

United States Senate
WASHINGTON, DC 20510

March 1, 2021

Dave Uejio
Acting Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Acting Director Uejio,

We write to request information about the Consumer Financial Protection Bureau (CFPB)'s oversight authority and regulatory history with regard to tenant screening technology companies. The COVID-19 pandemic has led to a significant rise in economic and housing insecurity; in January 2021, more than 20% of renters were behind on rent payments and millions were at risk of eviction.¹ Despite eviction bans put in place as public health measures, evictions have continued throughout the pandemic, and even if unsuccessful or illegal, these evictions often still appear on reports generated by tenant screening companies.² Landlords are already relying on tenant screening technologies that are known to collect faulty, publicly available data from court records,³ and a rise in eviction filings that may violate local, state or, federal bans⁴ could mean that millions of Americans may find themselves blacklisted in future housing searches due to these faulty screening technologies. We are particularly concerned that communities of color that have been disproportionately affected by job losses in the pandemic, and have historically been precluded from homeownership, will be the hardest hit, and we write to request more information on the regulation of these tenant screening software companies.

Uses of Tenant Screening Technologies

Tenant screening technologies are used by landlords to review potential tenants. Spurred on by a rise in the number of Americans renting, historic declines in rental vacancy rates, and the growing data economy, the tenant screening industry has seen rapid expansion in recent years

¹ U.S. Census Bureau, Household Pulse Survey, Week 23, "Table 1b. Last Month's Payment Status for Renter Occupied Housing Units, by Select Characteristics" available at: <https://www.census.gov/data/tables/2021/demo/hhp/hhp23.html>; Popular Science, "In 2021, a new wave of evictions could also fuel a rise in COVID cases," Kat Eschner, January 4, 2021, <https://www.popsoci.com/story/health/housing-eviction-covid-19-pandemic-spread/>.

² The New York Time, "Losing a Home Because of the Pandemic Is Hard Enough. How Long Should It Haunt You?" Barbara Kiviat, and Sara Sternberg Greene, January 7, 2021, <https://www.nytimes.com/2021/01/07/opinion/eviction-records-crisis.html>.

³ The Markup, "Access Denied: Faulty Automated Background Checks Freeze Out Renters," Lauren Kirchner, and Matthew Goldstein, May 28, 2020, <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>.

⁴ The Washington Post, "Renters thought a CDC order protected them from eviction. Then landlords found loopholes." Kyle Swenson, October 27, 2020, <https://www.washingtonpost.com/dc-md-va/2020/10/27/trump-cdc-eviction-moratorium-loopholes/>.

and is now valued at \$1 billion.⁵ These technologies are widely used—survey results indicate that approximately 90% of landlords are relying on them to make decisions about whether to rent to a potential tenant.⁶ Landlords report that they rely on these technologies to review income and employment history, eviction history, and criminal background of prospective tenants.⁷ But these data sources are often plagued by inaccuracies.

Many tenant screening companies employ search algorithms and use web scrapers to search for and collect data on publicly available court websites.⁸ Companies then compile this data into reports containing either a numerical recommendation score or a “thumbs-up or thumbs-down” recommendation of whether a landlord should rent to the potential tenant.⁹ Easy access to criminal databases and publicly available court data has led to a proliferation of background screening companies, with the CFPB identifying 1,954 background screening companies in 2019.¹⁰ Because tenant screening companies are not required to register with any government agency, the exact number of these companies is unknown.¹¹

Tenant Screening Companies’ Practices Have a Disproportionately Harmful Effect on Tenants of Color

Employees at some background screening companies have stated in lawsuits against the companies that they “err on the side of including any possible match, rather than excluding possible errors.”¹² This is reflected in the design of some companies’ search algorithms which employ an error-prone tool, termed a “wild-card,” that requires only a partial match of the letters in a tenant’s name during a search.¹³ This practice may have disproportionately negative consequences for potential tenants with common surnames, which can include many potential tenants of color. The U.S. Census Bureau found that “twenty-six surnames cover a quarter of the Hispanic population and 16 percent of Hispanic people reported one of the top 10 Hispanic

⁵ *Id.*; Consumer Financial Protection Bureau, “Market Snapshot: Background Screening Reports,” October 2019, Page 4, https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

⁶ SmartMove Resources, “TransUnion Independent Landlord Survey Insights” Transunion SmartMove, August 7, 2017, <https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page>.

