

Tenant Background Checks Market

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Executive Summary

Each year, millions of consumers encounter tenant screening as a gateway in their path to rental housing. Tenant background checks, also known as tenant screening reports, are marketed to landlords and rental property managers as a risk management and due diligence solution, although there is no independent or publicly available evidence that tenant screening reports are either reliably predictive of future rental behavior or otherwise reduce risks and costs to landlords. Still, most residential landlords currently use tenant screening reports in deciding whether to rent to an individual prospective tenant.

- Tenant screening reports include extensive personal information, such as credit history, past rental payments, civil and criminal records, and credit scores, as well as the proprietary risk scores on which many landlords and property management companies base their decision to rent to an individual prospective tenant.
- Collecting this data, particularly civil and criminal public records data, and correctly matching the collected data to an individual prospective tenant, can be challenging. For example, according to one study of 3.6 million eviction court records, 22 percent of state eviction cases are ambiguous or false records. As a result, the data reported in tenant screening reports and relied on in generating the proprietary tenant risk scores are often ambiguous or out-of-date and can be erroneous.
- Prior rental payment history, which would seem to be highly relevant for a landlord's decision to rent, is overwhelmingly not reflected in tenant screening reports or risk scores. Industry estimates of the coverage of rental payment history in the consumer reporting system range between 1.7 to 2.3 percent of U.S. renters.
- A reported 68 percent of renters pay application fees when applying for rental housing, which are often used to cover the cost of tenant screening. Based on this and other supporting evidence, the CFPB estimates that a majority of landlords use tenant screening reports when considering prospective tenants. Although renters frequently pay for these reports, they often have little to no visibility into the information they contain prior to a rental decision being made.
- Market incentives generally value comprehensiveness of derogatory information at the expense of accurate information. Tenant screening companies tout the use of tenant screening reports as a tool to avoid tenants that may cause property damage, rent revenue losses, legal liability or otherwise be undesirable. Additionally, data quality checks can be costly, providing further incentives against ensuring accuracy.

- Most tenant screeners' business models appear to rely on the low-cost automated retrieval of court records for criminal and eviction records, without the more costly manual verification needed to ensure accuracy. Manual verifications, which can cost seven times as much as automated data pulls, are generally only undertaken in the event of a dispute, at the specific request of the landlord, or by some smaller tenant screening companies as a special value proposition.
- Prospective tenants have little to no meaningful ability to correct errors in these reports. Given the large number of tenant screening companies, prospective tenants cannot easily identify in advance which company will provide the tenant screening report and address errors before a rental decision is made. While landlords are required by federal law to inform prospective tenants if they base their decision not to rent on a tenant screening report, tenants and some researchers state that compliance is limited. As a result, tenants may have difficulty correcting errors after a decision is made.
- Tenant screening is an opaque industry made up of hundreds of smaller regional companies and a few larger firms. There is no U.S. registration system for the consumer reporting industry, and the total number of market participants is unknown.
- Larger firms often offer proprietary risk scores, but common practices in financial services credit risk operations, such as documented model validation and risk management, do not appear to be prevalent in tenant risk modeling. 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.

1. Introduction

This report is based on analysis of data from industry research, legal cases, academic research, the CFPB's market monitoring, and other third-party sources. In our research, we focused on publicly available information from a sample of 17 tenant screening companies that offer services to landlords across the country.¹ These companies were selected based on their perceived prevalence in sources such as: public-facing websites, analyses by industry observers, academic research, consumer complaints submitted to the CFPB, and recent lawsuits. Given the highly bifurcated nature of the industry, with hundreds of small players and a few large ones, there is, obviously, some degree of uncertainty as to the extent to which our sample is representative.

This report begins with a description of the rental housing landscape. Next, the report provides an overview of the tenant screening industry, the features of tenant screening reports, the regulatory landscape, and the participants in the tenant screening data ecosystem. Finally, we examine three tenant screening report market challenges where longstanding issues have the potential to create or reinforce market distortions and harms for landlords and renters. Those are: (1) public records, including eviction and criminal records, (2) credit reports and credit scores, and (3) customized rental risk scores and related automated screening solutions.

¹ These 17 companies are: AmRent, AppFolio, Avail, BetterNOI, Entrata, E-Renter, FABCO, FirstAdvantage, MRI, National Tenant Network, National Credit Reporting, RealPage, RentPrep, SafeRent, TransUnion, TurboTenant, and Yardi.

2. Rental Housing Landscape

Section 2 provides an overview of rental housing, renters, and landlords to provide context for the use of tenant screening reports.

The U.S. rental market serves over 100 million people across 45 million rental units.² Low vacancy rates and rising rents make availability and affordability central concerns for tenants.³ In October 2022, the rental vacancy rate stood at 5.5 percent, well below the pre-pandemic norm.⁴ The Consumer Price Index for rent of primary residence was up 7.2 percent as of September 2022, the largest annual change since 1987.⁵ Rental housing supply is constrained across demographics, but the shortage is most acute for lower income renters seeking low-cost housing.⁶ The overall housing supply deficit in markets where demand is strong can directly contribute to both rising prices for renters and increased discretion for landlords when choosing their tenants. Such conditions increase the significance of tenant screening practices.

² Collectively, renters share 44.6 million renter occupied units, 4.5 million of which receive direct government rental assistance, and an additional 7.0 million of which self-report rental reductions. Estimates from the 2019 American Community Survey, <https://www.census.gov/programs-surveys/ahs/data.html>.

³ Andrew Aurand, et al., “Out of Reach 2021,” National Low Income Housing Coalition, 2021 (finding no states where the average full-time, minimum wage worker could afford to rent a two-bedroom apartment without spending more than the recommended 30 percent of their income on housing), https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach_2021.pdf. Recent indicators suggest rents are starting to decline, but only after reaching record rates. Will Parker, “Rents Drop for First Time in Two Years After Climbing to Records,” *The Wall Street Journal*, September 26, 2022, <https://www.wsj.com/articles/rents-drop-for-first-time-in-two-years-after-climbing-to-records-11664135197>.

⁴ See Apartment List Research, “Apartment List National Rent Report,” October 30, 2022 (After reaching an historic low of 4.1 percent in October 2021, the rental vacancy rate has gradually trended upwards, although still well below the pre-pandemic norm of 6-7 percent), <https://www.apartmentlist.com/research/national-rent-data>.

⁵ U.S. Bureau of Labor Statistics, “Consumer Price Index for All Urban Consumers: Rent of Primary Residence in U.S. City Average,” retrieved from *FRED, Federal Reserve Bank of St. Louis*, November 1, 2022, <https://fred.stlouisfed.org/series/CUUR0000SEHA>. Rents in most major markets were up by double digits in early 2022. Joint Center for Housing Studies of Harvard University (JCHS), “The State of the Nation’s Housing,” 2022, p. 31, https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf.

⁶ JCHS, “The State of the Nation’s Housing” (2022), *supra* note 5, p. 37-38.

2.1 Landlord Snapshot

As of 2018, there were between 10 and 12 million landlords in the U.S. managing about 45 million rental units.⁷ Most landlords are individual “mom and pop” landlords that own one to four rental units.⁸ However, corporate investors, including real estate investment trusts (REITs), private equity firms, and other limited liability companies (LLCs), own a majority of large rental properties and more rental units overall.⁹ Corporate investors grew their rental market share from 8 to 26 percent of rental properties between 2001 and 2018.¹⁰ This growth is expected to continue over the next few years as larger institutional investors are attracted by revenue potential in the strong rental market.¹¹ Figure 1 shows that non-individual investors have comprised a growing share of the rental market since 2001, particularly for higher unit properties.

⁷ Todd Richardson, “Landlords,” *HUD Policy Development and Research*, June 2018, <https://www.huduser.gov/portal/pdredge/pdr-edge-firm-asst-sec-061118.html>. See also a 2018 estimate of 48.2 million individual rental units, of which approximately 44 million are occupied. Drew Desilver, “As National Eviction Ban Expires, a Look at Who Rents and Who Owns in the U.S.,” *Pew Research Center*, August 2021 <https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/>.

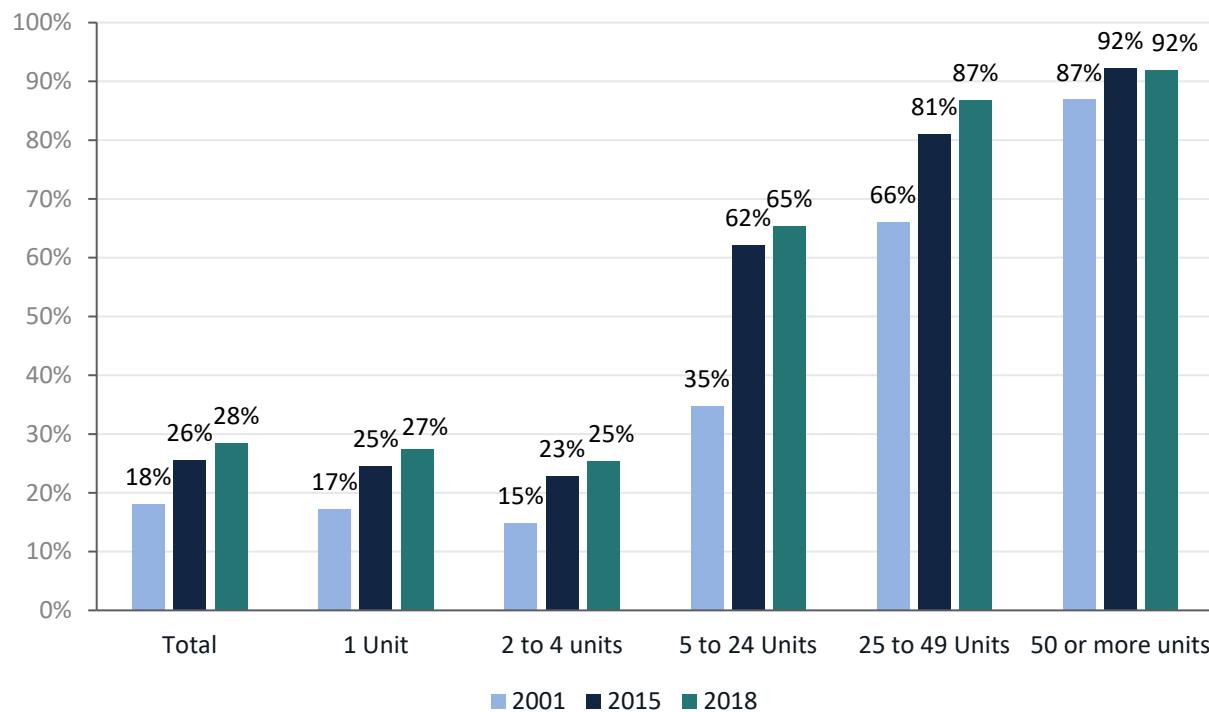
⁸ Desilver (2021), *supra* note 7.

⁹ Hyojung Lee, “Who Owns Rental Properties, and is it Changing?,” *Joint Center for Housing Studies*, August 18, 2017, <https://www.jchs.harvard.edu/blog/who-owns-rental-properties-and-is-it-changing>.

¹⁰ U.S. Census Bureau, “Rental Housing Finance Survey,” <https://www.census.gov/programs-surveys/rhfs.html>. Because properties owned by individuals are more likely to be smaller and contain fewer units, business entities owned the largest share of rental units at 45 percent whereas individuals only owned 41.2 percent. The remaining share of units are owned by non-profits, cooperatives, trustees, other ownership forms, and entities that did not report their structure.

¹¹ Eric Peck, “Institutional Investment in SFR Properties on the Rise,” *DSNews*, August 1, 2022, <https://dsnews.com/daily-dose/08-01-2022/investment-sfr-properties-rise>.

FIGURE 1: SHARE OF NON-INDIVIDUAL-OWNED RENTAL PROPERTIES, 2001, 2015, 2018¹²



Most landlords appear to screen prospective tenants. A 2022 national survey shows that 68 percent of renters pay application fees, which landlords typically use to cover the cost of tenant screening reports.¹³ Other reports similarly indicate most landlords use tenant screening reports to screen prospective renters.¹⁴ Corporate landlords may rely more substantially on tenant screening reports since they use automated property management software which typically

¹² Figure contains information from Lee (2017), *supra* note 9. Data from U.S. Census Bureau, “2001 Residential Finance Survey”; “2015 Rental Housing Finance Survey,” and “2018 Rental Housing Finance Survey,” <https://www.census.gov/programs-surveys/rhfs.html>.

¹³ Manny Garcia and Edward Berchick, “Renters: Results from the Zillow Consumer Housing Trends Report 2022,” *Zillow*, July 2022, <https://www.zillow.com/research/renters-consumer-housing-trends-report-2022-31265/>.

¹⁴ See Family Housing Fund & Housing Justice Center, “Tenant Screening and Selection: How it Works in the Twin Cities Metro Area and Opportunities for Improvement,” March 2021, p. 6 (“Most professional landlords hire tenant screening companies to perform background checks.”), <https://www.hjcmn.org/wp-content/uploads/2021/04/Tenant-Screening-Report.pdf>; TransUnion, “TransUnion Independent Landlord Survey Insights” (9 out of 10 landlords surveyed used some form of tenant screening report), <https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page>. See also, Rudy Kleysteuber, “Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records,” *Yale Law Journal* 1344, 2007, p. 1344.

include tenant screening and application services.¹⁵ Smaller independent landlords, on the other hand, appear to prefer greater discretion in evaluating applicants and using tenant screening reports.¹⁶ As the share of rental units held by large corporate owners increases, use of tenant screening reports may increase in tandem.

2.2 Renter Profile

As shown in Figure 2, relative to homeowners, renters are more likely to be people of color and lower income.¹⁷ Renters are also more likely than homeowners to live in urban areas, although 55 percent of renters live in rural or suburban areas – often in single family homes or manufactured housing.¹⁸ In 2019, 48.4 percent of renter households were cost-burdened, defined as spending 30 percent or more of their income on housing.¹⁹

¹⁵ Desiree Fields, “Automated Landlord: Digital Technologies and Post-crisis Financial Accumulation,” *Environment and Planning A: Economy and Space* 54, no. 1, February 2022, p. 11-14, <https://unequalcities.org/wp-content/uploads/sites/17/2019/10/Fields-2019-Automated-Landlord.pdf>. See also “Sold to the Highest Bidder: How Tech is Cashing In on the American Dream,” *Tech Bias and Housing Initiative*, July 2022, p. 11, <https://techequitycollaborative.org/wp-content/uploads/2022/06/Sold-to-the-Highest-Bidder-paper.pdf>.

