

KnowledgeVision | Accuracy_in_Consumer_Reporting_Part 2_1

TIFFANY GEORGE: Administrative reminders. Please silence any mobile phones and other electronic devices. No food or drink except water is allowed in the auditorium. And perhaps most importantly, we have scoured the building for additional purple FCRA books. We put some more out on the table, but those are the last ones.

However, they are available for free on the FTC's bulk order site. So please feel free to order some. And now please welcome Brian Johnson, Deputy Director of the Consumer Financial Protection Bureau who will provide remarks followed by remarks from Andrew Stivers, Deputy Director of the Bureau of Economics at the FTC. Thanks.

[APPLAUSE]

BRIAN JOHNSON: Good afternoon, everybody. It's a pleasure to be here. A pleasure especially to see our national exam team in town. It was good to catch up with some folks over lunch. Hopefully everybody got full bellies for lunch. I recognize that I'm in the unenviable spot between the real action here and post lunch lull. So I'll try and keep it interesting. Can't make promises. But we will muddle through together, in any event.

It's an honor to be here at the FTC and to speak with all of you today. We've come together today to discuss critical issues affecting the accuracy of consumer reports. We're very fortunate to have four panels of accomplished experts representing a variety of perspectives within the consumer reporting ecosystem, including industry representatives, consumer advocates, and regulators. To all of our panelists, thank you for your time and for sharing your invaluable thoughts and perspectives with all of us here today. I hope the discussions continue and that they're the catalyst for further engagement together.

Let me begin with a brief description of the consumer reporting marketplace, which plays such a vital role in consumer access to credit. Consumer report information, including when used in calculating credit scores, is critical to industry and consumers in determining who obtains credit, jobs, insurance, and housing and at what price. Consumer reporting has enormous reach, as evidenced by the over 200 million Americans who have credit files with trade lines furnished by over 10,000 providers.

Because of the importance of consumer report accuracy through the Fair Credit Reporting Act, which I'll call FCRA, Congress imposed interrelated legal standards and requirements to support the policy goal of accurate credit reporting. Significantly, the FCRA's standards and requirements acknowledge that consumer report information will not be perfect. Instead, the FCRA requires that consumer reporting agencies have reasonable procedures to assure

maximum possible accuracy of reports.

It also imposes certain accuracy obligations on furnishers and sets forth a dispute and investigation framework. This dispute resolution framework is important to the efficient operation of credit markets, as it presides a standard mechanism for recognizing and resolving inaccuracies when they occur. The Bureau has focused on consumer reporting accuracy and dispute handling by both CRAs and furnishers in its work.

And in its work, it has applied its fundamental tools of consumer education, supervision, enforcement, and guidance. I would like to briefly discuss the bureau's recent use of each of these tools to promote accuracy and then finish with some thoughts about the bureau's work to develop sound and practical policies for the future to increase accuracy of consumer report information.

First, consumer education. The Bureau recognizes the role of consumers in the consumer reporting system and offers resources on its website to empower consumers to help themselves by offering tools and tips so that they can take steps to work with CRAs and furnishers to dispute suspected inaccuracies.

Next, supervision. The Bureau has also directed resources toward examining and investigating CRAs and furnishers promoting compliance with their accuracy and dispute resolution obligations under the FCRA. Many of our examination findings are reported in periodic updates entitled Supervisory Highlights. Just yesterday, the Bureau released a special issue of Sup Highlights, which describes key findings from consumer reporting examinations.

So what are some of the key findings from this new issue? First, I'll touch on recent supervisory observations from examinations of furnishers. Furnishers of information play a crucial role in the accuracy and integrity of consumer reports, and they provide information to CRAs, as we heard in our first panel this morning. Furnishers also have an important role in the dispute process when consumers dispute the accuracy of information in their reports.

When a furnisher receives a dispute, it is required to investigate the accuracy of the disputed information. The FCRA in Regulation V include specific requirements for furnishers concerning the accuracy-- both accuracy and dispute handling. As detailed in the Supervisory Highlights edition, in recent supervisor reviews, the Bureau found FCRA and Regulation V violations as well as weaknesses of compliance management systems.

The Bureau has also done a significant amount of work supervising national consumer reporting agencies and CRAs as well as some consumer report resellers and specialty CRAs. Compliance in both the consumer reporting agency space and furnisher space is necessary for a well functioning system, as both parties are subject to accuracy related requirements.

Recent supervisor reviews of CRAs have evaluated compliance with the FCRA provisions regarding their procedures to ensure maximum possible accuracy of information as well as provisions regarding permissible purpose, restriction of information resulting from identity theft, and dispute investigation obligations. Bureau examiners identified instances of weaknesses and violations in procedures associated with these FCRA provisions.

In addition to its consumer education and supervisory activities designed to promote the accuracy of consumer report information, the Bureau has also brought enforcement actions and obtained remedies, such as civil penalties and injunctive relief, against CRAs and furnishers that violated the FCRA and Regulation V. CFPB settlements alleged conduct similar to its supervisory examination findings.

For example, the Bureau alleged that a CRA failed to investigate consumer disputes and another CRA failed to meet requirements related to the accuracy of its consumer reports. For furnishers, the Bureau alleged to have found failures to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information provided to CRAs as well as furnishers alleged to have provided inaccurate or incomplete information about consumers to CRAs or failed to conduct reasonable investigations of consumer disputes.

Moving on to guidance, the Bureau welcomes CRA and lender efforts to innovate using alternative credit data and models to promote access to credit while being mindful of the risks of such data and models. Last week the Bureau, along with four other financial regulatory agencies, issued a joint statement on the use of alternative data in underwriting by banks, credit unions, and non-bank financial firms.

In our statement, the agencies recognized that the use of alternative data in a manner consistent with applicable consumer protection laws may improve the speed and accuracy of credit decisions. It may help firms evaluate the credit worthiness of consumers who currently may not be able to obtain credit in the mainstream credit system. If we can provide greater clarity to the market with regard to the appropriate use of alternative data, we welcome the

opportunity and we will do so.

The Bureau's consumer education, supervision, and enforcement activities can help improve the accuracy of consumer report information, but we know that more needs to be done. I would like to discuss briefly the Bureau's policy work that is intended to lay the groundwork for future policies to improve the accuracy of consumer report information. The Bureau's Office of Research has experience in analyzing consumer reporting topics, and we will continue to use the results of our research to help develop the best possible policies for consumer reporting.

A good recent example of a research is a report we issued today examining how the removal of certain public records from consumer reports affects the relationship between credit scores and consumers' performance. One key finding of the Bureau's report is that the evidence suggests that the removal of these certain public records did not have a large effect on the relationship between credit scores and consumers' credit performance.

In addition to its research work, the Bureau closely monitors developments in the financial services markets, including those for consumer reporting. One major problem we have identified in the consumer reporting markets through its monitoring is disputes that some credit repair organizations submit on behalf of consumers. Some credit report repair organizations falsely claim that they can remove accurate information from consumer reports.

Other credit repair organizations may submit disputes, not because there is a legitimate concern about the accuracy of the information in a consumer report, but rather because they are trying to game the system. This practice not only harms CRAs and furnishers who incur costs in responding to these disputes. It also harms consumers with legitimate disputes. The Bureau is well aware of the problem certain credit repair organizations cause for the consumer reporting system. We are looking for ways to address these problems, including working with our partners at the FTC.

Along with what we learn ourselves through research and market monitoring, we also learn from stakeholders like you. Director Kraninger has commenced the symposium series, through which we are hearing from leading experts representing diverse viewpoints on cutting edge consumer protection issues, which helps inform our policy development process. This workshop today, with our partners at the FTC, plays the same role on the issue of accuracy in consumer reporting information.

We have already heard much today we believe will be useful to the Bureau's future work to

enhance the accuracy of consumer reporting. I'm looking forward to the rest of today's workshop and the opportunity to continue hearing from all experts on these issues. Thank you again for joining the Bureau in this discussion. And now I have the privilege of turning things over to the FTC's Bureau of Economics Deputy Director, Andrew Stivers, for further remarks. Thank you all very much.

[APPLAUSE]

**ANDREW
STIVERS:**

Thank you. I think that was an excellent setup for what I want to discuss. As Mr. Johnson noted, I'm a Deputy in the Bureau of Economics. I'm an economist. So I'm going to bring us back to Econ 101, which is a great thing to do right after lunch. So I apologize for that, but that's my job. That's what I do.

I need to make two quick caveats. First of all, I don't speak for the commissioners in this particular discussion of economics, necessarily. My thoughts are my own. And second of all, I have the privilege of working with an exceptional staff of PhD economists here at the FTC and in the Bureau. And some of those folks are responsible for basically everything I know about background screening and credit reporting. But of course, they're not responsible for what I don't know and my potential mistakes here.

So I want to back up a little bit and within the very interesting discussion that's happened so far and the discussions that are going to occur, I think, this afternoon and think about what it is the-- what the economic problem is that we're really addressing here. So fundamentally, what we're concerned about is how the market distributes scarce resources. Jobs, credit, housing, and other opportunities.

We as regulators are here because these resources are typically going to be necessary inputs to full participation in American life and, crucially, because we can identify some likely ways in which the market may fail to distribute these resources for the maximum benefit of all participants, all consumers that are seeking these resources. Specifically, there is an information asymmetry that could block or curtail the provision of these goods, and if that information asymmetry is not solved, it could block or curtail the provision of these goods.

And in solving this information problem, the market by itself likely discounts the costs of a false positive. That is, mistakenly perceiving a problem with an applicant. And one reason that these mechanisms may do so is that they are typically in the primary markets that we're talking

about lemon dropping. Sort of think about cherry picking and lemon dropping. Lemon dropping is going to be about trying to avoid the worst candidates rather than necessarily finding the best ones.

So that means that in terms of how the users of these screening technologies are going to be thinking about this, they're really going to be focused more on avoiding the folks who would necessarily not be or might not be good candidates rather than worrying too much about the false positives about weeding out people who actually would be good candidates.

So in terms of a mechanism that would provide the most benefit to applicants, the most benefits in these markets, we'd need to account for three things. We'd need to account for the cost of the screening technology. And the FCRA does that. It says we have to have reasonable procedures. And then two other things, the costs of false positives and the costs of false negatives.

And a mechanism that delivered the most benefit would attempt to minimize the sum of these areas, and it would attempt to balance the cost of if we have too expensive a mechanism, that's going to unnecessarily curtail a provision of these goods. If we don't take into account the costs on the variety of consumers that are going to be affected by these technologies, then we're probably going to be ignoring some benefits and overplaying our hand.

So I think it's worth pointing out, and I think probably again, given the discussion this morning, the trade offs that are inherent in any mechanism that seeks to separate out better and worse risks. First, the screening is applied to price and to mitigate risks, which means that they are inherently probabilistic. And thus some false negatives and some false positives are always going to be present in terms of outcomes.

Some applicants are going to pass screening, get a job, and end up stealing from the company. Other applicants who never would have stolen anything get screened out. And this is going to occur whether or not the inputs are accurate, because it's a probabilistic outcome that we're trying to predict.

Second of all, a noisy signal, one that contains significant inaccuracies, can sometimes improve the accuracy of outcomes overall. So while we may be able to identify individuals for whom the use of that signal produces a false positive, we can't easily identify the individual for whom the use of that signal fixed a false positive.

So the research that the CFPB is doing to try to figure out which of these public data sources may actually affect the outcomes in positive or negative ways or may actually not affect those outcomes is really helpful, because it helps us to separate out there's a noisy signal that maybe is useful, maybe it's not. So it's really important. I'm glad Brian raised that.

Finally, there is an inherent trade off between these types of areas, between the false positives and the false negatives. So decreasing the chance that I wrongly turn away a qualified candidate typically means that I increase the chance of accepting an unqualified candidate. So within the particular screening technologies that we use, we have to be aware that there are trade offs often between different consumer groups.

Finally, the last point I want to raise is that as participants in the development and enforcement of policy, policy that is applied in real markets, we also recognize that it can be difficult to account for these costs. So we have sort of what might be thought of as what's our ideal way, ideal mechanism for dealing with these issues? And then we have the realities of the resource constraints that we have, the knowability of various aspects of these markets.

And our actual policies contain two practical shortcuts that we hope result and believe result in better outcomes. And to be clear, I want to highlight these things not because they're bad shortcuts, they're wrong shortcuts, they're shortcuts that are practical that we need to make to be able to make progress in this area, but they do introduce complications that is important for us to study, to understand, and to hopefully mitigate.

So first, it seems reasonable to presume that screeners are taking into account both the costs of technology and the costs of false negatives, as I suggested earlier. They're lemon dropping, largely. So we focus our regulatory infrastructure on inserting controls aimed at reducing false positives. That's been a lot of the discussion here of how do we increase the accuracy of the inputs that might reduce these false positives.

Second, while I think we would all be in agreement that what we really care about is accuracy and outcomes, that is, did the market provide and match opportunities correctly given the risk characteristics and the costs that we believe are appropriate to be concerned with? But what we regulate, again, for practical reasons, is primarily going to be accuracy in inputs. This means that we're using a proxy for what the goal that we're actually interested in and that that proxy is going to presume rather than consider the cost of inaccuracy.

So I'll end with a plea for more research and attention to these two issues. First, what is the

effect on consumer outcomes of focusing on the false positives in our regulatory efforts? Do we overpower the other issues to the detriment of some consumers? Or are we still under incentivizing concern for false positives given the known market failures in this area?

Lastly, what is the effect on consumer outcomes of focusing on input accuracy? Are we improving the accuracy of outcomes? Are we balancing the competing consumer costs and benefits with those outputs? What does focusing on the accuracy of inputs do to the incentives of all of the market participants? I look forward to the afternoon discussion. Thank you very much.

[APPLAUSE]

TIFFANY

GEORGE:

Good afternoon, everyone, and thank you for joining us for this panel on accuracy considerations for a background screening. Once again, I'm Tiffany George, and I'm an attorney in the FTC's Division of Privacy and Identity Protection. And my colleague, Amanda Koulousias and I will be moderating this panel. We'd like to thank our esteemed panelists for agreeing to share their wisdom and knowledge and insights on this topic, and I will briefly introduce them before we dive in.

Next to Amanda, we have Terry Clemans, who is the Executive Director of the National Consumer Reporting Association. Next to Terry, we have Eric Dunn, who's the Director of Litigation for the National Housing Law Project. Next to Eric, we have Jamie Gullen, a Supervising Attorney at the Community Legal Services of Philadelphia.

Next to Jamie, we have Ariel Nelson, who is a Staff Attorney at the National Consumer Law Center. Next to Ariel, we have Melissa Sorensen, who is Executive Director of what is now known as the Professional Background Screening Association. And at the very far end, but certainly not least, we have Matt Visser, who is Chief Executive Officer of VICTIG Screening Solutions.

