

**Written Testimony of Natasha Duarte, Senior Policy Analyst,
and Tinuola Dada, Research Assistant, Upturn**

**Council of the District of Columbia
Committee on Government Operations**

**Public Hearing on
B23-149, Fair Tenant Screening Act of 2019
B23-498, Intersectional Discrimination Protection Amendment Act of 2019
B23-195, Michael A. Stoops Anti-Discrimination Amendment Act of 2019**

October 27, 2020

Dear Chairperson Todd and members of the Committee on Government Operations,

Thank you for the opportunity to testify on the Fair Tenant Screening Act of 2019, B23-149.

We are providing this testimony on behalf of Upturn, a civil rights and technology research and advocacy nonprofit based here in D.C. We write to express our support for the protections in the Fair Tenant Screening Act, to explain the role of tenant screening companies in the D.C. rental market, and to urge you to require screening services to abide by the fair tenant screening requirements contained in this legislation and in the Fair Criminal Record Screening for Housing Act of 2016.¹

The Fair Tenant Screening Act would be an important step toward making housing accessible to more D.C. residents and curtailing housing discrimination. Too many people are completely locked out of housing simply because they—like millions of others—have an eviction, criminal, or negative credit record in their history. These records are artifacts of systemic racism, including the behavior of housing providers and law enforcement, and relying on them to make housing decisions inevitably has a disparate impact on Black and Latinx renters. Only twenty landlords in D.C. filed nearly half of all evictions in 2018.² Those renters were victims of serial filing—a practice landlords use to intimidate their tenants, not to remove them for legitimate lease violations.³ We commend the Council for taking steps to permanently mitigate the impact of public records on access to housing, because the eviction crisis is not limited to the current pandemic.

Including tenant screening companies in this legislation would help ensure that it effectively protects renters. Tenant screening companies collect, maintain, and select records for housing providers to use when evaluating tenants.⁴ They also play a significant role in interpreting those records, determining tenant screening criteria, and informing rental decisions. In addition, tenant screening companies contribute to the

¹ D.C. Code § 42–3541, <https://code.dccouncil.us/dc/council/code/titles/42/chapters/35B/>.

² Brian J. McCabe & Eva Rosen, Eviction in Washington DC: Racial and Geographic Disparities in Housing Instability 25 (2020), <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap>.

³ See *Id.* at 12–13; Philip ME Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 *City & Community* 638 (2019).

⁴ See, e.g., Lauren Kirchner & Matthew Goldstein, *Access Denied: Faulty Automated Background Checks Freeze Out Renters*, *The Markup* & N.Y. Times (May 28, 2020), <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>.

risk of discriminatory housing decisions in three important ways: (1) They often report inaccurate or misleading information in tenant screening reports; (2) they solidify credit, criminal, and eviction records—all of which have disparate racial impacts—as the most important factors in rental decisions; and (3) they seldom provide enough transparency and context to allow landlords to provide adequate notice to tenants and to comply with fair housing laws in D.C.

The Council should close this gap in accountability by extending notice and transparency requirements to tenant screening companies, and prohibiting them from reporting certain records—such as dismissed evictions and sealed or expunged records—that the council has already deemed unfair for screening tenants. D.C. would not be the first jurisdiction to impose limitations on tenant screening companies. Washington State law prohibits tenant screening companies from disclosing records, including terminated leases, related to domestic violence,⁵ and Pennsylvania requires data brokers to update their state court records weekly to reflect updated dispositions and remove expunged cases.⁶

The following testimony proceeds in two parts: Part I explains how tenant screening companies work, and Part II explains why the Council should ensure the efficacy of fair housing and tenant screening rules by covering tenant screening companies.

I. How tenant screening companies work

Almost every renter in D.C. has to pass a background check to be eligible for housing. Nationally, about 90 percent of landlords run credit and criminal background checks and 85 percent run eviction reports on all applicants.⁷ An online search for affordable housing in D.C. in October 2020 returned 806 listings (including those with waitlists), 95% of which required criminal background and credit checks.⁸ Housing providers in D.C.—particularly property managers that lease multiple units—usually rely on tenant screening companies like RentGrow,⁹ RentSafe,¹⁰ and CoreLogic¹¹ to conduct these background checks. The District of Columbia

⁵ Wash. Rev. Code § 59.18.580, <https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.580>.