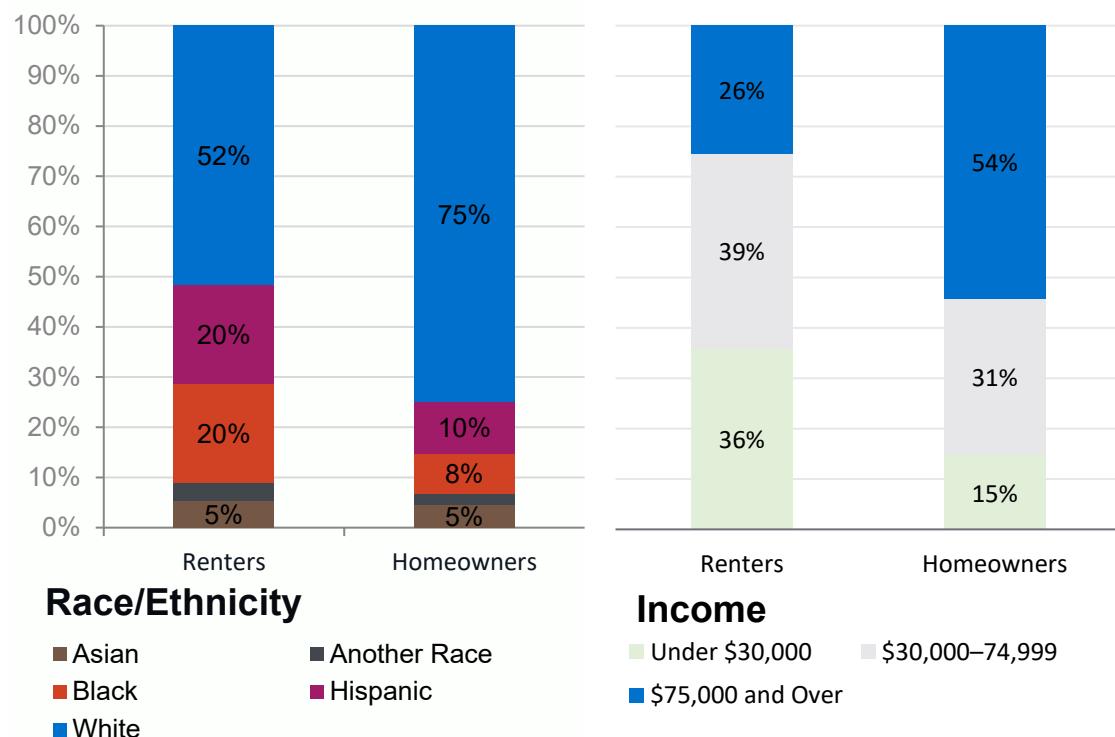
¹⁶ See Anna Reosti, “‘We Go Totally Subjective’: Discretion, Discrimination, and Tenant Screening in a Landlord’s Market,” *45 Law and Social Inquiry* 618, 2020, p. 634-35.

¹⁷ Joint Center for Housing Studies of Harvard University, “America’s Rental Housing 2022,” 2022, https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf.

¹⁸ JCHS, “America’s Rental Housing 2022” (2022), *supra* note 17, p. 12. See also, Garcia and Berchik (2022), *supra* note 13.

¹⁹ National Low Income Housing Coalition, “Census Bureau Releases Data from 2019 ACS,” September 2020, <https://nlihc.org/resource/census-bureau-releases-data-2019-ac>.

FIGURE 2: PERCENT OF RENTERS AND HOMEOWNERS BY RACE AND ETHNICITY (LEFT) AND INCOME DISTRIBUTION OF RENTERS AND HOMEOWNERS (RIGHT)²⁰



Compared to homeowners, renters are generally less financially stable, with greater credit card utilization, lower credit scores, and higher incidence of credit invisibility.²¹ These factors can impede access to housing for renters because credit reports are commonly used in tenant screening reports notwithstanding various limitations described in Section 4.2. The COVID-19 pandemic also resulted in significant hardship for many renters who incurred rental debt or faced eviction filings, both of which may appear as derogatory information in tenant screening reports even if the debt was later repaid or the eviction was dismissed in court.²²

²⁰ Figure from JCHS, “America’s Rental Housing 2022” (2022), *supra* note 17. Tabulations from US Census Bureau, “2019 American Community Survey 1-Year Estimates,” 2019.

²¹ These characteristics are not mutually inclusive, meaning a renter may have a lower credit score and not have greater credit card utilization. In 2019, the median wealth of homeowner households was more than 40 times the median for renter households. See JCHS, “The State of the Nation’s Housing” (2022), *supra* note 5, p. 5. See also Consumer Financial Protection Bureau (CFPB), “Financial Conditions for Renters Before and During the COVID-19 Pandemic,” September 2021, https://files.consumerfinance.gov/f/documents/cfpb_financial-conditions-for-renters_report_2021-q3.pdf. “Credit invisibility” refers to consumers who lack a credit history with one of the nationwide consumer reporting companies. See CFPB, “Credit Reports and Scores Key Terms,” <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/answers/key-terms/>.

²² See section 4.1.2, below.

3. Market Overview

3.1 Tenant Screening Industry

The tenant screening market is opaque. There is no required federal registration system for the consumer reporting industry, including for tenant screeners, so the market size and number of participating companies is unknown.²³ An informal estimate from 2006 suggested that as many as 650 companies provide tenant screening.²⁴ However, evidence suggests the industry has since trended toward consolidation with a small number of major players providing a more significant portion of tenant screening services.²⁵ One industry research firm estimates that tenant screening services generate approximately \$1.3 billion in revenue annually, an amount that has grown by 3.3 percent over the last five years and is projected to continue growing.²⁶

Historically, landlords screened prospective tenants through informal social networks and reference checks.²⁷ Beginning in the 1990s with the digitization of court records and credit information, tenant screening companies and data brokers began to build private databases and

²³ Some states like Maine, Maryland and New York have state registration requirements for “credit reporting agencies.” See Maine Bureau of Consumer Credit Protection, “Credit Reporting Agencies,” https://www.maine.gov/pfr/consumercredit/industry/licensing/credit_reporting_agency/index.htm; Maryland Department of Labor, “Consumer Credit Reporting Agencies,” <https://www.dllr.state.md.us/finance/industry/creditrep.shtml>; New York Department of Financial Services, “Consumer Credit Reporting Agencies,” https://www.dfs.ny.gov/apps_and_licensing/credit_reporting_agencies. Additionally, two states, California and Vermont, have a “data broker” registration system. See PrivacyRights.org, “Registered Data Brokers in the United States: 2021,” February 2022, <https://privacyrights.org/resources/registered-data-brokers-united-states-2021>; Federal Trade Commission (FTC), “Accuracy in Consumer Reporting Workshop – An FTC/CFPB Workshop,” December 2019, p. 19, https://www.ftc.gov/system/files/documents/videos/accuracy-consumer-reporting-workshop-session-2/ftc_accuracy_in_consumer_reporting_workshop_transcript_segment_2_12-10-19.pdf.

²⁴ See Kleysteuber (2007), *supra* note 14, p. 1346 (citing a 2006 industry study estimating 650 tenant screening companies).

²⁵ See Evan Hoffman, “Background Check Services in the US,” *IBISWorld Industry Report OD6058*, April 2019, p. 8; Cyrus Farivar, “Tenant Screening Software Faces National Reckoning,” *NBC News*, March 14, 2021, (citing pitchbook data of rising private equity investment and acquisition activity in the industry), <https://www.nbcnews.com/tech/tech-news/tenant-screening-software-faces-national-reckoning-n1260975>; Roofstock, “Roofstock Acquires Leading Tenant Screening Company RentPrep,” *Roofstock Press Release*, August 4, 2022, <https://www.prnewswire.com/news-releases/roofstock-acquires-leading-tenant-screening-company-rentprep-301599915.html>.

²⁶ See Hoffman, *supra* note 25, p. 15. The report estimates that tenant screening accounts for approximately 32.1 percent of revenue in the background screening industry. In a 2022 report from the same research firm, revenue in the background check industry was estimated at \$4.0 billion, about a third of which can be attributed to tenant screening. Vlad Khaustovich, “Background Check Services,” *IBISWorld Industry Report OD6058*, June 2022, p. 10-11.

²⁷ David Thacher, “The Rise of Criminal Background Screening in Rental Housing,” *33 Law & Social Inquiry* 5, Winter 2008, p. 11.

create reports on prospective renters that included income, credit history, criminal records, and eviction information.²⁸ Today, tenant screening reports have become widely used in the tenant selection process.²⁹

Tenant screening companies advertise their ability to provide quick access to large consumer datasets and algorithmic risk assessment tools that can identify prospective tenants whose tenancy is more likely to result in specific costly adverse outcomes, such as rent revenue loss, damage to property, endangerment of other tenants, fraud, or eviction.³⁰ Landlords also need to manage and mitigate litigation and multiple regulatory compliance risks. For example, landlords can be held to a special form of liability, “premises liability” negligence claims, “if the landlord fails to use ordinary care to reduce or eliminate an unreasonable risk of harm.”³¹ Tenant screening companies claim to protect landlords from these types of regulatory compliance and litigation risks by, for example, handling adverse action notices,³² providing regulatory guidance,³³ and issuing “recommendations” for rejecting or accepting prospective tenants.³⁴

²⁸ Matthew H. Leiwant, “Locked Out: How Algorithmic Tenant Screening Exacerbates the Eviction Crisis in the United States,” 6 *Geo. L. Tech. Rev.* 276, 2022, p. 280-82.

²⁹ Leiwant (2022), *supra* note 28, p. 280.

³⁰ See, e.g., RealPage, “Resident Screening,” <https://www.realpage.com/apartment-marketing/resident-screening/>; TurboTenant, “Tenant Screening Services,” <https://www.turbotenant.com/tenant-screening/>. FirstAdvantage RightID service markets itself on convenience and speed. First Advantage, “RightID Brochure,” <https://fady.com/wp-content/uploads/ResidentRightID.brochure.pdf>. TransUnion advertises its screening service as “built specifically to predict the likelihood of an eviction,” further stating that, “with up to 7% reduction in evictions and skips using TransUnion’s ResidentScore, you could save \$2800 on one property alone!” TransUnion, “ResidentScore,” <https://www.transunion.com/product/resident-score>. Similarly, MRI markets its screening as a protection “against fraud and unqualified prospects, reducing delinquency rates, skips, collections, and evictions.” MRI Software, “Resident Screening Software,” <https://www.mrisoftware.com/products/resident-screening/>.

³¹ See, SEARCH, The National Consortium for Justice Information and Statistics, “Negligence theories applicable to claims against landlords,” *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information*, <RNTFCSCJRI.pdf> (search.org), 2005, p. 68.

³² Adverse action notices are information a renter must receive if a landlord makes an adverse decision based entirely or in part on content in a tenant screening report.

³³ See, e.g. Entrata, “ResidentVerify” (“Compliance, Not Complications: ResidentVerify’s advanced screening interfaces reduce the risk of Fair Housing violations, allowing you to apply applicant criteria consistently. Our ResidentVerify team is available to audit any report that is challenged by an applicant”), https://www.entrata.com/docs/spec_sheets/residentVerify.pdf. RentPrep provides landlords with sample “tenant rejection letters” and instructions on “How to Legally Deny a Tenant Applicant.” RentPrep, “How to Deny a Rental Applicant,” <https://rentprep.com/forms/rental-application-denial-letter/>.

³⁴ See, e.g., FABC, “rejecting applicants,” <https://fabcogroup.com/screenings/ra/>. See also National Tenant Network, “Take the Guesswork Out of Screening Applicants,” <https://ntnonline.com/resident-screening/ntn-decisionpoint/>; RentPrep, *supra* note 33.

Companies that perform automated data collection and report production have significantly lower data acquisition costs than those that perform manual verifications.³⁵ While these costs vary, CFPB market monitoring indicates that fees incurred by tenant screening companies for credit reports or court records are rarely more than \$1.00; on the other hand, manual verifications and quality control checks of court data can cost around \$7.00.³⁶ These checks may entail contacting county courthouses to access physical court records or having an employee check data for obvious errors, such as the wrong first or last name, the wrong address, or outdated information.³⁷ To keep costs low, many companies expressly do not conduct manual verification or sourcing of consumer data.³⁸ Out of the 17 tenant screening companies analyzed by the CFPB, only five advertised any form of manual verification processes.³⁹ Some of these companies may only manually verify data in the event of a consumer dispute or if a landlord request requires it.⁴⁰

The tenant screening market is bifurcated between smaller regional and larger firms. Most tenant screeners are small regional companies catering to the needs of smaller independent landlords. Our market monitoring indicates that smaller firms differentiate themselves by claiming to perform greater due diligence to support smaller landlords less able to absorb tenant-related risks and financial loss. In market monitoring interviews, representatives for

³⁵ Industry analysts have identified automation as a key factor in reducing data acquisition costs for screening services. Khaustovich (2022), *supra* note 26, p. 9, 11, 22, and 23. With automated data collection, the primary cost for tenant screening companies are the fees third-parties charge for credit reports, court database records, and other information. For example, fees for accessing federal court records are \$0.10 per page: PACER, “PACER Pricing: How Fees Work,” <https://pacer.uscourts.gov/pacer-pricing-how-fees-work>; Accessing Maryland state court records costs \$.50 per page: Clerk’s Office Circuit Court for Allegany County, “Records,” <https://www.courts.state.md.us/clerks/allegany/records#:~:text=A%20clerk%20shall%20collect%20a,in%20making%20self%2Dservice%20copies>. Examples of private data collectors include LexisNexis Risk Solutions, FirstAdvantage, and RealPage.

³⁶ In court filings, RealPage disclosed that the company pays a data broker \$0.22 for court records, while manual verification of these records costs \$7.00. Laura Kirchner and Matthew Goldstein, “How Automated Background Checks Freeze Out Renters,” *NY Times*, May 28, 2020, <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>.

³⁷ See, e.g., BetterNOI, “Platform Solutions” (claiming to have courthouse researchers that work within local courthouses to manually verify evictions and criminal records), <https://betternoi.com/en/platform-solutions/>.

³⁸ For an overview of the consequences of automation in the tenant screening industry, see Kirchner and Goldstein (2020), *supra* note 36.

³⁹ National Tenant Network, MRI, BetterNOI, Entrata and RentPrep offer manual verification of tenant report data to varying degrees. Some other screening companies, such as FirstAdvantage, will only manually verify data if it is disputed by a consumer or if a landlord requests information only accessible by visiting the courthouse in-person, but mostly rely on automated screening solutions to produce tenant reports. Notably, RentPrep argues that their manual verification service is necessary given the frequency of errors in automated database scans offered by larger industry players. RentPrep, “Instant Data Comes With Instant Errors,” <https://rentprep.com/tenant-screening/tenant-screening-services/#instant>. In conversations with the CFPB, smaller regional tenant screeners have highlighted and asserted differences in data verification practices between large national screening companies versus smaller companies. See also Kirchner and Goldstein (2020), *supra* note 36 (quoting the CEO of a Utah-based screening company, “We can figure out how to match a record... It requires a human element. When we are performing any of these reports, it is a fairly monumental moment in someone’s life. You just have to give a crap”).