To help provide some context for our discussion, you'll see that we have a slide behind us that will contain examples of some common components of both employment and tenant screening reports. Different types of records may present different issues for accuracy, both in the context of matching the records to the correct consumer and in terms of accurately representing what is contained in the record.

So first I think we'll start off with a 30 second speed around to each of the panelists. What do you see as the largest issue related to the accuracy of background screening reports? Terry?

TERRY CLEMANS: Thank you, Tiffany. Missing and inconsistent data inputs is what I would put as the largest issue for accuracy. And that's coming from the courts.

ERIC DUNN: I suppose similar to that, I would say it's the fact that a lot of the source data, the public records, really are not prepared for use in background checks and credit reporting, but they're basically appropriated for that purpose anyway. And so I think because they're not prepared for that purpose, those records are going to have a lot of gaps and misleading components.

JAMIE GULLEN: And I'd just build on top of that to say that when the data is taken directly from the sources, like courts or state police repositories, often it doesn't have all the context or all the outcome information. And even when it does include all of that information, somehow when it makes its way into CRA databases, sometimes that information can end up being reported inaccurately. So I would just say that issues with both the source data and then how it ends up ultimately being pulled for reports creates a variety of different error outcomes that we see in our practice.

ARIEL NELSON: And I'll make a related but slightly different point, which is that we see inaccuracies often arising out of the total or near total reliance on automated processes along with the use of bulk data and loose matching criteria. And I'm not saying that automation in and of itself or bulk data in and of itself are problematic, but when information coming from those sources is not verified or there's no manual review process, we see a lot of inaccuracies, including things like mismatched reports.

MELISSA SORENSON: And I'll go further into the instance of availability of source information, specifically identifiers and the completeness of source information. That's also a constantly changing availability within the courts, as technologies change at the court levels, and sometimes there's not consideration for the unintended consequences of redacting some of those data fields or pieces of information.

MATT VISSER: Yeah, exactly. I echo what everyone said. And when we talk about data, I don't want it to be lost on anyone that we're really talking about data from courts across the country. And as Eric said, sometimes those courts aren't really built or set up in a way where they can be conducive to kind of the competitive corporate side of what we do. And so you have, as Melissa said, courts who constantly are changing access or failing to provide information or deciding on their

own to redact personal identifiers. And so when we get bad data in, it's really hard to get good data out.

AMANDA KOULOUSIAS: So a number of you, I think actually almost all of you, focused on the issue with data from the courts, missing information, and how that affects kind of matching records to consumers. So I'm wondering if we can dive a little bit more in detail into what some of the challenges really are in terms of accurately matching these public records to a consumer. Melissa, could you start us off with that?

MELISSA SORENSON: Yeah, absolutely. So as PBSA is a professional trade association with more than 900 member companies around the globe, our members are increasingly and always focused on accuracy. There are three parties engaged in this process, the consumer, the end user, employer or property manager, in cases of this panel, and the consumer reporting agency. It is table stakes to get the information right.

The challenges when going to the source for information is, as I initially alluded to, relate to availability of personal identifiers in the records, our members' ability to use those data pieces that they already have with the consent of the consumer, and query those sources, query them for full name, full first, middle, and last name. And with courts changing their technologies or making decisions to pull or hold back that information and not provide it, it provides an increasing challenge to our members to, as Matt mentioned, provide good data out when the information sources provide us with challenges on the front end.

TIFFANY GEORGE: Terry, do you have anything to add?

TERRY CLEMANS: Sure. I'd like to add, just to make sure people understand how diverse these inputs are. We have to think about the universe in which we're working. When you tally all the counties in the United States, all the states that create a state database, all the Indian reservations, the District of Columbia, we're talking over 3,500 different jurisdictions where the public policies of those jurisdictions are setting up, while well intended, sometimes some very difficult unintended consequences for us to do our job in trying to provide an accurate portrayal of a person's actions. And we only have incentive to get it right.

Everyone loses when the information is incorrect, from the court system providing the information to the consumer, of course, and for everyone involved in the process. We want to get it right. As I mentioned, it's just a difficult situation due to the fact that a lot of the missing

information is PII that was stripped out over the years to protect consumers' identity. 25, 30 years ago, go into any courthouse in the country and it was an identity thief's dream to pick up name, address, social security number, date of birth, all in one spot. So it was correct to remove that information from the system.

However, nothing happens in a vacuum, and we will have ways to fix this. We are doing better all the time. If you look at the Uniform Law Commission, their report the criminal histories that they released last year, and they're currently working on the missing PII from the system. They get that this is an issue, and they're trying to help in solving it. And for those of you that are not familiar with the Uniform Law Commission, that's a bipartisan organization founded in 1892, because what we're talking about here is not new. But standardizing all these laws and making sure all the codes are consistent would certainly help.

TIFFANY

Ariel and Jamie, you both touched on using secondary sources as well as automated

GEORGE:

processes. Can you talk a little bit about, I guess, what you see as how CRA procedures can exacerbate this problem of lack of identifiers in the public records?

ARIEL NELSON:

Sure. So one thing we see a lot of is when, like I mentioned, a background check company uses an automated search, runs an automated search through a giant database of aggregated criminal records and then just provides the result of that search to the employer or housing provider without any manual review or verification.

Now, not all background screening companies do this. I have one to my left that does not. But as an industry study, recently found in 2019 there are almost 2,000 criminal background screening companies, and many of them do provide results without verification. And part of the reason why that's such a problem is that these aggregated databases often include records that are incomplete and don't have enough personal identifying information to sufficiently match a record to the actual, to the consumer.

And so some of the other related problems in this area are the failure, like I said, the failure to verify information obtained through vendors or other faulty sources, this use of incomplete data that we've mentioned, which could, in addition to the lack of personal identifiers, include missing disposition information, which I'm sure we'll come back to. That's a big issue. And then the retrieval of data in bulk and then the failure to routinely update that data.

And also the failure to utilize all available information to prevent things like false positives. And

Melissa mentioned the fact that you want to ask a consumer for as much information as possible to try to match that with the records, but we see a problem when there's actually a failure to use all the information that's been gathered from the consumer. So it has to occur on both ends.

And then finally, one thing I'll touch on is the misunderstanding of state specific criminal justice system procedures and laws, which Terry sort of touched on. It's very difficult to read these records from all these different jurisdictions. And so we do see errors arising out of that failure.

JAMIE GULLEN: And I'll just add a little bit of context from our practice. At Community Legal Services in Philadelphia, we represent over 1,000 low income people every year who are facing barriers to employment due to their criminal records, and we try to ameliorate those barriers in a variety of ways, including clearing as many records as we can, advocating directly with employers under local, state, and federal laws, as well as ensuring the accuracy of the information actually being provided to employers.

And in the course of doing that work every day on the ground in our just little corner of the country, we see the same types of mistakes being made over and over, often by the same vendors, even often for the same person after they've tried to correct the issue. So while the source data is certainly a problem, it's not the only problem that we see, by a long shot.

And some of the most common issues we see are the mis-screening of offenses. So somebody who had a summary offense, which in Pennsylvania is like a traffic ticket, being misreported as a misdemeanor or a felony offense, which has really significant employment outcomes in Pennsylvania, because summary citations are actually not allowed to be considered by employers. So that misreporting, while it might seem like a minor detail, can actually be a significant reason for a job loss.

Another issue we see, as Ariel spoke to, is just missing or not updated information. We've had a couple of young people in our program recently who have been denied significant job opportunities. There was a young man who was denied an opportunity to go into the federal job corps program, actually, where he would have had job training, a stipend, and housing provided to him, which he all critically needed, because a case that he had been charged with that was actually sent to juvenile court and adjudicated there was misreported as an open, ongoing adult felony case on his background report.

And we've seen that issue crop up now three or four times across different CRAs. And that's

an issuer that was in the source data, but a verification process with the court would have revealed that that case had been sent back to juvenile or family court.

And the final issue I just want to touch on is across the country, we're seeing a movement towards vast expungement and sealing of criminal records. Pennsylvania was the first state to pass an automated clean slate law, which is a process by which half of our court's database is now being sealed and can no longer be reported at all or considered at all in the employment process. But other states are now following suit. So I think the future is really in automating the clearing of records, and that automation is going to make it even more critical that CRAs are going back to the sources and constantly updating their information.

In Pennsylvania, we have a best practice, we think, which is that our courts actually produce a lifecycle file with all of the cases that have been expunged and sealed every month and directly deliver that to the CRAs that they contract with and require any downstream users to also update their records with that file. So on the rest of the advocacy we do around the country, we are advocating for states to adopt similar procedures to make it clearer and more easy for CRAs to comply with removing expunged and sealed records.

But even without those protections, it's just really essential, especially as we see more and more states adopting these automated procedures, that there's really that updating and verification process happening, rather than as Ariel spoke to, the sort of reliance on internal database information, which can quickly become stale.

AMANDA KOULOUSIAS: Matt, I'm wondering if you can give us kind of a background screening company's perspective on this question of kind of the use of databases versus going directly to the source.

MATT VISSER: OK. Yeah, thanks. So it's interesting, because Pennsylvania has done an amazing thing with their lifecycle file. And if you're not aware of what that is, I really suggest that you research it. And also with their clean slate act, I think I agree with Jamie. It's really a model for what we ought to do going forward in other areas.

The problem with that is most states just don't have the infrastructure from a technological perspective to be able to do that. And what I mean by that is in a lot of areas, the courts, the local courts, are the custodians of information. And the state really doesn't have an infrastructure where those records are sent on a regular basis. And so Pennsylvania is great, because they're in a position to be able to do that, but many places just aren't.

And I'm not talking about Missoula County, Montana, where I'm from. Not a real highly populated area. But San Diego, for example, is one where we have to get the information by sending a court runner. And this is a profession of individuals that physically go to the courthouse to get information. And in this case, they have to get it verbally from the clerk of the court. So you've got a lot of human involvement there in just getting the information.

And then, of course, we're dealing with public records. And as Terry pointed out, because it's public, I don't want my social security number attached to a record at the courthouse. So when we're looking at records, we're really looking at records based on their name and date of birth and sometimes their address, and if we're lucky, if we're really lucky, a partial social security number. But that's pretty rare today.

So when we're talking about doing research based on those parameters, when courts start to redact that information, it becomes really difficult to do the research. And that's why I made the comment when the bad information is coming in, it's really, really hard for us to be accurate with the data coming out.

And I agree completely with what Ariel and Jamie said. You have to have human involvement on that. You just can't automate any criminal record decision making or in terms of-- and what I mean by that is us passing along information. That has to be done by a human. It's just way too complex that data sets what they say, what they mean, how they're spelled is just way too complex to do that with machine learning or an algorithm. And so you have to operate in a way where you're looking at that information, you're caring about it, and you're trying to make the best decision you can based on the parameters we have under the FCRA.

So to get back to what you're saying, database records, what's meant by that is there are companies that go out and aggregate criminal records across the country in a variety of different ways. They get it from thousands of different jurisdiction sources all across the country. And the interesting thing with that is you're dealing with I think that this study said one in three Americans have a criminal record. And oftentimes individuals with criminal records may have more than one. And so we're talking about a high volume of records.

How you handle that is really something that's circumstantial to the CRA, to the background screening company. And companies operate in a variety of different ways. So I will speak to how we handle it. I can't speak on behalf of other background screening companies. But our policy is we don't report ever any information out of a database source.

And what I mean by that is we use them. We use them all the time. It's kind of like casting a net over the whole country and just seeing if we may find a record in an area that we wouldn't have thought to search kind of as a locator. But if we find any information at all, we always go to the best source for that information. Most of the time, well, I shouldn't say most of the time. A lot of the time, that requires physically sending somebody to the courthouse to verify that information. And we will only provide information to our customers that were found there.

Now, the FCRA provides latitude in how that's handled. And so again, it's kind of tough to say, but there's challenges. There's challenges with the data, even when you're dealing with the correct data source.

TIFFANY

So that's a good segue way, I think, into a question that we have from the audience as it

GEORGE:

relates to Section 613. And I'm going to send this to Melissa, because I know we've had conversations about the interplay between Section 613's requirements for completing and up to date information for public records for employment and the use of national databases. And the audience member has a question as to how do you square that with Section 607.

MELISSA

Great. Those are actually two very distinct and intentionally separate sections of the FCRA.

SORENSEN:

607 deals with the overall accuracy of the report. 613 speaks to the completeness of the record. And for employment purposes, it offers two different opportunities. You can send what's known as a 613 notice at the time that you're reporting public record information, or you can report directly from the source complete and up to date information.

And so in the employment context, 613 allows for both of those options to be utilized. And I think it's important for us to recognize as a panel and as a room that those are very different sections of the FCRA, intentionally so. They do have interplay, of course, but 613 really speaks to the completeness of the record itself.

TIFFANY

Does anyone else want to respond to that?

GEORGE:

MATT VISSER:

Sure. I'll venture into that. So we're talking about reasonable procedures to assure maximum possible accuracy. That's 607. And then strict procedures to ensure the data is up to date and complete. That's 613. And for me, as a business owner, as an entrepreneur, somebody that runs a CRA, those terms sound awfully similar.

And I think that-- I think what we're dealing with here are individuals who are applying for jobs

or individuals who are applying to rent a property. And in both of those cases, we're talking about pivotal moments of their life. It's a major thing. And I think that the overwhelming majority of background screening providers of CRAs really kind of take that responsibility pretty seriously. We're trying our very best to make sure that the data is accurate as possible, given the stakes.

And so for me, I agree with what Melissa said. They are separate and distinct. But practically operating a company, we look at it as we have to have reasonable procedures to ensure the data is accurate as much as possible. And so that's why we don't provide records out of that database. Just that's our kind of philosophy on it.

TERRY Can I add something to that?

CLEMANS:

TIFFANY Sure.

GEORGE:

TERRY I think it's really important to note that when we're talking 607 and 613 and we're talking about
CLEMANS: consumer reporting agencies and background investigation companies that there's a set of background investigation companies that avoid both of those. And any user of the information needs to make sure they look at the agreement when they're buying that information, because some of them are not CRAs. They're databases that are selling information specifically not to be FCRA compliant.

They're just selling you whatever they have. And they have a disclosure that says, this is not FCRA. It should not be used for employment purposes and for leasing purposes. That's a different type of company. But those are out there, and I want to make sure people don't confuse those with companies like Matt's and companies that Melissa and I represent within our organizations that are complying with the FCRA.

AMANDA So I think one of the points that we've been making here kind of related to some of these
KOULOUSIAS: databases is kind of the completeness and the matching of the records. And Eric, I'm wondering if you can speak to us a little bit about any of those issues and any unique issues that come up specifically with housing court records.