⁶ Admin. Office of Penn. Cts (AOPC) of the Unified Jud. Sys. of the Commonwealth of Penn., Agreement Concerning Bulk Distribution of Electronic Case Record Information on Recurring Basis 2, <https://www.nelp.org/wp-content/uploads/PA-Courts-Agreement-Distribution-Electronic-Case-Record-Information.pdf> [hereinafter Pennsylvania data sharing agreement] (“SUBSCRIBER shall retrieve and access on a weekly basis the appropriate LifeCycle file(s) . . . and update their data accordingly.”); *Id.* at 4 (“The COMMONWEALTH may, at its discretion, perform audits of the SUBSCRIBER to verify compliance with the terms and conditions of this AGREEMENT and the appropriate use of the information and data . . .”). See also Lauren Kirchner, *When Zombie Data Costs You a Home*, The Markup (Oct. 6, 2020), <https://themarkup.org/locked-out/2020/10/06/zombie-criminal-records-housing-background-checks> [hereinafter *Zombie Data*] (describing the Pennsylvania agreement).

⁷ TransUnion Independent Landlord Survey Insights (Aug. 7, 2017), <https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page>.

⁸ We conducted this search on DCHousingSearch.org, D.C.’s affordable housing listing and search engine, using the filters for criminal and credit checks. Out of 806 listings, only 11 did not require a credit or criminal background check, and about 65 required one but not the other.

⁹ RentGrow, <https://www.rentgrow.com/>.

¹⁰ RentSafe, <https://rentsafe.lease/>. RentSafe is a D.C.-based tenant screening company used by Nomadic Real Estate, which manages many properties in the District. Nomadic Real Estate, Application Process, <https://www.nomadicrealestate.com/application-process/>.

¹¹ CoreLogic, Resident Screening, <https://www.corelogic.com/products/resident-screening.aspx>.

Housing Authority (DCHA) contracts with RentGrow to screen applicants for all 33,000 of its Housing Choice Voucher units.¹²

Tenant screening companies compile records from multiple different sources, including public and private databases, and provide their clients with tenant screening reports that include varying levels of detail.

1. Collecting and matching records

Tenant screening companies use public and private sources of data to evaluate rental applicants.

Tenant screening companies collect data from many different sources, including courts and other government agencies, private databases, and credit bureaus. They may receive this information by entering into agreements with agencies and data brokers¹³ or by collecting it from websites.¹⁴ Some tenant screening companies maintain copies of these records in their own databases.¹⁵ Some services claim to leverage newer data sources, such as location data,¹⁶ social media information,¹⁷ and reviews from previous landlords.¹⁸ However, the vast majority of tenant screening companies rely primarily on credit, eviction, and criminal records.¹⁹ When a tenant screening company receives a rental application, it attempts to match the applicant's personal information with the records it has access to.

Tenant screening companies regularly report inaccurate information

There is very little oversight or standardization of tenant screening companies' record collection or matching practices.²⁰ As a result, tenant screening reports regularly contain errors and misleading information.²¹ Three major sources of error are (1) lack of information in the underlying records; (2) record matching errors; and (3) failure to update records databases.

¹² RentGrow, Inc., and D.C. Housing Auth., Screening Services Activation Agreement (Aug. 2018), <https://www.documentcloud.org/documents/6819690-Washington-DC-RentGrow-Contract-ECOD.html>.

¹³ See, e.g., Pennsylvania data sharing agreement, *supra* note 6; LexisNexis Public Records, <https://www.lexisnexis.com/en-us/products/public-records.page>.

¹⁴ See, e.g., Kirchner, *Zombie Data*, *supra* note 6. For more on how data brokers obtain information, see generally Federal Trade Commission, *Data Brokers: A Call for Transparency and Accountability* 11–18 (May 2014), <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>.

¹⁵ Privacy Rights Clearinghouse, *The Renter's Guide* (2017), <https://privacyrights.org/consumer-guides/renters-guide-tenant-privacy-rights>; Kirchner, *Zombie Data*, *supra* note 6.

¹⁶ See Naborly, *LRANK Location Intelligence Engine*, <https://naborly.com/lrank/>.

¹⁷ See, e.g., Tenant Assured, *FAQ*, <https://www.tenantassured.com/frequently-asked-questions/>.

