

Before the

Federal Trade Commission and Consumer Financial Protection Bureau

In the Matter of
Request for Information Regarding the Tenant Screening Industry

Docket No. FTC-2023-0024

Comments of
HOME of Virginia
and
TechEquity Collaborative
[more signatories pending]

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May 30, 2023

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ABOUT THE COMMENTERS

Housing Opportunities Made Equal of Virginia (HOME) is a 501(c)(3) non-profit, HUD-approved housing counseling agency serving Virginia. Its purpose is to address systemic inequities in the housing system, through fair housing enforcement and policy research and advocacy. HOME empowers individuals to advocate for their housing rights and achieves justice for clients through fair housing complaints and the courts. Additionally, HOME promotes housing equity through its housing counseling, homeownership, voucher mobility, and eviction prevention programs. HOME has extensive experience with the effects of the tenant screening industry through its housing mobility program, in which HOME helps tenants who hold housing choice vouchers find available units in areas of opportunity. Through that program, HOME assists tenants with correcting credit reports and addressing other barriers to finding housing that the tenants face. HOME has direct experience requesting and disputing tenant screening reports and is well-positioned to comment on the troubling transparency and bias issues that algorithmic tenant scores raise.

TechEquity Collaborative is a California-based non-profit organization that aims to mobilizes tech workers and companies to advance structural change that addresses economic inequity at its roots. It educates the tech community on economic justice, advocates for bold public policy, and develops equitable corporate practices that build equity and opportunity in the broader economy. TechEquity’s “Tech, Bias, and Housing Initiative” is an effort to raise awareness about the potential harms of property technology (“proptech”), notably algorithmic tenant screening. Its recent publications on tenant screening and proptech more generally make TechEquity uniquely equipped to comment on the increasing prevalence of and pernicious effects of algorithmic tenant scoring.

INTRODUCTION

Ms. Jones¹ was seeking to rent an apartment for herself and her three children using her housing choice voucher. On paper, she was an attractive tenant for many landlords: she had a credit score of 629, was employed, did not have any criminal history, and did not have any adverse rental history. Nonetheless, Ms. Jones was denied housing by six different apartment complexes. This meant that each time, she had to pay a nonrefundable application fee only to end up without an apartment. Ms. Jones’ final denial letter stated that she was rejected because of a tenant screening report from SafeRent Solutions and provided her their contact information. Unfortunately, she was unable to request her report and contest any inaccuracies. To request her report from SafeRent, Ms. Jones would have had to fill out their burdensome request form, which asks for all addresses where she has resided in the past seven years, a copy of her state ID, and a recent tax or utility bill. Ms. Jones was unable to attach her voucher within the 120 days she was allotted, even after receiving two extensions. She lost her voucher and is still searching for housing.

¹ Ms. Jones is a client of HOME of Virginia. Her name has been changed to preserve her anonymity.

Ms. Jones’s experience is far from unique. Indeed, the housing industry has a long history of pervasive discrimination that disproportionately impacts marginalized groups, including low-income individuals, people of color, women, and those with disabilities. That legacy persists today in many forms, including (but in no way limited to) tenant screening. There are over 2,000 American tenant screening companies,² and an estimated 90% of landlords rely on reports from them when making tenant decisions.³ It is a largely unregulated industry, which has caused screening reports to suffer from myriad issues, including mislabeled, out-of-date, and incorrect tenant records. Additionally, tenant screening companies rely on data that reflects systemic discrimination, such as criminal records, eviction records, and credit scores, which disproportionately affects Black and Brown folks seeking housing.⁴

The issues plaguing the tenant screening industry have been magnified by the introduction of algorithms into the screening process. The expanded use and proliferation of widely available public court repositories and technology have prompted consumer reporting companies to utilize unreviewed algorithmic technologies to screen individuals. Though tenant screening algorithms are marketed as providing a neutral, unbiased assessment of applicants free from human error, the opposite has proven true. **Algorithmically derived tenant screening reports and scores mask data integrity issues, prevent landlords from reviewing an applicant’s underlying records, and provide little explanation to denied applicants.** Further, these algorithms are largely trained on records that already disproportionately represent protected classes and records that have been repeatedly noted to provide inaccurate information.