⁴⁰ See note 39.

smaller tenant screening firms asserted that they have a better understanding of local client needs, regulatory requirements, and courthouse records.⁴¹

As large institutional ownership has risen in rental markets, so has the demand for property management software solutions that often include tenant screening.⁴² Many larger tenant screening firms, such as RealPage, Yardi, MRI, Entrata, and AppFolio offer a suite of digital property management tools, including tenant screening, on one platform.⁴³ In addition to risk management benefits, these companies advertise near-instant turnaround times, integration with property management software, and a lower price point.⁴⁴ A market research company values the property management software market at about \$16.5 billion in 2021 and projects it will reach around \$39.5 billion by 2030, registering a compound annual growth rate (CAGR) of more than 10 percent from 2022 to 2030.⁴⁵

⁴¹ They also asserted better data accuracy than larger firms because of their additional processes and expertise, but the marketed benefit for landlords is primarily thoroughness. For instance, one smaller company emphasizes fraud prevention and increased accuracy in their marketing of manual verifications. RentPrep, “How Our Tenant Screening Works,” <https://rentprep.com/tenant-screening/how-it-works/>.

⁴² See generally, Fields (2022), *supra* note 15, p. 11-14. For an overview of how institutional investor ownership in the rental market coincided with new digital systems that operated property management, see Tech, Bias, and Housing Initiative (2022), *supra* note 15, p. 11 (“The scale of these investor owners’ portfolios was too large to support one-to-one relationships between individual property managers and tenants. So they relied on a new suite of tech tools that automated management. Digital systems to screen applicants, accept payments, issue evictions, vet repair requests, and more all emerged in response to this new corporate ownership structure”). See also, Form 10-K RealPage Inc., February 2019, p. 3 (“The rise of national real estate portfolio managers, many of them accountable to public shareholders, created a need for more sophisticated and scalable property management systems that included a centralized database and were designed to optimize and automate multiple business processes within the renter life cycle and property operations”), available at: <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001286225/000128622520000011/rp-20191231x10k.htm>.

⁴³ A credible market participant has told us that the combined market share of RealPage, Yardi, MRI, and Entrata range between 55-70 percent of the broader rental property management space inclusive of tenant screening. We have not independently verified this estimate. AppFolio is another larger firm and is publicly listed. Its revenue for 2021 was \$359.4 million, a 16 percent increase from 2020. See Form 10-K AppFolio, Inc., February 2022, p. 26, available at: <https://ir.appfolioinc.com/static-files/f8703596-937c-4483-81e8-16d67dcc6da>.

⁴⁴ See, e.g., Yardi, “Screening Works Pro Income Verification” (“Save time and increase efficiency by eliminating manual verification processes.”), <https://resources.yardi.com/documents/screeningworks-pro-income-verification-brochure/>; Equifax, “Resident & Tenant Screening” (“A One-Stop Shop for Comprehensive Background Information”), <https://www.equifax.com/business/product/resident-tenant-screening/>; TransUnion, “TransUnion SmartMove” (“Great convenience, get tenant screening reports in minutes”), <https://www.mysmartmove.com/>.

⁴⁵ Straits Research, “Property Management Market Size is projected to reach USD 39.51 Billion by 2030, growing at a CAGR of 10.21%: Straits Research,” *Straits Research Press Release*, August 17, 2022, available at: <https://www.globenewswire.com/news-release/2022/08/17/2500285/0/en/Property-Management-Market-Size-is-projected-to-reach-USD-39-51-Billion-by-2030-growing-at-a-CAGR-of-10-21-Straits-Research.html>.

3.2 Tenant Screening Reports: Features & Fees

Tenant screening reports are sold at different price points and offer a range of content. A “standard” report might include identity verification, credit history, criminal background records, and eviction history.⁴⁶ “Premium” packages or add-on features typically consist of customized tenant risk-scoring metrics, employment verification, rental payment history, income information, manual reference checks, or even social media screening.⁴⁷ Figure 3 illustrates the features and fees options from one company.

⁴⁶ The 17 companies reviewed for this report offered credit, criminal, and evictions history as part of their standard package or for a relatively small additional fee. For example, SafeRent provides a credit report and score, evictions history, and criminal background check for its standard package, which costs \$10-\$30. SafeRent Solutions, “Resident Screening,” <https://saferentsolutions.com/>. Similarly, TurboTenant offers a credit score, credit tradeline check, criminal background check, and evictions report. TurboTenant, “Tenant Screening Services,” *supra* note 30. See also, CFPB, “What is a tenant screening report?,” <https://www.consumerfinance.gov/ask-cfpb/what-is-a-tenant-screening-report-en-2102/>.

⁴⁷ See, e.g., E-Renter’s “Basic,” “Premium,” and “Ultimate” screening packages. E-Renter, “Tenant Screening,” <https://www.e-renter.com/services/tenant-screening/>. See also, TransUnion, “Landlord Credit Check” (pricing options include extra fees for income verification and detailed credit tradeline information), <https://www.mysmartmove.com/SmartMove/landlord-credit-check.page>; MyRental, “Pricing” (proprietary tenant risk-scoring metric included in “Premium” package), <https://www.myrental.com/pricing>. Shield Screening offers a wide array of screening products, including social media screening. Shield Screening, “Superior Landlord Screening Solutions for More Responsible Tenants: Social Media Screening” (“With just the right mix of software automation and experienced social media analysts, Social Intelligence identifies a candidate’s potentially problematic online activity and provides you with an FCRA-compliant report to use in your decision”), <https://www.shieldscreening.com/tenant/>.

FIGURE 3: TENANT SCREENING FEATURES & FEES (IMAGE)⁴⁸

Pick Your Tenant Screening Bundle		
BEST VALUE	SmartCheck Plus	SmartCheck Basic
SmartCheck Premium \$41.99 per screening	\$39.99 per screening	\$24.99 per screening
Credit-Based ResidentScore™*	Credit-Based ResidentScore™**	Credit-Based ResidentScore™**
National Criminal Background Report**	National Criminal Background Report**	National Criminal Background Report**
Full Credit Report	Full Credit Report	
National Eviction Related Report***	National Eviction Related Report***	
Income Insights		

Tenant screening companies provide some or all of the following types of data and services, from various sources:

Identity verification. Companies often provide Social Security Number validations and prior address histories to help landlords verify that rental applicants are who they say they are.⁴⁹ Some verification services utilize facial-recognition software to match and authenticate applicant-submitted selfies to their government-issued ID.⁵⁰

Rental history. In reviewing the sample of 17 firms, the most commonly marketed components of rental history information are eviction court records and rental payment

⁴⁸ Image from TransUnion, “Landlord Credit Check,” *supra* note 47. Based on our review of 17 tenant screening companies, the most common features marketed by tenant screening companies include a credit, criminal, and evictions background check. Many companies offer additional services, such as TransUnion’s “Income Insights,” feature, which estimates an applicant’s income based on credit report data such as account balances and payment history. TransUnion, “Income Insights,” <https://www.mysmartmove.com/SmartMove/income-insights.page>.

⁴⁹ See, e.g., RentPrep, “Packages & Pricing,” <https://rentprep.com/tenant-screening/packages-pricing/>; FrontLobby, “Tenant Screening Designed for Housing Providers,” <https://frontlobby.com/tenant-screening/>; E-Renter, “Tenant Screening Services,” *supra* note 47. Social Security Number checks and address histories appear to typically be included in credit reports from the nationwide consumer reporting companies. See Experian, “Tenant Screening Services,” <https://www.experian.com/screening-services/>; TransUnion, “SmartMove Tenant Screening,” <https://www.transunion.com/product/smartmove/>.

⁵⁰ See, e.g., First Advantage, “Rental Property Screening: RightID,” <https://fadv.com/rightid-residential-screening/>.

history.⁵¹ Some companies also include information about property damage, lease disputes, landlord references, and pet screening from large property management platforms, or directly through manual reference checks.⁵² See section 4.1.2 for more information on eviction records.

Credit checks. Information purchased from one or more of the three nationwide consumer reporting companies (NCRCs) typically includes the applicant's credit history and account status, including derogatory information such as delinquent debt.⁵³ See section 4.2 for more information.

Income and employment verification. Verifying an applicant's stated employment status or sources of income typically relies on manual checks of past employers and/or automated employment data.⁵⁴ Some companies also deploy tools for assessing a prospective tenant's ability to pay rent, such as linking directly to a bank account, with authorization from the renter, to confirm salary information.⁵⁵

Criminal background checks. Criminal records from federal, state, and/or county court records typically include past felony and misdemeanor convictions, and arrest history.⁵⁶ Tenant

⁵¹ See, e.g., FirstAdvantage, “Resident Screening: Tenant Background Check” (“Evictions & Skips... Through the SkipWatch® Database, property managers and owners get access to a tenant’s timeliness of payments, lease disputes, and more”), <https://fadv.com/solutions/residential-tenant-background-checks/>. RealPage claims to provide information on an applicant’s rental history which includes evictions and previous rental payment history. RealPage, “AI Screening,” <https://www.realpage.com/apartment-marketing/resident-screening/ai-screening/>.

⁵² Large property management platforms often have a wide array of landlord-tenant data related to rent payment history, landlord-tenant disputes, lease renewals, abandoned units, and evictions. See, e.g., RealPage, “AI Screening,” *supra* note 51 (advertising a proprietary database of over 30 million landlord-tenant interactions); National Tenant Network, “NTN Tenant Performance Profile” (offering a service that utilizes tenant history information collected from the company’s clients), <https://ntnonline.com/resident-screening/ntn-tenant-performance-profile/>.

⁵³ Credit checks usually are accompanied by a generic third-party credit risk score from a company like Fair Isaac (FICO) or VantageScore. See, e.g., TransUnion, “Landlord Credit Check,” *supra* note 47; RentPrep, “Packages & Pricing,” *supra* note 49.

⁵⁴ See, e.g., The Work Number, an Equifax-owned company, has a private database of income and employment records and is utilized by several tenant screening companies including Yardi. Yardi, “ScreeningWorks Pro Income Verification Brochure,” p. 2, <https://resources.yardi.com/documents/screeningworks-pro-income-verification-brochure/>. Some screening companies, such as National Tenant Network, conduct manual reference checks to verify an applicant’s employment history or status. National Tenant Network, “Verification Services,” <https://ntnonline.com/resident-screening/ntn-tenant-performance-profile/verification-services/>. Other examples include: TrueWork and The Closing Docs. Truework, “Screen New Tenants with Cost-Effective Employment Verifications,” <https://www.truework.com/solutions/propertymanagement>; The Closing Docs, “Streamline Applicant Screening,” <https://www.theclosingdocs.com/property-managers>.

⁵⁵ See, e.g., FirstAdvantage, “RightIncome: Residential Income Verification” (“RightIncome gives you income verification information and peace of mind, while applicants use the simple online app to link their bank accounts and digital wallets”), <https://fadv.com/rightincome-residential-screening/>. TransUnion offers “Income Insights,” a service which analyzes an applicant’s credit report information to estimate their income. TransUnion, “Income Insights,” *supra* note 48.

⁵⁶ Market monitoring indicates that tenant screening companies have reduced marketing of arrest records after the Department of Housing and Urban Development (HUD) issued guidance outlining how certain uses of arrest

screening companies sometimes access this information directly from the original source, or, more often, purchase it from third-party sources. See section 4.1.3 for more information.

Watchlist information. Scans of state or federal watchlists typically include sex offender registries and the U.S. Department of the Treasury’s Office of Foreign Assets Control Specially Designated National and Blocked Persons (OFAC SDN) list.⁵⁷

Customized tenant scores or recommendations. In addition to a generic credit risk score, tenant reports will often include a tenant risk score, recommendation flag, or metric to grade prospective tenant risk.⁵⁸ In some cases, these recommendations are customized to a specific landlord’s risk criteria, while other scores utilize proprietary algorithms, sometimes including “artificial intelligence” models.⁵⁹ See section 4.3 for more information.

3.3 Regulatory Landscape

The creation and use of tenant screening reports are regulated by a patchwork of federal, state, and local government laws.

The Fair Credit Reporting Act. Enacted in 1970, the Fair Credit Reporting Act (FCRA) regulates the preparation and use of consumer reports, including tenant screening reports. The FCRA sets forth the permissible uses of consumer reports, limits how long certain information can be reported, requires dispute investigation processes, requires reasonable procedures for maximum possible accuracy, and outlines requirements for adverse action notices. Unlike its

records could violate the Fair Housing Act. *See also*, HUD, “FAQs: Excluding the Use of Arrest Records in Housing Decisions,” November 2015, https://www.hud.gov/sites/documents/FAQ_EXCLUDE_ARREST_RECORDS.PDF; HUD, “Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions,” June 2022, <https://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>.

⁵⁷ *See, e.g.*, Avail, “Online Tenant Screening” (screening solution includes OFAC Terrorist Watch List, Most Wanted List and Sex Offenders List,) <https://www.avail.co/landlords/online-tenant-screening>. *See also* Nancy Fischer et. al., “Specially Designated Nationals as Tenants: How Landlords Can Be Impacted by Sanctions Against Russian Nationals,” *Pillsbury Law*, March 2021, <https://www.pillsburylaw.com/en/news-and-insights/specially-designated-nationals-tenants.html>. James Janz, JD, “Act Accordingly -- Property owners and managers should understand how to comply with the U.S.A. Patriot Act,” <https://www.ccim.com/cire-magazine/articles/act-accordingly/>.

⁵⁸ *See, e.g.*, Entrata, “ResidentVerify” (noting a “proprietary risk scoring” feature), <https://www.entrata.com/leasing/resident-verify>; SafeRent, “SafeRent Score,” <https://saferentsolutions.com/saferent-score/>; TransUnion, “Resident Score,” *supra* note 30.

⁵⁹ *See, e.g.*, RealPage, “AI Screening,” *supra* note 51.

treatment of other types of negative information, the FCRA permits convictions to appear on a consumer report indefinitely, even if they occurred years or decades ago.⁶⁰

State and local laws. States also regulate the content and use of tenant screening reports. Many state and local laws place a cap on application fees landlords charge prospective tenants that may be used for reports.⁶¹ Additionally, many states and localities have restricted the content that can be included in consumer reports to reduce their impact on renters' ability to access housing, employment, or financial services and products. For example, the following states have limited the reporting of convictions to seven years: California, Kansas, Maryland, Massachusetts, Montana, New Mexico, New York, New Hampshire, and Washington.⁶² Similarly, some states have put in place laws that seal public records, such as eviction filings or expunged criminal records, so that they are not publicly available to data brokers or tenant screening companies.⁶³

Public housing and fair housing requirements. Public Housing Authorities (PHAs) and owners of Department of Housing and Urban Development (HUD)-subsidized properties are required to conduct tenant screening when selecting tenants.⁶⁴ While these requirements identify some minimum procedures for landlords to follow, any further selection criteria must be publicly disclosed and may not violate federal regulations on housing discrimination.⁶⁵ The Fair Housing Act (FHA) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin.⁶⁶ In 2022, HUD issued guidance for fair housing and equal opportunity investigators on the use of public records in the process of screening prospective

⁶⁰ See 15 U.S.C. § 1681c. Other types of adverse public record datasets are generally limited in how long they can be reported. For example, arrest records, civil suits, and civil judgments are generally limited to seven years or until the governing statute of limitations has expired, whichever is the longer period. See, CFPB, “How long does information about me stay on my consumer report?,” <https://www.consumerfinance.gov/ask-cfpb/how-long-does-information-about-me-stay-on-my-consumer-report-en-1121/>.