¹⁸ Naborly allows landlords to submit feedback and endorsements for tenants, which it maintains in a database called open_DOOR. Naborly, *How It Works*, <https://naborly.com/#overview>.

¹⁹ HousingLink, *Tenant Screening in the Twin Cities: An Overview of Tenant Screening Practices and Their Impact on Renters* 19 (2004), https://housinglink.org/Files/Tenant_Screening.pdf.

²⁰ Ariel Nelson, National Consumer Law Center, *Broken Records Redux: How Errors in Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing* 10 (Dec. 2019), <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>.

²¹ See generally *Id.*; Kirchner & Goldstein, *supra* note 4; Kirchner, *Zombie Data*, *supra* note 6.

First, court records often do not contain enough information to be accurately categorized and matched to individuals. In 2017, pursuant to a settlement with 30 state attorneys general,²² TransUnion, Equifax, and Experian agreed to stop reporting civil court records, including evictions, in consumer credit reports because they don't contain enough personal information to be reliably linked to individuals.²³ Nonetheless, tenant screening companies continue to report these records. Court records are not standardized between jurisdictions, so offense names and types can be difficult to parse and categorize.²⁴ A serious property crime in one state can have the same name as a much less serious offense in another state. Court records may also lack final disposition or procedural information.²⁵

Even when the updated disposition of a case is included, it can still be misleading. In D.C. Superior Court, a "dismissal" in an eviction case can mean that the tenant paid the rent owed before the hearing, that the landlord did not have a justification to file the eviction in the first place, or that the landlord did not attend the hearing.²⁶ Tenant screening companies may themselves create misleading impressions by reporting court records but omitting important information that would bear on the tenant's reputation, such as the final disposition of or reason for an eviction.²⁷

Second, tenant screening reports regularly attribute records to the wrong applicants.²⁸ First Advantage LNS Screening Solutions was sued in 2017 because at least 13,346 of its criminal background reports contained records belonging to the wrong person.²⁹ One reason for these "matching errors" is that companies may use overbroad search and matching practices and "err on the side of including any possible match."³⁰ In 2018, tenant screening company RealPage entered into a \$3 million settlement with the Federal Trade Commission (FTC) after the FTC alleged that RealPage's system was designed to match people with records containing the same last name but different first and middle names.³¹ This is sometimes called a "wild-card search," and it

²² *In the matter of* Equifax Information Services LLC, Experian Information Solutions, Inc., & TransUnion LLC, Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance (May 11, 2015), <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2015-05-20-CRAs-AV-C.aspx>.

²³ See Jasper Clarkberg & Michelle Kambara, Consumer Financial Protection Bureau, Removal of Public Records has Little Effect on Consumers' Credit Scores (Feb. 22, 2018), <https://www.consumerfinance.gov/about-us/blog/removal-public-records-has-little-effect-consumers-credit-scores/> (explaining the reporting change).

²⁴ Nelson, *supra* note 20, at 21–22.

²⁵ See Consumer Financial Protection Bureau, Market Snapshot: Background Screening Reports 11 (Oct. 2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening-report.pdf (citing Becki R. Goggins & Dennis A. DeBacco, Dep't of Justice, Office of Justice Programs, Survey of State Criminal History Information Systems 2 (2018)) ("A 2016 survey of state reporting jurisdictions found that in 50 states and Guam, an average of 68 percent of all arrests in state databases have final dispositions reported.").

²⁶ McCabe & Rosen, *supra* note 2, at 9.

²⁷ See sample report, TurboTenant screening report snapshot, eviction records, App. 1.

²⁸ See Kirchner & Goldstein, *supra* note 4; Nelson, *supra* note 20, at 17–19.

²⁹ *Williams v. First Advantage LNS Screening Sols., Inc.*, 238 F. Supp. 3d 1333, 1340 (N.D. Fla. 2017) (Of 3.5 million reports prepared between 2010 and 2013, 17,431 were disputed, 14,346 resulted in a revised background report, and 13,346 of those revised reports were based on disputes where the consumer complained that a public record in their report belonged to another individual.).

³⁰ Kirchner & Goldstein, *supra* note 4.

