Fact Sheet: Are You a Reverse Mortgage Non-Borrowing Spouse? Tips to Help You Remain in Your Home

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NCLC Support Letter: Consumer Protection for Medical Debt Collections Act
Report: Rampant Errors on Criminal Background Check Reports Are Still Preventing Consumers from Securing Jobs and Housing

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Report: Rampant Errors on Criminal Background Check Reports Are Still Preventing Consumers from Securing Jobs and Housing

National Consumer Law Center Urges Federal and State Action to Stop Faulty Criminal Background Check Reports and Hold Background Screening Companies Accountable;

FTC/CFPB to Host Accuracy in Consumer Reporting workshop on Tue., Dec. 10

Download the National Consumer Law Center report at:
https://www.nclc.org/issues/rpt-broken-records-redux.html

Boston – Passing a criminal background check is a nearly universal prerequisite to securing a job or housing, yet employers and landlords are making decisions based on inaccurate reports. Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing, a new report from the National Consumer Law Center (NCLC), finds that problems with accuracy in commercial criminal background check reports are still rampant. “Unfortunately, many background screening companies still seem to prioritize profit over accuracy, leading to reports that cost consumers’ jobs and housing,” said Ariel Nelson, National Consumer Law Center staff attorney and author of the report.

Nelson and NCLC attorney Chi Chi Wu will also be panelists at an all-day workshop on Accuracy in Consumer Reporting to be held at the Constitution Center (also available to view via live stream on the FTC website) in Washington, D.C. on Tuesday, December 10 from 9 a.m. until 4:30 p.m. sponsored by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB).

NCLC’s research reveals that background screening companies continue to generate criminal background check reports that:

- Mismatch the subject of the report with another person (e.g., listing criminal records belonging to someone else, often harming common-name consumers in particular);
- Include sealed or expunged records (e.g., listing a conviction that was legally removed from the public record);
- Omit information about how the case was resolved (e.g., failing to report that charges were dismissed);
- **Contain misleading information** (e.g., listing a single charge multiple times); and/or
- **Misclassify the offense reported** (e.g., reporting a misdemeanor as a felony).

The background screening industry is now a multi-billion dollar industry, with about 94% of employers and about 90% of landlords using criminal background check reports to evaluate prospective employees and tenants. *Yet there are still no registration requirements for background checking companies and no standardized criteria governing background checks.*

**A recent development:** many screening products are designed to automate and outsource decision making to the background screener. This means that users may not individually assess or make judgment calls about applicants. Automated decision making may also mask errors and deny consumers the chance to explain why a record is inaccurate or why it should not bar housing or employment. Further, there is no common standard for predicting if an individual will be a “good” tenant or employee. As a result, applicants who otherwise would have been accepted are excluded, and employers and landlords miss out on qualified applicants.

“Background screening companies often promote their products by pointing to the advanced technologies and automated processes they use, but the automation of criminal background check reporting has come with its own serious problems,” **said Nelson.**

Companies use automation to generate reports by running computer searches through giant databases of aggregated criminal record data. Reports may only undergo minimal, if any, manual review, which is especially problematic because the data is often purchased in bulk through intermediaries or obtained using web scraping technology. Thus, it often lacks key personal identifiers, information about how a case was resolved, and may not be updated frequently. Practices like these, along with the use of loose matching criteria, lead to erroneous reports that have grave consequences for consumers seeking jobs and housing.

“If Congress, federal agencies, and states don’t act to ensure that background screening companies are closely monitored and hold them accountable for their repeated mistakes due to poor policies and practices, consumers will continue to pay the price by forfeiting housing and job opportunities while employers and landlords will miss out on qualified employees and tenants,” **said Nelson.**

Since NCLC’s ground-breaking report in 2012, the CFPB and the FTC have brought a handful of enforcement actions against several background screening companies for violations of the Fair Credit Reporting Act (see pages 24-25 of the new report), but much more must be done.

**Recommendations:** The National Consumer Law Center report recommends that Congress, federal regulatory agencies, and states use their authority to clean up the criminal background screening industry once and for all, including the following steps.

- **Congress** should amend the FCRA to increase protections for prospective tenants and give the Federal Trade Commission specific supervisory authority over background screening companies.
- The **Consumer Financial Protection Bureau** should use its rulemaking authority to require mandatory measures to ensure greater accuracy of background check reports and require registration of background screening companies.
- The **Consumer Financial Protection Bureau** and the **Federal Trade Commission** should continue to use their enforcement powers to investigate major background screening companies for FCRA violations. These federal agencies should also investigate nationwide employers for compliance with FCRA requirements for users of consumer reports for employment purposes.
States should pass legislation requiring users of background check reports to review the underlying report produced by the background screener before making employment or housing decisions. States should require companies that receive bulk data from public records sources to promptly delete sealed and expunged records and to routinely update their records. States should revoke the ability to receive data if an audit reveals that the company is not in compliance.

Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing

Mistakes on criminal background check reports continue to cause many thousands of people to be denied jobs and housing and skirt federal law (Fair Credit Reporting Act). Federal and state government and the courts each have a role in improving the accuracy of background checks.

