

WHAT STATES CAN DO TO Regulate Tenant Screening

The rental housing crisis continues to squeeze working families. Contributing to these struggles is the use of tenant screening reports, which typically combine information about eviction filings, criminal records, and credit history.

These reports often contain significant systemic errors and problems, such as:

1. tagging the wrong person with a criminal or eviction record,
2. reporting of incomplete or misleading records, and
3. reporting of sealed or expunged records.

Tenants are often forced to pay for these reports in the form of application fees.

Landlords may not see anything but a score or a thumbs-up-or-down recommendation, sometimes supposedly generated by AI, on whether a family should be allowed to rent a home. Landlords often blindly follow such scores or recommendations despite the absence of any evidence that they are actually predictive.

Tenant screening reports also create a [disparate impact](#) on Black and Latino/Hispanic renters.



Almost two-thirds of the landlords surveyed received tenant screening reports that contained some AI-generated score or recommendation.



Three-quarters of housing attorneys, counselors, and advocates surveyed reported that private landlords rarely or never consider mitigating circumstances or additional context when screening tenants.

Relationship With Federal Law

The Fair Credit Reporting Act (FCRA) is the federal law that governs consumer reports, including tenant screening reports. While the FCRA preempts some state laws about what consumer reporting agencies (CRAs) can report, there are good arguments that state laws regulating the content of tenant screening reports are not preempted, as discussed in the [Addendum](#). State laws governing users of consumer reports – like landlords – generally are not preempted by the FCRA.



Regulating Landlords Engaged in Tenant Screening**CONSUMER PROBLEMS****STATE SOLUTIONS**

Landlords automatically deny applicants with an eviction or criminal record, or based solely on a tenant screening report score or recommendation.

Require individualized assessments of rental applicants, and prohibit automatic denials.

Landlords don't disclose their screening criteria, which causes renters to waste application fees applying for units for which they'll be automatically rejected.

Require landlords to make the screening criteria publicly available.

Landlords reject applicants for arrests, old convictions, or other irrelevant criminal history.

Prohibit landlords from considering non-conviction criminal records, and limit consideration of convictions to those bearing directly on whether the applicant will be a successful tenant.

Landlords do not provide information about the reason(s) for denying an application.

Require landlords to provide a written statement of the reason(s) for denying a rental application.

Rental debts are often inflated or inaccurate.

Prohibit landlords from considering rental debts or limit consideration to amounts determined in a court judgment.

Debt collectors report inflated or inaccurate rental debts to tenant screening or credit reporting companies.

Require landlords, when selling or assigning rental debt to collectors, to include contract clauses prohibiting reporting the debts to tenant screening or credit reporting companies.

Eviction filings are often inaccurate, irrelevant to the tenant's current situation, and reflect racial disparities.

Limit consideration of eviction records at most to those with a judgment on the merits against the tenant; facilitate sealing and expungement.

Tenants exercising their right to withhold payments due to poor conditions may appear to have missed or made late payments.

Prohibit consideration of missed or late payments if the applicant provides documentation that the amounts were withheld due to poor conditions.

Credit reports and scores are not designed to measure the likelihood that a tenant will pay the rent.

Prohibit consideration of credit reports and scores, either by themselves or included in a tenant screening report. Limit consideration to current ability to pay.

Regulate Tenant Screening Companies**CONSUMER PROBLEMS****STATE SOLUTIONS**

Applicants are wrongfully rejected based on eviction filings or criminal charges that did not result in a judgment or conviction against them.

Prohibit tenant screening companies from reporting cases that did not result in a judgment or conviction against the tenant.

Tenant screening reports include expunged or sealed criminal or eviction records.

Prohibit tenant screening companies from reporting cases that have been expunged or sealed.

Tenant screening companies sell scores or recommendations that lack any evidence of predictiveness or accuracy. The algorithms may disproportionately harm renters of color.

Prohibit scores or recommendations in tenant screening, or require companies show they are empirically derived, predictive of tenant performance, and routinely tested to prevent discrimination.

Many states do not regulate or supervise tenant screening agencies.

Give the appropriate state regulator authority to supervise and regulate tenant screening companies. Adopt federal guidance at the state level (see Addendum for details).

For more on information about tenant screening, see: [Digital Denials: How Abuse, Bias, and Lack of Transparency in Tenant Screening Harm Renters](#) and [Salt in the Wound: How Eviction Records and Back Rent Haunt Tenant Screening Reports and Credit Scores](#).

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Addendum

Preemption and the Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) is the federal law that governs “consumer reports,” including tenant screening reports. It has a complicated scheme regarding preemption, which is the ability of federal laws to override state laws. However, states can also regulate tenant screening practices, and should do so given that landlord-tenant law has traditionally been the domain of state law.

The FCRA has a general rule that the Act does not preempt stronger state laws. That general rule is subject to a number of more restrictive provisions that do preempt state laws regarding certain specific subjects. The more restrictive provisions do override state laws with stronger protections with regards to those subjects.

The scope of these more restrictive preemption provisions has been hotly debated over the years. A recent Colorado law prohibiting the reporting of certain criminal records has been [challenged](#) as preempted by the FCRA. The Biden-era Consumer Financial Protection Bureau (CFPB) was supportive of state efforts to regulate the content of tenant screening reports, and issued an [interpretive rule](#) that the FCRA does not prohibit such laws. The Trump-era CFPB withdrew that interpretive rule as part of a May 12, 2025 [mass withdrawal](#) of 67 guidance documents, based on its opposition to any guidance that is not in the form of a formal regulation. Nothing in the May 12 withdrawal indicated any critique of specific interpretations, although the CFPB has begun issuing other withdrawals with specific reasoning as well. As discussed in [this NCLC article](#), the legal reasoning of withdrawn guidance documents can still be used for their persuasive value. And there are still good arguments that the FCRA does not preempt state laws regulating consumer reports, including the First Circuit decision in *Consumer Data Indus. Ass’n v. Frey*, 26 F. 4th 1 (1st Cir. Feb. 10, 2022).

Furthermore, state law provisions governing landlords and other users of consumer reports from considering certain information in their decision making should not face a preemption threat. The FCRA provisions that govern users of consumer reports – as opposed to the provisions governing what CRAs themselves can report – are only subject to the general rule that does not preempt stronger state laws.

Potential State Administrative Agency Action: Fair Housing Guidance on Tenant Screening

In April 2024, the U.S. Department of Housing and Urban Development’s (HUD) Office of Fair Housing and Equal Opportunity issued [strong and comprehensive guidance](#) to protect rental housing applicants from discriminatory tenant screening practices that could potentially violate the anti-discrimination provisions of the Fair Housing Act (FHA). The HUD guidance discussed how the three main components of tenant screening reports – credit reports/scores, criminal records, and eviction filings – can all potentially have a disparate impact on protected classes, especially race and disability, as well as domestic violence survivors.

The HUD tenant screening guidance is no longer on the HUD website, but is available [at the Internet Archive](#) and has not yet been formally withdrawn. Thus, it still should be possible to use the guidance for its persuasive value.

Furthermore, states might be able to issue something similar to the HUD tenant screening guidance. A state administrative agency could potentially issue a regulation if (1) the state has an anti-discrimination law that covers rental housing and includes a disparate impact standard and (2) this law allows the agency to issue regulations. Even if the agency cannot issue regulations, it could issue informal guidance, which is essentially what HUD did.