Additionally, the method by which results from those algorithms are produced and audited is wholly invisible to outsiders. Tenant screening companies are notoriously tight-lipped about how they develop and audit these algorithms, the criteria under which the algorithms evaluate an applicant, and how the algorithms interpret an applicant’s records. Companies are also vague about the data on which their algorithms are trained, including whether it is representative of the population and considers racial biases. Indeed, inquiries into these practices are frequently shielded from external review due to claims of proprietary technology and trade secrecy. The lack of industry standards means that the answers to these questions will vary from

² CONSUMER FIN. PROT. BUREAU, MARKET SNAPSHOT: BACKGROUND SCREENING REPORTS 4 (2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

³ Abby Boshart, *How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing*, URB. INST.: HOUS. MATTERS (Dec. 21, 2022), <https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-how-using>.

⁴ See, e.g., THE SENT’G PROJECT, AMERICANS WITH CRIMINAL RECORDS 1-2, <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf> (last visited May 30, 2023); Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENT’G PROJECT (Oct. 13, 2021), <https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/>; Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649 (2020); *Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination*, NAT’L CONSUMER L. CTR. (May 3, 2016), <https://www.nclc.org/resources/past-imperfect-how-credit-scores-and-other-analyticsbake-in-and-perpetuate-past-discrimination/>.

company to company, compounding the lack of transparency. Because of the opacity of algorithmic tenant screening, the industry’s practices run the risk of automating discrimination in the tenant screening process.

The secretive nature of these scores has left denied tenant applicants with little recourse. Denied applicants seldom know that a predictive tenant screening report was the reason they were denied housing. If they do, the process of requesting their report from the screening company and disputing any errors is long and onerous. By the time any errors are resolved, the housing the applicant wanted will likely be off the market.⁵ Additionally, fixing an error with one tenant screening company does not resolve it with every other company. If the next time someone applies for housing the landlord uses a tenant screening company that still relies on the erroneous information, the cycle repeats. And many denied applicants do not even know they can request and dispute their reports in the first place.

Low-income and minority applicants are particularly vulnerable to bias in tenant screening. Low-income individuals, particularly recipients of housing vouchers, are at greater risk of negative consequences if they are repeatedly denied housing. Further, minority applicants are more likely to be mistakenly identified as having criminal backgrounds given poor name-matching protocols. Consequently, supposedly unbiased screening algorithms can produce disparate impacts.

Fortunately, the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) are well positioned to ensure that tenant screening is fair and equitable. As detailed in the recommendations below, proactive testing of the algorithms, mandatory audits, and congressional recommendations can mitigate the potential for harm.

ANSWERS TO SPECIFIC QUESTIONS

How Are Algorithms Used by Tenant Screening Companies?

31. How are algorithms, automated decision-making, artificial intelligence, or similar technology (collectively referred to below as “algorithms”) being used in the tenant screening process?

As technology has evolved, tenant screening companies have increasingly relied on algorithms to evaluate prospective tenants for property managers and provide an opaque qualitative or quantitative score measuring their rental fitness.⁶ Algorithms generally evaluate an applicant’s scraped records against pre-determined eligibility criteria, using predictive data to forecast future behavior. The extent to which landlords are involved in setting eligibility criteria varies from company to company. Most scores are derived from screening companies’ own

⁵ CONSUMER FIN. PROT. BUREAU, CONSUMER SNAPSHOT: TENANT BACKGROUND CHECKS 10 (2022), https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf.

⁶ Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times*, Consumer Reports (Mar. 11, 2021), <https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/>.

criteria.⁷ Nevertheless, some companies give 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.⁸ In some circumstances, the landlord can set eligibility criteria, even tailoring it for each property they manage.⁹

The algorithmic recommendation can take several forms, including a numerical score or a simple approve/deny. For example, TransUnion’s SmartMove computes a “ResidentScore” ranging from 350 to 850, taking into consideration payment history (weighted 30%), credit utilization (26%), credit history (21%), credit availability (13%), and hard credit inquiries (10%).¹⁰ Moreover, TransUnion’s ResidentScore claims to “provide a more accurate assessment of risk for your future rental property income than a typical credit score.”¹¹ In other words, it claims to accurately forecast an applicant’s future tenant behavior and integrate this assessment into their scoring. By contrast, the National Tenant Network provides a numerical score from 0 to 100 with an accompanying qualitative recommendation.¹² The variation in recommendation systems is largely because no standardized reporting format exists for tenant screening companies. Each tenant screening company relies on its own database of information, follows different protocols on updating this information, and sets different criteria upon which to base tenant scores.¹³

Algorithmic tenant screening companies, like traditional ones, partner with database vendors or brokers to compile information and rely on metrics including credit history, criminal records, and eviction history.¹⁴ For example, TransUnion searches “millions” of criminal reports from state and national databases, including most wanted databases and the sex offender registry. SafeRent similarly relies on an “exclusive” database of landlord-tenant records, multi-state criminal data, and state sex offender data.

