, or required documentation such as work permits or Social Security numbers in order to qualify for a rental unit.¹⁹⁰ Language barriers exacerbate many of these issues, and without in-language communication from housing providers communicating screening criteria, and reasons for denials, these tenants will continue to face challenges in finding and securing sustainable rental housing.

B. Requirements for recipients of federal financial assistance to provide language access to LEP tenants

In order to comply with federal civil rights laws, many subsidized housing providers are obligated to provide language assistance to LEP tenants and applicants given their status as recipients of federal financial assistance. Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin in all federally funded programs and activities.¹⁹¹ In effectuating this mandate, Executive Order 13166 requires all federal agencies to “examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have

¹⁸⁹ Language Access, National Housing Law Project, available at www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/language-access/.

¹⁹⁰ American Poverty Is No One’s Salvation. Afghan Evacuees in the U.S. Struggle to Find Housing, Time, (Sept. 2021), <https://time.com/6180724/afghan-refugees-housing-crisis/>.

¹⁹¹ 42 U.S.C §§ 2000d - 2000d-7

meaningful access to them.”¹⁹² The Executive Order also requires that agencies ensure that recipients of federal financial assistance provide meaningful language access to their LEP applicants and beneficiaries.¹⁹³

As part of these mandates, the Department of Housing and Urban Development published guidance to recipients of federal financial assistance on their duty to provide language access to HUD-funded program recipients.¹⁹⁴ Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.¹⁹⁵ This definition excludes housing providers that only receive tax credits, such as the Low Income Housing Tax Credits (LIHTC), Section 8 Home Choice Vouchers, and contracts for insurance, such as Federal Housing Administration (FHA) insurance.¹⁹⁶ However, once a provider receives any qualifying federal assistance, it must provide language access in all parts of its operations.¹⁹⁷ While the HUD guidance includes a “safe harbor” for housing providers located in areas where a relevant language group is a small proportion of the eligible service population, this safe harbor extends only to written translations of vital documents and does not extend to oral interpretation.¹⁹⁸ Thus, at a minimum, housing providers that receive federal funds must offer complimentary oral interpretation to prospective tenants, and must provide written translations of vital documents in most cases.

C. NCLC survey results: scant and inconsistent language assistance in the rental market

Anecdotal accounts indicate that even when there is an affirmative duty to provide language services to individuals with LEP, housing providers may not offer all crucial written information in-language, and many do not regularly make use of interpreters or bilingual staff. The NCLC survey sought to obtain information not only on whether housing providers attempt to provide language assistance to prospective tenants, but also which language services are most commonly used by providers in the industry. The survey asked respondents the following, for both private and subsidized housing:

“Have you observed landlords and property managers offer language assistance to tenants and prospective tenants with limited English proficiency by (Check all that apply):

¹⁹² Executive Order 13166, 3 C.F.R. §13166 (2001); Dep’t of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed.Reg. 41455 (Jun. 6, 2002).

¹⁹³ Id.

¹⁹⁴ 72 Fed. Reg. 2732-2757 (Jan. 22, 2007)

¹⁹⁵ 72 Fed. Reg. 2740 (Jan. 22, 2007).

¹⁹⁶ For an exhaustive list of which programs qualify as federal financial assistance under Title VI, see 69 Fed. Reg. 8700 (Nov. 4, 2004).

