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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

October 19, 2021

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G St., NW
Washington, DC 20552

Dear Director Chopra:

As Director of the Consumer Financial Protection Bureau (CFPB) you are leading an agency charged with protecting millions of consumers from illegal, abusive, deceptive, and unfair practices in our financial marketplace. As Chairman of the Senate Committee on Banking, Housing, and Urban Affairs (Committee), I share your commitment to addressing some of the most pressing challenges that consumers, families, and communities face during this unprecedented time in our nation's history.

In keeping with that commitment to protect consumers, in April 2021, the Committee wrote to ten tenant screening companies requesting information about the accuracy, development, and marketing of tenant screening reports. The Committee sought to understand, among other things, these companies' compliance with the Fair Credit Reporting Act (FCRA), steps they are taking to ensure the accuracy of tenant screening reports, and the different types of information included and considered in a tenant screening report.¹ As discussed in greater detail below, the Committee's inquiry revealed practices that may put certain groups of consumers at a distinct disadvantage in today's rental marketplace.

The housing market for our nation's approximately 43 million renters is more competitive than at any time in recent history.² Vacancy rates remain near their lowest point in nearly three decades,³ while for most Americans the cost to rent and own continues to rise.⁴ According to reports, median rent has increased 10 percent this past year.⁵ With soaring home prices keeping many people renting, would-be homebuyers have few choices but to pay increasing rent.⁶

¹ Brown Calls Attention to Tenant Screening Inaccuracies That Can Lock Tenants Out of the Housing Market; April 8, 2021.

² Demographic Characteristics for Occupied Housing Units (TableID S2502); U.S. Census Bureau, October 10, 2021.

³ U.S. Census Bureau, Rental Vacancy Rate in the United States [RRVRUSQ156N], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/RRVRUSQ156N>, October 18, 2021.

⁴ America's Rental Housing 2020; Joint Center for Housing Studies Harvard University, January 31, 2020, pg. 11, Home Prices Skyrocketing in Most Markets; Joint Center for Housing Studies Harvard University, Interactive.

⁵ Apartment Rents Increase as Young Workers Head Back to Cities; Wall Street Journal, August 3, 2021.

⁶ *Ibid.*, 4.

The competition for affordable housing is intensified by a decline in the overall number of affordable, rental units available. In 2017, low cost rental housing constituted just 25 percent of the nation’s overall rental housing stock, a decline from previous years.⁷ This competitive landscape is particularly challenging for the 10.8 million renters—a quarter of all renters—who have extremely low incomes.⁸ Among this group, 7.6 million renters pay over 50 percent of their income for housing.⁹ This group is more likely to be seniors living on a fixed income, or persons with disabilities, and is also more likely to be Black and Brown renters.¹⁰

According to research compiled by the CFPB, there are approximately 2,000 U.S.-based tenant screening companies with an estimated revenue of \$3.2 billion.¹¹ The Committee’s inquiry revealed numerous details about how tenant screening reports are marketed and the variety of screening products and services available to landlords and tenants. It also included a review of responses from large, medium, and smaller regional tenant screening companies from across the nation serving landlords of all sizes and tenants regardless of geographic location.¹²

To better understand the spectrum of products and services offered by tenant screening companies, the Committee requested information about the pricing and marketing of tenant screening reports. The Committee found that tenant screening reports varied in price from as low as \$5 to as high as \$55 per report. Tenant screening reports are typically purchased by a property manager, landlord, or by the prospective tenant in order to assess or demonstrate a renter’s credit worthiness. Tenant screening companies may offer volume discounts to landlords or property managers who may pass on this discount to tenants. Most tenant screening companies market their reports and services through internet and email campaigns, and using direct sales, trade publications, and industry events.

Tenant screening reports contain an array of information for landlords to consider in determining the risk associated with an individual’s tenancy. This information may include consumer information, such as a credit score, civil complaints, and criminal background information. Additional types of information may also be included on a tenant screening report, including information contained in and/or through the USA-PATRIOT Act Watchlist, Office of Foreign Asset Control matches, sex offender registry, Social Security number search, eviction records, and landlord collection records. Information such as prior addresses and income history may also be included within a report.