⁷ Letter from Sherrod Brown, Sen., Congress of the United States, to Rohit Chopra, Dir., Consumer Fin. Prot. Bureau (Oct. 19, 2021), <https://www.banking.senate.gov/newsroom/majority/brown-calls-on-newly-confirmed-cfpb-director-chopra-to-revieve-the-tenant-screening-industry>.

⁸ *Id.*

⁹ ARIEL NELSON, *BROKEN RECORDS REDUX: HOW ERRORS BY CRIMINAL BACKGROUND CHECK COMPANIES CONTINUE TO HARM CONSUMERS SEEKING JOBS AND HOUSING* 13 (2019).

¹⁰ Andrea Collatz, *SmartMove’s ResidentScore vs. a Typical Credit Score: Which Is Better?*, TRANSUNION SMARTMOVE (Apr. 24, 2019), <https://www.mysmartmove.com/SmartMove/blog/residentscore-tailored-tenant-screening.page>.

¹¹ *Id.*

¹² The National Tenant Network recommends a rejection for scores from 0 to 59, a conditional acceptance for scores from 60 to 79, and an acceptance for scores over 80. Lauren Kirchner & Matthew Goldstein, *Access Denied: Faulty Automated Background Checks Freeze Out Renters*, MARKUP (May 28, 2020), <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>.

¹³ *Id.*

¹⁴ Shivangi Bhatia, Note, *To “Otherwise Make Unavailable”: Tenant Screening Companies’ Liability Under the Fair Housing Act’s Disparate Impact Theory*, 88 FORDHAM L. REV. 2551, 2561-62 (2020). Additional information that may be evaluated includes matches to the sex offender registry, the PATRIOT Act Watchlist, and the Office of Foreign Asset Control. Letter from Sherrod Brown to Rohit Chopra, *supra* note 7.

The primary difference between traditional and algorithmic screening reports is that, rather than providing raw data about an applicant to the landlord, algorithmic reports typically consolidate and combine that data with aggregated information in far less transparent ways and then provide a score that is usually opaque and ambiguously determined. Tenant applicants are largely in the dark as to their score, and the reports are designed such that landlords seldom look at the underlying records. Tenant screening companies proffer no information on how they categorize applicants' records, weigh them, or combine them with generalized data, thus masking potential errors in their algorithms. These ill-defined scores particularly impact low-income people of color and voucher holders by masking errors to which these groups are disproportionately subject. As explained below in question 14, Latinx and Asian Americans are disproportionately mismatched with each other, and errors found on voucher holders' reports usually take too long to correct given their truncated timeline to find housing.

39. How are landlords and property managers using recommendations or scores from consumer reporting agencies in deciding whether to rent to prospective tenants?

Landlords' Understanding of Algorithmic Tenant Screening Scores

Despite the increasing prevalence of these algorithms, it is hard to say how much property managers and prospective tenants understand much about how they work beyond the basic facts outlined above given their proprietary nature. They are a nebulous black box.

Algorithmically generated tenant scores are advertised to landlords as trustworthy, unbiased, and simple tools to efficiently find the “right” tenant for a given property. Tenant screening companies' claimed impetus for developing algorithmically generated scores was to facilitate the decision-making process and minimize landlords' judgement calls to reduce human error and bias.¹⁵ For example, tenant screening company AppFolio explains on its website that its “screening capabilities help you reduce human bias and manage Fair Housing risk by establishing consistent review criteria.”¹⁶ Similarly, RealPage touts its screening service as providing “a new level of confidence in screening accuracy,” reducing the risk of landlords making “‘intuitive’ decisions that can lead to financial loss or Fair Housing violations.”¹⁷ Tenant screening services are marketed to provide landlords with overstated, even mistaken, reassurances that algorithmically derived scores are more consistent, accurate, fair, and otherwise superior to human review. The narrative these companies weave masks the fact that the underlying data and practices are still discriminatory. An algorithm simply amplifies biased data under the false pretense of neutrality, as we expound upon below.

Landlords' Interaction with an Applicant's Underlying Records

Algorithmic tenant scores hinder and sometimes even prevent landlords from reviewing the underlying data from which a score is derived. In some cases, the tenant screening companies

¹⁵ NELSON, *supra* note 9, at 14.