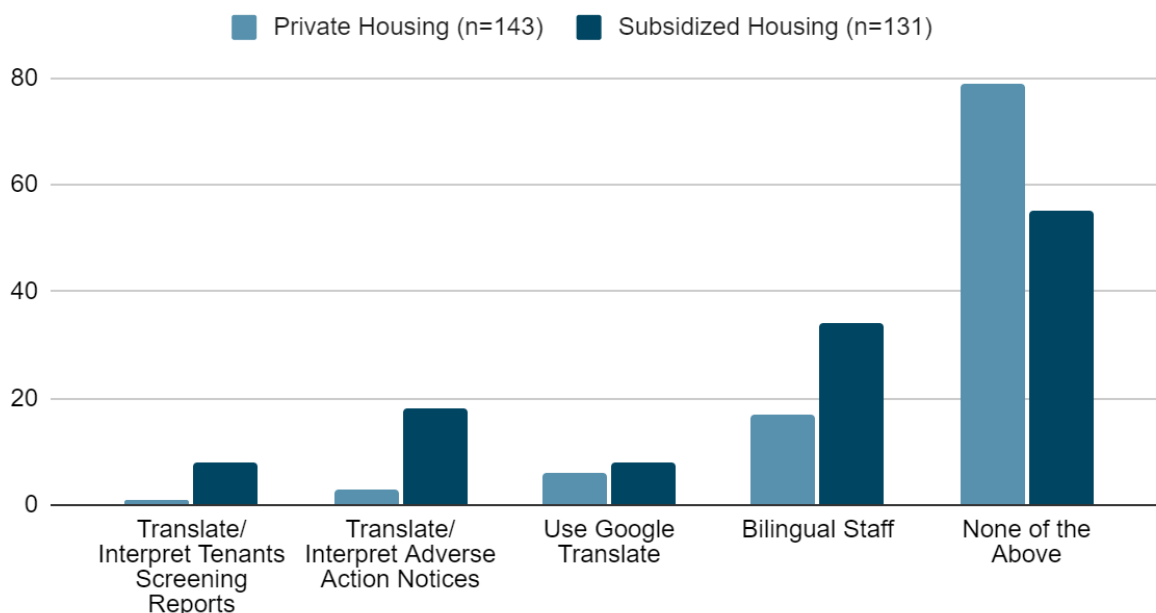
¹⁹⁷ Id.

¹⁹⁸ 72 Fed. Reg. 2753 (Jan. 22, 2007)

translate/interpret tenant screening reports, translate/interpret adverse action notices, use Google Translate, Bilingual staff, or none of the above.”

We received 143 responses to this question for private housing and 131 responses for subsidized housing. While subsidized housing providers were more likely to offer language assistance in each available category, the most frequent response for all respondents was “None of the Above,” comprising 79% of responses for private housing and 55% of responses for subsidized housing. The most common type of language assistance was to have bilingual staff, observed by 17% of respondents for private housing and 34% for subsidized housing. These figures suggest that for both categories the norm is to provide no language assistance to LEP tenants and prospective tenants.

Chart 8: Language Assistance Provided by Landlords and Property Managers to Tenants with Limited English Proficiency (% of Respondents)



Narrative responses support this conclusion. Respondents in Massachusetts, Delaware, Ohio, North Carolina, Connecticut, California, Florida, Georgia, New York, Pennsylvania, Indiana and Illinois all reported that landlords and housing providers offering language assistance to prospective tenants was a rarity. A common response was that tenants relied on family members, friends, and children.

Even housing authorities often ignore applicant's language selections and preferences in their mailings, eligibility interviews, communications. Private landlords are even worse. - Housing counselor from MA

I have never seen a landlord offer language assistance to tenants. Usually, the tenants bring their own assistance (usually a family member, often a child) - Legal services attorney from DE

Landlords and property managers rarely offer language assistance to tenants and prospective tenants, which frequently intimidates clients from applying if there is that language barrier. - Housing counselor from CA

I have seen more instances of not offering assistance than offering assistance. - Legal services attorney from OH

Subsidized landlords seem to be slightly more aware of their duty to provide LEP access, but it's still very bad. - Legal services attorney from GA

Respondents in North Carolina, Oregon, and New York reported that language assistance among housing providers is inconsistent, and that those that hire bilingual staff have high rates of employee turnover for these positions. These respondents also noted that documents, especially documents unique to an individual's circumstance, are almost never translated into other languages, even for subsidized housing providers.