³¹ Lesley Fair, Federal Trade Comm'n, \$3 Million FCRA Settlement Puts Tenant Background Screening at the Forefront (Oct. 17, 2018),

<https://www.ftc.gov/news-events/blogs/business-blog/2018/10/3-million-fcra-settlement-puts-tenant-background-screening>.

disproportionately harms groups like Latinx renters, who share a small number of unique last names.³² Tenant screening companies also frequently match records only based on first and last name even when other relevant information, such as date of birth, address, or middle names do not match.³³

Third, tenant screening companies can collect or maintain outdated records, exacerbating the challenge of properly classifying records and increasing the occurrence of errors. For example, a tenant screening company's data may not be updated often enough to reflect updates to cases such as dismissals or expungements. In 2018, RealPage paid \$1 million to settle a class action lawsuit alleging that it reported expunged records to housing providers.³⁴

Unlike traditional credit reports, renters usually can't find out what will be in their tenant screening reports before they apply for a unit. Housing providers use hundreds of different tenant screening companies with varying data sources, matching practices, and reporting practices. Applicants are forced to dispute any inaccuracies after being screened, and there's no guarantee that they will be able to provide evidence of the error to the housing provider before the unit is rented to someone else.

2. Creating tenant screening reports

Tenant screening companies compile information into reports, which may include numerical scores, recommendations, and other features encouraging landlords to accept or reject tenants.

Once a tenant screening company has matched a rental applicant to available records, it creates a report for the housing provider. Some reports simply provide the records to landlords without analysis or recommendations. Many reports, however, provide analysis, scores, recommendations, or other features that encourage the landlord to accept or reject the tenant.

Some companies offer stark "accept" or "reject" recommendations,³⁵ while others assign scaled risk scores to applicants. For example, National Tenant Network (NTN)'s Decision Point product scores applicants from 0 to 100, where at certain thresholds applicants Meet, Conditionally Meet or Do Not Meet the criteria.³⁶ NTN advertises its analysis as "comprehensive" and states that it tells landlords "everything [they] need to make a sound rental decision."³⁷ Corelogic's SafeRent Score uses the same numerical scale used in traditional credit scoring, and characterizes scores as low, medium, or high risk based on how many other applicants screened

³² See Kirchner & Goldstein, *supra* note 4 (citing U.S. Census Bureau, Hispanic Surnames Rise in Popularity (Aug. 9, 2017), <https://www.census.gov/library/stories/2017/08/what-is-in-a-name.html>).

³³ See Nelson, *supra* note 20, at 11, 18.

³⁴ Complaint, Stokes v. RealPage, Inc., 2:15-cv-01520-JP (E.D. Penn. 2015), <https://www.clearinghouse.net/chDocs/public/CJ-PA-0003-0001.pdf>. See also Max Mitchell, *Background Screening Company Settles Credit Reporting Case for \$1M*, Pittsburgh Post-Gazette (Feb. 13, 2018), (<https://www.post-gazette.com/business/legal/2018/02/13/Background-screening-company-settles-credit-reporting-case-for-1M/stories/201802130011>).

³⁵ See, e.g., Memorandum of Decision on Motions for Summary Judgment at 7, Conn. Fair Housing Ctr. v. CoreLogic Rental Property Solutions LLC, D. Conn., 3:18-cv-705 (Aug. 7, 2020), <https://www.courtlistener.com/recap/gov.uscourts.ctd.125021/gov.uscourts.ctd.125021.194.0.pdf> ("... with CrimSAFE, 'criminal record search results are evaluated using our own advanced, proprietary technology and an accept/decline leasing decision is delivered to your staff.'").

³⁶ Sample report, National Tenant Network, NTN DecisionPoint, App. 1.

³⁷ National Tenant Network, NTN DecisionPoint, <https://ntnonline.com/resident-screening/ntn-decisionpoint/>.

by Corelogic fell above and below that score.³⁸ MyRental, another Corelogic product, includes an “accept or decline” button the housing provider can click to automatically generate an acceptance or rejection letter for the tenant.³⁹

Tenant screening reports are designed to apply uniform criteria to all applicants.