⁷ *Id.*; SmartMove Resources, “TransUnion Independent Landlord Survey Insights” Transunion SmartMove, August 7, 2017, <https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page>.

⁸ The Markup, “Data Brokers May Report COVID-19–Related Evictions for Years,” Lauren Kirchner, August 7, 2020, <https://themarkup.org/locked-out/2020/08/04/covid-evictions-renter-background-reports>.

⁹ The Markup, “Access Denied: Faulty Automated Background Checks Freeze Out Renters,” Lauren Kirchner, and Matthew Goldstein, May 28, 2020, <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>; Data & Society, “Poverty Lawgorithms: A Poverty Lawyer’s Guide to Fighting Automated Decision-Making Harms on Low-Income Communities,” Michele Gilman, September 15 2020, Pages 30-33, <https://datasociety.net/wp-content/uploads/2020/09/Poverty-Lawgorithms-20200915.pdf>.

¹⁰ Consumer Financial Protection Bureau, “Market Snapshot: Background Screening Reports,” October 2019, page 4, https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

¹¹ The Markup, “Access Denied: Faulty Automated Background Checks Freeze Out Renters,” Lauren Kirchner, and Matthew Goldstein, May 28, 2020, <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>.

¹² *Id.*

¹³ *Id.*

names,” and this pattern is similar for Asian and Black Americans.¹⁴ This means that, because an individual with the same or a similar name has a criminal record or court history, the potential tenant is unable to obtain housing if a landlord requires a tenant screening record.

This common surname problem is not the only concern. Because many screening services only search for whether the potential tenant has been named in an eviction case – and don’t include the reasons for the landlord filing the eviction, how long ago it occurred, or the outcome of the case including whether it was dismissed – the potential tenant can find themselves blacklisted as a result of incomplete data from the screening software.¹⁵

This problem of incomplete and incorrect data on eviction filings poses a risk to renters every year, but may create a heightened threat in 2021. Due to the economic and housing instability wrought by the COVID-19 pandemic, an estimated 30-40 million Americans remain at risk of eviction;¹⁶ in January 2021, more than 20% of renters reported being behind on rent.¹⁷

High Eviction Rates Due to the COVID-19 Pandemic

According to data from Princeton University’s Eviction Lab, more than 20,000 evictions were filed between the start of the CDC moratorium through October 17, 2020 in the 27 cities the project tracks, bringing the total number of evictions since the start of the pandemic in those cities to at least 240,000.¹⁸

These evictions pose a severe threat to families and to public health,¹⁹ and people of color are disproportionately at risk of the harms of eviction. Communities of color and women have been hardest hit by job losses during the pandemic—with women of color at particular risk.²⁰ As a

¹⁴ United States Census Bureau, "Hispanic Surnames Rise in Popularity," America Counts Staff, August 09, 2017, <https://www.census.gov/library/stories/2017/08/what-is-in-a-name.html>.

¹⁵ ACLU Blog, Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women," Sandra Park, March 30, 2017, <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>.

¹⁶ The Aspen Institute, “The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk,” June 19, 2020, Emily Benfer, David Bloom Robinson, Stacy Butler, Lavar Edmonds, Sam Gilman, Katherine Lucas McKay, , Zach Neuman, Lisa Owens, Neil Steinkamp, and Diane Yentel, <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>; The Washington Post, "Congress extends pandemic aid for the jobless and renters. Here’s what you need to know." Kyle Swenson, December 21, 2020, <https://www.washingtonpost.com/dc-md-va/2020/12/19/covid-eviction-unemployment/>.

¹⁷ U.S. Census Bureau, Household Pulse Survey, Week 22, “Table 1b. Last Month’s Payment Status for Renter Occupied Housing Units, by Select Characteristics” available at: <https://www.census.gov/data/tables/2021/demo/hhp/hhp22.html>.

¹⁸ The Washington Post, "Renters thought a CDC order protected them from eviction. Then landlords found loopholes." Kyle Swenson, October 27, 2020, <https://www.washingtonpost.com/dc-md-va/2020/10/27/trump-cdc-eviction-moratorium-loopholes/>; Eviction Lab, Accessed February 19, 2021, <https://evictionlab.org/eviction-tracking/>.