I almost never see translation services offered on Private Housing for low income tenants, unless a staff member happens to speak Spanish. Property management companies change so often, however, that this staff leaves and then tenants have no one who they can communicate with about their issues. - Legal services attorney from NC

Translation of documents (leases, screening reports, notices) is rarely if ever seen locally in my experience. The local PHA has spanish language advertisements on certain notices and will offer interpreters for grievance hearings. I can't recall if they offer leases in other languages. - Legal services attorney from FL

Even subsidized housing providers seldom translate unique documents. If anything is translated, that will usually be forms and boilerplate notices. - Legal services attorney from VA

I have seen bilingual staff occasionally but bilingual staff, staff of color and staff for affordable housing are often paid less than market rate housing staff even though they often have more training or they are bilingual. - Housing counselor from OR

Lack of consistency was another common theme among narrative responses. For example, one respondent from New York reported:

The checked boxes are not universal. Not all PHAs, or Property managers of multiple dwellings have bilingual staff, where there tends to be frequent turnover. Notices issued in the tenant's/applicant's native language is not consistent. - Legal services attorney from NY

D. LEP renters need meaningful access to information in their preferred language

Language assistance in the rental market should not be such a rarity. Providing written materials in an individual's preferred language, in conjunction with robust, professional oral interpretation

services, is essential to preventing harm and improving outcomes in all aspects of our economy, but especially in the rental screening process. Individuals with limited English proficiency should have a meaningful opportunity to understand whether they will qualify for a rental unit before they apply, and why their applications are denied. We recommend requiring housing providers to offer translated adverse action notices in the eight most commonly spoken languages among the U.S. LEP population (Spanish, Chinese, Korean, Vietnamese, Tagalog, Russian, Arabic, and Haitian Creole) as the vast majority of the U.S. LEP population speaks one of these eight languages. The CFPB should also issue model adverse action notices in those languages.

VII. Algorithms

Q31. How are algorithms, automated decision-making, artificial intelligence, or similar technology (collectively referred to below as “algorithms”) being used in the tenant screening process?

Q35. What information about applicants is relayed by consumer reporting agencies to landlords and property managers?

a. What types of recommendations, scores, predictions, or other outputs are consumer reporting agencies providing to landlords and property managers?

b. How are recommendations or scores derived or produced?

As discussed in Section II.A, tenant screening CRAs commonly offer products that “adjudicate” or “score” the applicant, providing a recommendation or decision about whether to reject, accept or accept the tenant with conditions like a higher security deposit. Some tenant screening CRAs claim to use artificial intelligence/machine learning models or other automated tools in producing these recommendations, although the lack of transparency makes it difficult to confirm or evaluate these claims.¹⁹⁹

Tenant screening scores and recommendations are even more opaque than credit scores and receive even less oversight. With respect to credit scores, the implementing regulation of the federal Equal Credit Opportunity Act requires them to be “empirically derived, demonstrably and statistically sound,...”²⁰⁰ Federal regulators that supervise banks and credit unions have reviewed credit scoring models to ensure that they meet the standard of being predictive and statistically sound.²⁰¹ No equivalent regulatory supervision exists to ensure that tenant screening scores are similarly predictive or statistically sound. As the CFPB has noted “common practices in financial services credit risk operations, such as documented model validation and risk

¹⁹⁹ See NCLC, Comment Letter on the Financial Institutions’ Use of Artificial Intelligence, Including Machine Learning 15–16 (July 1, 2021), www.nclc.org/images/pdf/credit_reports/comments_RFI_AI.pdf (discussing background screening companies’ purported use of AI-based process to decide whether to accept rental housing applicants).

²⁰⁰ Reg. B., 12 C.F.R. pt. 1002.2(p)(1); see also NCLC, Fair Credit Reporting § 16.2.3.2 (9th ed. 2017), updated at www.nclc.org/library.