⁶¹ See generally RentPrep, “A Landlord’s Guide Rental Application Fees (50 States),” <https://rentprep.com/tenant-screening-news/the-landlord-guide-to-charging-rental-application-fees/>. LawDistrict, “Rental Application Fees by States,” <https://www.lawdistrict.com/articles/rental-application-fees-by-states>, February 2022.

⁶² For more information on how one background screener describes various state conviction data restrictions see, Checkr, “How do background check reporting requirements vary by state?,” <https://help.checkr.com/hc/en-us/articles/360000739988-How-do-background-check-reporting-requirements-vary-by-state>; CFPB, Interpretive Rule, “The Fair Credit Reporting Act’s Limited Preemption of State Laws,” https://files.consumerfinance.gov/f/documents/cfpb_fcra-preemption_interpretive-rule_2022-06.pdf.

⁶³ Those states include Oregon, California, Florida, and Minnesota. See Jabo Lake and Leni Tupper, “Eviction Record Expungement Can Remove Barriers to Stable Housing,” Center for American Progress, p. 9, <https://www.americanprogress.org/article/eviction-record-expungement-can-remove-barriers-stable-housing/>.

⁶⁴ See 24 CFR 960.203 (setting standards for PHA tenant selection, including examples of relevant financial obligation and behavioral information public housing programs “may consider.”); 24 CFR 960.204 (requiring PHA landlords to deny admission for narrow set of criminal or drug abuse activity). Despite the fact that PHA landlords must deny tenants for certain criminal or drug abuse activity, they may not pass on the cost of criminal background checks to prospective tenants. 24 CFR 960.204(d).

⁶⁵ HUD, “Chapter 4: Waiting List and Tenant Selection,” HUD Occupancy Handbook, https://www.hud.gov/sites/documents/DOC_35647.PDF.

⁶⁶ 42 U.S.C. 3601 et seq.

tenants. The 2022 guidance specifically outlines how tenant screening practices can violate the FHA, such as by rejecting any applicants with any past convictions or arrest as a matter of policy.⁶⁷

Other regulatory obligations. Landlords also have additional regulatory compliance obligations that arise in certain unique situations. For example, landlords have obligations to terminate relations with tenants subject to U.S. sanctions, such as those on the “Specially Designated Nationals and Blocked Persons” (SDN) list maintained by the U.S. Treasury Department.⁶⁸ Landlords also may need to determine if a prospective tenant’s pet is a disability assistance animal without violating FHA discrimination prohibitions and HUD guidance.⁶⁹ Some tenant screening firms offer pet screening solutions for this purpose.⁷⁰

3.4 Data Ecosystem

Figure 4 illustrates how tenant screening companies pull the consumer data outlined above from several to thousands of data sources in order to create a tenant screening report. While tenant screening companies sometimes access information directly from an original source, such as eviction filings or criminal records, often they purchase information from third party data brokers who collect and sell consumer data. These data brokers may purchase data in bulk, only periodically refreshing it to reflect updates in underlying sources.⁷¹

⁶⁷ HUD, “Implementation of the Office of General Counsel’s Guidance” (2022), *supra* note 56. *See also*, HUD, “FAQs: Excluding the Use of Arrest Records” (2015), *supra* note 56.

⁶⁸ U.S. Department of the Treasury, “Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists,” September 2022, <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>; See Nancy Fischer, et. al., “Specially Designated Nationals as Tenants: How Landlords Can Be Impacted by Sanctions Against Russian Nationals,” *Pillsbury Law*, March 2022, (“The designation of an SDN prohibits U.S. persons from engaging in any transaction with SDNs, as well as providing goods or services to them,”) <https://www.pillsburylaw.com/en/news-and-insights/specially-designated-nationals-tenants.html>; and James Janz, JD, “Act Accordingly -- Property owners and managers should understand how to comply with the U.S.A. Patriot Act,” CCIM, <https://www.ccim.com/cire-magazine/articles/act-accordingly/>.

⁶⁹ HUD, “HUD Issues Guidance on Reasonable Accommodations Under the Fair Housing Act Relating to Assistance Animals,” January 28, 2020, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_013.

⁷⁰ YardiBreeze, “All About Pet Screening, Emotional Support Animals & Service Animals With Victoria Cowart,” August 29, 2022, <https://www.yardibreeze.com/blog/2022/08/assistance-animals-pet-screening-victoria-cowart/>. *See also* PetScreening, “Pet & Animal Rental Portfolio Management,” (“Our proprietary screening platform adds an extra layer of liability protection by having a standardized process when dealing with household pets and assistance animals.... Our proprietary FIDO Score™ can help generate a significant net-new pet revenue stream, and is often used by property managers & housing providers to fine tune their pet-related pricing policies such as pet fees & pet rent.”) <https://www.petscreening.com/industries/long-term-rentals>.

⁷¹ *See* National Consumer Law Center (NCLC), “Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing,” December 2019, p. 17, <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>.

No federal law requires tenant screening companies to be licensed or registered as consumer reporting companies. This makes it virtually impossible to know the full set of companies that sell tenant screening or other consumer reports, or what consumer data they include. Renters also are not always provided the full list of data sources used for their report, further limiting their ability to fix errors or inaccuracies.⁷²

⁷² See, e.g., *Leo v. AppFolio, Inc.*, No. 17-5771 RJB (W.D. Wash. Jan 30, 2019), at p. 4 (FCRA lawsuit filed against AppFolio for failing to provide the intermediary data source).

FIGURE 4: TENANT SCREENING ECOSYSTEM: HOW DOES INFORMATION GET INTO A TENANT SCREENING REPORT?



3.5 Renters' Experience

In the tenant screening market, prospective renters may value data accuracy more than landlords or tenant screening companies do. 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.⁷³ As a result, there may be a high potential that tenant screening reports overstate the risk of renting to any given applicant. When this happens, prospective tenants can lose housing opportunities, pay multiple application fees, have extended search times, and ultimately obtain less-desirable housing. Renters may also be required to pay add-on charges, extra security deposits, and higher rent based on a negative tenant screening report.

While landlords are the users of screening reports, rental applicants frequently pay for their own screening through application fees.⁷⁴ Based on our analysis of 17 tenant screening companies, only one apparently defaults to the landlord as payor.⁷⁵ Our analysis indicates that tenant screening companies charge approximately \$25-\$35 for each report, though prices may be as high as \$55. Application fees paid by prospective tenants typically range between \$40 and \$59.⁷⁶

Fees can add up quickly when prospective renters submit applications with multiple landlords, especially in places without fee caps. To help address this cost burden, California, Maryland, and Washington state each passed laws permitting portable or “reusable” tenant screening reports

⁷³ See generally, discussion of Market Challenges in Section 4, below. See, e.g., Complaint, *U.S. v. AppFolio, Inc.*, 1:20-cv-03563 (D.D.C.), Filed Dec. 8, 2020 (“AppFolio failed to follow reasonable procedures to assess whether there were internal inconsistencies in the identifiers or results indicating that the company was including information about multiple people in one report; and AppFolio failed to follow reasonable procedures to prevent the inclusion of multiple entries for the same criminal or eviction case in one report”), available at https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf.

⁷⁴ Some states have fee caps limiting how much landlords can charge applicants. See LawDistrict (2022), *supra* note 61.

⁷⁵ See FABCO, “How do I pay for the reports I run?,” <https://fabcogroup.com/faqs/>. In contrast, another company’s website markets an “applicant pays” solution to landlords: Tenant Verification Services, “Reports are FREE when you choose applicant pays upon ordering. Choose the right tenant... ABSOLUTELY FREE,” <https://www.tenantverification.com/>; Experian also offers “no fee” credit check solutions for landlords: Experian, “Tenant credit report – No fee to check a tenant’s credit report and score,” <https://connect.experian.com/credit-report/tenant-credit-report.html>; See also, TurboTenant, “Tenant Screening Services,” *supra* note 30 (“The Tenant Pays for the Screening Report – With TurboTenant, you can manage the entire rental process for free without any application fee! The majority of landlords have the tenant pay the \$55 fee to cover the screening report. But if you’ve already collected a fee or just want to pay it yourself, you have that option too.”).

⁷⁶ Garcia and Berchick (2022), *supra* note 13 (“The typical median renter submitted two applications — one online and one on paper/in person. For these rental applicants, the typical application fee was between \$40 and \$59. The typical number of applications and amount in fees that renters reported has not changed significantly between 2022 and 2018”).

that can be used at multiple properties.⁷⁷ However, these laws do not necessarily require landlords to accept reusable reports.

Application fees might impact prospective tenants unevenly, particularly those in locations where rental housing demand is stronger. In a recent Zillow survey, 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.⁷⁸ Our market monitoring indicates that some landlords use application fees to deter applicants that “are not serious,” or otherwise do not want to pay the fee. Tenant advocates describe rental application fees as “junk,” asserting that these fees “can be higher than the housing provider’s actual costs to process the application and may be assessed even when no rental unit is in fact available.”⁷⁹ Industry advocates have expressed concern that government-imposed fee caps can put pressure on landlords to underinvest in tenant screening, endangering tenants and property staff.⁸⁰

During the application process, it is frequently difficult for applicants to know the specific screening criteria and data that will inform a landlord’s decision.⁸¹ Even if a prospective applicant wanted to proactively verify their information ahead of a lease application, there is no easy way for them to do so. First, they may not know which screening service a landlord will use. Further, tenant screening reports are commonly generated individually, for each application, making it virtually impossible to request, review, dispute, and have inaccurate information

⁷⁷ See RCW 59.18.257, <https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.257>, Maryland SB691, <https://trackbill.com/bill/maryland-senate-bill-691-real-property-landlord-and-tenant-reusable-tenant-screening-reports-2021134/>, and California Assembly Bill No. 2559, September 2022, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2559. See also, “Bill to Standardize Reusable Screening Reports for Rental Applications Heads to Governor,” *East County Today*, August 24, 2022, <https://eastcountytoday.net/bill-to-standardize-reusable-screening-reports-for-rental-applications-heads-to-governor/>.

⁷⁸ Garcia and Berchik (2022), *supra* note 13 (“The typical white renter reported paying \$35 in application fees on their rental, while the typical Black, Latinx, and Asian renters all reported spending \$50 on application fees”). Zillow’s analysis also shows that Black, Latinx, and Asian American renters were significantly more likely to submit two or more applications. Black and Latinx renters were also almost twice as likely to report submitting 5 applications or more (38 percent of Black and Latinx renters report submitting 5 or more, compared to 21 percent of white renters).

⁷⁹ National Consumer Law Center & National Housing Law Project, “Re: Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services, Docket No. CFPB-2022-0003,” April 11, 2022, p. 3, https://www.nclc.org/images/pdf/debt_collection/CFPB_2022_0003_comments.pdf.

⁸⁰ See CDIA, “Caps on rental application fees continue,” January 2020, <https://www.cdiaonline.org/background-screening-information-center-basic/2020/01/22/caps-on-rental-application-fees-continue/>.

⁸¹ Some jurisdictions require landlords to publish their evaluation criteria in advance, but this is not common, and the level of specificity provided by landlords varies. *See, e.g.*, Texas Property Code Section 92.3515 (https://texas.public.law/statutes/tex_prop_code_section_92.3515), and RCW 59.18.257 (<https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.257>). For HUD-subsidized multifamily housing programs, HUD requires, when applicable, that “owners must develop and make public written tenant selection policies and procedures that include descriptions of the eligibility requirements and income limits for admission.” HUD, “Waiting List and Tenant Selection,” *supra* note 6565.

corrected in advance.⁸² Also, in contrast to the employment screening context, landlords are not required to notify tenant applicants before taking an adverse action based on information in the tenant screening report.⁸³ Prospective tenants may only learn the landlord's reasons for denial or the tenant screening provider's name after they have already been denied. Finally, some nationwide specialty tenant screening companies do not make free annual copies available to those that request them, as required by law.⁸⁴

For individuals who learn of inaccuracies and decide to exercise their right to dispute them, the dispute intake and investigation processes can be challenging. Some companies permit disputes submitted online, while others require submissions only by postal mail.⁸⁵ Complaints submitted to the CFPB also indicate that tenant screening companies vary widely in their responsiveness, with complaints indicating that some companies did not provide responses at all.⁸⁶ Others have claimed they could not fully dispute inaccurate information because a tenant screening company

⁸² This is a common practice in background screening for both employment and tenant screening in which generally files are created and aggregated only on a per request basis for institutional users with a permissible purpose. For more information, see "List of consumer reporting companies," *Consumer Financial Protection Bureau*, <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/consumer-reporting-companies/companies-list/>.

⁸³ Landlords also may fail to fulfill their adverse action obligations under the FCRA, or may only provide adverse action information orally as opposed to in writing, limiting consumers' ability to understand the reasons for their rejection or seek relief under antidiscrimination law. See Frances Mock, "Blacklisted: An Argument for Eviction Record Suppression in South Carolina in Response to the Housing Crisis," *15 Charleston L. Rev.* 529, 2021, p. 545 ("evidence indicates that 'many landlords are not aware of [adverse action] requirements and therefore often do not comply with them'" (quoting Esme Caramello and Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches*, *Clearinghouse Rev.* (2017); Reosti (2020), *supra* note 16, p. 643. Cf. HUD, "Implementation of the Office of General Counsel's Guidance" (2022), *supra* note 56 (instructing landlords to reduce FHA liability by "provid[ing] the applicant or tenant with the criminal record, indicate which specific part of the record may form the basis of an adverse decision, and give the applicant or tenant the opportunity to correct inaccurate information or explain extenuating circumstances related to that record").

⁸⁴ See CFPB, "Consumer Financial Protection Bureau issues warning to nationwide specialty consumer reporting agencies," November 2012, (CFPB bulletin to nationwide specialty consumer reporting agencies affirming their obligation under the law to provide a "streamlined process" for consumers to request a free annual consumer report,) https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-issues-warning-to-nationwide-specialty-consumer-reporting-agencies/?_gl=1*kcz8wk*_ga*MTQoOTQzQDAoNS4xNjM4NTY0NTUx*_ga_DBYJL3oCHS*MTY1ODE3MTEwMC42Ny4xLjE2NTgxNzExNzkuMA. See also, Amended Complaint, *Terrence Enright v. National Tenant Network*, 1:14-cv-08380 (N.D. Ill.), Filed April 1, 2015 (consumer attempted to correct an inaccurate eviction record, but was allegedly told that he was not entitled to a free copy of his report). This case was ultimately settled.

⁸⁵ See RealPage, "Consumer Support" (indicating that consumers can dispute information on their reports by contacting the company by mail, email, or fax), <https://www.realpage.com/support/consumer/>. See also, National Tenant Network, "Consumer Disclosure Request" (stating that consumer disputes may only be processed through US. Postal mail), <https://ntnonline.com/wp-content/uploads/2022/01/Consumer-Reinvestigation-Request-Packet-01-11-22.pdf>.

