

The Federal Trade Commission and the Consumer Financial Protection Bureau invite interested individuals to submit comments about background screening issues affecting individuals who seek rental housing in the United States. Tenants, prospective tenants, tenants' rights and housing advocacy groups, industry participants (including property managers, commercial landlords, individual landlords, and consumer reporting agencies that develop credit and tenant screening reports used by landlords and property managers to screen prospective tenants), other members of the public, and government agencies are encouraged to provide comments and information about the use of credit reports, credit scores, and criminal and civil (including eviction) public records in tenant screening; the use of algorithms in making tenant screening decisions; the use of tenant screening recommendation products developed, marketed, or sold by consumer reporting agencies; and other tenant screening issues. In particular, the agencies welcome comments addressing the following issues:

### Tenant Screening Generally

1. How are landlords and property managers currently setting criteria for prospective tenants and using background screening products to assess prospective tenants? For example, how do landlords and property managers determine whether and to what extent to consider past criminal and eviction records in making a decision about a tenant or prospective tenant?
2. How and to what extent are landlords and property managers informing tenants and prospective tenants about their tenant screening criteria? What are the potential harms and benefits from the current level of disclosure?
3. To what extent do landlords and property managers address barriers for tenants and prospective tenants with limited English proficiency or disabilities?
4. What (if any) information should landlords and property managers be required to provide to prospective tenants in advance of collecting rental applications and fees? For example, should landlords and property managers be required to disclose in advance their criteria for approving a prospective tenant (e.g., any disqualifying factors, such as poor credit history, prior evictions or criminal history), the information they will consider and the sources of that information (e.g., background information from tenant screening reports), the involvement of any third parties in the evaluation of the prospective tenant's application (e.g., whether the landlord or property manager uses a tenant screening company to provide screening reports or to make recommendations, and the identity of that company), and any procedures landlords or property managers provide for disputing screening information or appealing their decisions?
  - a. How would such disclosures affect prospective tenants, landlords/property managers, and other industry participants?
  - b. Would requiring such disclosures create competitive advantages or disadvantages for landlords/property managers or other industry members? What are those advantages or disadvantages?
5. Are there mechanisms that could make the tenant selection process more objective? For example, such mechanisms might require landlords and property managers to accept qualified tenants in the order they apply, rather than selecting a preferred tenant from a

- group of applicants. Should more objectivity in the tenant selection process be a regulatory goal? What are the costs and benefits of that approach?
6. Are landlords or property managers requesting that prospective tenants disclose their credit, criminal, eviction, or other housing court histories in applications (i.e., prior to a tenant screening report being prepared)? Why, and how prevalent is this practice?
  7. Are landlords or property managers requesting that prospective tenants disclose their source of income (including an intention to use housing vouchers) in applications? Why, and how prevalent is this practice?
  8. Do landlords and property managers have procedures by which tenants can explain and the housing provider can consider personal hardship or other circumstances (such as a natural disaster) that may have affected the tenant's prior income, credit, criminal, or rental history?
    - a. Do consumer reporting agencies take such information into account in preparing credit or other tenant screening reports for landlords and property managers, and do they provide such information to landlords and property managers to the extent they are aware of it?
  9. How and to what extent do landlords and property managers communicate with applicants for rental housing about their applications when the landlord or property manager has determined not to accept the applicant?
    - a. How do landlords and property managers provide adverse action notices (e.g., orally or in writing)? If orally, how do landlords and property managers ensure their adverse action notices comply with the requirements of the Fair Credit Reporting Act?
    - b. How and to what extent do landlords and property managers currently disclose to an applicant for rental housing the reason(s) for the applicant not being accepted to rent the unit?
    - c. Do landlords and property managers currently provide to the applicant a copy of any credit reports, screening reports, scores, or recommendations they received about the applicant? If not, what are the barriers to landlords and property managers providing that information to the applicant?
    - d. What are the benefits and harms associated with the current level of disclosure?
    - e. Are there steps regulators can and should take to mandate additional disclosures?
  10. To what extent do landlords and property managers tailor their criteria for how they assess prospective tenants to their locality?
    - a. Do landlords and property managers consider the attributes of the potential tenants in their community, such as the prevalence of applicants with criminal or eviction records?
    - b. How do landlords and property managers ensure they are aware of local laws restricting the use of prospective tenants' criminal and eviction records in making housing eligibility decisions? How do landlords and property managers ensure they comply with such laws?
    - c. To what extent are landlords and property managers familiar with regional courts' practices with respect to civil and criminal records, such as whether courts