²⁰¹ NCLC, Fair Credit Reporting § 16.2.3.2 & n.73 (9th ed. 2017), updated at www.nclc.org/library.

management, do not appear to be prevalent in tenant risk modeling.”²⁰² In other words, there is no evidence whether tenant screening scores or recommendations are predictive or meaningful at all.²⁰³

Tenant screening score algorithms are closely guarded secrets, with companies revealing minimal information about their products to housing providers, rental applicants, and the public. For example, SafeRent Solutions, LLC states that it uses “credit bureau data and scores,” bankruptcy records, past due accounts, payment performance, and eviction history as factors within its scoring algorithm, but does not disclose the specific sources of information or how the algorithm weighs those factors.²⁰⁴

Other tenant screening companies may provide even less insight into the makeup of their tenant screening scores. TransUnion SmartMove, for instance, states that its ResidentScores “give landlords pertinent information” about the “reliability and level of risk” that rental applicants may bring and that it is “designed to take credit report data into account” and “is powered by a sophisticated analysis of more than 500,000 actual resident records.”²⁰⁵ Similarly, RealPage states simply that its AI screening “incorporates granular third-party consumer financial data” and its “massive, proprietary database of outcomes.”²⁰⁶

Reliance on tenant screening scores and recommendations also disproportionately burdens tenants of color. Tenant screening companies and others often assert that relying on these automated decision-making tools (which may involve artificial intelligence) instead of human decision makers helps eliminate bias.²⁰⁷ However, research indicates that these tools instead worsen discrimination in housing,²⁰⁸ including because racial disparities exist in the data fed into the algorithms and used to “train” the artificial intelligence models. Tenant screening scores and

²⁰² CFPB, Tenant Background Checks Market, at 3. *Id.* at 41. (“In contrast to the documented model risk management in the financial services space, we are unaware of objective validation of tenant screening company models or detailed descriptions of the specific variables or weights used in a given model.”)

²⁰³ *Id.* at 40 (“nor is there independently validated, publicly available evidence that they reliably predict rental outcomes.”)

²⁰⁴ See Complaint, *Louis v. SafeRent*, at 6-8 (discussing public information about SafeRent Solutions’ tenant screening score product).

²⁰⁵ TransUnion SmartMove, ResidentScore, www.mysmartmove.com/SmartMove/landlord-credit-check-service.page (last visited May 18, 2023).

²⁰⁶ Press Release, RealPage, RealPage Releases AI Screening (June 26, 2019), www.realpage.com/news/realpage-releases-ai-screening/; see also RealPage, AI Screening, www.realpage.com/apartment-marketing/resident-screening/ai-screening/ (last visited May 18, 2023) (“Only RealPage has the powerful combination of AI technology with behavioral and payment data from more than 30 million rental records . . .”).

²⁰⁷ See, e.g., SafeRent Solutions, Resident Screening, <https://saferentsolutions.com/resident-screening/> (last visited May 18, 2023) (“Our advanced technology models are statistically validated based on facts, ensuring a degree of consistency and reliability unmatched in the industry, eliminating reliance on judgment calls by leasing staff.”).

²⁰⁸ Valerie Schneider, Locked Out by Big Data: How Big Data, Algorithms and Machine Learning May Undermine Housing Justice, 52 Colum. Hum. Rts. L. Rev. 251, 254 (2020); see also Cyrus Farviar, Tenant screening software faces national reckoning, NBC News (Mar. 14, 2021), www.nbcnews.com/tech/tech-news/tenant-screening-software-faces-national-reckoning-n1260975.

recommendations create a misleading veneer of objectivity while concealing underlying racial disparities.

NCLC is co-counsel in a recently filed case alleging that the tenant screening company SafeRent violates the federal Fair Housing Act (FHA) by assigning disproportionately lower tenant screening scores to Black and Latino renters who are HCV holders. The complaint explains that SafeRent informs the landlord whether the rental applicant is approved or denied for housing. SafeRent makes that decision based only on the tenant screening score it calculates through an automated process. The SafeRent score incorporates, among other factors, the applicant's credit history and non-tenancy debts. As discussed in Sections IV.E, reliance on those factors has a disproportionate effect on Black and Hispanic consumers because those consumers have disproportionately lower credit scores and worse non-tenancy debt histories than white consumers.²⁰⁹

VIII. Policy Recommendations

A. The FTC should use its unfairness authority to promulgate regulations protecting renters

The FTC's general unfairness authority under Section 5 of the FTC Act is an essential tool to rein in tenant screening practices. For purposes of the FTC Act, an unfair act or practice is one that is "[1] likely to cause substantial injury to consumers which is [2] not reasonably avoidable by consumers themselves and [3] not outweighed by countervailing benefits to consumers or to competition." The current ways in which tenant screening is used and harms renters satisfy this unfairness test.