ERIC DUNN: Sure. Well, a lot of times, people kind of think of eviction records in a similar way as they think of criminal records. But there's some significant differences. First of all, with a criminal record,

one person is accused of a crime. I mean, there may be a crime involving multiple people arrested, but there would be one charge filed against each person. So each individual would have their own criminal record.

But eviction cases, unlawful detainer cases, are often filed against multiple people. One case can belong to multiple people. I've seen cases where the landlord will sue everybody in a family, including young children, and young children can wind up with an eviction record. So that's one factor.

Secondly, in terms of accuracy for fair credit reporting purposes, usually the number of personal identifiers available for an eviction case are very limited. You're going to have the names of the tenants or the defendants, I should say, spelled by the landlord. So if the landlord didn't spell them correctly, they may be misspelled. And you may have the jurisdiction of the court. That's about it. You're not going to have dates of birth, social security numbers, things like that usually available.

And then third, with criminal cases, usually there's some kind of judicial disposition of the case that's dismissed. The person pleads guilty to the crime, maybe goes to trial, and a jury decides. But most cases, the court's going to end or some kind of final judgment. Whereas with unlawful detainer cases, most cases are settled.

Close to 90% or more in most jurisdictions of unlawful detainer cases are settled. And so even if the final order says the case is dismissed or that there's a judgment entered, that doesn't really alone give you a clear picture of what happened, let alone going into the details of the case.

And then, of course, most housing providers are only interested in filed cases. So they're usually-- they're going to deny someone's application for housing just based on the fact that a case was filed against them. And we'll do that even though the vast majority of unlawful detainer cases are based on non-payment of rent. Well over 75% of cases are either based on non-payment of rent or maybe a what we call a no cause eviction, where the landlord just declines to renew a lease, for instance. But the motivating factor is maybe the person was late on rent, that sort of a thing.

And unlike certain types of criminal behavior where you might be able to say, well, the person may have some kind of problem confining their actions to the law, non-payment of rent is almost always based on some kind of financial problem. People can get back to work, they can

get new public benefits, they can get housing vouchers, they can get new resources available to pay their rent. So I think there's a number of unique considerations available with eviction records.

And then further, I think we've already heard on this panel sort of this idea that, well, if the courts aren't making information available to us, then that's interfering with background check companies being able to do our work and that sort of thing. But really what we see in the eviction records context is that the availability of these eviction records actually undermines the performance of the courts.

It deprives tenants of due process, because when they know that simply by being sued for eviction and a public record is going to be created of that case file against them that that's going to cause problems for them to be able to rent in the future. Then a lot of times, they're not going to go to court. They're not going to defend the case, even if they have good defenses.

And so when that information is redacted, when it's made unavailable to background check companies by courts, I mean, that's done on purpose to protect people's privacy and protect people's rights and protect the functioning of the courts. And the courts, I think, it's appropriate for them to do what's right to make sure they're adjudicating cases properly and able to protect people's rights and not preparing records for background check companies.

AMANDA KOULOUSIAS: Terry, do you want to respond to any of that in terms of how tenant screeners handle some of these unique issues with housing records?

TERRY CLEMANS: Sure. Well, yes, you're absolutely right, Eric. There are a lot of filings that never get followed up on. If you think about the way the settlement happens, someone's past due on their rent, the eviction process starts, they're looking at moving on, and they move out into a different unit. And that doesn't always get completed with a full final disposition.

There is a variety of different perspectives amongst the housing community about the value of that. Some landlords and property managers believe that is valuable information, that is predictive, and it is useful information. Some believe that if it is not a final disposition there and you don't know if it was a conviction or not, it is not as valuable. That goes to the appetite of risk for each individual property manager and landlord.

We have to remember too that property management and the landlords in this country, 70% of

them are small landlords. So a financial problem with a tenant could turn into a financial problem for the landlord. That particular property might be lost for the family that owns it if the flat upstairs is not rented.

So it is a problem for everyone involved. And whether or not there's a full disposition there or not, if the event occurred, it is something that is reportable. Public records are part of our system, and they are protected by the First Amendment, freedom of speech. So they need to be utilized and used to the best possible ability.

TIFFANY

So when you're looking at these differing viewpoints and differing values placed on different

GEORGE:

types of records, how do CRAs measure accuracy, and how should they measure accuracy?

I'll start with Ariel.

ARIEL NELSON:

That's a big question. I mean, I just want to speak to sort of an overarching problem here, which is there hasn't been any regulation saying what reasonable procedures to assure maximum possible accuracy looks like. So the background screening companies are doing different things, and there's a pretty big variation in what they are doing, whether they're just relying on the results of an automated search, like I mentioned, or taking the steps that Matt was talking about.

And the other thing I want to mention that is different from some of the panels on credit reporting we just heard is there aren't any reporting-- there's no standardized reporting format. There's no Metro 2 in this context. There are no registration requirements for background screening companies. So we just see tremendous variation. And I think that that lack of guidance often leads to problems with accuracy.

And just to sort of underscore how big a deal this all is, about 94% of employers do some sort of criminal background check and about 90% of landlords do. So we're talking about a really-- it's really pervasive. It's basically a universal prerequisite that you have to pass a background check. So I'm not exactly speaking to what that entails, but I think that there needs to be more rules in what maximum possible accuracy looks like.

And I think it has to be more than just results of an unverified search. You need to take measures to verify the results of the search, whether it's sending a person to the court or calling the court or whatever that looks like. And also procedures to update records. Things of that nature are really, really important.

JAMIE GULLEN: If I could just build on what Ariel was saying too, I think sometimes on the consumer or client end, as we think of it, it's difficult for us to see exactly what went wrong. We just see that it did go wrong, and often we see that it went wrong over and over again even for the same person.

One example, I represented a young man who had a background check by a big CRA that misreported a bunch of information from his brother's background report, which was obviously a mismatch of identification mistake. But even after I navigated that young man through the dispute process with the CRA, got a corrected report issued to the employer, by which point it was too late and he had already lost the job opportunity, he then came back to our office just a month later with the same CRA having made the same exact mistake on a background check to a different employer.

So I see that and I say, clearly something is continuing to go wrong in terms of what procedures are in place to ensure maximum possible accuracy. And you can't say that it's reasonable for that to have happened, because there was already a dispute process that raised this mistake. But as the advocate for the individual in that space, all I know is that it's still going wrong. And even in the course of trying to have those conversations, it's often really unclear to us exactly what the internal protocols of CRAs are, because that's not information most CRAs are willing to divulge in terms of how their practices are working.

So while one might say these are just anecdotes or examples, I'm just one lawyer working in one office in Philadelphia and when I see the same CRAs making the same mistakes over and over again, even on the same individual client, it's just clear that there's a lot of work to be done in fleshing out what those standards are and holding CRAs accountable to meeting them.

ARIEL NELSON: And I just want to draw one point that Jamie made which is although the consumer dispute process is essential, it can't be the only way that accuracy happens. There has to be a front end effort by the CRAs And part of that is because sometimes it's hard for the consumer, like Jamie was saying, to figure out what the problem is in the first instance.

And one other small thing I want to mention that is a problem where a lot of inaccuracies happen is when there are consumers with common names. And in that instance, there needs to be specific procedures to deal with common name consumers. And we know this happens, and I know of a case in which an individual had a mismatched report. He had a common name, and that caused him to be denied the job, and then this consumer disputed the report,

got it corrected, and then a few months later applied for another job and was mismatched with the records from the same other person.

And so the court found that it was because in part there was a lack of common name procedures in place and/or the procedures that were in place were just completely insufficient to prevent that. And we know in the credit reporting context, there are flagging or cross blocking procedures that you could have, but this big CRA just didn't have them.

MATT VISSER: Yeah, common names is tough, because if you were to think for a second what is a common name? You'd probably percolate to Robert Smith or Mark Smith or something. But the more you think about it, it's a challenge to know what is it that's common about it. Is Mark common? Is it Smith? Is it the combination? What if there is a middle name? What if there's not?

What about the year of birth? Does that play a factor? What about the regionality? Is Mark Smith as common in San Francisco as it is here in DC? There is a lot of factors in that. And there's not an authority to draw a line in the sand and say, OK, all of these names here are common. And then as soon as it crosses this threshold with this spelling, now all of a sudden it's not common. So it's a real challenge.

There is a cool service that we started using just for information called Identity Score. And what it does is it takes Census Bureau data, it produces a score of how common a name is. And what that allows us to do as the CRA is to establish a policy for common names to say, OK, any name up to this-- if a name produces this score, then I can tell my operations team to do something different with it.

So at the end of the day, it's a tool that allows us to draw an arbitrary line in the sand to have a policy on how to treat common names differently. But those are cases that you look at them and you say, jeez, this is ridiculous. Here's the same problem again with that same name. How is this possible? But it actually is a bit more complex than it looks like on the surface.

MELISSA SORENSON: I just want to jump in there and one additional thing. So CRAs largely are aware that they have an internal requirement, statutory requirement, to prevent reoccurrence of a record with respect to a particular individual. With respect to common names, that's an additional issue on top of it. I think if you look at the statistical numbers with it, once you look at the commonality of a first name, add the commonality of a last name, put those pieces together, should you be fortunate enough to get a middle initial, middle name out of the record and add date of birth, you get to a very, very small statistical percentage of the population.

But as Matt alluded, CRAs are left with deciding, where's the line in the sand that we should draw? And I think they're hungry for and looking for guidance to help them from our regulators and help them make that determination so that it's not a trial by error with litigation.

TIFFANY
GEORGE:

So following up on all those points, we have a question from the audience about is there a minimum number of identifiers that constitute a match sufficient to attribute a record to an individual and does that differ for common names?

MATT VISSER:

I'll take that. Again, we're alone in the wilderness on that. So every CRA will have different matching policies, will have different ways of viewing that, will have different ways of handling that. And by the way, we'd be happy to share with anyone that would like. Our matching policy was actually drafted by a colleague of Jamie at Philadelphia Legal Services.

I think it's a great one. But there ought to be, and again, this is an intuitive discussion that ends up being more difficult because there's no guidance on it. The common sense is, yeah, OK, there ought to be a different standard for a common name. But again, what is common? It's a real difficult challenge.

And we think that we're good judges of that, but if you're seeing names that you're not common with or familiar with. For example, maybe it's a Hispanic name or an Asian name and you're not familiar with that culture and you don't know how common it is, how could you possibly be judge and jury on drawing the line in the sand with that? It's a real challenge. So that's my two cents on that.

ARIEL NELSON:

And I'll just add there are lots of other identifiers that could appear on records that you could use as a red flag, for example. Say you have a name that seems to match and a date of birth that seems to match but the consumer is female but the record belongs to a male. That would disqualify what appeared to be a match.

And I think a challenge here is that it might not be that easy to automate that, which is where to us the role of humans in this process is so essential, because if you compared those two records, it would be obvious that they're not the same person. So things like that are height, for example, physical characteristics, things that can either confirm a match or be a huge red flag can be used.

MATT VISSER:

Right. But my that would be that as a CRA, we're not dealing with the individual in our office

that we're performing a report on. So we wouldn't know the height. A lot of those characteristics, again, that seem like, oh man, that would be really great to use as a disqualifier, you're not necessarily matching the record, but it certainly would help in not matching the record, which is great, is information that just we wouldn't have based on where we are in that process.

MELISSA

I think it's also challenging to establish a bright line rule that you need two, three, whatever

SORENSEN:

your perfect number of identifiers is. Because most of the time, that's not consistent at the source. So where you might have a full first name, full last name, partial date of birth, potentially zip code information, that might predictably be a better match with two and a half pieces of personal information than three full pieces of information. So I think we have to contemplate that full picture there as well and including what we're able to get from the source.

TIFFANY

So Melissa and Terry, is there any guidance that you provide to your members with respect to

GEORGE:

matching of identifiers?

TERRY

We've had discussions about it, as we've had disagreements up here. There are a lot of

CLEMANS:

different perspectives on it, and it comes down to how the individual company wants to manage its own risk. Because you have to remember, when it comes to matching, it cuts both ways. So many of the things if you include it and it's a false positive, you've got that liability. And if you do not include it and you have the false negative, you also have liability. So it gets very personal to each individual company is what we have seen.

MELISSA

I agree with what Terry said.

SORENSEN:

JAMIE GULLEN:

Can I respond to that for a moment? I just want to talk for a minute about this idea of risk and liability, because we hear that come up a lot, especially in the employment law world. And I think especially the comments that we heard right before this panel were very illuminating in this regard. And I think those social science research that's been done is really instructive here to show that even after just a couple of years, somebody with a criminal record is no more likely to commit another crime than somebody without a criminal record. And you can look at varying by types of offense, but really just after a three to four years, you see across the vast majority of offenses the rate of re-offending just plummets to below somebody who doesn't have a record to begin with.

And I think when we're talking about criminal records and appetites for risk, it's really easy to

get this idea in your head of how dangerous this is for employers. And I think that leads to this desire to almost over report, because the idea is we want to get employers this information so they can manage their risk. But just from doing the work we do every day and from looking at the social science research, I really think and actually is cutting the other way, and I think more and more states and localities, and even on the national level, we're seeing a trend away from stigmatizing people because of their contact with the system, especially once they've had a couple of years free from their record.

So I just say all of that to put that into a little bit of context and to say that when we're thinking about where to draw those lines, I mean, I would advocate that the harm to attributing a record to somebody falsely and what that does to their life and their opportunities far outweighs the risk of not reporting information, especially if it's on the older or staler level and you're just missing all the information you need to feel really confident about that match.

And from the negligent hiring kind of employment lens, we just don't see that to be a real common-- it's something that gets talked about a lot, but it's not something that we're actually seeing a lot of litigation around. And so in our work, we try to kind of get that message out there. And I think a lot of the work being done around record clearing is really kind of speaking to that. That's why you're seeing so much movement towards that around the country.

ERIC DUNN:

And in the employment-- excuse me, in the tenant screening context where I've been active for the last 12 years or so, I have yet to see a housing provider who's actually researched what their look back periods for different types of criminal histories should be. When they're talking about liability, what they're usually talking about is how far back can we put the look back periods and still a court's not going to rule against us if we get challenged under the Fair Housing Act?

But I've never seen a housing provider that's actually engaged any kind of scientist or looked at any sort of statistics or meaningful study to figure out, well, how long does it take before someone's risk level goes down to that of someone with no criminal history?

MATT VISSER:

Sorry, were you done, Eric? I didn't mean to.

ERIC DUNN:

Go ahead.

MATT VISSER:

I think those are great points. And I think we could talk about justice reform and prison reform, which are things that we need to address in our country for sure. And I think largely that's a

factor of educating employers about the rate of recidivism and what you're looking at when you're looking at an individual who may have a past criminal record. Because I agree, oftentimes they're the very best employees. And I think a lot of employers generally agree with that.

I think the one note I'd like to make here is that as a CRA, we don't have an agenda. We don't have a quota to meet. We're not hoping for any type of outcome when we're performing a consumer report or an investigative consumer report. We're not hoping for a record or no record, and neither are our customers.