Several tenant screening services offer tenants the ability to allow their report to be viewed multiple times over a specified period. This feature, commonly referred to as “portability”, is

⁷ Documenting the Long-Run Decline in Low-Cost Rental Units in the US by State; Joint Center for Housing Studies Harvard University, Elizabeth La Jeunesse, Alexander Hermann, Daniel McCue, Jonathan Spader, September 2019, pg. 7.

⁸ The Gap, A Shortage of Affordable Rental Housing; National Low Income Housing Coalition, March 2021, pg. 2

⁹ Ibid., pg. 2.

¹⁰ Ibid., pg. 2, 12.

¹¹ Market Snapshot: Background Screening Reports, Criminal Background Checks in Employment; Consumer Financial Protection Bureau, October 2019, pg.4.

¹² Brown Calls Attention to Tenant Screening Inaccuracies That Can Lock Tenants Out of the Housing Market; April 8, 2021.

tailored to allow renters the ability to apply to more than one property without having to purchase additional screening reports, provided that the landlord accepts the tenant screening product.¹³ “Portable” tenant screening reports are a feature offered by service providers, and in the state of Washington, for example, landlords are required to inform tenants whether these reports are accepted.¹⁴

Tenant screening reports may also contain a score or recommendation. Scores and recommendations are used by landlords in determining the risk associated with renting to a prospective tenant. Some tenant screening companies generate scores and recommendations using proprietary algorithms to measure the data contained within the rental screening report. Screening companies develop, maintain, and update scoring criteria and are legally responsible for the accuracy of its algorithmic score or recommendation.¹⁵ Unlike the algorithms used in credit scores, little is publicly known about how a tenant’s information is used by tenant screening algorithms.¹⁶ Similarly, little is publicly known about the effect inaccurate data has on a report’s score or recommendation.¹⁷

Tenant screening report scores are typically provided on a scale from “0” to “100”, with “100” representing the lowest amount of rental risk and “0” representing the highest rental risk. Recommendations include terms like “accept”, “low acceptance”, “accept with conditions”, “pass”, “refer”, “fail” and “decline.” The Committee also found that some tenant screening services allow landlords the option of setting minimum requirements for a positive recommendation or score, including debt-to-income ratio, credit score, on-time payment history, outstanding credit obligations, length of credit history, types of credit, and the amount of new credit recently opened or sought. This option allows landlords the ability to exclude renters with an eviction filing. Scores and recommendations can include data on criminal history. Criminal information may be prominently placed on tenant screening reports to provide landlords a snapshot of a renter’s background and history.

The Committee requested information about the policies and practices used by tenant screening companies to ensure the accuracy and relevance of data contained in tenant screening reports. The Committee’s review of the responses provided by tenant screening companies found that each firm utilized different data management, validation, matching, and updating processes and procedures. In general, tenant screening companies rely on a host of third party vendors to supply accurate consumer and criminal background information for screening reports. Third party vendors are responsible for the accuracy of their data; however, many tenant screening companies responded that they perform their own quality control examination to validate the accuracy of vendor information. These quality control measures differed from company to

¹³ Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State, Seattle Journal of Social Justice, Volume 9 Issue 1, Eric Dunn and Marina Grabchuk, November 2010, pg.360-361.

¹⁴ Washington State Bill Information, SB6413 (2015-16).

¹⁵ Tenant Background Report Provider Settles FTC Allegations That It Failed to Follow Accuracy Requirements for Screening Reports, Federal Trade Commission, December 8, 2020.

¹⁶ Screened Out, How Tenant Screening Reports Deprive Tenants of Equal Access to Housing; Shriver Center on Poverty and Law, Tex Pasley, Henry Oostrom-Shah, Eric Sirota, January 2021, pg. 11.

¹⁷ How Automated Background Checks Freeze Out Renters; New York Times, Lauren Kirchner and Matthew Goldstein, May 28, 2020.

company depending on whether the tenant screening company compiled vendor information to produce a screening report or referred the request to another tenant screening company. Tenant screening companies may manually validate information matches and certain consumer or criminal history. Certain types of background information may be withheld from a screening report to comply with state and local laws and regulations.