⁸⁶ CFPB, "Complaint Bulletin: COVID-19 issues described in consumer complaints," July 2021, p. 14-15, https://files.consumerfinance.gov/f/documents/cfpb_covid-19-issues-described-consumer-complaint-bulletin_2021-07.pdf.

refused to disclose their vendors.⁸⁷ Given these challenges and the time necessary for dispute processes, an interested tenant could lose out on a residential property while the tenant screening company considers corrections, especially in a strong rental market. Further, even when inaccurate information is successfully disputed and fixed, the same inaccuracies can appear in another company's report, or possibly even in subsequent reports produced by the same company.⁸⁸

⁸⁷ See, e.g., Amended Class Action Complaint, *Estes v. MRI Software LLC*, No. 20-cv-01624 (D. Minn.), Filed October 7, 2020, p. 10 (alleging MRI refused to provide the applicant with the sources used to compile his rental history report). For a summary of the case, see: <https://www.consumerlawfirm.com/lawsuit-national-tenant-screening-company-fair-credit-reporting-act/>. See also, *Kelly v. RealPage, Inc.*, No. 21-1672 (3rd Cir. 2022), p. 7-9 (consumers alleged RealPage did not include data broker sources in the reports it provided to consumers and then would not correct their information without proof of error from “accurate records”).

⁸⁸ Cf. *Williams v. First Advantage LNS Screening Sols., Inc.*, 238 F. Supp. 3d 1333 (N.D. Fla. 2017). FCRA Section 611(a)(5) states that a consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to a dispute.

4. Market Challenges

This section describes tenant screening challenges in three areas: (1.) public records data accuracy, predictiveness and fairness; (2.) the relevance of credit reports and credit scores for rental decisions; and (3.) the reliance on, and predictiveness of, customized tenant risk scores, as well as automated and opaque decision-making processes.

4.1 Public Records

4.1.1 Matching & Data Accuracy Errors

Tenant screening companies obtain eviction and criminal record information from more than 13,000 federal, state, and local courts.⁸⁹ There is no single government database that collects records from across all courts, so tenant screening companies often rely on third-party data brokers who compile criminal or civil court records into centralized databases.⁹⁰ The processes companies use to search for court records that can be “matched” to a given rental applicant are imperfect. Moreover, public court records included in tenant screening reports have documented errors.⁹¹ As discussed in detail below, many tenant screening companies appear to over-include criminal and eviction court records and may under-invest in quality control processes to filter out court records that belong to other people or are outdated.⁹²

⁸⁹ CFPB, “Market Snapshot: Background Screening Reports,” October 2019, p. 10 (noting 13,000 state courts of record, and 94 district level and 13 appellate federal courts), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

⁹⁰ See CFPB, “Market Snapshot” (2019), *supra* note 89, p. 5-6. For example, court systems may provide different levels of identifying information, provide data in either bulk files or individual search results, or use different names or categories for criminal offenses. See GAO, “Criminal History Records,” February 2015, p. 33-39, <https://www.gao.gov/assets/gao-15-162.pdf>.

⁹¹ See, e.g., JD Supra, “LexisNexis Sued for FCRA Violation for Failing to Keep Consumer Data Up-To-Date,” June 2020 (lawsuit alleging LexisNexis Risk Analytics failed to properly update and verify the accuracy of data on public records, such as tax liens and collections), <https://www.jdsupra.com/legalnews/lexisnexis-sued-for-fcra-violation-for-23702/>.

⁹² See generally Consumer Financial Protection Bureau, Advisory Opinion, “Fair Credit Reporting: Name-Only Matching Procedures,” 86 FR 62468, November 10, 2021 (highlighting that a consumer reporting company that uses inadequate matching procedures to match information to consumers, including name-only matching, in preparing consumer reports is not using reasonable procedures to assure maximum possible accuracy under 15 U.S.C. 1681e(b)), https://files.consumerfinance.gov/f/documents/cfpb_name-only-matching_advisory-opinion_2021-11.pdf; See also Complaint, *U.S. v. AppFolio*, *supra* note 73 (“AppFolio failed to follow reasonable procedures to assess whether the identifiers in criminal records and eviction records in its reports reasonably

Online court databases are typically designed for jurisdiction-specific case tracking and management, and may differ on the scope of data that is collected, what data is made publicly available, and the terminology used within court records.⁹³ The National Center for State Courts (NCSC) has warned background check companies that these databases are not official records “and may be subject to error[s] or omission[s]” that require further verification for “accuracy, currency, and completeness.”⁹⁴ In addition, some jurisdictions have privacy-enhancing laws or procedures that limit the identifying information available in public records.⁹⁵ As a result, automated matching practices can lead to erroneous matches, such as court records being mismatched to individuals with similar names, or the inclusion of information that, by statute, is no longer permitted to appear in a consumer report.⁹⁶ In some cases, subsequent matching errors could even occur after an individual successfully disputes erroneous information.⁹⁷

Lawsuits and research point to the practice of “wildcard” matching, where a tenant screening company intentionally searches for records using only partial names to make a match, such as a first name initial with a last name.⁹⁸ These matching practices result in an increased likelihood

matched the applicant... AppFolio failed to follow reasonable procedures to assess whether there were internal inconsistencies in the identifiers or results indicating that the company was including information about multiple people in one report; and AppFolio failed to follow reasonable procedures to prevent the inclusion of multiple entries for the same criminal or eviction case in one report.”); Complaint, *FTC v. RealPage, Inc.*, 3:18-cv-02737-N (N.D. Tex.), Filed October 16, 2018 (“RealPage’s screening reports associated some potential renters with criminal records that did not belong to them, those renters may have been turned down for housing or other opportunities”), available at: https://www.ftc.gov/system/files/documents/cases/152_3059_realpage_inc_complaint_10-16-18.pdf.

⁹³ See generally, Becki Goggins and Dennis DeBacco, “Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report,” *SEARCH*, 2018, p. 2-14, <https://www.ojp.gov/pdffiles1/bjs/grants/251516.pdf>.

⁹⁴ NCSC, “Why court records don’t provide a person’s criminal history,” <https://www.ncsc.org/consulting-and-research/areas-of-expertise/technology/online-records>.

⁹⁵ See CFPB, “Market Snapshot” (2019), *supra* note 89, p. 14; CFPB, “Name-Only Matching Procedures,” *supra* note 92 (discussing insufficiency of “name-only” matching techniques). See, e.g., *All of Us or None etc. v. Hamrick*, No. 37-2017-00003005-CU-MC-NC (Cal. Super. Ct.), May 26, 2021. See also, Michigan Courts, “Protecting Personal Identifying Information,” <https://www.courts.michigan.gov/administration/special-initiatives/protecting-personal-identifying-information/>.

⁹⁶ See CFPB, “Justice-Involved Individuals and the Consumer Financial Marketplace,” January 2022, p. 30-32, https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022_q1.pdf; FTC, “Texas Company Will Pay \$3 million to Settle FTC Charges That it Failed to Meet Accuracy Requirements for its Tenant Screening Reports,” October 2018, <https://www.ftc.gov/news-events/news/press-releases/2018/10/texas-company-will-pay-3-million-settle-ftc-charges-it-failed-meet-accuracy-requirements-its-tenant>.

⁹⁷ *Cf. Williams v. First Advantage LNS Screening Sols., Inc.*, 238 F. Supp. 3d 1333 (N.D. Fla. 2017) (following a successful consumer dispute, employment screening company collected criminal record about the wrong individual a second time).

⁹⁸ See, e.g., Complaint, *FTC v. RealPage* (2018), *supra* note 92, p. 5-8 (alleging inadequate matching procedures); Kirchner and Goldstein (2020), *supra* note 36. Cf. GAO, “Criminal History Records” (2015), *supra* note 90, p. 38 (“using personal identifying information in addition to an individual’s name when conducting a check, such as the person’s date of birth, can minimize false positives and false negatives”); *Bureau of Consumer Financial Protection v. Sterling Infosystems, Inc.*, No. 1:19-cv-10824 (S.D.N.Y.), Filed November, 22 2019, p. 3-4 (employment background screening company allegedly used only two identifiers to match individuals to public records), available at: <https://www.consumerfinance.gov/enforcement/actions/sterling-infosystems-inc/>.

that the wrong person's court records or outdated information will appear in a rental applicant's report.⁹⁹ This type of practice can be especially problematic for known high-risk accuracy issues, such as name-matching errors among non-white groups with high surname overlap.¹⁰⁰

Although some tenant screening companies highlight conducting additional manual verification checks as part of their screening services (as described above),¹⁰¹ others suggest that doing so "would be an overwhelming task."¹⁰² One senior executive said that the experience of running a large tenant screening business "felt like [being] the captain of a sinking ship" due to the particular challenges and litigation risks of packaging and selling criminal records data.¹⁰³ There is no definitive analysis of the frequency of matching errors in the tenant screening industry, though some companies are starting to advertise the use of products that disambiguate matching errors.¹⁰⁴

The NCRCs were forced to address name-matching issues due to a multi-state lawsuit focused in part on public records matching practices. In 2018, as a result of a legal settlement, the NCRCs required stricter matching on name, address, and Social Security Number or date of birth for public records in traditional credit reports.¹⁰⁵ This effectively eliminated civil judgments and

⁹⁹ CFPB, "Name-Only Matching Procedures," *supra* note 92; NCLC, "Broken Records Redux," *supra* note 71.

¹⁰⁰ See CFPB, "Name-Only Matching Procedures" (2021), *supra* note 92 ("The risk of mismatching from name-only matching is likely to be greater for Hispanic, Asian, and Black individuals because there is less last-name diversity in those populations than among the non-Hispanic white population."); see also Joshua Comenetz, "Frequently Occurring Surnames in the 2010 Census," October 2016, p. 3-7, <https://www2.census.gov/topics/genealogy/2010surnames/surnames.pdf> ("Twenty-six surnames cover a quarter of the Hispanic population and 16 percent of Hispanic people reported one of the top 10 Hispanic names. The pattern is similar for Asians and blacks."); U.S. Census Bureau, "Hispanic Surnames Rise in Popularity," August 9, 2017, <https://www.census.gov/library/stories/2017/08/what-is-in-a-name.html>; U.S. Census Bureau, "What's in a Name," December 15, 2016, https://www.census.gov/newsroom/blogs/randomsamplings/2016/12/what_s_in_a_name.html.

¹⁰¹ See, e.g. Entrata, "ResidentVerify," *supra* note 58 (marketing "Manual Court Searches").

¹⁰² See Kirchner and Goldstein (2020), *supra* note 36 (citing a federal deposition, by a CoreLogic employee).

¹⁰³ Cyrus Farivar, "Tenant screening software faces national reckoning," NBC News, March 14, 2021, <https://www.nbcnews.com/tech/tech-news/tenant-screening-software-faces-national-reckoning-n1260975>. In 2020 and 2021, CoreLogic sold its tenant screening business, Rental Property Solutions LLC., which is now known as SafeRent Solutions. See Form 10-K Corelogic, Inc., February 2021, p. 56 <https://sec.report/Document/0000036047-21-000018/> and *The Real Deal*, "The problem with tenant screening reports," September 2022, <https://therealdeal.com/2022/09/12/the-problem-with-tenant-screening-reports/>.

¹⁰⁴ For example, Name Grades ranks how common a given name is, allowing consumer reporting companies to gauge the likelihood of a matching error. Name Grades, <https://www.namegrades.com/>. Equifax also sells "pointer" solutions to help consumer reporting companies match criminal data utilizing address and incarceration history. Equifax, "TraceSmart," <https://totalverify.equifax.com/solutions/tracesmart>; and "CrimSmart," <https://totalverify.equifax.com/solutions/crimsmart>.

¹⁰⁵ CFPB, "Quarterly Consumer Credit Trends: Public Records," February 2018, https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-trends_public-records_022018.pdf.

nearly half of tax liens from credit reports.¹⁰⁶ This change was not adopted by tenant screening or other background screening companies. While trade representatives claim that analysis of consumer disputes and regular audits of source data help assure data quality, the prevalence of those practices across tenant screening companies is unknown.¹⁰⁷

4.1.2 Eviction Records

Eviction records are one of the most commonly marketed¹⁰⁸ yet widely criticized¹⁰⁹ elements of tenant screening reports. On average, 3.6 million eviction records are created each year.¹¹⁰ Seeing the term “eviction” on a tenant screening report can be a red flag for many landlords. However, the nature of eviction proceedings and the approaches taken by tenant screening companies to capture and report eviction records can result in missing, outdated, or misleading information appearing on a report, undermining its purported predictive value.

Eviction Court Processes

An eviction process typically begins when a landlord sends a tenant a notice to “vacate” or “quit.” In general, the landlord must wait to file the eviction in court until after the period specified in the landlord’s initial notice expires.¹¹¹ It is this subsequent legal filing for eviction

¹⁰⁶ CFPB, “Quarterly Consumer Credit Trends” (2018), *supra* note 105, p. 4. The NCRCs ultimately made the decision to remove all civil judgments and tax liens from credit files. Notably, this had little effect on consumer credit scores. See also, Jasper Clarkberg, “A new retrospective on the removal of public records,” *Consumer Financial Protection Bureau*, December 10, 2019, <https://www.consumerfinance.gov/about-us/blog/new-retrospective-on-removing-public-records/>.

¹⁰⁷ “Accuracy in Consumer Reporting Workshop – An FTC/CFPB Workshop,” December 2019, p. 28-29, https://www.ftc.gov/system/files/documents/videos/accuracy-consumer-reporting-workshop-session-2/ftc_accuracy_in_consumer_reporting_workshop_transcript_segment_2_12-10-19.pdf.

¹⁰⁸ All 17 companies surveyed for this report marketed an eviction records check as part of their tenant screening services. *See, e.g.* TransUnion SmartMove Eviction report, <https://www.mysmartmove.com/SmartMove/eviction-check.page>. RealPage markets its “Rental History” database as having 30m+ records, including evictions history. RealPage, “Screening Solutions,” *supra* note 30. RentPrep includes an evictions check in its standard tenant screening package. RentPrep, “Packages & Pricing,” *supra* note 49.

¹⁰⁹ *See* Kleysteuber (2007), *supra* note 14; Family Housing Fund & Housing Justice Center, “Tenant Screening and Selection,” *supra* note 14; Community Legal Services of Philadelphia (CLS Philadelphia), “Breaking the Record: Dismantling Barriers Evictions Records Place on Housing Opportunities”. November 2020, <https://clspnla.org/wp-content/uploads/2020/12/Breaking-the-Record-Report-Nov2020.pdf>.

¹¹⁰ Ashley Gromis et. Al, “Estimating eviction prevalence across the United States,” *PNAS* Vol. 119, No. 21. <https://www.pnas.org/doi/full/10.1073/pnas.2116169119>.

¹¹¹ *See, e.g.*, Montgomery County Department of Housing and Community Affairs, “Evictions,” <https://montgomerycountymd.gov/DHCA/housing/landlordtenant/evictions.html>.

that shows up in court records.¹¹² Court records will generally not reflect instances when the tenant voluntarily left the property.¹¹³

The legal basis for an eviction, and whether that basis must be stated in the initial court records, varies by jurisdiction.¹¹⁴ Thus, although many filings are based on alleged non-payment, others are filed for “no cause,” lease expiration, sale of the property, or based on other alleged breaches of the lease agreement.¹¹⁵ Even when the court filing includes the legal basis for the eviction proceeding, that reason may not be reflected in automated searches.¹¹⁶ Additionally, while court rules vary, initial court filings may not have to be accompanied by supporting details or evidence (i.e., an amount of damage or unpaid rent).¹¹⁷

Similarly, a tenant screening report may only reflect the initial filing and not any ultimate disposition of the lawsuit, including cases ultimately dismissed or decided in the tenant’s favor.¹¹⁸ To the extent tenant screening reports pick up the ultimate disposition, they may be lacking additional relevant context. For example, a tenant may have presented a defense that a landlord did not fulfil their lease obligations¹¹⁹ or that the eviction was filed without any legal basis, perhaps in response to the tenant’s refusal to grant the landlord or property manager sexual favors.¹²⁰ To take another example, in response to COVID, federal and state protections

¹¹² See Massachusetts Law Reform Institute (MLRI), “Evicted for Life,” June 12, 2019, p. 4, https://www.mlri.org/wp-content/uploads/2019/06/evicted_for_life_mlri.pdf.

