



National  
Consumer Law  
Center

<http://bit.ly/broken-records>

## BROKEN RECORDS REDUX: HOW ERRORS BY CRIMINAL BACKGROUND CHECK COMPANIES CONTINUE TO HARM CONSUMERS SEEKING JOBS AND HOUSING

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### EXECUTIVE SUMMARY

Seven years ago, the National Consumer Law Center (NCLC) issued *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, a report detailing the harmful mistakes that criminal background screening companies routinely make. Since then, advocates have litigated many class action and individual lawsuits against these 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 provides an update to the 2012 *Broken Records* report. Today, the background screening industry is a multi-billion dollar industry, with about 94% of employers and about 90% of landlords using background checks to evaluate prospective employees and tenants.

Background screening companies now generate reports through largely automated processes. Generally, they run automated searches through giant databases of aggregated criminal record data. Reports may undergo only minimal, if any, manual review or quality control before an employer or landlord receives them. The data included in reports often is purchased in bulk through intermediaries or obtained from websites via web scraping technology. The data often is incomplete, missing key personal identifiers. It also may be infrequently updated.

Practices like these often lead to erroneous background check reports that result in consumers being denied jobs and housing. Even consumers who successfully remove errors from their reports may not get the job or the apartment.

Background screeners continue to generate these inaccurate reports even though the FCRA requires them to maintain procedures to ensure the accuracy of the information they report.

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This report uses stories from lawsuits and public enforcement actions to illustrate the types of errors that continue to harm consumers. In particular, background screening companies generate criminal background check reports that:

- Mismatch the subject of the report with another person,
- Include sealed or expunged records,
- Omit information about how the case was disposed of or resolved,
- Contain misleading information, and
- Misclassify the offense reported.

This report also examines the problems that arise out of relying on automated processes to decide whether to reject or accept a prospective employee or tenant.

Based on the issues identified in the original report and in this one, this report recommends action at the federal and state levels.

## RECOMMENDATIONS

### Congress

Congress should amend the FCRA to:

- Increase protections for prospective tenants. The special protections that apply to the use of background check reports for employment purposes should also encompass reports used for housing purposes.
- Prohibit the reporting of criminal convictions more than seven years old.
- Require consumer reporting agencies to both maintain strict procedures to ensure reported information is complete and up to date and to send a notice to a consumer, which should be sent before delivering the background check report to an employer.
- Give the FTC specific supervisory authority over background screening companies.

### Federal Regulators

The CFPB should use its rulemaking authority under the FCRA to:

- Require mandatory measures to ensure greater accuracy.
- Produce guidelines on matching criteria.
- Define how long an employer has to wait in between sending an initial notice and taking an adverse action (e.g., rejecting an applicant).
- Require registration of consumer reporting agencies.
- Reaffirm and clarify that the FCRA applies to certain companies that own or maintain aggregated criminal record data and to certain software providers that offer access to automated searches or analyses.

The FTC and CFPB should continue to use their FCRA enforcement powers to:

- Investigate commercial background screening companies for common FCRA violations.
- Investigate nationwide employers for compliance with FCRA requirements imposed on users of consumer reports for employment purposes.

## States

State attorneys general should:

- Investigate background screening companies, and any remedies should require the implementation of specific reforms.

As the source of most of the data reported by background screeners, states should ensure that state repositories, counties, courts, and other public records sources:

- Require companies that receive information in bulk to have procedures for ensuring that sealed and expunged records are deleted, that dispositions are promptly reported, and that their customers also properly delete records and report dispositions.
- Audit companies that purchase bulk data to ensure that they are removing sealed and expunged data and undisposed cases.
- Ensure that no criminal history report contains information relating to cases that do not show a final disposition and for which no entry has been made for at least five years.

States should also pass legislation requiring users of background check reports to:

- Review the underlying report produced by the background screening company before making an employment or housing decision.
- Consider whether a consumer has disputed information on the background check report.
- Provide consumers with written notice of the reasons for any denial of a job or housing whether or not based on a consumer report.

Because the use of criminal background checks is pervasive in both the employment and housing contexts, it is more critical than ever for background screening companies to produce accurate and complete reports. The background screening industry must be monitored and held accountable. Otherwise, consumers will continue to pay the price of inaccurate information by forfeiting housing and job opportunities.