In fact, if you think about it, an employer spends a ton of time and money recruiting great staff, human capital. It's a process, and it's expensive. Oftentimes, the very worst thing is to get to the point of when they're finally ordering a background check and then to see in it something that they weren't expecting. It's not good for business. It's not good for the consumer. It's not the desired outcome.

And so my point in saying that is we're not hoping for any certain set of outcome. We're not hoping to pass along a certain percentage of our records with hits, or something like that. Our objective simply is to get it right as best we possibly can. And I think then a lot of that is educating the employers or the users of that information or the multifamily housing industry on what to do with it.

**MELISSA
SORENSEN:**

I want to just add one kind of overarching statement to that. The premise of doing a background check is to protect people, all people. So I can speak to this from my position having worked in a background screening company, having had to make tough decisions on how you draw that line of whether to report or not to report. But also as an end user, when I've had to order a background check because I know somebody is going to be caring for my child or my grandma, it's incredibly important to me to know what that history is when I put the safety of my loved ones in their care.

**TERRY
CLEMANS:**

That is truly the issue. I mean, our agenda, from a screening industry, is getting it right and providing factual information so you can balance that fair access to housing and fair housing. There unfortunately are individuals in our society that commit crimes and repeat committing crimes. And for the anecdotal stories about somebody not getting a job because of a mistake, there is very unfortunate tragic stories about people who were not properly screened out, whether it was due to overzealous expungements or overzealous policies about not screening

at all. And this is the big question right now.

You have such a variance out there with Seattle, who's currently fighting a lawsuit where they're trying to block the use of criminal records in private housing, to what Cook County just recently passed that'll go into effect next year that sets the bar at three years, to a different standard that Minneapolis just passed in the last couple months that sets the bar between three, seven, and 10 years depending on the type of the offenses. So that is the big question as to how to use this data. And our goal is just to make sure we provide factual information so that the right decision can be made.

ERIC DUNN: Well, first of all, I have yet to hear an actual accurate, true story of someone not being screened out and then some dire consequences happen. I think that's a myth that's been going around for some time.

TERRY I can give you three.

CLEMANS:

ERIC DUNN: OK, you can give me three when it's your turn. I waited for you.

TERRY In the last two years, I can give you three.

CLEMANS:

ERIC DUNN: OK, he can give me three.

TERRY That are actual murders.

CLEMANS:

ERIC DUNN: Great. Second, background check companies may not have an agenda to screen out individual people or find a criminal record or something belonging to a particular applicant, but they do maintain the idea that all these different data sources and databases are things that are useful and that housing providers or others should be looking at and deciding who to rent to.

If it's the OFAC list of suspected money launderers and traffickers or it's some new database of driving records or whatever, that's a new profit center. That's a new source of information that they can market to landlords and say, hey, don't you want to check and see if the person's are listed suspected terrorist?

And they can get landlords to pay for that. So the idea that this information somehow has value, somehow is predictive, is something that the background check industry has been pushing for a long time, even when it comes down to doing an actual background check they don't care what happens on one particular applicant.

And then finally, it's one thing to say, well, I don't want the person taking care of my kids or the person in my home to be someone with some kind of problematic criminal record, and I think we can all understand that and identify with that. The problem is what happens when you do this on a societal level in a country that has mass incarceration and over 100 million people with criminal records. It's between one and three, one in four of US adults have some kind of criminal record. And if you're telling all these people, well, you can't live in the best neighborhoods, you can't live in the most desirable housing, well, where are they going to go? It's not good public policy.

And what it winds up doing is it sort of steers those people into areas of concentrated poverty. They have less opportunities for education, they have less opportunities for employment to break cycles of poverty that they may be in. So it's sort of one thing on an emotional level to say, well, yeah, someone who has a criminal record could be dangerous. I'd rather find someone who doesn't. But that's not a way to approach that on a collective scale.

MATT VISSER: Yeah. Let me just add, and Eric makes some great points, and I think a lot of them are, again, social, economical issues that ought to be addressed. There are things that we ought to talk about. And I think our country needs to make a lot of changes for the better. I will take exception with one comment and that is that we don't care about the applicant. And I care. We care about every single applicant that comes through our system. We feel like there's a responsibility that we have under the FCRA, but not only that, a moral responsibility for what we're doing to get it right. And so that's how we operate.

And one other point I'll say is specifically with OFAC as an example, there are many employers in the United States that are absolutely required to run that search. They come to us and say, hey, we operate in the health care space. We have to order this search. And so it's a service that we provide. Very rarely are we out trying to add different things to their packages to pad profits. Oftentimes what is dictating what is requested from us are statutory requirements that they have based on the space that they operate in.

ARIEL NELSON: I just want to make two points. One is that I do think there is a tension between employers and

landlords having this sense that they want as much information as possible and the fact that they're not allowed to have certain information. So I worry a little bit about incentives for reporting more information, even when that's not permitted. And I'm not saying everyone does it, but I think there is a serious tension there.

And the second point I want to make is that state localities have decided that clean slate laws and record clearing laws are a public policy solution. And so when a background screener does then report expunged or sealed records, it is completely undermining those policy objectives. So that is just a challenge to underscore. Whether or not you know someone agrees with the expungement rules is completely different from the fact that reporting them undermines the public policy goals that that state or locality has set about to achieve.

MELISSA And I think that's where we all have room to work within the states and the state court system.

SORENSEN: So not every state has the availability of a Pennsylvania to put together the lifecycle file and the technology behind that. But there are very easy solutions that courts can put into place very low tech to say, here's the list of expunged records listing not personal information, just the court, the case record number, sharing that information.

Get that information out there. Because I can guarantee you nobody is reporting that information because they want to if they have access to that information. And we can work collectively to help courts facilitate how they get that information to the background screening companies, I think that would serve everyone well.

ARIEL NELSON: And information sharing. I was just on a webinar with Matt. I was listening to the webinar. Matt was on it. And someone from the Pennsylvania court system who said, I'll share with anyone who asks how we do this. So that kind of information sharing is available and should be used.

AMANDA
KOULOUSIAS: I'd like to follow up on something that's come up a few times, and I think actually kind of incorporates an audience question that we've gotten, which is something that's mentioned a few times is kind of the desire is always, obviously, to kind of get this right when you're issuing a background screening report. So the question is, how are background screeners measuring accuracy? Are you relying kind of solely on looking at the dispute information that you get, or is there another method that background screeners can use or should be using to kind of assess the accuracy overall of what they're issuing?

MELISSA
SORENSEN: Yeah, in my experience, it's a couple of different methods. Yes, they certainly look at dispute information that comes in from consumers are from their clients, but they're also

independently measuring their own data. So they've got quality checks in place to go after and look at a certain percentage of their work product to measure the accuracy.

MATT VISSER: Yeah, and actually the PBSA has an accreditation program which is pretty cool. It is very thorough, and it outlines some really cool practices that a CRA can do and must do if you're an accredited member of PBSA. And one of those things is in addition to reviewing dispute information on a regular basis, you ought to also be running random audits on a quarterly basis on a number of different things.

And I think that's a critical component, because we're dealing with, as Terry said, thousands of different data sources all across the country, some of them commercial sources, but many of them public sources. It's really important to be able to have a way to go through it and see after the fact what that research looked like. Was it accurate? Was it not accurate? And then have the outcome of it and then be able to understand what the outcomes of that were. So it's critical.

But to your point, it's one of those things that you just would be oblivious to unless-- I mean, nobody has a crystal ball. So nobody knows if this was a perfect outcome or not. And so a random audit's a great way to be able to do that.

ARIEL NELSON: I completely agree with Matt that more than just-- and Melissa-- that more than just raw dispute data is necessary to assess accuracy and weather background screeners are getting it right, because there are consumers who will not dispute their reports for whatever reason. It takes the ability to navigate the dispute process. And even sometimes the consumer will get the job or the housing even if there is a bad error on the report. So they won't dispute it in that case either. So it takes more than just raw dispute data to understand what's really going on.

JAMIE GULLEN: If I could just add on to that for a moment, especially in the employment context, I feel like there's this kind of overarching narrative that, well, if a CRA makes a mistake, then the consumer gets the report. They'll see the mistake. They'll file a dispute. It'll get corrected. The employer will see the corrected report and make the correct decision based on that. And in my experience, that chain of events never happens that way. Employers are operating on tight timelines. So even in an ideal scenario where the consumer got the report and did initiate the dispute process, the employer's already given that job to somebody else.

But moreover, what we see even more frequently, which is not a problem with the CRA, but employers often don't even give people the copies of their background reports to begin with.

And so they're never even at that starting line to notice that there's incorrect information being used against them to be able to initiate the dispute process. So just given all of the kind of links in that chain to make the dispute.

And I know we have a whole panel on the dispute process later, so I won't say too much about it. But just to make all of that work the way it should really does not play out in reality. And a lot of employers are not doing their part to make sure that consumers are actually given the information they need to make those disputes. So that's just to echo that relying just on dispute data alone is really not going to capture the universe of errors that may be being made.

ERIC DUNN:

And in the rental screening context, I think one of the real limitations on disputes is that when consumers request their reports, I mean, a lot of times they're sort of steered toward calling on the phone and receiving disclosures of information orally rather than even getting an actual copy of their report. But even if you get the physical copy of the report, with the automation of not only the retrieval and the sorting of the information, but even the actual decision.

And I realize the background check companies will call it a recommendation. But landlords will almost always just use the recommendation as a decision. So it effectively amounts to the same thing. Landlords will be given some kind of screen or grid or something to program in their rental criteria.

So let's take criminal history. They might be given several different categories of crimes. Crimes against people, crimes against property, crimes against society. Maybe broken down into felonies and misdemeanors, that sort of thing. And then they'll be told to put in a number of years to look back. So OK, we're going to deny people for felonies against people for 10 years and property misdemeanors for three. And then they fill out this whole grid.

And then you have an automated system that what it's supposed to do is match the applicant to the criminal records that belong to that person, bring them back, classify each criminal record into a different type of crime, assign a date to the record, and then figure out whether that criminal record falls within the landlord's look back period. And if it does then they'll report back to the landlord to deny the person. And if it doesn't, then the person will pass the background check.

So when you call and get a copy of your criminal history and it says you've got a record for

purse snatching, well, do we know which category? Does that belong in crimes against people, crimes against property, crimes against society? And then maybe that was classified as a felony. Maybe it should have been a misdemeanor. Do we know what age it was put on the record? Let's say that the crime occurred in 2013, but you were arrested in 2014, and you pleaded guilty in 2015, and you are released in 2016. Which date did they use? How did they measure the look back period?

The consumer isn't told any of this sorting information. They're not told which category it was put in. They're not told which a date was used to age the record. They're not even shown what the landlord's admission policy was that it was compared against. So the consumer has no way of knowing, well, gee, you put my crime in the wrong category. If you put it in the correct one and applied the correct data, I would've gotten in. So there's a lot of limitations, even when the consumer does go through the steps of getting their record, in what these disputes can really accomplish.

TERRY

CLEMANS:

I think that while there are some companies that have done exactly what you've outlined, there are some companies that don't offer any type of decisioning tools like that. They just provide the records. And that is totally up to the landlord or property manager to interpret it. So I think it's very difficult to sum up the entire industry as acting in one way.

Because even when you have decisioning tools like that, the industry is divided as to whether you use an algorithm that looks at all these things in whatever fashion or you use a set of matrices to go through and look at the rules and decide what the recommendation would be and whether it's a yes, some type of a conditional offer or caution, or if it has one of the hits on the HUD's knockouts a denial based off of the key items from HUD that is the bright line.

But I think it's very difficult to lump the whole industry and say that all consumers don't get to see a copy, because the FCRA is pretty clear about how adverse actions need to be handled. And if the entire industry acted that way, I think we'd have a lot more litigation and the FTC and the CFPB would be very busy. Because they do a very good job at oversight for industry. We are heavily regulated.

The FTC, the CFPB, as you guys have heard about, with the uncapped, the 31 attorney generals went together and brought forth an action, and then there is a variety of private action. And that private action, again, our goal is to make sure we get it right. Because the private action cuts both ways as well for us as providers of the information.

If we get it wrong on the consumer, they have a cause of action. And if the property manager or employer makes a mistake and there is some kind of an event at their employment or there's something in the rental housing that goes wrong, there's liability there if there was something missed. So our goal is to get it right.

And these tools, these decisioning tools, have been brought about from requests years ago from the fair housing community to go to a rules based system and to put into play mechanisms to take subjectivity out of it, to make the decision based off of data. So that you create this matrices and it is colorblind. The data states what it states.

And that is the thing that was talked about in an earlier session too about lending. Fair housing, fair lending, fair employment, we are all trying to provide the information to get to the right decision. And we get to that data correctly and accurately much more often than not.

And we talk about and focus on when we don't get to it, and I think we should, because we're always trying to evolve and get better as an industry, and by focusing on the mistakes is how we'll do it. But most of the time it is accurate. And again, these tools that have been created to make these decisions were created because of the housing advocates coming to us and telling us we need tools to take subjectivity out of it.

MELISSA

SORENSEN:

I'm just going to add one more thing onto what Terry said in particular in the employment context. In my experience, those decisional matrices, a CRA may apply flags based on what their clients have provided them in a decisional matrix, but the CRA is not making the decision. They are applying flags like review the information and that type of a thing based on what their clients have said. And that's only if they've got the capability to apply those flags.

MATT VISSER:

Yeah, absolutely. But Eric, you make a great point that, I guess, I've been thinking about here with the scoring models, particularly with adverse action. And I'm not aware of the process that you described with categorizing criminal records, because that's something I wouldn't dare even try and attempt. But I'm sure somebody is doing it, because you're talking about it.

But it is an interesting point, though, that if that matrix is affecting that decision, that the categorization of those things ought to be something that the individual should know about. And so that if a company is employing those, then that's something to consider. But I think that's a good point.

JAMIE GULLEN:

I'd like to just respond, and if Eric wants to jump in on the housing advocacy point, I would

defer to him on that. But I want to respond to this idea that a matrix based on strict criteria or rules is in some way colorblind. I think what we know about mass incarceration in this country ensures that any way in which you're using blanket rules to disqualify people based on their criminal records is anything but colorblind and will have a huge disproportionate impact on people of color in this country.

So I think that in the employment space, I'll speak to that. We've moved very far away from any kind of blanket line drawing, anybody with a felony you're out, because we know what the impact of that is and pushing people deeper into poverty and over and disproportionately punishing communities of color.

And the EOC's as guidance is very clear that people are supposed to be considered on an individualized basis with consideration given to who they are as a person, to their rehabilitation, to their job history in addition to the record itself. So at least in the employment context, and I'll let Eric speak to the housing context, all of the trends in state, local, and federal law have been away from these sort of blanket rules that disqualify people because of the very harm that they do.