Tenant screening companies standardize the process of screening by uniformly applying criteria to each applicant’s records.⁴⁰ Companies often promote this as a feature, telling landlords that consistency is the best way to avoid legal liability.⁴¹ As one tenant screening company executive explained in an interview, “[Landlords are] saying, ‘We like using SafeRent because it tells us red, yellow, green lights and our people don’t have to think. We don’t want them to think. We think it’s safer, legally, from a fair housing standpoint if they don’t think.’”⁴² However, the Department of Housing and Urban Development (HUD) has acknowledged that even consistently applied tenant screening criteria can result in unlawful disparate impacts, and has recognized the need for some individualized assessment that considers the context and mitigating details surrounding an applicant’s records.⁴³

Relying on credit, criminal, and eviction histories to make rental decisions deepens systemic racism and perpetuates poverty and housing insecurity. For example, Black renters are far more likely to have eviction records in D.C., in part because most evictions are concentrated in Wards 7 and 8 and carried out by only a handful of landlords.⁴⁴ Many tenant screening companies undermine landlords’ ability to conduct an individualized assessment—and to comply with D.C. law—by making judgments about tenants while omitting the underlying information.⁴⁵

Tenant screening companies do not always include the underlying information used to develop their reports.

In some cases, tenant screening companies do not provide landlords with the underlying records used to create reports. An ongoing housing discrimination lawsuit against CoreLogic alleges that CoreLogic provided tenant screening reports to leasing agents without providing the underlying records.⁴⁶ CoreLogic’s report included a cover page titled “Lease Decision,” and listed a “Crim Decision,” which stated that disqualifying

³⁸ Sample report, CoreLogic MyRental, SafeRent Score Report, App. 1.

³⁹ CoreLogic MyRental, How It Works, <https://www.myrental.com/how-it-works/tenant-screening>.

⁴⁰ While some companies give landlords discretion to include or exclude broad categories of data, but they rarely provide more granular tuning, such as excluding all dismissed eviction records, or ignoring nonpayment of rent that occurred before the applicant received a housing voucher.

⁴¹ See, e.g., RentPrep, Establishing Tenant Screening Criteria for Rating Tenants, <https://rentprep.com/tenant-screening/tenant-screening-criteria/>.

⁴² Anna Reosti, “We Go Totally Subjective”: Discretion, Discrimination, and Tenant Screening in a Landlord’s Market, 45 Law & Social Inquiry 618 (2020).

⁴³ U.S. Dep’t of Housing & Urban Development, Office of the General Counsel Guidance on Application of the Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (Apr. 4, 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF. See also Fair Criminal Record Screening for Housing Act of 2016, D.C. Code § 42–3541.

⁴⁴ McCabe & Rosen, *supra* note 2, at 14–21.

⁴⁵ See *infra* notes 44–46.

⁴⁶ Memorandum of Decision on Motions for Summary Judgment at 6, Conn. Fair Housing Ctr. v. CoreLogic, 3:18-cv-705 (“RPS [CoreLogic] allows CrimSAFE customers to disclose or suppress information underlying disqualification from its staff and housing applicants. If a customer chooses to suppress disclosure of the underlying criminal record from its onsite staff, they see only whether disqualifying records are found or not.”).

records were found, but did not describe or provide the records.⁴⁷ The disqualifying record turned out to be a dismissed arrest for retail theft, which was used to deny Mikhail Arroyo’s application to move in with his mother, who has been his primary caretaker since he became disabled.⁴⁸

Many tenant screening companies provide numerical scores indicating a tenant’s risk; however, few services disclose all of the criteria used to calculate these scores, and while some provide the primary factors contributing to a particular score, in our research we have not seen any that disclose the weight of each factor in determining the scoring formula.⁴⁹ In fact, scoring models are often described as proprietary.⁵⁰ Housing providers must provide adverse action notices to the tenants they reject,⁵¹ and sometimes these are automatically generated by tenant screening companies, but they often provide vague reasons that are unclear to tenants and their housing attorneys.⁵² Without the underlying records and criteria, landlords cannot assess whether the criteria are legal to consider, nor can they conduct an individualized assessment. And without knowing the specific criteria used to evaluate and reject tenants, landlords cannot provide enough notice to allow tenants to challenge the results or provide mitigating information.

II. The Council must regulate tenant screening companies to effectively protect tenants.

Although tenant screening companies contribute substantially to rental criteria and decisions, they face very little oversight over the fairness and accuracy of their reports. There are no federal rules governing what records or criteria can be used to screen tenants.

