

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

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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.