ERIC DUNN:

Absolutely. I mean, the HUD guidance that came out in 2016, one of the things it basically requires or what I think it said is that a less discriminatory alternative for doing criminal background screening will always be doing an individualized review of someone's background, including factors other than their criminal record before you make a decision. So anytime that you fully automate a decision and just the computer says no, you're denied, you can't comply with that.

And the fair housing community wants this argument is one that's been kind of an annoyance for some period of time, because what a lot of the criminal screening companies will tell housing providers is, hey, you need to treat everybody exactly the same. And if you don't do that, you're going to get sued for discrimination. So just if you use our computer screening product and you just follow the decisions that the computer provides, then nobody can ever accuse you of discriminating, because you don't even know why you turn them down. The computer said no, so you don't get in, and we do that for everybody.

I've had housing providers deny reasonable accommodation requests, which by definition you're treating somebody differently because of this mantra that they hear from background check companies that you need to treat everyone exactly the same. You can't consider any

individual circumstances. Well, HUD rejected that a few years ago, and I'm glad to see some of the courts doing that recently as well.

TIFFANY

So we are out of time. I know we've just begun to peel the many layered onion of accuracy in terms of the different components of accuracy, accuracy in interplay with predictiveness and accuracy and interplay with fair housing and fair lending and other various considerations. So I want to thank our esteemed panelists for sharing their time with us today and thank you as well. Please stick around for the next panel.

GEORGE:

[APPLAUSE]

We're going to take a quick break.

AMANDA

Yeah, we're going to take a 15 minute break.

KOULOUSIAS:

[MUSIC PLAYING]

If everybody could go ahead and take their seats, we're going to get started with our final panel in just a second.

SPEAKER 1:

And we haven't had our panel yet. Seriously.

SPEAKER 2:

Should we do some jumping jacks before we get started?

AMANDA

Thank you to everybody for coming back for our final panel of the day, which is on navigating the dispute process. My name is Amanda Koulousias, and I'm an attorney in the FTC's Division of Privacy and Identity Protection. And my colleague Beth Freeborn and I are going to be moderating this panel. Beth is from the FTC's Bureau of Economics.

KOULOUSIAS:

Following up on our earlier discussions today about how furnishers, credit reporting agencies, and background screening companies handle accuracy, the plan for this panel is to turn to kind of a discussion of what happens once a consumer identifies a potential inaccuracy and initiates a dispute. We'll be covering consumer disputes in both the credit reporting and background screening context. And before we kind of start diving into some of the issues, I'd like to just give each panelist a minute or so to introduce themselves and their organization's work in this area. We'll start with LaDonna.

- LADONNA BOHLING:** Good afternoon. Thank you for hanging with us. My name is LaDonna Bohling and I'm from Receivable Solutions. We are a third party collection agency. I am their Chief Compliance Officer. But I'm also unique to this panel, because I'm also the Chair of the Education Committee for one of our member support groups, ACA International, and we're the folks who put out training content for all of our industry.
- ERIC ELLMAN:** Good afternoon. Eric Ellman with the Consumer Data Industry Association, CDIA. We are a trade association representing the consumer reporting industry, which includes not just the nationwide consumer reporting agencies that were here earlier but also a number of background check companies, employment screening, residential screening companies. We're really happy to be here. Accuracy is our north star, and we're happy to talk about it.
- STEPHANIE FROELICH:** Good afternoon. My name is Stephanie Froelich. I am CEO of True Hire. True Hire is a background check company. We do background checks across the entire United States. I have been in the background check industry for over 20 years now.
- KRISTI KELLY:** Good afternoon. I'm Kristi Kelly. I'm a consumer protection lawyer with Kelly Gonzo based in northern Virginia. One of our main practice area is representing consumers in the Fair Credit Reporting Act on individual and class basis. And so I'm very pleased to be here. Thank you.
- REBECCA KUEHN:** Hi, good afternoon. My name is Becky Kuehn. I'm with the law firm Hudson Cook. I work with furnishers and consumer reporting agencies on accuracy and dispute issues. And prior to joining Hudson Cook, I was here at the FTC for a bit and worked on the furnisher rule and the direct dispute rule.
- CHI CHI WU:** Hi, my name's Chi Chi Wu. I work for the National Consumer Law Center, and I have been working on credit reporting issues since 2006. One of the first things I did at NCLC is I put out a report in 2009 called Automated Injustice describing all the problems that we saw with the credit reporting dispute process and the fact that it was highly automated and consumers had trouble fixing their errors.
- We've released a update to that in 2019 called Automated Injustice Redux, and it goes through some of the changes that were discussed earlier today by the CFPB but also finds that there's still a lot of problems with the credit reporting dispute process. And my colleague Ariel Nelson, who you heard from earlier, has copies of that report, if you would like it. She didn't mention she has her own report that she just released yesterday on the topic that she was talking about. Broken Records Redux on background screening issues.

AMANDA

Thank you. As you can see, we've got a variety of perspectives here, and so we hope that will lead to a constructive dialogue about how consumers, furnishers, and CRAs navigate the dispute process. Just to help kind of ground our discussion, we do have a background slide up that just tries to give a kind of simplified look at the process when a consumer disputes something with a CRA. Of course, consumers can also dispute things directly with the furnisher. So the fact that this is focused on CRA is just for simplicity's sake that we have one slide. And with that, I think we'll start to jump into the discussion.

BETH FREEBORN:Great. So as you can see, the first step in the dispute process begins with the consumer. So the consumer has to identify a potential inaccuracy on their report. So first we'd like to talk about whether or not there might be potential barriers or challenges to consumers in identifying a potential inaccuracy. So we thought Chi Chi, maybe you could start with that.

CHI CHI WU:

OK, great, thank you. Well, obviously to identify an inaccuracy, the consumer has to be able to get a copy of the consumer report. As we all know, you can get one free copy per year. But one of the things that we found is consumers even have sometimes trouble with that because they'll go to get their free report and they'll somehow end up signed up for a \$20 a month credit monitoring product, which is a whole other panel and discussion.

But once they've used up the free report, either they have to pay for it or they have to have some sort of second right. And so in the first panel, Syed Ejaz talked about wanting a-- that we should have free online access to our credit reports at all times for free. I mean, after all, it's our information, right?

The reality also is that in terms of accessing consumer reports and spotting errors that a lot of it happens when consumers get an adverse action notice. They're going to notice that information in a consumer report has been used to turn them down for something or they have to pay more for it. And that notice is important. Unfortunately, sometimes it is not complied with, especially in some of the fields that we talked about in the previous panel. And

I just want to say at this point there was some discussion earlier of how, oh, some of these noticed requirements, the violation, they're just foot faults. No, they're not foot faults. These notices are important to consumers, because it gives them important information about their rights, about what's going on in their credit report. And so it's vital that they're actually provided.

ERIC ELLMAN: Can I jump in for a moment? I'm glad that Chi Chi started with maybe one step before identifying alleged or possible errors on credit reports, because really, the first step is getting copies of credit reports. And the good news for all of us, the good news for consumers, is that consumers have never been more empowered before ever to obtain copies of credit reports. And the places that consumers can go to get copies of credit reports and credit scores has never been more widely available.

In fact, last year, 23 million free reports were given out through annualcreditreport.com, and that's just through annualcreditreport.com. That doesn't include the myriad of other ways that consumers can get copies of credit reports and scores from lenders and users and furnishers and from other websites and from adverse action notices, which of course, are free for if you're on public assistance, free if you are denied employment or other adverse actions and things like that. So the good news is that consumers have never had more chances to get more stuff for free than at any point before in history.

**AMANDA
KOULOUSIAS:** I'd like to just follow up on that really quickly, because for credit reports, obviously, there's annualcreditreport.com. But Chi Chi, one of the things you mentioned is kind of specifically with background screening reports. I'm wondering if somebody could address whether there are issues in particular in terms of background screening reports for consumers to be able to identify potential inaccuracies or get a copy of that report.

**REBECCA
KUEHN:** Well, obviously in the employment context, we have the pre-adverse action process, which is unique to employment. Congress recognized that employment was important, wanted to make sure consumers had access to information that could affect their ability to get a job. And so if an employer gets a report that has potentially disqualifying information in it, they're required to provide a copy to the consumers.

That's a very affirmative act of getting it to them. So that pre-adverse action process I think gives, at least in the employment background screening area, a unique access to consumer reports, perhaps even earlier than waiting for following up after an adverse action and requesting a report after an adverse action notice.

**AMANDA
KOULOUSIAS:** And would somebody mind addressing that in the tenant space, the tenant screening space?

CHI CHI WU: So Eric Dunn has left the building, unfortunately, and I might be able to address that. So I think I'm going to try to channel Eric.

ERIC ELLMAN: I'm right here.

[LAUGHTER]

CHI CHI WU: Eric Dunn, not Eric Ellman.

ERIC ELLMAN: I'll go next.

CHI CHI WU: And so there are barriers to consumers accessing their tenant screening reports. Some of the automation that was talked about in the earlier panel that makes it difficult to actually get a copy of the underlying information that led to the matrix or led to the recommendation slash decision. And Eric's actually litigated cases where tenant screeners were like, oh, well, we pull the records at the time we assemble something. So we have no file to give you, which is a problem.

Also, those scores, the tenant screening scores, and background check scores, to the extent there's automation and a score is produced, there's no right under the Fair Credit Reporting Act, either free or paid, to access those scores, which is a significant deficit in the statute. And I think basically, I've been saying this over and over again. If there's a piece of information about a consumer, we should be entitled to it. We should be able to get it and access it for free.

REBECCA KUEHN: I just want to jump in a little bit on tenant screening, because I think this is an area where I think the industry has made some strides in the absence of any sort of regulatory or legislative import. There are a number of tenant screening companies that work with their clients to provide earlier access to potentially disqualifying reports, recognizing the challenges, which we heard throughout the day, with public records and matching and that being such a difficult thing even doing the very best job you can. Because of the absence of identifiers, you may get it wrong.

So tenant screeners have really been incentivized by their user community, the landlords, who want to be able to get these people approved and get them into apartments to provide earlier access to reports. So it's not anything that's required by law, but it is, I think, a development I'm seeing among the tenant screening community to provide earlier access to consumers.

KRISTI KELLY: One issue I would like to raise on behalf of consumers is kind of a counterpoint to what Eric

said is with the proliferation of access to consumer reports, there's also a proliferation of different types of consumer reporting entities or agencies that don't consider themselves consumer reporting entities that have information on consumers. And so it's not uncommon a consumer will come in with a tenant screening or background check report or even a tri-merge report when they've applied for a mortgage that has taken data from so many different sources.

And so it can be difficult for the consumer to correct that information to identify what source that data came from and how to prevent that happening in the future. Because when people come to a consumer lawyer like myself, they want to solve the problem. They don't want the inaccuracy to continue. And so sometimes if you correct it with True Hire, certainly True Hire will correct it right away, I'm sure.

But that doesn't mean that if they go to another background screening company that they may get their information from the same place, and that problem persists, and that consumer's plagued by that issue. And so for me one of the big issues that I see is there are so many other entities that gather information and sell information to consumers. And having a consumer have access to all of that information and being able to correct that can be very problematic.

ERIC ELLMAN: Can I follow up with that? This is one of the challenges of why it's hard being a consumer reporting agency, because we are being criticized when consumers get too much information and we are criticized when consumers don't get enough information. We are criticized when the process is too automated. We are criticized when the process is not automated enough.

And the fact that the FCRA is a fee shifting statute that incentivizes private enforcement I think puts consumer reporting agencies in a very difficult position. We do a very difficult job very, very well. But you can see from this panel just now, just a few minutes into it, as we've seen from some of the prior panels, some of the challenges that we have to work with to make a fair and reliable system even more fair and even more reliable.

STEPHANIE FROELICH: And if I could make just one comment. What Kristi was saying, we do try, when we do have a dispute and there is an actual correction that needs to be taken, say, at a courthouse or something of that nature, we do make sure to follow through with that court and make sure that that information is corrected on their side as well so that that will lessen the possibility of that coming up in the future on that particular consumer's report in the future.

LADONNA

And allow me to comment. Not only do the CRAs get a bad rep, but the data furnishers

BOHLING:

themselves, because there are so many working pieces to this process goes to the creditor the person gathering the information that goes perhaps to the collection agency or to their internal department trying to collect. Then it goes to the data furnisher to the CRAs, and is that information correct?

And e-OSCAR's involved, and there's so many working parts to where you have to stay on top of everything. The regulatory environment, the technology environment. And since Chi Chi's original report came out in 2001, there's been leaps and bounds. Great things have happened. But then she's got a 2019 report saying that some of these issues are still there. But I tend to be a very positive person, and I think as an industry, we're all working on getting these things corrected.

BETH FREEBORN: So I think I want to bring it back to, well, providing a little bit more clarity about what the steps the CRAs do take when a dispute comes in, how that investigation process works, specifically how it might be different for credit reporting agencies versus background screeners. And how long does this process take for the consumers?

ERIC ELLMAN:

Was that for me? Well, first of all, as I mentioned before, not only is accuracy our north star, but the touchstone for the dispute resolution process is the FCRA, of course. And everything flows-- everything that's done by consumer reporting agencies flows out of that act.

So a dispute comes in. If it comes to a consumer reporting agency, it's processed. It is sent to the data furnisher for review. The data furnisher is in charge of re-investigating, reporting their results back to the consumer reporting agency who turns around and reports the results back to the consumer.

One of the things that we've seen, and I'm sure we'll get into this soon, it's already been touched on, is the significant problem that credit repair has in gunking up, that's an official technical term, the dispute resolution process. And about a half, approximately, of all disputes are the result of credit repair.

And it really drains the resources of the consumer reporting agencies to have to deal with the real from the imagined. And it makes it difficult for consumer reporting and for data furnishers and data users to resolve the process when, in fact, credit repair clinics are trying to pound consumer reporting agencies into submission.

AMANDA So I actually have a kind of a follow up to that. So as you were kind of walking through the
KOULOUSIAS: steps you talked about, the CRA gets the consumer's dispute, they process that, they send the information along to the furnisher.

So I'd like to understand a little bit more about what steps the CRA is taking in terms of processing the dispute, whether it's reviewing the information the consumer has provided, and I think kind of flowing from that, one of the things you raise is you suggested that half of the disputes are kind of from credit repair. What is the CRA-- how is the CIA identifying those? What kind of evaluation is going into that?

ERIC ELLMAN: Let me try. There's, I think, a couple of questions in there. Let me try to respond to them. And if I forget, I'm sure you'll remind me.

AMANDA I will.