¹⁹ The Appeal, “The Coming Wave Of Evictions Will Significantly Worsen America’s Covid-19 Crisis,” Emily Benfer, Gregg Gonsalves, and Danya Keene, December 7, 2020, <https://theappeal.org/the-coming-wave-of-evictions-will-significantly-worsen-americas-covid-19-crisis/>.

²⁰ Forbes, "American Women Lost More Than 5 Million Jobs In 2020," Maggie McGrath, Jan 12, 2021, <https://www.forbes.com/sites/maggiemcgrath/2021/01/12/american-women-lost-more-than-5-million-jobs-in-2020/?sh=2c1bd79a2857>.

direct result of our nation’s legacy of racist, harmful policies, Black families are less likely to own homes, less likely to have generational wealth from past homeownership to afford a down payment, and more likely to be renters²¹ – so Black families are at greater risk in the absence of renter protections.²²

The threat of eviction particularly harms Black women.²³ In Massachusetts, Black women renters were three times more likely than white renters to have an eviction filed against them that ultimately resulted in dismissal, making Black women “more likely to be denied housing due to prior eviction filings, even when they won” their cases.²⁴

While the CDC federal eviction moratorium has been a critical public health intervention, the Trump administration undermined its intent and effectiveness both in the original order and in subsequent guidance issued in October 2020.²⁵ Eligible renters do not automatically receive eviction protection under the order, yet the CDC did not conduct public outreach to inform renters they must take action to receive protection. Additionally, the CDC did not work with other agencies to ensure enforcement of the moratorium, even as local jurisdictions defied the order²⁶ and landlords and courts evicted covered renters.²⁷ The October 2020 guidance further weakened the order, stating it only prevents “the actual eviction of a covered person,” but allows landlords to begin eviction proceedings. The guidance also states that “landlords are not required to make their tenants aware of the Order and Declaration.” This allows for landlords to evict a tenant who should be protected by the moratorium but is unaware they must take action – a problem compounded by the CDC’s failure to conduct any renter outreach.

Federal Regulation of Tenant Screening Technologies

Under the Fair Credit Reporting Act (FCRA), tenant screening companies are considered specialized consumer reporting agencies (CRAs) and must “follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”²⁸ However, numerous lawsuits have resulted in fines for CRAs – including

²¹ The Washington Post, “One home, a lifetime of impact,” Michele Lerner, July 23, 2020, <https://www.washingtonpost.com/business/2020/07/23/black-homeownership-gap/>.

²² Politico, “Coronavirus relief favors white households, leaving many people of color at risk of being evicted,” Taylor Miller Thomas, August 7, 2020, <https://www.politico.com/news/2020/08/07/coronavirus-relief-racial-eviction-392570>.

²³ ACLU, “Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color,” Sophie Beiers, Sandra Park, and Linda Morris, January 10, 2020, <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

²⁴ *Id.*

²⁵ CDC, “HHS/CDC Temporary Halt In Residential Evictions To Prevent The Further Spread Of Covid-19: Frequently Asked Questions,” October 9, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf>.

²⁶ Mother Jones, “The CDC Put a Halt to Evictions. One Missouri County is Allowing Them Anyway,” Will Peischel, October 2, 2020, <https://www.motherjones.com/politics/2020/10/the-cdc-put-a-halt-to-evictions-one-missouri-county-is-allowing-them-anyway/>.

²⁷ The Texas Tribune, “Texas tenants are still struggling to stop evictions a month after federal moratorium was announced,” Juan Pablo Garnham, October 6, 2020, <https://www.texastribune.org/2020/10/06/texas-tenants-courts-evictions-moratorium/>.

²⁸ FCRA § 1681e(b)

tenant screening companies – for violating this requirement.²⁹ In 2018, the Federal Trade Commission (FTC) fined the company RealPage \$3 million for its use of error prone wild-card searches; the same company “brings in about \$48 million annually” from producing these inexpensive tenant screening reports.³⁰

Landlords are required to inform tenants if they were turned down because of a negative report and the name of the company used; screening companies then have 30 days to respond if a tenant requests a correction to their report but, “[i]n responses to lawsuits, tenant screening companies say renters dispute fewer than 1 percent of reports.”³¹ In a deposition for a federal lawsuit, an employee from one company, CoreLogic, said that independently verifying reports before sending them to landlords “would be an overwhelming task.”³² This assessment may be at odds with CRAs’ requirements under FCRA, and suggests these companies are particularly ill-suited to navigate their requirements with the surge in eviction filings in 2020.