customarily add attorney's fees or damage multipliers to unpaid rent or what different charge categories and conviction statuses mean in criminal records, and do they consider that when reviewing tenant screening reports?

11. What types of application and screening fees do landlords and property managers charge prospective tenants and what do these fees cover (e.g., expenses related to processing applications, overhead for staff to review screening reports, etc.)?
  - a. How, when and to what extent do landlords and property managers disclose the purpose(s) of these fees?
  - b. What are the costs landlords and property managers incur in handling the rental application (for example, fees to a screening company, labor costs, other administrative overhead, etc.)?
  - c. Do landlords and property managers charge application fees that exceed their costs in handling the rental application? If so, how are these fees used; to whom do these excess fees accrue; and what are the potential harms associated with these excess fees?
  - d. Should there be limitations imposed on landlords and property managers regarding the collection of application and screening fees from prospective and current tenants? For example, limitations on types of fees, amounts of fees, or the frequency with which a landlord or property manager could charge a fee to a particular prospective or current tenant applying more than once to the same landlord or property manager?
  - e. How would such limitations affect prospective tenants, landlords/property managers, current tenants, and other industry participants?
12. Should landlords and property managers be required to return prospective tenants' application-related fees if the prospective tenant is not considered for the housing (e.g., because the landlord chose another applicant before considering the prospective tenant's application)?
13. How and to what extent are landlords, property managers, and other industry participants currently using portable tenant screening report products (i.e., a tenant screening report that the prospective tenant purchases from a consumer reporting agency that is designed to be shared with multiple prospective landlords and property managers)?
  - a. How are portable tenant screening reports distributed by screening companies (e.g., does the screening company provide the report directly to the landlord or property manager, or do they provide it to the prospective tenant who provides it to landlords and property managers)? Where the distribution is directly to the landlord or property manager, are prospective tenants provided with a copy of the portable tenant screening report as well? If so, at what point in the application process?
  - b. How does the availability of portable tenant screening reports affect prospective tenants, landlords, property managers, and other industry participants?
  - c. Should the use of portable tenant screening reports be further regulated (e.g., by requiring their acceptance or by prohibiting background screening charges where

the prospective tenant provides a portable tenant screening report)? Why or why not?

- d. What, if any, competitive issues are raised by further regulating the use of portable tenant screening reports?
14. Do tenant screening practices have unique impacts on certain groups or communities? For example, are there unique impacts on historically underserved populations, such as Black, Indigenous, and people of color; the LGBTQI+ community (especially trans and gender nonconforming individuals); military service members; immigrants; public housing voucher recipients; renters with disabilities; or others?
- a. If so, what are these impacts and which tenant screening practices cause them?
  - b. What research or data can demonstrate or quantify such impacts?
  - c. What steps, if any, are landlords and property managers taking to assess whether and how their use of tenant screening reports might have discriminatory impacts on certain populations?
  - d. To the extent that particular tenant screening practices negatively impact certain groups or communities, are there steps regulators can and should take to address these impacts?
  - e. What barriers are people with IRS-issued individual taxpayer identification numbers (instead of Social Security Numbers) confronting in the tenant screening process?
15. How do landlords and property managers handle applications from prospective tenants who dispute information on their credit or tenant screening reports while their application is pending?
- a. To what extent do landlords and property managers communicate directly with the consumer reporting agency regarding the dispute?
  - b. To what extent do landlords and property managers take into account the initiation of a dispute when making a decision about a prospective tenant?
  - c. To what extent do landlords and property managers wait for a dispute to be resolved before making a decision about a prospective tenant?
  - d. To what extent do landlords and property managers ask consumer reporting agencies to prioritize dispute investigations for prospective tenants with pending applications? How does that process work?
16. To what extent are states or local jurisdictions requiring tenant screening companies to register or be licensed? In what ways do those requirements benefit or harm landlords, property managers, and prospective tenants?