KOULOUSIAS:

ERIC ELLMAN: So one of the things that consumer reporting agencies do, credit bureaus do is, of course, if there are internal reviews that they need to undertake, then obviously they do that. One of the things I didn't mention is that when a consumer sends backup information, like letters or receipts or bills or something, all of that is imaged and turned around and sent to the data furnisher. And going back a couple of panels ago, if I recall correctly, furnishers must and are required to open those attachments before proceeding down the line. I think there was a previous panel that said that that did not happen. But as I understand it, it does.

LADONNA It does.

BOHLING:

ERIC ELLMAN: Right. There you go. And in terms of how do we identify credit repair, well, it's a challenge. Certainly form letters that maybe all come from the same zip code, that maybe have the same misspellings in them. Or now we've seen that recent changes in the identity theft report from the Federal Trade Commission, I think, incentivize and enhance the ability of consumers to essentially make false claims and try to have accurate but adverse information removed. So I think those are, perhaps, get to some of the questions that you asked.

REBECCA And I just want to chime in. You identified sort of two rounds of disputes, talking about
KUEHN: background screening and credit repair, credit reporting agencies. But there also are direct disputes to furnishers that came out as an advent of the direct dispute rule. And I think that

that's important, because one of the things I hear are concerns about the automated system and the about the ability of consumers' information to be accurately transmitted through the system. Now, there have been a lot of changes and modifications, as Eric as mentioned, to try to improve that, to include copies of documents.

But there also has been this right of a direct dispute, which allows consumers to go right to the source, to the furnisher who provided the information, the creditor with whom they have the relationship. And I think that has made, at least in my experience in working with different companies, a big change.

Number one, they've all had to adopt policies and procedures to be able to handle these disputes in addition to their accuracy responsibilities, but also they have a much faster immediate insight into what the issue is and their ability to correct it. And so you don't have the delays of things coming into the system and even though they get it done within those 30 days, there's still some consumers who are looking to get things done more quickly, and the direct dispute process allows for that to happen.

LADONNA

And let me add to that as a data furnisher, our industry has opened up so many multi-channels for consumers to communicate with us. If they see their credit report, our name is there. Our toll free number is there. They can reach out to us via phone. They can send us something in the mail.

BOHLING:

Our industry has spent significant time and effort in updating our website. So a consumer can go to a website rather than talk to a person and initiate a dispute, get a dispute started. Or they can call and ask to speak to someone about the dispute.

ACA International and RMA International, those are both support groups for our industry. They have reference pages on their websites for consumers to educate consumers on what do you do if you dispute something. How do I get a dispute resolved? How do I get a balance checked? Those types of things. And we're all making an effort, working together, to try to get these things resolved to make it more consumer friendly for the consumers to actually get their disputes resolved.

CHI CHI WU:

So I'd like to speak, though, to some of the-- were we going to get there?

AMANDA

It's OK. Go ahead.

KOULOUSIAS:

CHI CHI WU:

OK, so I want to speak to some of the downsides of the dispute process. Certainly it's good to hear that there are more channels to get a dispute in front of a furnisher, but there's a lot of variability in terms of how furnishers handle disputes.

And I have no doubt that, LaDonna, your organization may conduct a reasonable investigation. But what we've seen from CFPB enforcement actions and private litigation, there are a lot of furnishers that don't properly process disputes. And despite the CFPB guidance to furnishers that they need to consider all the information, including opening those images through e-OSCAR, they're not doing that. There's a lot of variability.

And the check on that variability is supposed to be the consumer reporting agency, because they are supposed to have an independent obligation to review that dispute as well. And the thing that I, unfortunately, didn't hear in Eric's presentation is that the role of the CRA to be that check and to independently review the information to see if the consumer is actually the one correct because the documentation-- for example, things like a court judgment or a settlement that says the consumer doesn't owe the debt. And yet if the furnisher says, no, no, no, they owe it despite that judgment, it still stays on their report.

And so just yesterday, the CFPB released their own report. I mean, I guess it's a week of new reports coming out. And the supervisory highlight report on page 19 says that the CRAs relied on the furnisher's response invalidating information from a dispute without independently considering the relevant information or documentation provided by the consumer when that information called into question the accuracy or validity of the information provided by the furnishers.

In response to these findings, one or more CRAs updated procedures to more clearly describe that agents must review all relevant information that the consumer provided. However, in a follow up review at one or more CRAs, examiners found that these revised procedures were not fully implemented.

Also, the multi-state attorney general settlement with the 31 attorneys general clearly said in the document that there was supposed to be this independent review, and yet it's not happening. And part of what we documented in this report, Automated Injustice Redux, is the fact it's not happening. And clear, straight out errors that should be easily spotted, like in the furnisher's own record is a copy of a settlement where they said the consumer didn't owe the debt, and it's still being reported.

LADONNA Chi Chi, just may I make this point? We only get 5% of disputes that come to us have
BOHLING: supporting documentation from the consumer. So we gladly open those to help us to resolve the dispute more quickly. But we're not getting a whole lot of documents from the consumer.

REBECCA And I did one want to sort of circle back to something was said on the earlier panel with the
KUEHN: consumer reporting agencies. They've all been developing furnisher oversight procedures. And part of those furnisher oversight procedures are looking at exactly the type of things that you talk about, Chi Chi. Are they looking at the documents?

Are they just verifying everything? That's a sign they're not really doing a reasonable investigation. Are they deleting everything? That's another sign. And something else the CFPB has pointed out that that's not a reasonable investigation. If you get a dispute, I'll just delete it. I don't even have to look at it. So we all agree that that's not a reasonable investigation.

So I think there have been a number of strides coming out of NCAP and others to try to figure out better ways to help oversee exactly what's going on with furnishers and how are they treating disputes short of instituting a giant audit process. And let's be honest, consumer reporting agencies had, and I'm probably going to get the count wrong, so I will apologize, and Eric will correct me, 15,000 furnishers or some kind of giant number.

ERIC ELLMAN: About. In that 10,000 to 15,000 neighborhood.

REBECCA So there's a lot of different companies to look at. And you were right. I mean, so you've got
KUEHN: responsible companies who are definitely doing what they are. There are companies that need encouragement for their compliance, to put it nicely. And so I think we're all trying to figure out who those companies are and bring them up to speed with the rest of the industry.

KRISTI KELLY: In my experience representing consumers in deposing some of the individuals that actually investigate the disputes from consumers, I can say positively toward consumer reporting agencies that in my career, the past decade or so, direct disputes to the credit bureaus mixed file disputes are-- the process and procedure for resolving those is much better than it used to be. And so a lot of times when a consumer comes to me with a mixed file, that sometimes gets resolved in their dispute, and it's because the consumer reporting agencies actually investigate that.

And I have found in my experience as well that if it's a furnisher error, the consumer reporting agencies, as Chi Chi indicated, just kind of pass it along to the furnisher and don't really own

their obligations as needing to investigate that as well, despite the fact that there may be a lot of documentation that in and of itself would show that the consumer's position is correct.

And they just rely solely on what the furnisher states. And the larger furnishers that I've deposed, a lot of times they outsource the investigation of disputes. And when you depose them and you ask them what they actually do in their dispute, all they say is they verify the name, the address, the date of birth, the social security number. And you'll ask them, did you look at these images?

And you can show them on the ACDV where it shows like whether they viewed the images or not. And they don't say I always look at the images. They say, I might have. I don't remember this specific dispute. And so the larger furnishers, in my experience, tend to have time constraints, and they have to complete a number of dispute investigations in a certain period of time. And those ACDV operators are rated on that.

I just took depositions two weeks ago of a furnisher, and they're still timed. They are timed how long they process disputes, and they have to complete a certain amount in an hour. And if they don't, they are audited, and they have to have a certain percentage of completing that. Otherwise, there are repercussions for that.

And so in my experience, the larger companies or the companies with more volume tend to make more errors. And it is because the nature of the process and the number of disputes. And I understand credit repair is a problem, and we don't like it either. And so I just think the larger companies, there's still a lot of room for improvement.

**AMANDA
KOULOUSIAS:**

Following up on that, LaDonna, I think it might be helpful if you could walk us through some of the steps that-- I know you can't speak for all furnishers, but what your company does in investigating disputes. I think you noted that only 5% or so come in with documentation. And so how that investigation differs when you get some sort of supporting documentation versus when you just get the dispute.

**LADONNA
BOHLING:**

Yes, supporting documentation is good, because usually it's very specific to the nature of the dispute. The balance is incorrect. That's not me. This was paid through insurance or what have you. Those can help us expedite the investigation process. When there is no documentation, a lot of times we're just making a guess over what the actual dispute is, because if they're going through their credit report, if they're checking a box or filling in

something that says I don't owe this, it's not mine, well, what does it's not mine mean?

We have to get down to investigate it and a lot of times when they come in, we'll have to put the account on hold, go back to the creditor. And then sometimes we do, we look at the information that's in our files, and we look at the information that's in the dispute, and they do match, and we're like, well, according to what you're saying is wrong, we're showing that this is correct.

But we also do police ourself and look at our data analytics as well. I know you all have heard throughout the day we've talked about NCAP, NCAP, the National Consumer Assistance Plan that came out, and it was rolled out, I think, over a two year period. One of those things was you had to have PII, a social security number, and your date of birth when you're sending a file over to the CRAs or they will reject the file.

Well, through some data analytics on our side, we were looking at patterns and trends with disputes, and we realized that we were getting lots of disputes with consumers saying it wasn't them. And then sure enough, it wasn't them, and the root cause of it was we didn't have social security numbers on these accounts. Most of our clients send us social security numbers or dates of birth, and that's what we would send over.

But we didn't really have a rule that says if it's not there, don't send it. And the CRAs didn't have a rule that says if it's not there, don't take it. So we implemented a rule long before NCAP came out. But then I was looking, again, positive as an industry that since we're all reporting PII now that the information will get to the right person's file and we will see a decrease in consumers seeing identity theft or even disputes, for that matter, being on the wrong person's credit.

Because we had a lawsuit almost one time where a unisex name, it was Terry, a very common last name, big city of Atlanta, and it went on the wrong person's credit. And this person just happened to be the wife of the editor in chief of a big publication. They were very gracious, and we worked through that without. But it opened our eyes. I stand here today still in the industry.

[LAUGHTER]

**AMANDA
KOULOUSIAS:**

I wanted to follow up on that quickly. So LaDonna, obviously your company is not the original creditor for these accounts. And so Becky, I'm wondering if you can talk kind of from your

experience in representing some of the original creditors, what steps they take to investigate disputes, and how, if at all, that differs from this process.

REBECCA

KUEHN:

Sure. And I would say this. Whether the dispute comes through e-OSCAR or whether the dispute comes directly to it, they're still going to look at the same underlying system of records. And so the concept is they want to try to figure out if there is an error, and if there is an error, get it corrected.

I hear what you're saying, Kristi, about some large furnishers having incentives to complete these things on time. Hasn't been my experience, but again, obviously there are a number of folks out there. But the idea is that they could get access to the right information.

So one of the things that I've really seen furnishers spending a lot of effort and making sure is making sure that people who are handling the disputes have access to all the systems they need in order to conduct the investigation based on the nature of the investigation. So if you have a situation where a consumer's talking about a payment history, making sure that operator gets access to the information about payment history. If it's about someone who claims they're a victim of identity theft or it's a not mine dispute, getting access to the identification information that was supplied in connection with the application, taking a look at any documents that the consumer provides.

And it's my understanding that e-OSCAR system has been updated to make sure that if you are a furnisher you have to open up that attachment. So I think you have heard of nudge. This is one way that I think the consumer reporting industry is trying to nudge everyone into compliance to make sure that these documents are reviewed in accordance with the CFPB's guidance on this issue and otherwise.

BETH FREEBORN: Stephanie, could you talk about how background screeners handle disputes? We've heard about credit reporting agencies. We'd like to hear.

STEPHANIE

FROELICH:

Sure. So I can speak of how True Hire conducts disputes. We have multiple methods for the consumers. Once they receive the pre-adverse action letter from us or the employer, we have many different ways that they can contact us. We have forms they can fill out online. We have a website that's mobile friendly, because we know that most everyone is using their phones and things like that. We also have online chat. We also have 800 numbers that's accessible most all hours of the day that they can always address anything and any concern that they have.

So once we receive the dispute from the consumer, we know that it's always for a job that they're waiting for or we do minimal tenant screening as well. So we deal with all of the disputes pretty swiftly. We let the end user know, which is either a business that's waiting to hire the person or a property manager. We let them know that there's been a dispute initiated, and then we jump on all of that as soon as possible. So we are looking at the dispute, getting the information from the consumer.

We are then contacting immediately upon that information. We contact it's oftentimes a court. So we are getting with the court to make sure that we can pull the records. Sometimes we can resolve it by a phone call. We'll call the courts and resolve everything right there very quickly. Sometimes it might be an issue of perhaps identity of that person stating that that is not the consumer on that report that we provided.

A lot of times, we'll have to try and locate even more identifiers. So we'll pull the case file directly from the court. So oftentimes that might take a day or two for us to get that information. In certain jurisdictions, we operate all over the country, so some jurisdictions take longer than others. But we do encourage them to try to get the information back as quickly as possible.

And then once we have all that information verified, we either let our client know, let the consumer know that the information is verified as correct or that we are revising a report, and then we give them a new copy of that updated report. And we do that as quickly as we can, because we do not want any of the consumers to not get that particular job that they're waiting on.

**AMANDA
KOULOUSIAS:**

So I wanted to follow up kind of on points that were made by a number of people about talking about the differing documentation or differing issues that consumers are raising in terms of their disputes. And I'm wondering if there are steps that either CRAs or furnishers are taking to kind of work with consumers to resolve the dispute while it's pending, to either request additional information or to more fully understand what the consumer may actually be disputing. And LaDonna, I'm wondering if you could talk a little bit about some of the steps that your company takes.

**LADONNA
BOHLING:**

Well, we have staff that are assigned to that. And yes, they do have expectations, key performance indicators. But one of those is quality and accuracy in getting the dispute resolved. And a lot of times, we don't really have the actual contact with the consumer. It's

either through the CRA that we're notified or maybe something in the mail or a brief contact over the telephone and they're not very specific.

We'll try to follow up after we feel like we've validated it, like gone back to the client to get substantiation of the debt to show a payment history or to show where you sign the agreement or the original contract and send that back to the consumer. Then we'll try to find out with the consumer, follow up with the consumer, to see if this was resolved to their satisfaction.

And we never really get any feedback. Rarely do we get feedback. And a lot of times when we get the dispute letters in the mail and we're not sure if they're robo or they're legit or not and we'll still process them, we'll get the documentation that we sent out back because it was a bad address. So those are some of the things that we encounter daily.

CHI CHI WU:

So it strikes me, describing your process and Stephanie describing yours, and then earlier Matt Visser and his background check agency, that you guys put human resources in review into handling disputes or even preparing the background check report. And I think that's a really critical component of a good dispute process is human intervention, human contact, trained employees who can look at documents.