¹⁶ *Tenant Screening*, APPFOLIO, <https://www.appfolio.com/services/tenant-screening> (last visited May 25, 2023).

¹⁷ Guy Lyman, *How Artificial Intelligence Is Revolutionizing Resident Screening*, REALPAGE: BLOG (June 26, 2019), <https://www.realpage.com/blog/artificial-intelligence-revolutionizing-resident-screening/>.

do not provide the underlying data at all. All landlords see is an applicant's score or recommendation.¹⁸ In these instances, it is nearly impossible to consider an individual's extenuating circumstances or for landlords to perform their own risk assessment. Even when some underlying data is provided, many screening reports are designed such that landlords see the score or recommendation first, "so that landlords do not have to spend time considering the individual's specific . . . history."¹⁹ Often, if that score or recommendation is negative, landlords simply reject that applicant without a second glance.²⁰ As one property manager explained, "we just put their information into the computer and it tells us whether they qualify."²¹ This is especially true for corporate property managers with a large volume of applicants.²²

One of the main selling points of algorithmic scoring is the speed with which landlords obtain reports and a recommendation. Several companies pride themselves on delivering results within seconds. But this speed factor sacrifices accuracy and careful review, as explained below in question 14.

41. To what extent are landlords, property managers, or consumer reporting agencies sharing the recommendations or scores with prospective tenants? What steps, if any, are they taking to explain to prospective tenants the basis for a recommendation or score?

Landlords are legally required to inform tenants if they were turned down because of a negative screening report and provide the name of the screening company used.²³ This is known as an adverse action notice. But in our experience, many landlords do not provide such information.²⁴ Typically, "rental applicants [are] simply told whether they were approved or they never hear[] back about the application at all."²⁵ Often, for a denied tenant to understand why they have been rejected, they must call the property manager or landlord and seek answers. When they do so, they might eventually get told that their denial was based on a tenant screening report and provide the name of the company. Because landlords rarely look beyond an applicant's algorithmically derived score if they are able, they usually do not specify what exactly from the report led to the denial. When a denied applicant then contacts the tenant screening company, they are usually redirected to the landlord to understand why they have been denied. This back-and-forth is frustrating, time consuming, and confusing for denied tenants seeking answers.

HOME's clients understand this story well. For example, when Ms. Hemsley²⁶ was denied by a local apartment complex, she did not receive an adverse action notice. When she

¹⁸ NELSON, *supra* note 9, at 13.

¹⁹ Rebecca Oyama, Note, *Do Not (Re)enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act*, 15 MICH. J. RACE & L. 181, 189-90 (2009).

²⁰ NELSON, *supra* note 9, at 15.

²¹ Eva Rosen et al., *Racial Discrimination in Housing: How Landlords Use Algorithms and Home Visits to Screen Tenants*, 86 AM. SOCIO. REV. 787, 801 (2021).

²² *Id.*

²³ See 15 U.S.C. § 1681m(a).

²⁴ See also CONSUMER SNAPSHOT, *supra* note 5, at 22-23.

²⁵ *Id.* at 23.

²⁶ Ms. Hemsley's name has been changed to preserve her anonymity.

asked for a denial letter, the property manager told her that she “wasn’t denied,” but that her “screening came back rejected,” and that they did not give out adverse action notices. The manager suggested that Ms. Hemsley call RentGrow, from whom the report was generated. It was only upon Ms. Hemsley’s insistence that she was entitled to a letter that she received one explaining that her denial was due to a tenant screening report. When Ms. Hemsley contacted RentGrow, they told her several vague reasons why she was denied but never provided sufficient detail or a copy of her report to verify its accuracy. This entire process took so long that soon after, her Housing Choice Voucher expired. People like Ms. Hemsley highlight how the frustrating back-and-forth to get answers is felt particularly acutely by low-income individuals on tight timelines.

42. To what extent do consumer reporting agencies allow tenants the opportunity to dispute, seek review of, or seek a non-automated alternative to the use of a recommendation, prediction, or score produced by an algorithm? To what extent do landlords or property managers re-assess housing applications following a tenant’s dispute or correction of scoring criteria or underlying data?