The Fair Credit Reporting Act

Under the Fair Credit Reporting Act (FCRA), tenant screening companies must “follow reasonable procedures to assure accuracy,”⁵³ and the FTC provides some high-level, informal guidance for tenant screening companies (e.g., “certain practices may be indicators that a background screening company isn’t following reasonable procedures. For example, if a report lists criminal convictions for people other than the applicant or tenant . . .”).⁵⁴ However, the FTC does not have adequate resources to oversee tenant screening companies’ practices, and is unlikely to intervene until thousands of applicants have already been harmed. Thousands of lawsuits have been filed over errors in tenant screening reports, but these lawsuits are not effective means for tenants to avoid losing out on a rental unit.⁵⁵

⁴⁷ *Id.*

⁴⁸ *Id.* at 16. For a brief description of the facts in this case, see Nelson, *supra* note 20, at 13.

⁴⁹ See, e.g., Sample report, National Tenant Network, NTN DecisionPoint, App. 1.

⁵⁰ See, e.g., Screening Service Agreement between Corelogic Rental Property Services, LLC, and Minneapolis Public Housing Authority at 4 (May 2017), <https://www.documentcloud.org/documents/6819668-Minneapolis-CoreLogic-Contract.html>.

⁵¹ 15 U.S.C. § 1681m(a).

⁵² Memorandum of Decision on Defendant’s Motion to Dismiss at 2, Conn. Fair Housing Ctr. v. CoreLogic, No. 3:18-cv-00705-VLB, D. Conn. (March 25, 2019), <https://www.courtlistener.com/recap/gov.uscourts.ctd.125021/gov.uscourts.ctd.125021.41.0.pdf>.

⁵³ 15 U.S.C. § 1681e(b). See also *infra* note 53.

⁵⁴ Federal Trade Comm’n, What Tenant Background Screening Companies Need to Know About The Fair Credit Reporting Act (Oct. 2016),

<https://www.ftc.gov/tips-advice/business-center/guidance/what-tenant-background-screening-companies-need-know-about-fair>.

⁵⁵ See, e.g., Kirchner & Goldstein, *supra* note 4 (reporting that they reviewed hundreds of cases filed over the last ten years).

Under the FCRA, housing providers only need a “permissible purpose” to obtain consumer reports, and screening rental applicants is a permissible purpose.⁵⁶ There’s no FCRA requirement to provide information to the applicant about screening criteria or methods. The FCRA requires housing providers to send adverse action notices to applicants,⁵⁷ but these notices are not required to include the report used to make the rental decision.⁵⁸ The applicant must independently request it from the tenant screening company. By requiring notice of eligibility criteria before tenants are screened and requiring housing providers to disclose tenant screening reports and underlying records, the Fair Tenant Screening Act would add to—not contradict or undermine—the requirements in the FCRA. It’s not unusual for states to pass laws that compliment and augment the FCRA, such as credit check bans for employment.⁵⁹

When it comes to accurately matching records to people, tenant screening companies have lower standards than the big three national credit bureaus. As part of a litigation settlement, Equifax, Experian, and TransUnion created the National Consumer Assistance Plan (NCAP), requiring that any records included in credit reports include sufficient information and be updated at least every 90 days.⁶⁰ Because civil litigation records typically do not include personal information such as dates of birth, they are no longer included in traditional credit reports because the risk of a mismatch is too high. Tenant screening companies are not accountable to NCAP and continue to report civil litigation records despite the high risk of errors.

The Fair Housing Act

The federal Fair Housing Act is intended to cover any entity that engages in housing discrimination (not just housing providers),⁶¹ and HUD released guidance in 2016 about when criminal records screening amounts to unlawful disparate impact.⁶² However, the Trump administration has promulgated rules making disparate impact much more difficult to allege and has signaled its intent to review (and likely reverse or weaken) the criminal records guidance.⁶³ While tenant screening companies market their services to landlords as a way to help them make housing decisions, they have drafted their terms of service to include disclaimers stating that they do not make rental decisions—a practice that could help them evade Fair Housing Act liability.⁶⁴

D.C. should ensure the efficacy of the Fair Tenant Screening Act by including tenant screening companies.

⁵⁶ 15 U.S.C. § 1681b(a)(3)(F). *See also* Federal Trade Comm’n, Using Consumer Reports: What Landlords Need to Know (Oct. 2016),

<https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-landlords-need-know>.

⁵⁷ 15 U.S.C. § 1681m(a)).

⁵⁸ 15 U.S.C. § 1681g(a). *See also* Nelson, *supra* note 20, at 28.