It also would go to the issue of credit repair or, for example, a human being who's trained and knows what they're doing, can tell the difference between a form letter and a real, legitimate dispute. Whereas if you automate the heck out of something, and unfortunately, I think the credit bureaus have done that, they don't allow for that human intervention and human review.

We've certainly seen cases where disputes that have come with a lot of documentation, written letters, even return receipt requested get kicked back as credit repair. I mean, return receipt requested gets kicked back as a credit repair. And really, you need to have the staff to be able to handle this. As Syed said, he did this as a staffer in the Senate.

You can certainly hire people to do this. You need to put the resources in. And I know, Eric, you said you guys have a tough job. But you're dealing with people's lives and financial reputations here. You're dealing with whether they can get a mortgage or a car to take them to work. And you gotta get it right. The gentleman, Matt Visser, he said he cares about each applicant. You've got to care about each consumer and getting it right.

ERIC ELLMAN:

Can I can I respond?

AMANDA Yes, absolutely.

KOULOUSIAS:

ERIC ELLMAN: A couple of points to respond to what Chi Chi just said and what some of the other panelists have said before. And that is this. That when all you do is take consumer complaints all day long, like at a plaintiff's attorney's office or in a consumer organization like the NCLC, really where you sit depends upon what you see. If I hung out all day in a cardiologist's office, I'm mostly only going to see people who come in with heart problems.

I'm not going to be able to take a holistic of a wellness care center like the consumer reporting agencies have. They have invested millions of dollars in resources, many of which were alluded to before. They are driving harder and harder to get to perfect. We may never get there. But we are trying as very hard. We are trying very hard to be as perfect as possible.

In fact, in response to some of the comments that were made here not only just on this panel but others that we don't have a focus on consumers, that it's more expensive to not deal with consumers. The FTC, who is hosting this today, said in 2004 in a report to Congress that there is a market incentive to maintain and improve the accuracy and the completeness of credit reports. And that was as true today, even more true today, than it was in 2004 with all of the resources that have been individually and collectively invested by the consumer reporting agencies.

And dispute resolution has to be right sized. Sometimes it's automated. Sometimes it's human. Sometimes it's a combination. There are remarkable advances that we've talked about before in machine learning and artificial intelligence, which has to be deployed very thoughtfully and very carefully, but can and probably will drive to even greater rates of accuracy.

In terms of the comment about human intervention in every single dispute, I have been into the mail rooms of the credit bureaus. You could not even wrap your mind around the volume of paper that comes in primarily from credit clinics who are seeking to merely get the credit bureaus to run out the clock and have the dispute removed. It's a big problem, and it's getting worse. But humans is-- a human intervention can be helpful, appropriately, but so can technology.

LADONNA BOHLING: We embrace technology, but we also train our people. Without the technology, we couldn't meet our standard operating procedures for handling the disputes within 30 days. So we have to use technology to a degree. Technology comes in, finds the accounts, segregates the

accounts.

Then a human being goes through these accounts. But in the meanwhile, they're getting coded correctly as a dispute while we start our investigation. So we have to embrace technology and can't have all manpower doing the process. Otherwise, we wouldn't meet our requirements. And automation just enhances our requirements. It doesn't relieve us of our responsibilities to investigate.

AMANDA

KOULOUSIAS:

Eric, one of the things you mentioned was that there is a role for automation and there is a role for human intervention. Can you expand a little bit upon what the appropriate circumstances, in your view, might be for each?

ERIC ELLMAN:

Yeah. I can't say specifically what situations are called for humans and what situations are called for technology, but I can also tell you that I have been through-- it's been a while, but I've been through some of the call centers at some of our credit bureaus. And there are just rows and rows of people who are glued to their headsets all day and talk to consumers. And these people have the patience of a saint, because a lot of the people on the other end of the phone, most of the people on the phone, seem to be very kind and pleasant, but there are a few others who are, naturally, very angry.

Some of the people, probably most of the people that call in, are really just asking for clarification. Like I thought I closed that credit card. Why is it still on my credit report? In fact, a lot of disputes are really not so much disputes with the accuracy of the information but come from, perhaps, a lack of consumer education. And there's a role for everybody to collectively play, including the consumer reporting agencies.

So it's great that the credit bureaus can have these conversations with people on the phone and work them through clearing up a dispute, if there is a dispute, or helping them understand that we are required by law to keep this credit card on your credit report even though you closed it, because there was a late payment some time ago, and we have to keep that on.

AMANDA

KOULOUSIAS:

So following up a little bit on some of the, I think, points there, you talk about kind of as consumers call in, sometimes there's an education angle, maybe, that some of the disputes are about things that maybe aren't inaccuracies but are a misunderstanding. Can anybody expand on kind of where they think the role for consumer education is here? Is that something that the CRAs should be doing more on? Are there others who should be doing more on the consumer education front? And how much would that help resolve some of these issues?

LADONNA

I'd like to start this one, if I may. Consumer education, financial literacy is very important. It's something that's near and dear to my heart. And it is a group effort. The CRAs, the regulators. And I think that we're all making an effort to do better at this, but we need to start earlier with consumers at the high school level to make sure they understand the importance of credit and how things work.

BOHLING:

As a data furnisher, if a consumer asks me questions about, well, if I pay this, will my credit improve? Will my score go up? Our hands are tied, because we don't know. We can only refer them to the CRA for that type of information.

And here's a true story for you. A couple of years ago, I was on an executive council for one of the big CRAs, and we were at a annual meeting. And our keynote speaker was the head of a credit counseling type organization. And so she gave her spiel and she walked us through what she does or what her organization does when consumers come in. Their credit's a wreck, and they need some help in financial matters, et cetera. And part of the dispute process, she tells them, if they can't get what they need from the data furnisher, from the collection agency, then just hang up the phone and contact the CFPB. And I'm like, OK.

And I sat there and I held my tongue, believe or not. When she opened the floor up for questions, I asked her, I said, and it was nonprofit, and I had lots of respect for them, I said, so what type of credentialing do your counselors have? And she asked me to elaborate. I said, so where do they get their education on the Fair Credit Reporting Act, the FDCPA? And she said they were all self educated, and that just kind of concerned me. So not only is education needed on the consumer side. It's needed in other avenues as well, the folks that actually communicate with consumers about credit.

REBECCA

KUEHN:

Well, I think one of the interesting things here is there is, and we talked about sort of evolution of being able to access credit information, the number of sources. [INAUDIBLE] referred to scores on statements, which has been a really big thing. A lot of creditors are providing their customers with access to credit report information and being able to get all of that great data.

And along with it comes education. At least, of all my credit card companies, every single one of them's offering me access to my credit report. Every single one of them is offering me information about how to understand what's on my consumer report, what are the factors that impact my credit score, things like that. And I think that's been very helpful.

Where I think in the dispute process, we could all give better education and I know the bureaus have made an effort and others have made an effort to kind of get this information out, is to help consumers understand exactly how the consumer reporting system works. We're in an era of instant gratification. So I pay off my loan today. I'm expecting to see my credit report updated tomorrow.

And that's not how the credit reporting system works. We heard earlier today about all the processes the furnishers undergo before they update a record and provide a new file to the credit reporting agencies. The credit reporting agencies have their own vetting processes before they load that information into the system. And so there's going to be a gap in time between when someone pays something off and when it gets updated on the report.

And the second area where I see, and it's pretty common in dispute data that I've looked at, is a consumer who has paid off a collection. And LaDonna, you've probably seen this. Where it will show up as a paid collection, but it's still going to be on the credit report. And consumers don't always understand that and don't understand sort of what the impact of reporting it.

And I think LaDonna sort of pointed out an issue, which is they have to be very careful with what they explain to consumers about the impact of what happens when they make a payment or pay off a collection. The most they can tell them is exactly how they're going to report it factually, which is this will be reported as a paid collection.

The consumer doesn't always understand what that means. And so providing resources like the CFPB has done and the FTC have done, a lot of my clients direct their consumers to those sites because it is much more of a sort of a trusted site for information and because we avoid any indication that somehow we're misleading consumers. We want to make sure they're getting the right information.

CHI CHI WU:

So I want to address, getting a little bit off topic, but on this consumer education point, the fact that consumers get confused by the 30 to 45 day lag. And this goes back to the issue of technology. Now that our account balances can be updated instantaneously and all this information can be updated, why is it that it takes 30 to 45 days for this information to be updated? I mean, isn't that a problem with some of these legacy systems that exist in consumer reporting and the need to update some of this?

So on the topic of consumer education, our mantra is always consumer education is good, but it's no substitute for substantive regulation. If the fact you're getting a lot of these inquiries

about paid collection, I mean, that's really getting into the weeds. Paid collections and that collections don't come off, they just show up as paid collections, or that it takes 30 to 45 days to update. Maybe that should give you an indication that something needs to be fixed in the system if you're getting so many inquiries about it.

KRISTI KELLY: And just to chime in, those two issues are common issues that we see consumers will come to us inquiring about. I just paid this, and it wasn't corrected. And we'll explain the process to them, and we don't take those cases, because that is the procedure and the process. And if they were to dispute, normally by the time the dispute comes back, it's corrected anyways, just given the timing.

But I do think in terms of consumer education, it is-- and sometimes I get confused. With the more information that is on each type of report, consumers-- it's more likely to have some inaccurate information or to wonder where that information came from. And with the more types of entities that collect and compile, assemble data and sell it to other people, it is confusing for a consumer. If they apply for a job and that company uses True Hire and there is some sort of information on there, like maybe it's an address and an address that was never affiliated with them, and it's a fraud flag.

And then they apply again, because they're trying to work. And then they apply with another background screening company, and that same information is on there. It can be really frustrating for someone trying to drill down, where is this information coming from that's preventing me from getting a job?

And so I think the more information is, obviously, a lot of creditors prefer more is better. It helps with our algorithms and determine if someone's credit worthy. But it also leads to more confusion, and there should be more education about where data comes from, how it is compiled, assembled, who brokers what data, because consumers want to know that.

And there are times where someone brings me a report and I'm trying to figure out myself, where did this come from? Who could be selling this information? So that I can figure out from my client how to help solve their problem. And so I just think that it needs to go beyond just what is on a traditional credit report, because there are so many other-- so much other information out there these days.

STEPHANIE If I can speak for a moment. When we get a consumer dispute just in the background

FROELICH: screening arena, we always make sure that we educate that consumer, A, on the whole entire process. So we get them usually on the phone, for the most part, because they're kind of upset that they got turned down or they had this pre-adverse letter in the mail, and they're upset.

So then we just kind of walk them through the whole process. And then we also talk to them about exactly what they're disputing so that we can get all the information. And while they're talking to us about that, we have their background check report right in front of us. So we can go down through that immediately and gauge as to where there might be the error.

And then if we do find that there is either a court error in a disposition or perhaps they thought that maybe that record should have been expunged and it wasn't, we then communicate that back to them and let them know that that court has this particular information. And we go as far as to give them like a contact name, the actual phone number that they need to dial, in order to contact that court to get their information taken care of and actually report the correct information for them.

**AMANDA
KOULOUSIAS:** Thank you. I actually think that's a nice segue into my next question, which is in the credit reporting context, once the CRA or the furnisher kind of finish their investigation and it's time to kind of report the results of that investigation to the consumer, what kind of transparency in those instances is the consumer being given into the process, into kind of what steps were taken to investigate the dispute, how it was resolved? What's actually being communicated back to the consumer in those instances? I'll open that up to anybody who wants to take that.

**LADONNA
BOHLING:** From a data furnisher perspective, typically we're responding in writing and with whatever documentation. If we're sending documentation, we have a cover letter saying this is what you said, this is where we got this information. Please review. Let us know. And then sometimes it's just a one page letter saying the balance is this or here's your payment history. So anybody else?

**STEPHANIE
FROELICH:** On the background check arena, we send usually in write-- it's always most likely in writing. Oftentimes we'll back that up with a phone call if they call in and want additional information. But we will send them a letter that states this is the information that was verified or this is the information that was re-verified or revised and taken off that report. Then we also communicate that back to our end users, which are the companies that they are applying with, and we give them the exact same information and let them know about that.

REBECCA KUEHN: And as part of the NCAP settlement, which we've heard about, there have been improvements with respect to the credit reporting companies providing more information in the dispute process and their dispute response letters about sort of the outcome of the dispute. Also providing consumers with access to another free copy of the updated report. So if a correction is made, the consumers can get another copy of their report at that time.

CHI CHI WU: So the only thing I'd like to add is that there is a requirement, obviously, as all of you know, on the FCRA to provide the consumer with the notice of the reinvestigation results. It's supposed to be in writing. We have heard complaints about one CRA requiring it to be delivered electronically. We think that the result should only be delivered electronically if the consumer has opted into electronic delivery and they've shown the capacity, as required by the Federal E-Sign Act.

LADONNA That's on you, boy.

BOHLING:

ERIC ELLMAN: Thank you.

[LAUGHTER]

REBECCA KUEHN: And just to respond to that, I looked into that after Chi Chi mentioned that, and I haven't been able to sort of chase that down. So as far as I know, the credit reporting companies, the consumer reporting agencies that I work with, a number of them do have online processes, because consumers have really demanded it. They wanted to be able to access the results of their disputes more quickly instead of waiting for a letter in the mail. But it's my understanding that for those companies, it's an option for consumers, and there still is the good old fashioned get your results in the mail response process.

ERIC ELLMAN: And from what I understand as well, and particularly in the employment background process, there's a continued drive to, particularly among new entrants into the workforce, who oftentimes live by electronic only, app based or other electronic devices, that consumers are pushing the marketplace to more online access.

And like was said before, we in the consumer reporting industry try to meet consumers where they are. That's also true with employers and with landlords and data furnishers and data users. Anything that we can do to continue to focus on consumers, the better everybody is served. That's one part of the key four part consumer reporting ecosystem of consumer

reporting agencies, users, furnishers, and consumers themselves who are really the beginning, the alpha, and the omega of the consumer reporting process.

STEPHANIE And at True Hire we do both ways. So we'll email and snail mail those as well.

FROELICH:

BETH FREEBORN: So I think this is a good time to ask how consumer reporting agencies are using dispute data to improve accuracy overall. I'd like to hear first from Eric and Stephanie and then open it up to everyone.

ERIC ELLMAN: Sure as you've heard before, still true, is that the dispute resolution process is a learning exercise. And every dispute is a learning exercise. And there was some great data-- we talked a little bit about some data from PERC and from the FTC and others, which is on the older side at this point. But given all of the advances in technology and invention and reinvention since, probably better.

But when the dispute resolution process was last tested by the CFPB and by PERC, a very high percentage, 90% to 95% of all consumers who participated in the dispute resolution process, were satisfied with the outcome of the process. Now, they may still disagree, but in the end they felt that they were treated fairly and felt that their results was ultimately objectively correct.