Despite efforts to validate information, the Committee found that a significant number of tenant screening reports contained inaccurate information. Inaccuracies in tenant screening reports may result in landlords denying applicants rental housing or charging higher security deposits. As part of the Committee's review, companies described the policies and procedures in place to ensure accurate reporting. Despite the policies in place, some companies continue to receive complaints about inaccuracies within tenant screening reports. For example, one company reported that over 80 percent of requests for data suppression were a result of records not matching the subject of the screening report. Additionally, according to complaint data provided to the Committee, one tenant screening company received over 33,000 complaints between January 1, 2019 and April 8, 2021. Of these complaints, approximately one-third resulted in the company modifying data within a tenant screening report. Over 10 percent of the complaints resulted in data being removed, and over 10 percent of the complaints led to data being suppressed. In total, more than half of the complaints made to the company during the period resulted in tenant screening report data being modified, removed, or suppressed.

The Committee's review of submissions show that tenant screening companies appear to respond expeditiously to resolve complaints related to inaccurate information contained in screening reports. Nonetheless, prospective tenants may be harmed by inaccurate tenant screening reports as landlords are not required to delay renting a property to another tenant while an adverse decision is being challenged. This results in applicants potentially losing out on both the housing opportunity and the non-refundable rental application fee, which includes the cost of the tenant screening report, required when applying for rental housing.

The Committee also found that the economic costs associated with screening report inaccuracies can potentially have devastating consequences on low-income communities. For example, an inaccurate report leading to an adverse decision could cause a family to lose its non-refundable application fee. For families that live paycheck to paycheck, being denied housing as a result of a screening report's inaccuracies could strain much needed resources and deplete a household's savings. Inaccuracies can also limit the number of applications a household can reasonably afford to submit, and may prevent households from securing safe, decent, and conveniently-located affordable housing.

In accordance with the FCRA, criminal background information may not be included on a tenant screening report if an arrest or conviction occurred more than seven years prior.¹⁸ Nearly all tenant screening companies reported that criminal background information is included in their reports. By including criminal background information, these companies increase the potential that matching errors or outdated or inaccurate information is included in a screening report. These errors can have devastating effects on renters. According to one review of federal lawsuits filed against tenant screening companies over the last ten years, mismatching criminal

¹⁸ Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., pg. 22-23.

information can lead to qualified individuals being labeled as “deadbeats” and denied access to affordable housing.¹⁹

Similar to criminal background information, the Committee also inquired into the use of eviction history by tenant screening companies. Past eviction filings against a tenant can significantly limit future housing opportunities for that tenant. Even more troubling, the Committee’s inquiry revealed that some tenant screening companies include eviction filings not leading to an ejection or final judgment in favor of a property manager. This is particularly problematic for low-income, women, and Black renters who experience a higher rate of eviction filings than white renters.²⁰ Depending on the criteria used to screen tenants, an eviction filing not leading to an eviction may be included in a tenant screening report score or recommendation and ultimately influence a landlord’s rental decision making process. Even in instances where an eviction filing is dismissed, the tenant’s rent worthiness may be adversely impacted due to scoring criteria and rating standards of screening companies.

With a growing number of lower income renters competing for a limited number of housing units, a tenant screening report can mean the difference between a renter’s family finding a home or being locked out of the rental market entirely. In light of the Committee’s findings, I request that the Bureau begin a thorough review of the tenant screening industry and use its authorities to the fullest extent possible to protect renters.

Thank you for your prompt attention to this important matter.

Sincerely,



Sherrod Brown
Chairman

¹⁹ How Automated Background Checks Freeze Out Renters; New York Times, Lauren Kirchner and Matthew Goldstein, May 28, 2020.

²⁰ Racial and Gender Disparities Among Evicted Americans; Eviction Lab at Princeton University, Peter Hepburn, Renee Louis, Matthew Desmond, December 16, 2020; Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship; MacArthur Foundation, Mathew Desmond, March 2014.