⁵⁹ *See, e.g.*, Amy Traub, Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job (Feb. 3, 2014), <https://www.demos.org/research/discredited-how-employment-credit-checks-keep-qualified-workers-out-job#Policy-Recommendations> (listing eight states that have restricted pre-employment credit checks as of 2013).

⁶⁰ *See supra* notes 22–23.

⁶¹ Memorandum of Decision on Defendant’s Motion to Dismiss at 9, Conn. Fair Housing Ctr. v. CoreLogic, No. 3:18-cv-00705-VLB, D. Conn. (2019).

⁶² U.S. Dep’t of Housing & Urban Development, *supra* note 43.

⁶³ 24 C.F.R. part 100 at 60330, <https://www.govinfo.gov/content/pkg/FR-2020-09-24/pdf/2020-19887.pdf>.

⁶⁴ *See, e.g.*, Screening Service Agreement between Corelogic Rental Property Services, LLC, and Minneapolis Public Housing Authority at 4 (May 2017), <https://www.documentcloud.org/documents/6819668-Minneapolis-CoreLogic-Contract.html>.

The lack of accountability for tenant screening companies already undermines D.C.'s Fair Criminal Record Screening for Housing Act of 2016, since tenant screening companies can report off-limits criminal records or incorporate them into opaque scores. The Council should rectify this, and ensure efficacy of the Fair Tenant Screening Act, by requiring tenant screening companies to be transparent and to stop reporting certain records in D.C.

D.C. would not be the first jurisdiction to exert some control over tenant screening companies. For example, Washington State law prohibits tenant screening companies from disclosing records, including terminated leases, related to domestic violence,⁶⁵ and Pennsylvania requires data brokers to update their state court records weekly to reflect updated dispositions and remove expunged cases.⁶⁶

Tenant screening companies should have to provide the notice and transparency required for landlords to comply with the Fair Tenant Screening Act of 2019 and the Fair Criminal Record Screening for Housing Act of 2016. This should include providing a full list of criteria and records used to screen tenants, providing the underlying records, and providing the formulas used to calculate any scores.

Tenant screening companies should be prohibited from reporting records that D.C. housing providers are not allowed to consider, including criminal records (before a conditional offer of housing is made), or eviction records that do not result in a judgment for the landlord. These kinds of restrictions apply to other kinds of consumer reporting agencies under the federal FCRA.⁶⁷

Thank you for the opportunity to submit this testimony. Please contact Natasha Duarte at natasha@upturn.org with any questions.

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⁶⁵ Wash. Rev. Code § 59.18.580.


⁶⁶ Pennsylvania data sharing agreement, *supra* note 6.

⁶⁷ The FCRA has overcome First Amendment challenges to its provisions that prohibit credit reports from containing information more than seven years old. In *King v. General Information Services, Inc.*, the U.S. District Court for the Eastern District of Pennsylvania held that while disseminating these records was speech, it deserved a lower degree of protection because it was only of interest to the speaker and its business audience. *King v. Gen. Info. Services, Inc.*, CIV.A. 10-6850, 2012 WL 5426742 (E.D. Pa. Nov. 6, 2012). The Fair Tenant Screening Act of 2019 could be similarly robust against First Amendment challenges, especially since protecting renters from discrimination is a strong government interest.

Appendix 1: Sample tenant screening reports

TurboTenant Screening Report Snapshot


4/13/2020 What does the screening report look like? What is included on it? - TurboTenant Help Center

 Help Center

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Search

What does the screening report look like? What is included on it?

 **Customer Support** · March 09, 2020 15:07 [Follow](#)

Screening Report Snapshot

Screening reports include a summary that allows you to see the information you need at a glance:

<https://support.turbotenant.com/hc/en-us/articles/218605247-What-does-the-screening-report-look-like-What-is-included-on-it> 1/7

Eviction Records

COLORADO

Action Date 9/12/2015	Description Colorado Evictions	County Larimer County 28th District-Civil
Subject Name Jackson, Thomas	Plaintiff Acme Corp, LLC	Record ID CO1278941
Subject Address 7800 Linden St. Fort Collins, CO 80525	Case Type Civil New Filing	File Number KN129N9XOP1

Action Date 10/9/2012	Description Colorado Evictions	County Larimer County 28th District-Civil
Subject Name Jackson, Thomas	Plaintiff Acme Corp, LLC	Record ID CO5161782
Subject Address 515 College Rd. Fort Collins, CO 80528	Case Type Civil New Filing	File Number TN02K9N1X5L