Under the Fair Credit Reporting Act (FCRA), applicants may request a free copy of their report from a screening company within 60 days of a denial.²⁷ Tenant screening companies generally allow denied tenant applicants to request a copy of their report, though the ease with which they may do so varies. For example, RentGrow’s request form is easily accessible through their main webpage and only requires applicants to provide basic information, such as their name, address, social security number, and the property to which they applied.²⁸ Applicants also need not disclose why they are requesting their report. By contrast, SafeRent’s request page is buried in small grey font at the bottom of their website and requires an applicant to navigate to a new website and several more webpages before accessing the online form.²⁹ The form itself is burdensome. It not only requires basic information, but also all the addresses where an applicant lived in the last seven years, a copy of their government ID and social security card, and a tax or utility bill.³⁰ It additionally requires applicants to give a valid reason for requesting the score.³¹ These burdens are all barriers to applicants receiving their report. They are what prevented people like Ms. Jones from requesting a copy of her report and disputing it before her housing voucher expired. When denied tenants *do* successfully request their reports, the CFPB has found that tenant screening companies seldom respond.³²

²⁷ 15 U.S.C. § 1681j(b).

²⁸ *Request a Copy of Your Report*, RENTGROW, <https://www.rentgrow.com/request-a-copy-of-your-screening-report-2/> (last visited May 25, 2023).

²⁹ SAFERENT SOLS., <https://saferentsolutions.com> (last visited May 25, 2023); Consumer Relations, MYRENTAL, <https://www.myrental.com/consumer-relations> (last visited May 25, 2023); Rental Application Support, SAFERENT SOLS., <https://saferentsolutions.com/rental-applicant-support/> (last visited May 25, 2023).

³⁰ *Consumer Disclosure Request Form*, SAFERENT SOLS., <https://saferentsolutions.com/wp-content/uploads/2021/11/srs-consumer-disclosure-042721-form-20211112.pdf> (last visited May 25, 2023).

³¹ Reasons include being denied housing, relying on their free annual FCRA consumer report, and suspicion that their report includes erroneous or fraudulent information. *Id.*

³² CONSUMER SNAPSHOT, *supra* note 5, at 18-23.

Even if denied applicants gain access to their report, in most cases they do not have the tools to understand the basis for and methods of calculation of their algorithmically derived scores. Typically, the reports that applicants receive only contain the underlying records on which the score was based—not the score itself.³³ Screening companies also rarely (if ever) disclose “how the algorithm classified [applicants’] records, aged them, or filtered them through the acceptance criteria.”³⁴ If, for example, the algorithmic recommendation suggested denying an applicant because of a wrongly aged conviction, the applicant may never realize this error.

If denied applicants, upon reviewing their screening report, notice an error in their underlying records, they have the right to dispute it with the tenant screening company under FCRA.³⁵ Upon submitting a dispute, the tenant screening company has 30 days to investigate the issue.³⁶ In reality, however, many denied applicants’ disputes are not resolved within this time frame.³⁷ Sometimes, even though the screening company communicates that they have fixed the error, the mistake is later reincorporated into their reports.³⁸

Even when errors are fixed in a timely, permanent manner, these corrections only apply to the tenant screening company to which an applicant submitted a dispute. **The errors likely persist in other companies’ databases.** This results in a game of whack-a-mole because there is no systemic way to update errors across the industry. To find these errors, tenants first must pay a non-refundable application fee, be denied because of a new tenant screening report, request this report, and dispute the error with that particular tenant screening company. This process is lengthy and expensive. Many prospective tenants do not have this kind of time or money.

There is also currently no way to ensure that there is a process to correct the outdated or erroneous data coded directly into assessment algorithms. What if this data is not accurate or inaccurate, but rather entirely hypothetical, as in the case of predictive scoring? Moreover, what if this information is not about the individual applicant, but about aggregate renter outcomes? Tenants likely do not even know to ask these technical questions when requesting and disputing their reports. And even if they did ask, it is unlikely that tenant screening companies would do anything about it.

Tenant screening companies report that denied applicants dispute less than one percent of reports;³⁹ however, this statistic may be misleading because it is likely that many denied applicants do not know they can access their reports or dispute them. This is especially true

³³ NELSON, *supra* note 9, at 14.

³⁴ *Id.*

³⁵ 15 U.S.C. § 1681i(a), (f).

³⁶ *Id.*

³⁷ *See, e.g.*, CONSUMER SNAPSHOT, *supra* note 5, at 18-19 (“I filed a dispute in regard to the incorrect items on my credit report and it has been well over 30 days, and I haven’t received any investigation results.”); CONSUMER FIN. PROT. BUREAU, COMPLAINT BULLETIN: COVID-29 ISSUES DESCRIBED IN CONSUMER COMPLAINTS 14-15 (2021), https://files.consumerfinance.gov/f/documents/cfpb_covid-19-issues-described-consumer-complaints_complaint-bulletin_2021-07.pdf (noting that “some companies did not provide responses at all” to applicants disputing their tenant screening reports).