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National Consumer Law Center©

- Report (PDF)
- Executive Summary (PDF)
- Press Release
- 2012 Broken Records Report
- Related Publications
Background

NCLC’s ground-breaking 2012 report on criminal background checks detailed an industry-wide lack of accountability and incentives to cut corners that meant consumers paid for these third-party errors with their jobs while employers waste money and miss out on hiring qualified employees. Since then, advocates have litigated many class action and individual lawsuits against background screening companies for violations of the Fair Credit Reporting Act (FCRA). Both the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) have brought actions resulting in settlements requiring background screening companies to reform their procedures and practices and pay millions of dollars in civil penalties and in relief to harmed consumers.

Despite these efforts to improve background check reporting, companies continue to generate inaccurate reports that have grave consequences for consumers seeking jobs and housing. This report investigates common poor practices and mistakes and offers best practice suggestions for background screening companies and recommendations for policymakers, including Congress, federal agencies, and state governments. Federal and state actors must take action to stop inaccurate and incomplete reports and to hold background screening companies accountable. It is essential that deficient screening practices be stopped so consumers are not guilty until proven innocent.

A significant number of adults living in the United States are affected.

- About 94% of employers and about 90% of landlords use criminal background checks to evaluate prospective employees and tenants.
- About 1 in 3 adults (between 70 million and 100 million people) in the U.S. have a criminal record.
- Many additional people without a criminal record are wrongly tagged as having a record.

The problems are industry-wide.

There are no licensing requirements for criminal background screening companies. Anyone with a computer and access to records can start a business; an industry analysis estimated there were 1,954 background screening companies in 2019.

There is no central system for registration for background screening companies. A consumer can’t regularly order their own report to review for errors as there is no central source to find and request a copy.

Many companies attempt to skirt the federal Fair Credit Reporting Act (FCRA), including by subcontracting work to vendors or disclaiming responsibility.

Employers often fail to comply with the FCRA. This makes it difficult to know whether consumers were denied employment due to a background check report.

Many screening products are now designed to automate and outsource decision making to the background screening company. Employers and landlords may no longer individually assess or make judgment calls about applicants. And applicants who otherwise would have been accepted are excluded, and employers and landlords miss out on qualified employees and tenants.

NCLC’s research reveals that criminal background screening companies
continue to generate reports that:

- **Mismatch the subject of the report with another person** (e.g., listing criminal records belonging to someone else, often harming consumers with common names in particular);
- **Include sealed or expunged records** (e.g., listing a conviction that was legally removed from the public record);
- **Omit information about how the case was resolved** (e.g., failing to report that charges were dismissed);
- **Contain misleading information** (e.g., listing a single charge multiple times); and/or
- **Misclassify the offense reported** (e.g., reporting a misdemeanor as a felony).

Many errors are due to common poor practices by background screening companies, such as:

- Using over-inclusive or unsophisticated matching criteria;
- Failing to verify information obtained through vendors or other faulty sources;
- Using incomplete data (e.g., missing personal identifiers or disposition information);
- Retrieving data in bulk and then failing to routinely update the database;
- Failing to utilize all available information to prevent a false positive match;
- Misunderstanding state-specific criminal justice procedures and laws.

**Recommendations**

The National Consumer Law Center report recommends that Congress, federal regulatory agencies, and states use their authority to rein in industry-wide problems (see pages 32-40 of full report for complete recommendations).

1. **Congress** should amend the Fair Credit Reporting Act, or FCRA (enacted in 1970 by Congress to protect the privacy of consumers) to increase protections for prospective tenants and give the Federal Trade Commission specific supervisory authority over background screening companies.

2. **The Consumer Financial Protection Bureau (CFPB)** should issue regulations under the FCRA to ensure greater accuracy of background checks. The CFPB should also require consumer reporting agencies to register so consumers can more easily correct inaccurate and misleading information.

3. The **CFPB** and the **Federal Trade Commission** should continue to use their enforcement powers to investigate major background screening companies for FCRA violations. These federal agencies should also investigate nationwide employers for compliance with the FCRA requirements for users of consumer reports for employment purposes.

4. **States** should pass legislation requiring users of background check reports to review the underlying report produced by the background screener before making an employment or housing decision. **States should also** require companies that receive bulk data from court databases to promptly delete sealed and expunged criminal records and routinely update their records. States should revoke a company’s ability to receive data if an audit reveals that the company is not in compliance.

5. **State attorneys general should investigate** background screening companies, and any remedies should require background screening companies to implement specific reforms.

**Related Publications:**
Coalition Letter in Support of the FUTURE Act

PDF View

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Martha Tamayo

Martha Tamayo is a Community Advocate and a member of the Board of Directors for Central California Legal Services. Martha has worked with the Kings Community Action Organization since 2012 to help residents and communities achieve self-sufficiency. She has also worked with the humanitarian program Palomas Mensajeras to arrange visits in the U.S. between elderly residents of Mexico and their family members now living in the U.S.
Guide to the HAVEN Act