### Criminal Records in Tenant Screening

17. How are landlords and property managers currently requesting criminal record information and using criminal records in making housing decisions about prospective tenants?
- a. How do landlords and property managers obtain criminal record information? For example, do they ask prospective tenants about their backgrounds, purchase

- criminal background reports (as part of a tenant screening report or as a stand-alone report), browse mugshot databases, or through other means?
- b. What types of criminal records are being used in evaluating tenants? For example, are landlords and property managers focusing on records from a particular part of the criminal process (e.g., arrest records, charging records, conviction records, or a combination) or relating to particular criminal activity (e.g., felonies, misdemeanors, records related to specific types of offenses)?
  - c. Do landlords and property managers review and consider records about traffic violations (whether reported as infractions, misdemeanors, or otherwise) in evaluating a prospective tenant?
  - d. What steps, if any, do landlords, property managers, and other industry participants take to avoid discriminatory impacts from their use of criminal records in assessing prospective tenants?
  - e. What steps, if any, do landlords, property managers, and other industry participants take to ensure their use of criminal records complies with fair housing laws?
  - f. What steps, if any, do landlords, property managers, and other industry participants take to verify criminal record information with prospective tenants?
18. What are the potential benefits and harms of considering criminal records in making housing decisions?
    - a. How do those benefits and harms vary by the attributes of the records, such as offense type or recency of the conviction, arrest, or other record?
  19. How accurate (including complete) are criminal records, both from public records sources like courts and as provided by tenant screening companies? Where there are inaccuracies, where do these errors originate?
    - a. How often do landlords and property managers become aware of inaccurate or incomplete criminal record information on tenant screening reports?
    - b. Are there particular types of oversight and quality control efforts that can catch these inaccuracies before they appear on tenant screening reports?
  20. Are there issues with the overall accuracy or completeness of criminal records that impact their usefulness in assessing individuals for housing or the benefits of considering them in making housing decisions? What research (statistical or otherwise) exists to show whether criminal records (or particular types of criminal records) are useful or relevant to assessing whether a particular individual is more likely to have a negative housing outcome (for example, to damage property, harm other residents, or otherwise violate their lease) when compared to the general population?
  21. Are there steps regulators can or should take with respect to the use of criminal records in tenant screening?

## Eviction Records in Tenant Screening

22. How are landlords and property managers currently requesting eviction record information and using eviction records in making housing decisions about prospective tenants?
  - a. How do landlords and property managers obtain eviction record information? For example, do they ask prospective tenants about prior eviction actions against them, purchase public records containing eviction information (as part of a tenant screening report or as a stand-alone report), browse public housing court records, or use other means?
  - b. What types of eviction records are being used in evaluating tenants? Do landlords and property managers consider only the public record (e.g., records obtained from a court) or do they also consider additional context (e.g., proof of satisfaction of judgment; supporting documents that demonstrate an eviction proceeding was retaliatory or in violation of local law; or relevance of an eviction proceeding that was filed before the prospective tenant began receiving housing subsidies)?
  - c. To what extent do landlords consider the outcome of an eviction proceeding in evaluating a prospective tenant? (e.g., Do landlords consider whether an eviction proceeding was dismissed versus an eviction proceeding in which the prospective tenant was ordered to vacate?)
  - d. What steps, if any, do landlords, property managers, and other industry participants take to avoid discriminatory impacts from their use of eviction records in assessing prospective tenants?
  - e. What steps, if any, do landlords, property managers, and other industry participants take to ensure their use of eviction records complies with fair housing laws?
  - f. What steps, if any, do landlords, property managers, and other industry participants take to verify eviction record information with prospective tenants?
23. What are the potential benefits and harms of considering eviction records in making housing decisions?
  - a. How do those benefits and harms vary by outcome (e.g., dismissals versus judgments) and recency of the eviction action?
24. How are tenant screening companies accounting for different jurisdictions' approaches to eviction proceedings and judgment amounts in their tenant screening products?
25. How do tenant screening companies differentiate between the actual amount in controversy and any additional fees levied or permitted by the court (e.g., statutory attorney's fees, treble damages, or collection fees)?
26. How do tenant screening companies account for variations in the completeness of records from different jurisdictions? To what extent do tenant screening reports differentiate between judgments for eviction and other types of eviction filings?
27. How accurate (including complete) are eviction records, both from public records sources like courts and as provided by tenant screening companies? Where there are inaccuracies, where do these errors originate?