National Tenant Network, NTN DecisionPoint

Access No: XX 011

Order No: 3619420

Reference No: Rose Unit

NTN DecisionPoint

INSTANT RESIDENT SELECTION SYSTEM

Screened For: XX 011 - ABC Property Management
DD-MM-YYYY

Applicant Information

Consumer, Jonathan Quincy SSN ***-**-9990 Income \$4,500.00 Rent \$1,400.00
10655 N Birch St DOB 10-Jan-1951 Months at Residence 24
Burbank, CA 91502 Months at Employment 21

Analysis Results - Based on subscriber's employment, residency and applicant score acceptance criteria.

Does Not Meet Criteria Rent to Income - Meets criteria
Eviction Filing – Applicant does not meet eviction criteria
Score - Reject Applicant
See adverse action letter for details

Rent to Income Multiple Exceeds Requirement	Time at Residence Exceeds Requirement	Time at Employment Exceeds Requirement	Applicant Score 55
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Applicant Score based on analysis of tenant performance information, national public records and other databases.

ID Check

A search of nationwide public record, eviction, tenant performance, and other proprietary databases returned the following results:

Substantial difference in Social Security Number found: **No**
Substantial difference in Date of Birth found: **No**
Substantial difference in current address found: **Yes**
Substantial difference in previous address found: **No**
Report of Credit Fraud found: **Yes**

Any item marked YES should be verified with the applicant

Additional Addresses see NTN Tenant Performance Profile
1314 SOPHIA LN APT3, SANTA ANA CA 90017

Additional Names (aliases) see NTN Tenant Performance Profile
Consumer, Quincy

Alert Messages

Current Address – verify entered address with applicant
Fraud detected – see Additional Information in File below

Tenant Performance Information see NTN Tenant Performance Profile

Name/Location	Date	Information Reported
Consumer, Jonathan	10-May-2015	Apartment Damage, Eviction Filing Required

Public Records see NTN Tenant Performance Profile

Action	Date of Filing	Disposition
Consumer, Jonathan (1314 Sophia Ln)	08-May-2015	Judgment for Plaintiff \$1,000

Additional Information in File

(Experian) 1 item closed by consumer
(Experian) Bankruptcy, Chapter 13-Filed
(Experian) Fraud Victim Alert: **#HK# ID SECURITY ALERT: FRAUDULENT APPLICATIONS MAY BE SUBMITTED IN MY NAME OR MY IDENTITY MAY HAVE BEEN USED WITHOUT MY CONSENT FRAUDULENTLY. DO NOT EXTEND CREDIT WITHOUT FIRST CONTACTING ME AND VERIFYING ALL APPLICANT INFORMATION. THIS SECURITY ALERT WILL BE MAINTAINED FOR 90 DAYS BEGINNING 05-01-17. (FACT ACT)

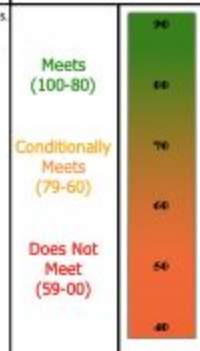
Messages

Eviction filing caused the NTN DecisionPoint score to be reduced by 20 points
Tenant Performance caused the NTN DecisionPoint score to be reduced by 10 points

Custom Criteria Used in Calculating the NTN DecisionPoint Score

If present, medical collections are ignored

End of NTN DecisionPoint



CoreLogic MyRental, SafeRent Score Report

SAFERENT™ SCORE REPORT

Processed April 02, 2019 at 5:35 AM



David Brandt

Primary Applicant for 4938 Main St Fresno, CA 93711

686

SafeRent Score

APPLICANT INFORMATION

Name	DOB	SSN
DAVID BRANDT	10/04/1997	***-**-1882
Email	Monthly Income	
DAVID_BRANDT@myrental.com	\$ 3300	
Current Address	1021 CENTER AVE FRESNO, CA 93711	
Previous Address	N/A	

SAFERENT SCORE

LOWEST RISK

686

This application is in the lowest risk category. Fewer than 16% of all applications score above 680.

LEASE INFORMATION

Monthly Rent	Total Income
\$ 1250	\$ 3300
Lease Term	Rent/Income
12 Months	38 %