First, shelter is a basic human need. The chief injury to consumers—increased difficulty and even inability to secure housing for renters with criminal or eviction records (including erroneous records) or low credit scores, as well as their families—could hardly be more substantial. And as discussed in Sections III.B, III.C and IV.E above, current screening practices cause myriad other harms as well, including the perpetuation and reinforcement of racial and other disparities.

Second, the injury is not reasonably avoidable by impacted consumers. Consumers cannot opt-out of tenant screening when applying for housing, and or opt out of being the subject of reports by tenant screening CRAs. Further, in many places the supply of affordable housing is extremely limited, with demand outstripping supply, and alternative rental opportunities without screening are unavailable to meet consumer demand.

Finally, no countervailing benefits have been shown to outweigh these harms. Tenant screening companies and housing providers claim that screening is necessary to ensure tenants will meet rent obligations and to protect the safety of others. While these are legitimate factors for housing providers to consider, tenant screening CRAs and housing providers *have not presented empirical support in favor of their claims* about the predictive value of credit reports and scores,

²⁰⁹ See Complaint, *Louis v. SafeRent Solutions*.

criminal records, or even eviction records. For criminal records, there is a growing body of evidence they demonstrably do *not* have such predictive value, as discussed at length in Section III.B.3.

Accordingly, on one side of the ledger, there are widespread, well-documented, and grave harms caused by current tenant screening practices. And on the other side of the ledger, there are unsupported—and, in fact, sometimes refuted—claims about benefits to tenant suitability.

Given the fundamental unfairness of current tenant screening practices, the FTC is well within its authority to use its UDAP authority to regulate them. The FTC should:

- Issue regulations requiring landlords to:
 - disclose their admission criteria to applicants if they charge any application fees
 - consider applicants in the order that they apply
- Prohibit landlords from rejecting applicants on the basis of
 - arrest records; convictions which have been set aside, pardoned, sealed or expunged; convictions older than seven years (or shorter if research indicates); or juvenile records
 - convictions without making an individualized assessment, such as the severity of the offense
 - evictions unless a judgment was issued against the tenant on the basis of nonpayment or other cause
 - credit score or credit history information, based on the lack of empirical support and the disparate impact on Black and Latino renters
- Regulate application and other junk fees in the rental context, as discussed in our February 2023 comments in response to the FTC’s junk fee Request for Information

The Shriver Center on Poverty Law, NCLC, and other organizations sent a letter to the FTC on November 22, 2021 that made additional recommendations for regulations and guidance regarding tenant screening practices, which is attached as Appendix B.

B. Recommendations for CFPB Regulation and Guidance

The CFPB has announced that the Bureau will be engaged in a rulemaking under the Fair Credit Reporting Act (FCRA). The CFPB should adopt provisions in this rulemaking to:

- Define “reasonable procedures to assure maximum possible accuracy” under § 1681e(b) of the FCRA to:
 - require verification of records retrieved through an automated search of a criminal or eviction records database using the records’ original source.
 - require verification and updating of criminal and eviction records that lack disposition data for records more than one year old.
 - require regular updating of criminal and eviction records to prevent reporting outdated information and ensure reporting of outcomes such as dismissals, vacate orders, judgment for the tenant, cleared convictions, or reductions of the grade of an offense.
 - prohibit the reporting of “undisposed cases”—cases that do not show a final disposition and for which no entry has been made for at least five years.