- a. How often do landlords and property managers become aware of inaccurate or incomplete eviction record information on tenant screening reports?
  - b. Are there particular types of oversight and quality control efforts that can catch these inaccuracies before they appear on tenant screening reports?
28. How does the accuracy of eviction records impact their usefulness in assessing individuals for housing or the benefits of considering them in making housing decisions?
29. What research (statistical or otherwise) exists to show that eviction records (or records in which an eviction proceeding was resolved in a particular way) are useful or relevant to assessing whether a particular individual is more likely to have a negative housing outcome when compared to the general population?
30. Are there additional steps regulators can and should take with respect to the use of eviction records in tenant screening, and if so, what are those steps?

### Using Algorithms in Tenant Screening

31. How are algorithms, automated decision-making, artificial intelligence, or similar technology (collectively referred to below as “algorithms”) being used in the tenant screening process?
- a. In particular, how are consumer reporting agencies using algorithms to (1) facilitate compliance with the Fair Credit Reporting Act; (2) match credit, criminal, and eviction records to particular consumers for inclusion on credit and tenant screening reports; or (3) evaluate, grade, score, pre-screen or make predictions about prospective tenants?
  - b. How common are these uses of algorithms by consumer reporting agencies?
  - c. For each of these uses (and any other common uses):
    - i. What are the inputs (i.e., types of data) that the algorithms process, analyze, or use?
    - ii. What are the outputs of the algorithms (e.g., tenant screening reports, scores, recommendations, or predictions)?
    - iii. What tasks are the algorithms performing?
  - d. How are algorithmically-generated scores, recommendations, and predictions being advertised to landlords and property managers?
  - e. To what extent do landlords and property managers select consumer reporting agencies (including tenant screening companies) based on the companies’ offering of recommendation or scoring products to evaluate prospective tenants, as opposed to such services being offered as an add-on product by such companies that the landlord or property manager selected for other reasons?
32. For algorithms that are being used for any of these purposes, how are the algorithms designed, developed, or otherwise created? To the extent that the development of the algorithms involves machine learning, deep learning, or other technologies that are designed to automatically derive correlations from so-called “training” data, what datasets are being used for training?
33. What are the sources of that data and how is the data obtained?
- a. What steps, if any, are tenant screening companies taking to ensure the data is representative of the relevant population (e.g., that the demographics of subjects

