



## 2023 Consumer Reform Priorities to Protect Tenants

January 2023

Low- and moderate-income renters have faced tremendous challenges in recent years, including shortages of affordable, decent housing; spiking rent increases; and abuses by corporate and private equity landlords. Contributing to these woes are practices that are regulated by consumer laws, including tenant screening reports, collection of rental debt, and imposition of junk fees. The following reforms are much needed to help struggling renters obtain and keep safe, decent, affordable housing.

### I. Tenant Screening

#### **Congress should amend the Fair Credit Reporting Act (FCRA) to:**

- Prohibit tenant screening companies from reporting and housing providers from using:
  - Any eviction records, or at least eviction records where the eviction filing did not result in a judgment against the tenant or the parties reached an agreement.
  - Any records, including eviction and criminal records, that have been sealed, expunged, or subject to similar relief.
  - Rental debt, or at least rental debt that arose during the COVID-19 pandemic.
  - Non-conviction criminal records older than four years (or a shorter time period if research indicates that such records are minimally predictive after a shorter period). Whether a disposition of a criminal case is considered a conviction should be determined by state law.
  - Criminal convictions older than seven years (or a shorter time period if research indicates that such records are minimally predictive after a shorter period).
- Extend the requirements and notices required for employment use of background check and credit reports to protect tenants when these reports are used for housing purposes.
- Require disclosure of tenant screening scores and recommendations, along with the underlying data used to calculate them and information about how the algorithmic scoring system classified public records inputs..
- Prohibit housing providers from using—either by obtaining a traditional credit report or a tenant screening report that contains credit information—credit reports and scores in rental housing decisions.
- Require users of tenant screening reports to provide specific reasons for the denial of housing.
- Require that any tenant screening algorithm or model used to produce scores or recommendations be empirically derived, demonstrably and statistically sound, and routinely tested to ensure fairness and prevent discrimination against protected classes.

- Give the Consumer Financial Protection Bureau (CFPB) or Federal Trade Commission (FTC) supervisory authority over tenant screening and other background screening companies.

**States can adopt laws to enact all of the recommendations in the section above regarding federal reforms except for the FCRA amendments limiting the amount of time information can be reported. In addition, states should:**

- Mandate that landlords conduct an individualized assessment of rental applicants and prohibit blanket rejection policies, such as those that exclude any person with an eviction or criminal record.
- Require tenant screening criteria that are specifically designed to assess whether the applicant has the current ability to pay rent and the applicant's suitability for tenancy. Any eviction records, criminal records, or other information that tenant screening companies are permitted to report and that landlords are permitted to use must bear directly on whether someone will be a successful tenant.

**The CFPB and FTC should:**

- Collaborate to investigate and bring enforcement actions against tenant screening companies that violate the FCRA.
- Collaborate with other federal agencies to undertake thorough quantitative and qualitative research on the tenant screening industry. This research should include a study of errors in tenant screening reports and the disparate impact of tenant screening on consumers of color and other protected classes.
- Collaborate with other federal agencies to undertake thorough quantitative and qualitative research on the ongoing impact of collection and credit reporting of rental debt—both pandemic-era debt and other rental debt.
- Evaluate whether rental debt should be included at all in credit reports, including conducting research as to whether it is predictive for purposes of credit underwriting and tenant screening and whether its reporting has a disparate impact on consumers of color.

**The CFPB should adopt provisions in its forthcoming potential rulemaking under the FCRA that:**

- Clarify that reporting public records (i.e., criminal and eviction records) that have been sealed, expunged, or subject to similar relief violates the FCRA.
- Establish that whether a disposition of a criminal case is considered a conviction should be determined by state law.
- Reaffirm and clarify that the FCRA applies to certain companies—including data brokers and other data vendors—that own or maintain databases of aggregated public records data (i.e., eviction and criminal records).

## II. Debt Collection

### Congress, state legislatures, or the CFPB should:

- Require collectors, before engaging in any collection activity, to obtain and review appropriate documentation of alleged rental debts, including whether the landlord is entitled to such amounts under state law and complied with the procedural requirements of such laws.
- Clarify that debt collectors must cease collection and engage in additional investigation of portfolios of rental debt accounts when certain red flags are present, including repeated disputes from consumers and assessment of uniform charges for damages (e.g., accounts repeatedly charged the same amount for repainting).

### The CFPB should:

- Prohibit debt collectors from seeking payment for amounts that were paid by emergency rental assistance programs during the pandemic.
- Prohibit credit reporting of rental arrears if emergency rental assistance funds have been paid, and require deletion of any such collection items on credit reports.
- Along with the [FTC](#), bring enforcement actions against debt collectors for practices involving rental debt collection that violate the Fair Debt Collection Practices Act (FDCPA) or FCRA.
- Collaborate with the FTC and state attorneys general to pass along information about abusive practices by landlords and property managers when these practices fall outside of CFPB authority.

## III. Junk Fees

### States should:

- Permit housing providers to charge only certain fees in addition to the stated amount of rent, which would be:
  - Security deposit
  - Modest late fee no more than the cost of the late payment to the housing provider.
- Ban application fees or adopt strict limits (e.g., limited to approved applications or the actual cost of a tenant screening report obtained by the housing provider)
- Ban fees that:
  - Are excessive in amount or greater than the landlord's cost for a service.
  - Pay for services not ultimately provided (e.g., pest fees, valet trash).
  - Prevent competition, such as requiring use of a certain cable/internet provider.
  - Violate the common law doctrine against liquidated damages (e.g., penalty fees, lease termination fees that do not consider whether a landlord was able to mitigate by re-renting to a new tenant).

## The FTC should:

- Investigate whether corporate and large landlords are committing unfair or deceptive practices by imposing unavoidable and exploitative junk fees, including fees that:
  - Are excessive in amount or greater than the landlord's cost for a service.
  - Pay for services not ultimately provided (e.g., valet trash).
  - Charge for services that the landlord is legally obligated to provide as part of renting a habitable premises (e.g., pest fees, fees to maintain the furnace to provide heat, etc.).
  - Prevent competition, such as requiring use of a certain insurer or cable/internet provider.
  - Violate the common law doctrine against liquidated damages (e.g., penalty fees, lease termination fees that do not consider whether a landlord was able to mitigate by re-renting to a new tenant).
  - Are prohibited by state or local law.
- Work with the CFPB to investigate and bring enforcement actions against debt collectors that engage in collection practices that violate the FDCPA in their collection of rental debt, including wrongful attempts to collect junk fees.<sup>1</sup>
- Develop guidance or rules that prevent the imposition of unavoidable and exploitative junk fees. Work with the CFPB to develop guidance or rules under the FDCPA stating that it is an unfair debt collection practice to collect such fees.
- Develop guidance or rules to mandate that online platforms for rental advertisements, such as Zillow or Apartments.com, disclose all fees, including fees charged before and after signing a lease, for a rental.
- Work with the CFPB and the U.S. Department of Housing and Urban Development (HUD) to study and address the disproportionate impact of these practices on renters and rental applicants of color.

*For more information, contact National Consumer Law Center Attorney Chi Chi Wu (cww at nclc dot org).*

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<sup>1</sup> See, e.g., April Kuehnhoff, et al., Nat'l Consumer Law Ctr., *Unfair Debts With No Way Out: Consumers Share Their Experiences With Rental Debt Collectors* (2022), <https://www.nclc.org/resources/unfair-debts-with-no-way-out/>.