- prohibit multiple reports of the same case, regardless of source. For criminal records, this includes clarifying what information can be included with convictions and arrests in order to prevent concurrent charges from being treated as additional convictions.
- Require CRAs to develop a comprehensive audit program to test the accuracy and completeness of public records in their reports.
- Establish that whether a disposition of a state criminal case is considered a conviction should be determined by state law.
- Reaffirm and clarify that the FCRA applies to certain companies—including data brokers and other data vendors—that own or maintain databases of aggregated public records data (i.e., eviction and criminal records) and sell these records.
- Require registration of CRAs.
- Establish notification requirements for use of consumer reports for tenant screening, similar to the pre-adverse action notice requirements for employment use.
- Require that users provide adverse action notices in languages other than English when the user knows that the consumer is limited English proficient.
- Reaffirm and clarify that CRAs and furnishers have an obligation to conduct a reasonable investigation of a consumer’s dispute when it involves a legal dispute.
- Prohibit the application of forced arbitration clauses in credit monitoring contracts to FCRA claims for inaccuracies and disputes
- Impose strict requirements as suggested in NCLC’s March 2023 Petition for Rulemaking on the furnishing of debt collection items, including rental debts, in credit reports.

In addition to the FCRA rulemaking, the CFPB should:

- Create a Credit Reporting Ombuds office to help consumers, especially those with educational or literacy challenges, to fix errors.
- Clarify that reporting public records (i.e., criminal and eviction records) that have been sealed, expunged, or subject to similar relief violates the FCRA.
- Clarify that CRAs may not use consumer disputes of inaccurate and incomplete reports as the sole procedure for verifying the results of an automated search of a criminal records database.
- Issue further guidance on matching criteria, especially for consumers with common names, keeping in mind that false positives are common even when names and dates of birth match.
- Develop and issue model adverse action notices in into the eight languages most frequently used by LEP consumers

3. The CFPB should promulgate a rule under the Equal Credit Opportunity Act that residential rental leases are “credit” for the specific purpose of the ECOA’s adverse action requirements.

C. Enforcement Recommendations for FTC and CFPB

The FTC should:

- Investigate and take enforcement action against corporate and large landlords that fail to provide adverse action notices.

- Investigate whether corporate and large landlords are committing unfair or deceptive practices by imposing unavoidable and exploitative application fees that are excessive in amount or greater than the landlord's cost for a service.

The FTC and CFPB should

- Collaborate to investigate and bring enforcement actions against tenant screening CRAs that violate the FCRA. Remedies for any violations should provide not only monetary relief, but also require the tenant screening CRA to implement specific policies and practices to improve accuracy and compliance.

D. Other recommendations for both CFPB and FTC

The CFPB and FTC should:

- Conduct a comprehensive, scientifically rigorous study assessing accuracy in tenant screening reports, similar to the FTC's study on accuracy in the credit reporting context published in December 2012.
- Collaborate with other federal agencies to undertake thorough quantitative and qualitative research on the tenant screening industry, including the disparate impact of tenant screening on renters of color and other protected classes.
- Collaborate with other federal agencies to undertake thorough quantitative and qualitative research on the ongoing impact of collection and credit reporting of rental debt—both pandemic-era debt and other rental debt.
- Evaluate whether rental debt should be included at all in credit reports, including conducting research as to whether it is predictive for purposes of credit underwriting and tenant screening and whether its reporting has a disparate impact on consumers of color.
- Recommend to the U.S. Department of Housing and Urban Development (HUD) that it should:
 - issue a rule or guidance that the use of credit reports and scores has a disparate impact on renters of color under the Fair Housing Act
 - prohibit the use of credit reports and scores in subsidized housing
 - require private landlords who accept Housing Choice Vouchers to provide language access, such as translated adverse action notices
 - enforce requirements that subsidized housing providers provide applicants with a notice of rejection that includes a statement of reasons for the rejection
- Recommend to the Department of Justice that it issue guidance clarifying that tax credits issued through competitive process, such as the Low-Income Housing Tax Credit program, constitute federal financial assistance under Title VI of the Civil Rights Act. Thus, housing providers that receive assistance in the form of tax credits are required to provide adequate language access, such as translated notices and hiring bilingual staff
- Recommend support for state and local laws that provide a right to counsel for tenants