- in the training data are similar to those of the population of tenants to be screened)?
- b. To the extent that algorithms are developed by third parties, what information about the development of the algorithms is available to companies that use those algorithms?
  - c. What steps, if any, do tenant screening companies take to assess how third-party algorithms have been developed, including assessing the representativeness, appropriateness, and accuracy of the underlying data?
  - d. What steps, if any, do tenant screening companies take to ensure third-party algorithms comply with fair housing laws?
34. To what extent is the performance of algorithms in tenant screening tested, both pre- and post-deployment?
- a. What measures or metrics of accuracy, reliability, and effectiveness do consumer reporting agencies use to evaluate the outputs of algorithms?
  - b. To what extent do companies permit, invite, or retain third parties to conduct independent audits or assessments of the algorithms that they develop and use in connection with tenant screening?
    - i. To what extent do companies make the results of such audits or assessments available to customers or the public?
    - ii. If such audits and assessments are not currently made public, what are impediments to making them public?
35. What information about applicants is relayed by consumer reporting agencies to landlords and property managers?
- a. What types of recommendations, scores, predictions, or other outputs are consumer reporting agencies providing to landlords and property managers?
  - b. How are recommendations or scores derived or produced?
  - c. What factors, data points, or characteristics do algorithms rely on in producing recommendations, scores, or predictions that are provided to landlords and property managers?
  - d. Do landlords and property managers have an opportunity to opt into or out of the consideration of particular factors in a recommendation or scoring product?
36. How are consumer reporting agencies deciding what criteria should be included in their tenant screening recommendation or scoring products?
- a. To the extent consumer reporting agencies use amounts owed by tenants in their recommendations or scoring products – such as amounts in collection on a credit report or amounts a court has ordered a tenant to pay in an eviction proceeding – do recommendation or scoring products consider the amount of the original balance or unpaid rent only, or do they also take into account fees, damage multipliers, or other additional charges?
  - b. To the extent that public records are included in scoring models, how are they weighed? Are records treated differently based on their recency or the type of charge (e.g., misdemeanor, felony or juvenile record)?

37. What steps, such as auditing, are taken to ensure that algorithms that evaluate, grade, or make recommendations about prospective tenants are not discriminating against prospective tenants on the basis of race, sex (which includes sexual orientation and gender identity), disability, or other protected class, and how are such steps carried out?
38. What steps are consumer reporting agencies taking to ensure that the tenant screening recommendations provided by algorithms are explainable to landlords, property managers, and prospective tenants?
  - a. To what extent do consumer reporting agencies inform landlords, property managers, and/or prospective tenants about (1) the factors that an algorithm relied on in producing or arriving at a particular determination and the weighting of each factor; and (2) the limitations of each algorithm and its outputs, including any factors that could affect the accuracy or reliability of the algorithm?
39. How are landlords and property managers using recommendations or scores from consumer reporting agencies in deciding whether to rent to prospective tenants?
  - a. How often do landlords or property managers receive a recommendation or score when considering a prospective tenant?
  - b. To what extent do landlords or property managers know or understand the basis of recommendations, scores, or predictions provided by consumer reporting agencies? What guidance or information do landlords and property managers receive?
  - c. To what extent do landlords or property managers review and consider the underlying data (including credit, eviction, and criminal records) before using a recommendation or score in evaluating a prospective tenant?
  - d. Are landlords and property managers able to access algorithmically-generated scores, recommendations, and predictions about prospective tenants without accessing an underlying credit report or tenant screening background report? Are there benefits to using those products instead of or in addition to more traditional credit reports and tenant screening background reports?
40. To what extent are landlords and property managers involved in setting the recommendation or scoring criteria? To what extent does that vary by consumer reporting agency?
41. To what extent are landlords, property managers, or consumer reporting agencies sharing the recommendations or scores with prospective tenants? What steps, if any, are they taking to explain to prospective tenants the basis for a recommendation or score?
  - a. How commonly do adverse action notices explain the criteria that the recommendation or scoring product considered or the reason(s) the algorithm rejected the prospective tenant?
42. To what extent do consumer reporting agencies allow tenants the opportunity to dispute, seek review of, or seek a non-automated alternative to the use of a recommendation, prediction, or score produced by an algorithm? To what extent do landlords or property managers re-assess housing applications following a tenant's dispute or correction of scoring criteria or underlying data?

43. Are there steps that regulators should take with respect to the use of algorithms in the tenant screening process?

You can file a comment online or on paper. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form. Your comment – including your name and your state – will be placed on the public record, including, to the extent practicable, on the <https://www.regulations.gov> website. You may view submitted comments at <https://www.regulations.gov> at any time.

For the Commission to consider your comment, we must receive it on or before May 30, 2023. Because of the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. Write “Tenant Screening, P235400” on your comment. If you file your comment on paper, write “Tenant Screening, P235400” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential” – as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Visit the FTC website at [www.ftc.gov](http://www.ftc.gov) to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before 90 days from issuance. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.