Despite lawsuits at the state and federal level, tenant screening companies continue to produce flawed products that are highly consequential for millions of renters, some of whom have faced homelessness as a result of errors in these tenant reports.³³ The CFPB and the FTC jointly enforce compliance with the FCRA. Effective oversight of these companies requires proactively investigating and auditing their effects on protected classes, auditing their methods for generating these reports to ensure accuracy and compliance in the use of data, and the company’s provision of guidance for landlords on the accuracy in utilizing these technologies.

In the absence of federal regulation, some cities and states have recognized the harm tenant screening companies can cause and have enacted laws to seal or expunge eviction records in some circumstances, or regulated the content of tenant screening reports, or the ability of landlords to use publicly reported eviction data in choosing tenants.³⁴ It is vital, with the recent wave of evictions nationwide caused by the pandemic, that these companies do not further disadvantage Americans looking to find safe and reliable housing. In order to ensure that a handful of companies using questionable methods to screen renters are not unfairly preventing millions of Americans from finding future housing, we ask that you provide answers to the following questions no later than March 14, 2021:

- 1) Describe the CFPB’s jurisdiction over tenant screening companies and how the Bureau coordinates with the FTC to examine and enforce compliance with the FCRA.

²⁹ The Markup, "Access Denied: Faulty Automated Background Checks Freeze Out Renters," Lauren Kirchner, and Matthew Goldstein, May 28, 2020, <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>.

³⁰ *Id.*

³¹ *Id.*


³² *Id.*

³³ *Id.*; Data & Society, "Poverty Lawgorithms: A Poverty Lawyer’s Guide to Fighting Automated Decision-Making Harms on Low-Income Communities," Michele Gilman, September 15 2020, Pages 30-33, <https://datasociety.net/wp-content/uploads/2020/09/Poverty-Lawgorithms-20200915.pdf>.


³⁴ Data & Society, "Poverty Lawgorithms: A Poverty Lawyer’s Guide to Fighting Automated Decision-Making Harms on Low-Income Communities," Michele Gilman, September 15 2020, Pages 30-33, <https://datasociety.net/wp-content/uploads/2020/09/Poverty-Lawgorithms-20200915.pdf>.

- 2) How does the CFPB prioritize and evaluate risk when determining which tenant screening companies to examine for compliance with the FCRA?
 - a. Does the CFPB evaluate the following when making such a decision, and if so, how?
 - i. The way in which these companies obtain data
 - ii. The techniques used in matching data records to potential tenants
 - iii. The use of algorithmic models
- 3) The FCRA requires CRAs to have “reasonable procedures in place to ensure maximum possible accuracy.” Describe how the CFPB evaluates the effectiveness of tenant screening companies’ procedures and how the Bureau evaluates whether such procedures are ensuring the maximum possible accuracy.
- 4) Algorithmic design decisions, like the use of wild-cards and the inclusion of whether an eviction has been filed without including data on the outcome of the eviction, have contributed to inaccuracy plaguing many tenant screening reports.
 - a. What additional factors contribute to inaccuracy in reports?
 - b. What internal processes does CFPB recommend to ensure accuracy among screening report algorithms?
 - c. Does the CFPB have specialized procedures in place to evaluate tenant screening companies’ algorithms to ensure these algorithms are accurate?
- 5) Does the CFPB examine tenant screening companies’ algorithms and data collection methods for compliance with fair lending laws?
 - a. Is there evidence that current tenant screening software algorithms and data collection methods discriminate against communities of color?
 - b. Is there evidence that current tenant screening software algorithms and data collection methods discriminate against women?
- 6) What steps will the CFPB take to ensure companies using eviction data from 2020 and 2021 are not reporting data despite a federal, state, or local moratorium at the time of eviction filing?

Sincerely,



Elizabeth Warren
United States Senator



Cory A. Booker
United States Senator



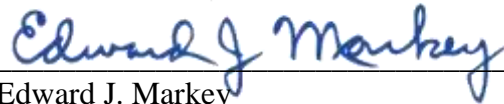
Chris Van Hollen
United States Senator



Ron Wyden
United States Senator



Richard Blumenthal
United States Senator



Edward J. Markey
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