STEPHANIE We always leave everything open ended to the consumer. So we always are following up,
FROELICH: making sure that they're satisfied with all the results that we have provided them and making sure that there isn't any other mistake that they are still thinking that there is out there. Also with the accuracy, we do follow through and try and get the court to update their system.

Or sometimes it's even on a driving record or something like that, and then we're working with the Department of Motor Vehicles to make sure that everything is correct in the future, because we want everything to be accurate. We don't ever want to report anything that is incorrect or get anyone disqualified for a job opportunity or anything like that. So we're always trying to encourage everyone to correct the information so that it doesn't happen in the future.

REBECCA And Amanda, I work, obviously, with the consumer reporting agencies as well as furnishers.

KUEHN: And both of those groups leverage dispute data to improve their overall accuracy. I like to call it the sort of circle back feature of disputes. They track the disputes they get, they categorize the type of information that was involved, the type of error was involved, they're leveraging

information from the root cause analysis they conduct to identify and correct systemic errors.

So whether that's at the consumer reporting agency level or whether that's at the furnisher level as part of their accuracy responsibilities, disputes are a gift, to quote one of my colleagues at my office. They really are, because they identify potential issues with your system before they even get further out of hand. And so you're able to identify early issues and correct systemic issues. There was a reference to an earlier systemic issue in one of the earlier panels. And those things are usually highlighted through disputes in the first instance. And that's the quickest way you can get it fixed and get all consumers corrected once the error is identified.

CHI CHI WU:

So I just wanted to say, it is great when a furnisher is able to use disputes to conduct analysis of if they're doing something systemically wrong. Unfortunately, it's not universal among furnishers. And in fact, the CFPB supervisory highlights report released yesterday on page seven talks about the failure of certain furnishers to do that and missing the fact that coding errors cause thousands of errors. And so just emphasize all furnishers need to be doing it, because if some furnishers do and some furnishers don't, you still have a lot of inaccuracies in the system. And that's going to cause problems for consumers.

And speaking of inaccuracies, I just had to note Beth was the author of the FTC report that found that 5% of consumers had serious inaccuracies in their credit report. They did have a commentary and analysis on the PERC study and did note that there were a disproportionate number of high scores in that study.

BETH FREEBORN: Thank you. So to move along, I think it would be nice to hear from everyone if you have thoughts on how to change or improve the dispute process as we move forward in the realm of accuracy.

LADONNA

Well, I think today is a good start. Everybody's assembled. All the stakeholders in the process.

BOHLING:

And I sat in today through every panel that we had trying to hear the different perspectives and learn from each one, and I did. And I think that I can go back and take to the debt collection industry some good takeaways. Because we do offer training through ACA. I've done lots of FCRA training for folks to make sure that they're all on the same page with our requirements and obligations.

But open communication, and I think the CFPB and the FTC has been very good about giving us case summaries and letting us know what's good, what's not good. And then internally,

when I say internally, I mean the CRAs, the data furnishers, the creditors, all working together and using the data that we have to make sure that we're seeing an improvement and we're doing the right thing by consumers.

ERIC ELLMAN: I'm assuming that your question is really just a future cast a little bit about the future of dispute resolution. I've got a few thoughts. One is continued enhancements in technology, which oftentimes can mean machine learning and artificial intelligence. And there's great promise but also potential problems. The goal of all of our members is and will continue to be to minimize the problems and enhance the promise.

Also in terms of future casting, credit repair is on a never ending skyward march. At one point, credit repair was probably only about 1/3 of all disputes and now it's probably about half. And we would love to enlist the assistance of the CFPB and the FTC to help us through any means possible to try to drive down the credit repair so that we can focus on real consumers with real problems.

In terms of other places that the FTC and the CFPB can help is, and both present and future, is in public records. There's a continued drive amongst public records agencies to remove public, or I'm sorry, personal identifying information out of public records. And our members, like I said, do a very difficult job very well. But we need identifiers. They are a key ingredient, not the only ingredient, but they are a key ingredient.

And we would love to enlist the support of the CFPB and the FTC to encourage local public record agencies across the country to keep identifiers in and to the extent that they have come out bring them back. We have been part CDIA of some national projects to try to standardize, to some degree, public records and also to try to keep public records, to keep identifiers in the system.

STEPHANIE FROELICH: I agree with both LaDonna and Eric. This is a great venue right here, just putting on this workshop so that we can all understand exactly who is involved and what every different agency is doing, and what the different businesses that are affected by all of this are doing to try and minimize disputes and try and take care of the accuracies, and making sure that every consumer is getting treated with kindness when we're trying to work through their problems and help solve their problems.

Also, like what Eric was saying, on our side of things, on the background check screening side, it is oftentimes we're working with courts. We're trying to pull information that has been

redacted. We're trying to get court files to find address information or maybe driver's license numbers and things of that nature. So it gets very difficult on our side if all that information is continually being redacted. So the more that we can try and make a little more information readily available for the court systems and things like that would also help us.

KRISTI KELLY: From the consumer perspective, there are two things that I think would probably help improve the consumer dispute process. And the first would be increased transparency on what's actually in the consumer's credit report and where it comes from so that they can understand how to prevent inaccuracies in the future and go right to the source when it's appropriate. The other would be for the credit bureaus not necessarily to solely rely on the furnishers for the furnisher's dispute obligations and really to try to improve their investigation procedures when it is a furnisher related dispute.

Like I said before, the credit bureaus, in my opinion, have significantly improved their dispute response with mixed files and certain types of inaccuracies, but I think there's still a lot of room to grow. And since they do have the largest number of disputes, I'm sure, I think that would be a really positive benefit for consumers.

REBECCA KUEHN: I'm going to echo, obviously, one of the points that Eric made with respect to the impact of credit repair. It's an ongoing problem for consumers. Credit repair operators charge a lot of money. I'm often astonished at how much they make. And with a lot of promise of nothing right. So their whole spiel is we want to just beat up the-- continue to send disputes directly to furnishers, directly to the consumer reporting agencies. And I see volumes of it.

And I would say, Chi Chi, it's a little more difficult now, because they're now leveraging all that technology and machine learning and altering to identify what's a credit repair dispute from an actual consumer. But trying to make some strides into addressing the issue, being able to tackle that, so that we can continue to have the investment resources on consumers who actually have legitimate disputes and being able to focus on their issues.

CHI CHI WU: So I think Kristi's mentioned some of the things that I think would improve the dispute process. Real resources committed by the credit bureaus to dispute investigations, actually reviewing and having independent ability to make a decision on a dispute, especially if it's coming from furnishers that, I mean, LaDonna said, I think, you're interested in being able to do a good job, but we do know that 40% of disputes come from debt collectors even though they only make 13% of the trade line information. That's a CFPB statistic.

So there are problematic furnishers, and the CRAs need to be a backstop, and they need to invest the human resources and the human resources to be able to tell. Because ultimately, we're not at the stage where machines or AI are as good as a human being at being able to tell what's a form letter or what looks really suspicious versus automation.

And I think the overuse of automation and the inappropriate use of it is where you get to problems like calling a legitimate dispute that's sent certified mail as a suspicious-- as credit repair. I don't think you can blame credit repair for everything, and I don't think you can have these sort of ham-fisted procedures that end up throwing the baby with the bathwater and tossing out legitimate disputes by real consumers who are struggling.

In terms of what really might make the system better, there are some legislative proposals out there. There's a bill that passed out of House Financial Services that would give consumers a right of appeal to an independent unit within the credit bureaus if they do not get their-- if they're not able to get their error fixed.

Another proposal to have an ombudsperson as a outside neutral to deal with some of these issues. Ultimately, there's also a proposal out there by one of the presidential candidates to make this a public function. I think there is enough public unrest or unhappiness with the credit bureaus that you've got a real legitimate presidential candidate talking about making it a public function.

On the issue of identification, I think, I mean, the fundamental issue is the social security number and how it's been misused as both an identifier and a verifier. And it would be a whole other panel, but we need to deal with that in our country so that we can have an ID number that you can just freely put out there and not risk someone having identity theft committed.

AMANDA

KOULOUSIAS:

Thank you. So we've talked through, I think, on this panel so far the process for consumer-- the process for the consumer disputes and now kind of some recommendations for improving that process. I want to just take it back for a minute and talk about is the dispute process equipped to handle all different types of inaccuracies?

And even if consumers are able to get errors corrected through the dispute process, what's the impact on them? Are they still successful in obtaining benefits that they may have previously been denied? And does that differ in the kind of depending upon whether they were applying for credit or whether they were applying for housing or employment? Chi Chi, do you

want to weigh in on this first?

CHI CHI WU: Yeah, yeah. I mean, obviously, Congress recognized when they developed the pre-adverse action requirement that there's a difference between credit and employment. That a consumer, if there is an error and he or she's able to get a corrected could apply for credit again. But often the job is gone by the time you can fix the error on the credit report, and that's why you have the pre-adverse action notice.

The problem is, as the prior panel, Jamie mentioned that the way it's supposed to work is not the way it's actually working, and employers aren't holding those jobs, and the timing is just not right for the consumers to be able to fix that report. And then in the tenant screening field, I mean, you don't have the pre-adverse action requirement. And in tight housing markets, the landlord is not going to hold the apartment either. And that's a serious and significant problem. And we have a housing crisis and an eviction crisis in a lot of our cities. And tenant screening has a role in that and causing that problem.

KRISTI KELLY: Yeah, I can echo a lot of what Chi Chi said. In terms of employment background screening inaccuracies, if a consumer is getting a job offer and they're with someone else and that person has a clean background check, they're probably not going to get the job if it's going to take some time to clear up. And so it's hard to unring that bell.

It's especially difficult in tenant screening, because you don't have the opportunity to correct it and reapply. Sometimes you have to pay another application fee. Sometimes that unit's gone and you needed to move. In terms of the traditional credit bureau reports, the only time where I really see the problems are in mortgage applications where a consumer was pre-qualified and then they're going to close, and the report is run again, and the inaccuracy comes up.

Because this is-- you're about to close in a certain period of time. If you're not able to correct it in like two weeks, then you lose your earnest money deposit or you lose your dream home or whatever the case may be. And so those are the instances with the traditional credit bureaus where I see that problem.

REBECCA KUEHN: Just want to add real quick in employment while the FCRA doesn't require that an employer keep a job open after providing a pre-adverse action notice, it just requires that they give them one without any sort of statement of what they're supposed to do. It has been, I think, the experience of a lot of employers that either from ban the box with screening being moved later in the hiring process that they've invested a lot of time and effort in this candidate, and if the

candidate comes with the dispute, as Stephanie mentioned, she's going to let the employer know, hey, I got a dispute. So just letting you know. And a lot of them, at least the vast majority of the ones I'm aware of, do put that job on hold, that decision on hold until the dispute process is run.

KRISTI KELLY: Well, just one more thing I want to add. And I don't necessarily disagree when it's an inaccuracy. But with expungements, those are a little bit trickier. And I think I've never seen a consumer come in with an expungement when it was originally reporting and then they're like, no, no, it was expunged. It was really me. I really did whatever. But it shouldn't have been on there. So that's a whole different situation.

ERIC ELLMAN: And I think this is a good example of where we could enlist the help of the CFPB and the FTC in terms of getting access to expungement information. And the access to expungement information varies differently from jurisdiction to jurisdiction. We want to not report expunged records, but we can't not remove them unless we know that they've been expunged. So we need to have access to that expungement information so we know not to report that information.

**AMANDA
KOULOUSIAS:** Thank you to everybody. I see that we are actually out of time. So I want to thank all of our panelists. I'm actually going to ask you to just stay on the stage very quickly for some very brief closing remarks, if you don't mind.

[APPLAUSE]

**MANEESHA
MITHAL:** OK. Thank you to all the panelists. And thank you all the audience. This is a remarkably full room for the end of a full day conference. So thank you for sticking it out. So thank you for all the panelists, all the panelists on stage, and all the panelists in the audience. I think this has been an extremely robust discussion and a really interesting day that's given the FTC and the CFPB a lot of food for thought going forward.

So just let me just say a few things. I just thought I'd kind of mention some key takeaways that I've heard today or some themes that I think have emerged from the day. And I'll just mention three of them.

The first is that on almost every panel, we had some sort of discussion about alternative data. And there seemed to be some consensus that there may be some benefits to alternative data,

which may be positive for consumers. So we had one CRA panelist mention that they have noticed that telecom data is often positive for consumers, and there might be some areas where we need to kind of do more on alternative data. But at the same time, there were some cautionary notes expressed about alternative data.

And in particular, there seemed to be consensus that we shouldn't be using what people have called fringe data, like social media data and other forms of data that may be unreliable, notwithstanding if you've seen the *Black Mirror* episode where they use the social media information to give you housing and credit and that sort of thing. So there seemed to be some consensus that that might not be a good idea in real life.

Second theme, we heard a lot of discussion on almost all the panels about the role of technology. I think we heard some consensus that there's not a question about whether to use technology, AI, pattern recognition, machine learning, that those things are here and they're here to stay. And I think that there was some consensus, there was some discussion around use of AI and pattern recognition in terms of evaluating quality of furnishers, evaluating quality of furnisher data.

There seemed to be less consensus around the idea of using technology and AI in terms of data matching. And there seemed to be some consensus around the need for manual review to take into account certain individual characteristics. And I think there also seemed to be consensus that, in any event, given that AI and machine learning is such a black box with the CFPB having its supervision authority, that's something that they should be looking at.

And finally, this whole workshop has been about accuracy. And some people talked about the need for further guidance on accuracy, but I do think that there was some consensus today that accuracy is not just about learning from disputes and incorporating what CRAs are learning and disputes into their accuracy. It's also about looking at accuracy on the front end in terms of evaluating quality of data furnishers and the information that's being furnished, paying attention to any red flags.

We heard that the PBSA, the trade group for the background screeners, they require their memberships to have quarterly auditing and testing of accuracy. And so there definitely seemed to be a consensus that there's a lot required on accuracy. Not just disputes, but disputes is an integral part of accuracy as well.

So I'll just leave you with those three very broad, very general takeaways. Let me close by, if

you'll indulge me, thanking a few people. I'd like to thank the FTC staff that worked on this workshop, Amanda Koulousias, Beth Freeborn, Tiffany George. I'd also like to thank the CFPB staff, Kiran Gopal, Tony Rodriguez, Susan Stocks, and David wake. So if we could give all of those folks a big round of applause for putting together this day.

Again, I want to thank the audience. I want to thank the panelists. I want to thank people who sent in questions, who have asked terrific questions. I want to let people know that the comment period is open until January 10th. So if you have anything that you'd like to add to the discussion, please provide comments. The instructions are on our website. So thank you again, and thank you all.

[APPLAUSE]

[MUSIC PLAYING]