¹¹³ See SFGate, “How Fast Does an Eviction Show Up on a Tenant Screening Report?,” December 29, 2018, <https://homeguides.sfgate.com/fast-eviction-show-up-tenant-screening-report-8048.html>

¹¹⁴ See Legal Services Corporation, Eviction Laws Database: State/Territory Dataset. Prepared by the Center for Public Health Law Research at Temple University’s Beasley School of Law for Legal Services Corporation (2021), available at <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>.

¹¹⁵ Eviction case procedures can vary by jurisdiction but have common elements. For an example eviction filing and hearing process, see <https://montgomerycountymd.gov/DHCA/housing/landlordtenant/evictions.html>. See also Massachusetts Law Reform Institute, “Evicted for Life,” (June 12, 2019), p. 4, https://www.mlri.org/wp-content/uploads/2019/06/evicted_for_life_mlri.pdf. See also, Seattle’s Just Cause Eviction Ordinance, which allows landlords to evict tenants if they wish to sell the property, [https://www.seattle.gov/sdci/codes/codes-we-enforce-\(a-z\)/just-cause-eviction-ordinance](https://www.seattle.gov/sdci/codes/codes-we-enforce-(a-z)/just-cause-eviction-ordinance).

¹¹⁶ See Kaveh Waddell, “How Tenant Screening Reports Make It Hard for People to Bounce Back From Tough Times,” (March 11, 2021), <https://www.consumerreports.org/algorithms-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/>.

¹¹⁷ See Frances Mock, “Blacklisted” (2021), *supra* note 83, p. 531 (stating that in South Carolina, the onus is on the tenant to show cause as to why they should not be evicted). Under some state laws, landlords may also name all the people who live in the house, including minors and other non-leaseholders, in the eviction filing. See Shelby R. King, “Minor Defendants: Kids Are Being Named in Evictions,” November 11, 2021, available at: <https://shelterforce.org/2021/11/11/minor-defendants-kids-are-being-named-in-evictions/>.

¹¹⁸ Frances Mock, “Blacklisted” (2021), *supra* note 83, p. 530 (describing tenant screening companies improperly using eviction records). See also Kleysteuber (2007), *supra* note 14, p. 1344.

¹¹⁹ MLRI, “Evicted for Life,” *supra* note 112, p. 4-8.

¹²⁰ Elora Raymond et al., “Corporate Landlords, Institutional Investors, and Displacement: Eviction Rates in Single-Family Rentals,” *Federal Reserve Bank of Atlanta*, December 2016, p. 3, <https://www.atlantafed.org/-/media/documents/community-development/publications/discussion-papers/2016/04-corporate-landlords-.pdf>.

prevented landlords in many instances from fully executing evictions against tenants.¹²¹ Where landlords filed evictions despite these protections, those eviction filings may appear on tenant screening reports, even when the tenant ultimately prevailed.¹²²

For an example of how evictions appear on a tenant screening report, see the image in Figure 5 below.

FIGURE 5: EVICTION HISTORY (TENANT REPORT EXCERPT)¹²³

EVICTION HISTORY			
	2	2 evictions reported.	
FILING DATE	JUDGEMENT AMOUNT	ADDRESS	PLAINTIFF
01/01/1985	\$688	718 TREVOR TER RICHMOND, VA 23225	SJW LIMITED PARTNERSHIP TA ST JO
02/19/2009	\$274	9868 SHALLOW CREEK LOOP WDBG, VA 22191	SL NUSBAUM REALTY CO
Showing 2 of 2			

Eviction proceedings are also characterized by an extreme imbalance in legal representation where most landlords hire attorneys, but few tenants secure counsel.¹²⁴ This imbalance heightens the risk that misleading or unfounded information is included in tenant screening reports.¹²⁵

[institutional-investors-and-displacement-2016-12-21.pdf](#). See also Department of Justice Office of Public Affairs, “Justice Department Obtains \$4.5 Million Settlement from a New Jersey Landlord to Resolve Claims of Sexual Harassment of Tenants,” December 14, 2021, <https://www.justice.gov/opa/pr/justice-department-obtains-45-million-settlement-new-jersey-landlord-resolve-claims-sexual>.

¹²¹ Eviction Lab, “Assessing State Eviction Prevention Policies in Response to COVID-19,” June 2022, <https://evictionlab.org/assessing-state-eviction-prevention-covid-19>.

¹²² Eviction Lab (2022), *supra* note 121. See also National Consumer Law Center, “Salt in the Wound: How Eviction Records and Back Rent Haunt Tenant Screening Reports and Credit Scores,” August 2020, available at: https://www.nclc.org/wp-content/uploads/2022/09/IB_Salt_in_the_Wound.pdf.

¹²³ Figure 5 is from a sample AppFolio screening report, available at <https://www.weichertlilac.com/tenant-screening-why-its-important-and-how-we-do-it/>.

¹²⁴ See American Bar Association and Harvard University, “Designing for Housing Stability: Best Practices for Court-Based and Court-Adjacent Eviction Prevention and/or Diversion Programs,” June 2021, p. 27 (“The majority of tenants facing eviction are pro se; it is estimated that fewer than 3% of tenants have access to counsel, compared to 81% of property owners.”), <https://hnmcplaw.harvard.edu/wp-content/uploads/2021/06/Deasigning-for-Housing-Stability.pdf>. While jurisdiction-dependent, this imbalance is likely due in part to the lack of a right to free legal counsel in eviction cases. See Russell Engler, “Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed,” *37 Fordham Urb. L.J.* 37 (2010), p. 41 (“They often identify an inability to pay for a lawyer as the primary reason for appearing without counsel.”).

¹²⁵ When tenants do have counsel, their ability to raise defenses, avoid evictions, and reach settlements is significantly improved. For example, a right to counsel program in New York City found that 84 percent of represented tenants were able to avoid eviction, and programs in Boulder, Cleveland, and San Francisco also demonstrated significantly

Tenant Screening Company Procedures

Some tenant screening companies and their data vendors appear to lack adequate procedures to account for these types of complexities and errors.¹²⁶ For example, a case procedurally transferred from one courthouse to another can end up inaccurately reported as two “evictions” in a tenant screening report.¹²⁷ Regulatory enforcement actions also indicate tenant screening companies have wrongly included public records that were sealed.¹²⁸

Even where up-to-date information is obtained, eviction case records often have missing or unclear information about the fundamental outcome of the proceeding. 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.”¹²⁹ Different originating courts may also record and report outcome information differently. For example, the study found that “unresolved” cases, which typically indicate the case was not adjudicated (suggesting that the landlord decided not to pursue the case, perhaps because of a resolution out of court), were purged in four states but five states retained these cases in publicly accessible records. In essence, this means a tenant from South Carolina could have an eviction filing on their tenant screening report, while a similarly situated consumer from Nebraska would not.¹³⁰

higher tenant victories and increased settlements. See Mayor’s Public Engagement Unit, “Right to Counsel,” <https://www1.nyc.gov/site/mayorspeu/resources/right-to-counsel.page>. Similarly, many judgments against tenants in evictions cases appear to reflect renters’ challenges with navigating court procedures rather than determinations on the merits; CLS Philadelphia, “Breaking the Record,” *supra* note 109, p. 4 (Some “34% of eviction filings over the past decade ended in default judgments where the tenant did not attend the court hearing, often because they were not aware of the hearing.”); Josh Kaplan, “Thousands Of D.C. Renters Are Evicted Every Year. Do They All Know To Show Up To Court?” *DCist*, October 2020, (“A nine-month investigation ...turned up more than 600 cases in just two months where two process servers filed affidavits containing discrepancies that, if brought to a judge’s attention, would likely result in the eviction case being dismissed”), <https://dcist.com/story/20/10/05/thousands-of-d-c-renters-are-evicted-every-year-do-they-all-know-to-show-up-to-court/>.

¹²⁶ See Complaint, *McIntyre v. TransUnion, LLC*, 2:18-cv-03865-RBS (E.D. Penn.), Filed September 10, 2018 (class-action lawsuit filed against TransUnion for allegedly reporting eviction cases which had been withdrawn and settled). See also, Complaint, *Clark-Fortunat v. TransUnion Rental Screening Solutions, Inc.*, 1:19-cv-03525 (E.D.N.Y.), Filed June 14, 2019 (class action lawsuit filed against TransUnion alleging that the company inaccurately reported eviction records which had been expunged).

¹²⁷ MLRI, “Evicted for Life,” *supra* note 112, p. 8.

¹²⁸ Complaint, *U.S. v. AppFolio* (2020), *supra* note 73. AppFolio settled with the Federal Trade Commission (FTC) for allegedly failing to check whether court records purchased from a third party and used in tenant screening reports had been sealed.

¹²⁹ Adam Porton, et al., “Inaccuracies in Eviction Records: Implications for Renters and Researchers,” *Housing Policy Debate*, vol. 31, no. 3-5, September 2021. In the study, “ambiguous” outcomes referred to records where outcome and judgment date information was blank (“unresolved”) or where outcome information did not clearly indicate the prevailing party or that the case was settled (“opaque”). The vast majority of records classified as “false” were instances of “serial” filings as opposed to records with apparent recordkeeping errors.

¹³⁰ Porton, et al. (2021), *supra* note 129.

Predictive Value & Fairness Concerns

The challenges outlined in this Section raise questions about the broadly presumed reliability of eviction records in informing rental decisions. Despite industry claims to the contrary,¹³¹ 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. Landlords relying on an automated search may unwittingly rely on arbitrary or inaccurate bases for denying housing to a prospective tenant.

Evidence suggests that whether a tenant is evicted relates, in part, to the characteristics of their landlord. A 2016 Federal Reserve study described how larger, corporate landlords file evictions at “substantially higher” rates than smaller ones, “even after controlling for property quality, location, and foreclosure history,” suggesting they “may routinely use eviction notices as a rent collection strategy.”¹³² In at least four states, serial filings account for more than 20% of total eviction cases.¹³³ These strategies may be used to secure rent withheld due to lack of maintenance or to extract late fees.¹³⁴ Without more information, it can be hard to judge whether individual eviction filings are caused by a tenant’s nonpayment of rent, a landlord’s use of the evictions process “to extort compliance or cooperation,”¹³⁵ individual landlord tendencies, or landlord-tenant negotiation dynamics.¹³⁶

Landlords may also overweight any eviction history, despite the nuances and complexities of eviction proceedings.¹³⁷ Even when tenant reports accurately list eviction records that include dispositions, a renter may be excluded from access to housing after winning an eviction case.¹³⁸

These practices may also exacerbate concerns about the discriminatory impact of tenant screening reports on certain demographic groups. Studies have shown that exclusion from housing due to prior evictions plays a role in reinforcing stigmas, contributing to cycles of

¹³¹ TransUnion, “Collection Records are Highly Predictive of Resident Behavior,” February 22, 2016, <https://newsroom.transunion.com/transunion-analysis-collection-records-are-highly-predictive-of-resident-behavior/>.

¹³² Raymond, *et al.* (2016), *supra* note 120, p. 3. For additional discussion of the practice of “serial” or “retaliatory” evictions, see Lake and Tupper (2021), *supra* note 63.

¹³³ Porton, *et al.* (2021), *supra* note 129, Figure 2: Prevalence of inaccuracies by state and type. Serial filings are groups of cases involving the same landlord filing repeated eviction claims against the same tenant at the same property.

¹³⁴ Raymond, *et al.* (2016), *supra* note 120, p. 7.

¹³⁵ Kleysteuber (2007), *supra* note 14, p. 1362. For anecdotal instances see Paula Franzese, “A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity,” 45 Fordham Urban L.J. 661, 2018, p. 667-669.

¹³⁶ See Testimony by Matthew Desmond to United States Senate Committee on Banking, Housing, and Urban Affairs U.S. Congress, p.6; Select Subcommittee on the Coronavirus Crisis, “Examining Pandemic Evictions: A Report on Abuses by Four Corporate Landlords During the Coronavirus Crisis,” Washington: Staff Report, July 2022, 24; and Henry Gomory, “The Social and Institutional Contexts Underlying Landlords’ Eviction Practices,” Social Forces 100, 2022: 1774-1805; Dan Immergluck, Jeff Ernsthausen, Stephanie Earl, and Allison Powell, “Evictions, Large Owners, and Serial Filings: Findings from Atlanta.” Housing Studies 35, 2020: 903-24.

¹³⁷ Franzese (2018), *supra* note 135, p. 667-669.

¹³⁸ See MLRI (2019), *supra* note 112, p. 4.

homelessness, causing mental and physical health issues, and preventing equitable wealth-building opportunities.¹³⁹ As noted in Section 2, the make-up of renters skews towards lower-income families, people of color, and younger populations. Studies have also shown that Black and Hispanic renters, particularly women, are disproportionately subject to and affected by eviction filings.¹⁴⁰ For example, Black women are more likely than any other demographic to be evicted, with some evidence suggesting that this holds constant after controlling for failure to pay rent.¹⁴¹

Emerging Trends

Some jurisdictions have recently considered or passed laws to seal or limit access to eviction filings in certain instances, like situations in which the landlord does not follow through with an eviction or the matter is not decided in the landlord's favor.¹⁴² California, Oregon, Florida, Massachusetts, Connecticut, and Ohio all have passed or considered legislation to seal or expunge eviction records.¹⁴³ Nonetheless, tenant screening companies have been alleged to report outdated, expunged, or sealed eviction filings which continue to exist in private databases.¹⁴⁴

¹³⁹ Franzese (2018), *supra* note 135; Kirchner and Goldstein (2020), *supra* note 36. Housing instability has been correlated to recidivism, long-term health impacts, and ongoing employment and financial challenges, *see* Lake and Tupper (2021), *supra* note 63.

¹⁴⁰ *See generally* Matthew Desmond, "Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship," MacArthur Foundation, March 2014, https://www.macfound.org/media/files/hbm_research_brief_-poor_black_women_are_evicted_at_alarming_rates.pdf; Peter Hepburn, Renee Louis, and Matthew Desmond, "Racial and Gender Disparities among Evicted Americans," *The Eviction Lab*, December 2020, <https://evictionlab.org/demographics-of-eviction/>; Deena Greenberg, Carl Gershenson, and Matthew Desmond, "Discrimination in Evictions: Empirical Evidence and Legal Challenges," *51 Harvard Civil Rights-Civil Liberties L. Rev.* 115, 2016; Kim Eckart, "Study reveals gender, racial disparities in evictions," *Phys.org*, February 11, 2020, <https://phys.org/news/2020-02-reveals-gender-racial-disparities-evictions.html>.

¹⁴¹ Romina Ruiz-Goirirena and Kevin Crowe, "'I lost everything': Black women get evicted more than anyone else. A looming eviction crisis will make it worse," *USA Today*, April 2022, <https://www.usatoday.com/in-depth/news/nation/2022/04/04/eviction-rates-black-women-at-risk/6901242001/>. *See also* Desmond (2014), *supra* note 140.

¹⁴² *See* California Code of Civil Procedure Sec. 1161.2, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1161.2.&lawCode=CCP; New York's Housing Stability and Tenant Protection Act of 2019, p. 45, <https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2019/11/Housing-Stability-and-Tenant-Protection-Act-of-2019.pdf>.

¹⁴³ Lake and Tupper (2021), *supra* note 63, p. 9. *See also*, Relating to the Expungement of Eviction Records, S.B. 873, Oregon Legislature, June 2019, <https://olis.oregonlegislature.gov/liz/2019R1/Measures/Overview/SB873>; An Act Relating to Public Records of 2021, H.B. 1195, Florida House of Representatives, 2021, <https://www.flsenate.gov/Session/Bill/2021/1195/BillText/Filed/PDF>; An Act Relating to Court Records of Eviction of 2021, C.S./H.B. 1193, Florida House of Representatives (2021), <https://www.flsenate.gov/Session/Bill/2021/1193/BillText/e1/PDF>; Regards Expungement of Eviction Case Court Files of 2021, S.B. 158, 134th Ohio General Assembly, April 21, 2021, <https://legiscan.com/OH/bill/SB158/2021>.

¹⁴⁴ See Complaint at p. 3-5, *Adams v. CBCInnovis, Inc. dba Amrent*, No. 1:18-cv-00485-AJT-IDD (E.D. Va.), Filed Apr. 26, 2018 (E.D. Va.).

4.1.3 Criminal Records

One in three adult Americans has a criminal record.¹⁴⁵ The use of criminal records – including arrests and convictions – in tenant screening has many of the same accuracy, predictiveness, and fairness concerns as evictions.¹⁴⁶

Obsolete or Irrelevant Records

There are many examples of tenant screening reports appearing to include statutorily prohibited obsolete information, such as non-conviction criminal records more than seven years old, or duplicative entries for the same conviction.¹⁴⁷ Incomplete criminal records are also a challenge. According to the Bureau of Justice Statistics, states report an average of only 68 percent of arrest records having a case disposition.¹⁴⁸ Tenant screening companies sometimes choose to include this limited arrest record information, with adverse consequences for prospective renters, even if they are not proof of criminal activity by themselves and may violate local laws that restrict use of records with missing dispositions after certain time periods.¹⁴⁹

Tenant screening companies and their data brokers may also fail to have procedures to assure removal of records that were expunged, sealed or obsolete.¹⁵⁰ While not yet a widespread solution, at least the state of Pennsylvania has begun to regularly publish “full cycle” lists of

¹⁴⁵ CFPB, “Justice-Involved Individuals” (2022), *supra* note 96.

¹⁴⁶ For example, several states have passed “clean slate” legislation that “automates arrest and conviction record clearance if a person stays crime-free for a period of time.” The Clean Slate Initiative, <https://www.cleanslateinitiative.org/states>.

¹⁴⁷ FTC, “Tenant Background Report Provider Settles FTC Allegations that it Failed to Follow Accuracy Requirements for Screening Reports,” <https://www.ftc.gov/news-events/news/press-releases/2020/12/tenant-background-report-provider-settles-ftc-allegations-it-failed-follow-accuracy-requirements>. Cf., Complaint, *CFPB v. Sterling* (2019), *supra* note 98 (alleging inclusion of outdated criminal records in an employment screening context).

¹⁴⁸ In 49 states and the District of Columbia, an average of 68 percent of all arrests in state databases have final case dispositions reported, and different states vary in how they calculate the percentage of arrests with dispositions recorded, as some states “consider an arrest to have a disposition if any final disposition can be associated with an arrest cycle.” Goggins and DeBacco (2018), *supra* note 93, p. 2-3.

¹⁴⁹ See Office of the General Counsel, “Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions,” https://www.hud.gov/sites/documents/HUD_QGCGUIDAPPFHASTANDCR.PDF. See also *Connecticut Fair Housing Center v. Corelogic Rental Property Solutions, LLC*, No. 3:18-CV-705 (D. Conn.), March 25, 2019 (plaintiff was allegedly rejected for an apartment as a result of an arrest record that had not led to a conviction as of the date it was reported). Virginia and Pennsylvania are examples of jurisdictions with limitations on access to outdated arrest information. See 6 VAC 20-120-50(B)(4)(c); 18 Pa. C.S. Sec. 9121(b)(2).

¹⁵⁰ CFPB, “Justice-Involved Individuals” (2022), *supra* note 96, p. 32. See also Complaint, *U.S. v. AppFolio*, *supra* note 73.

expunged and sealed cases, which subscribing background screeners and data brokers are contractually required to use to limit the reporting of outdated information.¹⁵¹

Predictiveness

There is limited evidence that individuals with criminal records, including arrests, are categorically more problematic tenants. From that limited evidence, it appears that most types of offenses are not predictive and that their predictive value declines with time. In 2022, HUD described how over reliance on criminal records can be problematic, noting the lack of empirical data demonstrating that criminal background checks reliably predict propensity for renters to skip rental payments, damage property, or disrupt neighbors.¹⁵² Industry representatives, on the other hand, argue that criminal background checks are a valuable tool for ensuring public safety.¹⁵³

Two studies have found limited or no value in using criminal background information to predict tenant outcomes, at least in certain contexts. One study of housing success for homeless adults moving into supportive housing found the “presence of a criminal background did not predict housing failure,” defined as “retain[ing] housing continuously for two years.”¹⁵⁴ Similarly, a research collaborative of four non-profit multifamily affordable housing providers found 11 out of 15 categories of criminal offenses did not appear to predict negative housing outcomes.¹⁵⁵ Moreover, the study found that any impact “declines rapidly over time; the impact of a

¹⁵¹ Sharon Dietrich, “Ants Under the Refrigerator: Removing Expunged Cases from Commercial Background Checks,” *Criminal Justice*, 2016, <https://clsphila.org/wp-content/uploads/2019/10/ants-under-the-refrigerator-published.pdf>. See also FTC, “Accuracy in Consumer Reporting Workshop” (2019), *supra* note 23, p. 13 (“In Pennsylvania, we have a best practice...which is that our courts actually produce a lifecycle file with all of the cases that have been expunged and sealed every month and directly deliver that to the CRAs that they contract with and require any downstream users to also update their records with that file. So on the rest of the advocacy we do around the country, we are advocating for states to adopt similar procedures to make it clearer and more easy for CRAs to comply with removing expunged and sealed records,” Jamie Gullen, CLS Philadelphia).

¹⁵² See HUD, “Tenant Screening With Criminal Background Checks: Predictions And Perceptions Are Not Causality,” May 17, 2022,, <https://www.huduser.gov/portal/pdedge/pdr-edge-frm-ass-sec-051722.html>.

¹⁵³ See Brief of Amicus Curiae Consumer Data Industry Association and the Professional Background Screening Association in Support of Appellants’ Request for Reversal, *Yim v. City of Seattle*, No. 21-35567, Filed November 5, 2021 (9th Cir.), <https://www.cdiaonline.org/wp-content/uploads/2021/09/2021-11-04-CDIA-Amicus.pdf>.

¹⁵⁴ Daniel K. Malone, “Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults with Behavioral Health Disorders,” *Psychiatric Services*, Vol. 60, No. 2, p. 224-230, <https://ps.psychiatryonline.org/doi/epdf/10.1176/ps.2009.60.2.224>.

¹⁵⁵ The study found property offenses, major drug offenses, fraud, and assault “may contribute to negative housing outcomes,” while also noting data limitations that call into question the size and significance of these offenses’ impact. Cael Warren, “Success in Housing: How Much Does Criminal Background Matter?,” *Wilder Research*, January 2019, https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf.

misdemeanor becomes insignificant after 2 years, while felonies become insignificant after 5 years.”¹⁵⁶ Studies of recidivism also share a similar trend.¹⁵⁷

Emerging Trends

In response to these concerns, a handful of jurisdictions have recently passed “ban-the-box” laws that either prohibit the collection and use of criminal history information in rental decisions, or only permit collection and use for individualized assessments after the landlord has determined the tenant otherwise qualifies. A growing number of places around the country, such as New Jersey, San Francisco, and Cook County, Illinois (which includes Chicago), have limited the ability of landlords to screen prospective tenants based on their criminal records.¹⁵⁸ In 2022, New York City continued to consider legislation in this area too.¹⁵⁹

Although industry advocates insist that criminal records screening is critical, there is evidence suggesting that many landlords are willing to—and do—take a more nuanced view of criminal records than other tenant screening data, like evictions history.¹⁶⁰ Academic- and industry-sponsored surveys alike have found landlords view criminal history as important, but not the *most* important screening criteria. In those surveys, landlords rank income and eviction-related

¹⁵⁶ Warren (2019), *supra* note 155.

¹⁵⁷ See Leonardo Antenangeli and Matthew Durose, “Recidivism of Prisoners Released in 24 States in 2008,” *Bureau of Justice Statistics*, p. 17 (“Generally, prisoners were less likely to be arrested the longer they went without being arrested following release.”), https://bjs.ojp.gov/BJS_PUB/rpr24s081oyfup0818/Web%20content/508%20compliant%20PDFs.

¹⁵⁸ See Mihir Zaveri, “Criminal Background Checks May Be Banned in N.Y.C. Housing Applications,” *The New York Times*, August 2022, <https://www.nytimes.com/2022/08/09/nyregion/criminal-background-checks-nyc-housing.html?smid=url-share>; NJ Assembly Bill 1919 <https://legiscan.com/NJ/text/A1919/id/2219117>; San Francisco Police Code § 4906, https://sf-hrc.org/sites/default/files/ARTICLE%2049_%20Final.pdf; Cook County Code of Ordinances, Ch. 42, Article II, §42-38 (2019), https://library.municode.com/il/cook_county/codes/code_of_ordinances?nodeId=PTIGEOR_CH42HURE_ARTI_IHURI_S42-38HO.

¹⁵⁹ A bill to be introduced in City Council would, with a few exceptions, ban landlords and brokers from seeking a person’s criminal records, and bar them from denying housing because of prior arrests or convictions. Zaveri (2022), *supra* note 158.

¹⁶⁰ See, e.g., Anna C. Reosti, “Tenant Screening and Fair Housing in the Information Age,” *University of Washington*, 2018 (study found that landlords would more unequivocally tell prospective tenants that evictions history was disqualifying compared to criminal records, and that landlords were more responsive to Black male applicants in jurisdictions with stringent antidiscrimination laws), https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/42546/Reosti_washington_0250E_18778.pdf?sequence=1&isAllowed=y.

information higher.¹⁶¹ Sample criteria from tenant screening companies also shows options for finer-tuned differentiation of specific crimes and their recency.¹⁶²

4.2 Credit Reports & Credit Scores

Tenant screening reports often include a third-party credit score or portions of a person's credit report.¹⁶³ Aside from the documented errors and inadequate dispute mechanisms associated with credit reports, credit history does not directly measure—and is therefore an inherently limited predictor of—one's likelihood to pay rent and be a responsible tenant.¹⁶⁴

4.2.1 Credit History Relevance to Rental Performance

Credit scores and reports were originally designed for creditors to pool knowledge about loan payment history, delinquencies, length of credit history, and the type of credit used.¹⁶⁵ The vast majority of tradelines furnished to the NCRCs are from financial services providers – related to

¹⁶¹ See Lynn Clark, “Landlord Attitudes Toward Renting to Released Offenders,” Table 3, June 2007, <https://www.uscourts.gov/federal-probation-journal/2007/06/landlord-attitudes-toward-renting-released-offenders>; TransUnion, “TransUnion Independent Landlord Survey Insights,” *supra* note 14; Avail, “Growing Renter Confidence Fueling Hot Market to Start 2022,” Feb 15, 2022, <https://www.avail.co/blog/growing-renter-confidence-fueling-hot-market-to-start-2022>; Despite some landlord concerns regarding criminal records, this information continues to be widely used in tenant screening reports. For example, all landlords managing Public Housing are required to conduct a criminal background check when evaluating prospective tenants. See HUD Occupancy Handbook, *supra* note 65.

¹⁶² E.g., RentPrep Tenant Screening Criteria template, <https://www.dropbox.com/scl/fi/t3km1zlji4115pds8oe86/Tenant-Screening-Criteria-Sample.docx?dl=0&rlkey=9qqzj24jqijvnmg98v1lsusyyj>. See also RealPage, “Screening Solutions,” *supra* note 30 (“Criminal History” feature allows landlords to specify scoring model settings on “how to treat each offense based on nature/type, severity, degree and/or age of the offense”).

¹⁶³ Industry practices vary on which components of an applicant’s credit history are made available to landlords. Most companies appear to offer a full credit report (e.g., FirstAdvantage, TransUnion, SafeRent, National Tenant Network and others), although some may provide more limited credit information and charge an additional fee for a full credit report (e.g., E-Renter and RentPrep).

¹⁶⁴ Consumer advocates assert that “there are no quantitative or scientific studies showing that credit reports and scores accurately predict a successful tenancy,” NCLC, “Mission Creep: A Primer on Use of Credit Reports & Scores for Non-Credit Purposes,” August 2022, p. 7, https://www.nclc.org/images/pdf/credit_reports/Mission_Creep_rpt.pdf. Some distributors of rental risk scores also argue that credit scores do not deliver the best results. See TransUnion, “SmartMove’s ResidentScore vs. a typical credit score: which is better?,” April 2019, <https://www.mysmartmove.com/SmartMove/blog/residentscore-tailored-tenant-screening.page>; Katy McLaughlin, “Robots Are Taking Over (the Rental Screening Process),” *Wall Street Journal*, November 2019 (RealPage claims that its AI-powered rental risk scoring model is more effective than traditional credit scoring in predicting tenant outcomes), <https://www.wsj.com/articles/robots-are-taking-over-the-rental-screening-process-11574322200>.

¹⁶⁵ CFPB, “Key Dimensions and Processes in the U.S. Credit Reporting System,” p. 7, https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf; Evan Hendricks, “Credit Scores & Credit Reports. How the System Really Works, What You Can Do,” *Privacy Times*, 2005; Family Housing Fund & Housing Justice Center, “Tenant Screening and Selection, *supra* note 14, p. 13.

bank loans, credit cards, and insurance.¹⁶⁶ The one credit reporting variable most relevant for rental housing – rent payment history – is not well-populated in the repositories of the NCRCs.¹⁶⁷ More precisely, it is estimated that only 1.7 to 2.3 percent of adults who live in rental housing have rent tradelines in their credit files.¹⁶⁸ In addition to there being limited rental performance data in credit histories, some studies have shown that when rental performance data is included it results in a boost for credit scores.¹⁶⁹

Research further suggests that renters may be more likely to make rental payments than to repay other financial services debt. Policymakers frequently reference the notion that “rent eats first.”¹⁷⁰ 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.¹⁷¹ The fact that individuals appear to prioritize rental payments over traditional forms of credit calls into question the strength of the relationship between an individual’s credit profile and their likelihood of paying rent. Even so, many tenant screening companies market credit reports and scores as stand-alone solutions for rental decisioning.¹⁷²

¹⁶⁶ CFPB, “Annual report of credit and consumer reporting complaints,” January 2022, p. 6, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf.

¹⁶⁷ There are a variety of commercial efforts to increase rent payment coverage. Some companies do this by encouraging consumers to contribute this information voluntarily as a way to build credit. See, e.g., Esusu, <https://esusurent.com/>; Emily Cahill, “Now You Can Add Rent to Experian Boost,” September 2022, <https://www.experian.com/blogs/ask-experian/now-you-can-add-rent-to-experian-boost/>.

¹⁶⁸ See FinRegLab, “Utility, Telecom, and Rental Data in Credit Underwriting,” p. 30 (citing estimates reported by FICO and VantageScore). See also Joanne Gaskin, “Leveraging Alternative Data to Extend Credit to More Borrowers,” FICO, May 2019, <https://www.fico.com/blogs/leveraging-alternative-data-extend-credit-more-borrowers>).

¹⁶⁹ Michael Turner and Patrick Walker, “Potential Impacts of Credit Reporting Public Housing Rental Payment Data,” p. 7 and 8, <https://www.huduser.gov/portal/sites/default/files/pdf/Potential-Impacts-of-Credit-Reporting.pdf>. The study noted that the sample of tenants examined “is composed of relatively high credit-risk consumers.”

¹⁷⁰ See HUD, “When the Rent Eats First From Incomes Large and Small, Is the Traditional Measure of Cost Burden Still Useful?,” January 2021 (discussing “residual income” as a possible measure for housing affordability on the assumption “that housing costs typically are fixed and must be paid before all other expenses”), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-011121.html>.

¹⁷¹ Fiserv, “Eighth Annual Billing Household Survey,” 2016, https://www.fiserv.com/content/dam/fiserv-com/resources/BillerSolutions_EighthAnnualBillingHouseholdStudy_ThoughtLeadership_0316.pdf.

¹⁷² See, e.g., Alliance2020, “Tenant Screening for Property Management Companies” (marketing a “Credit Only Screening Report” that includes a FICO 04 score), <https://www.alliance2020.com/services/tenant-screening/tenant-background-screening/>; FrontLobby, “Landlord Products” (screening reports only provide consumer credit files), <https://frontlobby.com/en/landlord-benefits/>; MyRental, “Rental Credit Check Service” (allows landlords to purchase an applicant’s credit report and credit score as a stand-alone tenant screening solution), <https://www.myrental.com/tenant-screening-products/tenant-credit-check-report>.

4.2.2 Emerging Trends

Some localities, including Philadelphia, Minneapolis, and Portland, limit the use of certain credit reporting related information, particularly credit scores, in rental decisions due to questions about their relevance and fairness.¹⁷³ The Los Angeles city council is also considering an effort to prohibit credit checks on housing applications out of concern that they are being used as a pretext for denying housing voucher recipients.¹⁷⁴ Some landlords have mounted legal challenges to these new requirements, citing impingement on landlord rights.¹⁷⁵

4.3 Customized Rental Risk Scores & Automated Screening

In addition to credit scores, many tenant screeners offer a customized renter risk score or a decision recommendation, such as to “accept,” “accept with conditions,” or “reject” a tenant, to reduce deliberation by housing providers.¹⁷⁶ These rental housing risk scores and decision recommendations vary in the type of risk they measure and the level of discretion offered to the housing provider. They are not easily understood due to low transparency of the underlying models and data inputs used by each company, nor is there independently validated, publicly available evidence that they reliably predict rental outcomes.

¹⁷³ See Portland City Council, “Add Evaluation of Applicants for Dwelling Units to provide renter protections add PCC 30.01.086 ordinance,” (describing Portland City Code amendment to exclude certain credit information based in part on research that “credit scoring systems have disparate impacts on people of color and were designed to support housing discrimination”), <https://efiles.portlandoregon.gov/Record/13112954>; Philadelphia Commission on Human Relations, Fair Housing Commission, “Rental Access Act Tenant Screening Guidelines,” p. 3 (describing Philadelphia prohibition on landlords rejecting applicants based solely on their credit score in Philadelphia code Section 9-1108, Section 9-810), <https://www.phila.gov/media/20211014090131/Renters-Access-Act-tenant-screening-guidelines-20211013-rev2.pdf>; Minneapolis Code of Ordinances 244.2030(a)(23), (“Credit scores by themselves typically are not based upon the applicant’s history of rent payment and do not necessarily predict the likelihood of paying rent on a regular and timely basis”), <https://lims.minneapolismn.gov/Download/FileV2/21127/Renter-Protections-Ordinance-Sep-13-2019.pdf>.

¹⁷⁴ See David Wagner, “As Landlords Intensify Tenant Background Checks, Some Lawmakers Want New Limits On Screening,” *LAist*, May 2022, <https://laist.com/news/housing-homelessness/los-angeles-la-renter-tenant-screening-credit-score-check-landlord-voucher-income-housing-apartments-bonin-ramm-city-council-rental-access-ordinance>.

¹⁷⁵ “Minneapolis landlords challenge tenant-screening rules,” *Courthouse News Service*, October 2021, <https://www.courthousenews.com/minneapolis-landlords-challenge-tenant-screening-rules/>.

¹⁷⁶ See Waddell (2021), *supra* note 116 (finding eight prominent tenant screening companies offered reports with algorithmically generated scores or recommendations).

4.3.1 Tenant Risk Recommendation Practices

Some tenant screening companies and property management platforms allow landlords to specify “knock-out” rules based on information about income, employment, creditworthiness, criminal history, evictions, or other information.¹⁷⁷ In these cases, landlords select the criteria most important to them and the report generates a recommendation on that basis. Other companies generate overall tenant risk scores based on their own proprietary models that purport to estimate the likelihood of an eviction, missed payment, or lease renewal.¹⁷⁸

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.¹⁷⁹ Additionally, two larger tenant screening companies with ostensibly sophisticated models use different definitions of a bad tenant outcome in their respective model definitions, making it more challenging for landlords to compare model efficacy should they choose to do so.¹⁸⁰ Some limited CFPB market monitoring suggests validating and refining decision criteria based on tenant performance has

¹⁷⁷ See, e.g., MyScreeningReport.com, “Landlord Criteria Considerations,” (specifying potential deniable or conditional approval factors like income less than 3 times rent, open bankruptcies, verified unpaid evictions, verified matches to certain crimes), <https://www.myscreeningreport.com/wp-content/uploads/sites/2/2018/10/MSR-Landlord-Criteria-Instructions.pdf>.

¹⁷⁸ See, e.g., TransUnion, “SmartMove’s Resident Score vs. a typical credit score” *supra* note 164 (TransUnion’s ResidentScore claims to model “the risk of an eviction...3+ late payments [or...] paying less than the amount owed”); RealPage, “AI Screening,” *supra* note 51 (stating RealPage’s AI model seeks to predict a renter’s “willingness to pay” rent). RealPage further states its model was validated against an internal dataset of key rental-related metrics including “defaults,” which the company defined as “skips, evictions, abandoned units, or where a writ of possession had been filed.” RealPage, “AI Screening Performance Validation Study Whitepaper,” <https://www.realpage.com/case-studies/ai-screening-performance-validation/>. See also SafeRent Solutions (claiming proprietary tenant score “helps identify quality applicants who are more likely to pay rent on time, treat the property with care, and stay for longer periods of time”), <https://saferentsolutions.com/>; McLaughlin (2019), *supra* note 164.

¹⁷⁹ For sample risk management guidelines and practices in financial services, see OCC, “Model Risk Management,” August 2021, <https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/model-risk-management/index-model-risk-management.html>. Tenant screening companies have not published any third-party validations for their scoring models, although some companies publish whitepapers or brief explainers on their models’ efficacy. See, e.g., TransUnion, “SmartMove’s Resident Score vs. a typical credit score,” *supra* note 164; RealPage, “AI Screening Performance Validation Study Whitepaper,” *supra* note 178.

¹⁸⁰ TransUnion defines negative tenant outcomes as: “evictions, 3+ late payments, and insufficient funds.” TransUnion, “SmartMove’s Resident Score vs. a typical credit score,” *supra* note 164. RealPage’s public whitepaper indicates bad tenant outcomes are defined based on rental payment defaults, total balance owed after departure, or percentage of move-outs during their study period. RealPage, “AI Screening Performance Validation Study Whitepaper,” *supra* note 178. SafeRent and National Tenant Network advertise proprietary tenant risk-scoring models, but do not publish information about how these models are validated. Some “tenant scoring” models, such as TransUnion’s ResidentScore, may be resold and used by other tenant screening companies. See, e.g., RentPrep, “Packages & Pricing,” *supra* note 49.

not been a major focus of property managers as long as aggregate property performance measurements are reasonably consistent over time.¹⁸¹

4.3.2 Risk of Masking Inaccuracies

While rental risk scores and decision recommendations can simplify the landlord's decision-making process,¹⁸² they can also conceal inaccuracies in the underlying data outlined in Section 3.1.¹⁸³ Some reports do not include the data used to generate the report and therefore the landlord cannot review the underlying information.¹⁸⁴

The screening report in Figure 6 shows a recommendation to reject an applicant, a risk score and corresponding explanation, and criteria used to generate the decision. However, the underlying information, such as the public court records, is not included.

FIGURE 6: SAMPLE RECOMMENDATION AS SHOWN IN A TENANT SCREENING REPORT¹⁸⁵

Rental Report for [REDACTED]		
Overall Recommendation		
DECLINE		This application does not meet one or more of your requirements that is set to "Pass/Fail". This recommendation has been automatically set to Decline. The Overall Recommendation was derived solely from your community's leasing criteria. On-Site makes no independent assessment of an applicant's qualifications.
Score for [REDACTED] : 538		
Criteria	Importance	Result
AI Score	Pass/Conditional	🟡
Monthly income to rent ratio exceeds 1.0	Pass/Fail	🔴
May have been through a bankruptcy	Pass/Fail	🟢
No unpaid property collections in the last 7 years	Pass/Fail	🟢
No Landlord Tenant Court records in the last 7 years	Pass/Fail	🔴
Criminal History: Felony Convictions	Pass/Fail	🟢
Total Considered Felony Convictions	-	Not Considered N/A
Alcohol	None ever	Pass/Fail
Bad Check	None ever	Pass/Fail
Criminal Other	None ever	Pass/Fail
Drug Manufacture Distribution	None ever	Pass/Fail
Drug Marijuana Use	None ever	Pass/Fail
Drug Meth Manufacture	None ever	Pass/Fail
Drug Use	None ever	Pass/Fail
Fraud	None ever	Pass/Fail

¹⁸¹ One property manager indicated the number of units they managed were not sufficient for robust data analysis. Another noted that their criteria were typically reviewed regularly only for regulatory compliance because performance metrics generally remained consistent.

¹⁸² For example, SafeRent claims their “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 the leasing staff.” SafeRent Solutions, “Resident Screening,” <https://saferentsolutions.com/resident-screening/>.

¹⁸³ NCLC, “Broken Records Redux,” *supra* note 71, p. 12-14.

¹⁸⁴ Leiwant (2022), *supra* note 28, p. 285-86.

¹⁸⁵ Sample rental report from On-Site, a screening company owned by RealPage. Erin Smith and Heather Vogell, “How your shadow credit score could decide whether you get an apartment,” *The Meteor*, March 2022, <https://meteor.news/2022/03/29/how-your-shadow-credit-score-could-decide-whether-you-get-an-apartment/>.

Automated scoring and algorithmic screening can obfuscate the underlying reasons for adverse rental application decisions and create risks for landlords. As a result, landlords may reject qualified applicants and may not be able to provide enough information to allow applicants to challenge the results, correct inaccurate information, or provide relevant mitigating information. This can also result in further legal risk to landlords; the use of rental risk scores and automated decisions has resulted in allegations of Fair Housing Act violations and other threats of civil litigation.¹⁸⁶

¹⁸⁶ For example, recent private litigation alleges that CoreLogic's CrimSAFE product "provide[d] a decision based on the client's pre-determined criminal decision policy" which led to him being denied housing solely due to an arrest record. The CrimSAFE product permits the underlying criminal record information to be suppressed so that leasing staff only see a "yes" or "no" indicator of whether disqualifying information was found. It is difficult to identify these types of issues because of how automated scoring and algorithmic screening can obfuscate the underlying reasons for adverse rental application decisions. *Connecticut Fair Housing Center v. Corelogic Rental Property Solutions, LLC*, No. 3:18-CV-705 (D. Conn.), August 7, 2020. For a similar example, see Office of Attorney General Maura Healey, "AG Healey Targets Companies Selling Pre-qualification Software That Discriminates Against Prospective Tenants," <https://www.mass.gov/news/ag-healey-targets-companies-selling-pre-qualification-software-that-discriminates-against-prospective-tenants>.

5. Conclusion

The tenant screening industry, by and large, competes on a combination of price and notions of “comprehensiveness” and “convenience.” Landlords see the use of tenant screening reports as an opportunity to “mitigate[e] risk, provid[e] better experiences for prospects, and reduc[e] the strain on hardworking associates.”¹⁸⁷ However, market indicators suggest the industry may have developed to emphasize speed, landlord convenience, and “loss aversion,” over fair and accurate information for evaluating rental applicants. Additionally, the relationship between screening data and future tenant behavior has not been independently and transparently examined, nor have landlords necessarily assessed all the risks that tenant screening reports may pose to them.¹⁸⁸

Tenant screening presents a confluence of policy challenges. There are classic market and information asymmetries with the usual buyer of the data, prospective renters through application fees unable to shop for the service or view component parts. Landlords are generally inclined to focus more on exclusion of “bad” applicants rather than actively seek all qualified renters. These forces can combine to reinforce existing market asymmetries and illegal discriminatory practices.

The CFPB will continue to monitor and conduct research to understand the tenant screening market, its incentives, and impacts on prospective renters. Also, the CFPB will:

- Identify guidance or rules that the CFPB can issue to ensure that the background screening industry adheres to the law.
- Determine how to require the background screening industry to develop and maintain appropriate and accurate consumer reporting practices, in accordance with applicable law.
- Coordinate law enforcement efforts with the Federal Trade Commission to hold tenant screening companies accountable for having reasonable procedures to assure accurate information in the consumer reporting system.
- Coordinate with federal and local government agencies to ensure tenants receive information about potential inaccuracies in their reports in a timely fashion, and that adequate adverse action notices are provided.

¹⁸⁷ Paul Willis, “Streamlining the Rental Application Process,” NAA, May 2022, <https://www.nahq.org/streamlining-rental-application-process>.

¹⁸⁸ See Complaint, *Louis v. Saferent Solutions, LLC*, 1:22-cv-10800 (D. Mass.), Filed May 25, 2022 (challenging tenant screening score’s reliance on credit and eviction history as having an unlawful adverse impact on Black and Hispanic rental applicants).