³⁸ CONSUMER SNAPSHOT, *supra* note , at 19.

³⁹ Kirchner & Goldstein, *supra* note 12.

given that landlords may not provide an adverse action notice that specifies the denial was due to a tenant screening report. Another reason denied applicants may not dispute their reports is that the length of the disclosure and correction process tends to outlast the urgent need for housing. By the time denied applicants figure out the process, make the proper requests, and get their information corrected, they have already been rejected by the landlord and the property is no longer available the vast majority of the time.⁴⁰ According to one Bay Area fair housing attorney, some individuals do not even bother applying for housing in the first place because they assume they will be denied because of information they think will be misinterpreted by an algorithmic tenant screening system. Because of the whack-a-mole nature of correcting reports, some do not find applying worth the effort.

In addition to disputing erroneous data on their reports, denied applicants can and have been suing tenant screening companies under both FCRA and the Fair Housing Act; however, this requires time, money, resources, and legal knowledge that many denied tenants simply do not possess. Indeed, “[t]he complexity of the law, along with the burden it places on the consumer to resolve disputes, makes it difficult for ordinary consumers to make use of these provisions.”⁴¹ The burdens imposed on denied tenant applicants let tenant screening companies get away with a lot more than the law allows.

Transparency Issues with Algorithmic Tenant Screening

32. For algorithms that are being used for any of these purposes, how are the algorithms designed, developed, or otherwise created? To the extent that the development of the algorithms involves machine learning, deep learning, or other technologies that are designed to automatically derive correlations from so-called “training” data, what datasets are being used for training?

There is a tremendous amount of uncertainty and lack of transparency concerning how the algorithms used in tenant screening are designed and developed. One of the major challenges for commenters in the proceeding, and for the FTC and CFPB going forward, will be gaining enough information to understand how that design and development works. The following investigative reports, legal actions, and analogous controversies in other industries where AI has augmented or supplanted human decision-making illustrate how algorithmic tenant screening companies exacerbate the broader problems of discrimination and housing access that already characterize the housing industry.

A 2020 investigation of tenant screening companies revealed troubling, unlawful data collection practices.⁴² According to their reporting, a common method that screening companies employ is a “wild-card search,” which is an inclusive data collection strategy where different

⁴⁰ Matthew Harold Leiwant, Note, *Locked Out: How Algorithmic Tenant Screening Exacerbated the Eviction Crisis in the United States*, 6 GEO. L. TECH. REV. 276, 285 (2022).

⁴¹ TEX PASLEY ET AL., SCREENED OUT: HOW TENANT SCREENING REPORTS UNDERMINE FAIR HOUSING LAWS AND DEPRIVE TENANTS OF EQUAL ACCESS TO HOUSING IN ILLINOIS 15 (2021).

⁴² Kirchner & Goldstein, *supra* note 12.

names that have the same few letters are searched.⁴³ This inclusive data collection technique resulted in Terrance Enright’s lawsuit against National Tenant Network. In the suit, the tenant screening company searched for “Enright, Ter*” (which yields matches with any name that starts with “Ter”), as well as misspellings like Enwright.⁴⁴ This tactic conflated Terrance’s records with Teri Enwright’s criminal records, wrongfully resulting in Terrance’s denial for housing.⁴⁵ Wild-card searches have resulted in similar outcomes for numerous other applicants.⁴⁶

Recent enforcement actions and lawsuits against tenant screening companies have also revealed discrimination inside the algorithmic black boxes. In January, the Justice Department filed a Statement of Interest in a Fair Housing Act case alleging unlawful algorithmic tenant screening practices.⁴⁷ The plaintiffs’ complaint revealed that the algorithm used to generate a “lease performance risk score” discounts applicants that rely on rent vouchers, which are disproportionately used by Black and Hispanic individuals.⁴⁸ These vouchers guarantee income for more than five million people directly from a public housing authority, which indicates a stable stream of rent for landlords.⁴⁹ Nevertheless, screening algorithms like the one at issue in this case weigh vouchers as a mark against an applicant’s ability to pay for rent. An excuse of this being a “good” business practice to protect landlords does not add up.

Other industries that rely on the same algorithmic technology as tenant screening companies further reveal how important it is to implement AI with caution. In the United Kingdom, for instance, an algorithm was developed to predict scores on college entry exams in lieu of actual testing during COVID.⁵⁰ The algorithms were trained on data that considered the historical performance of schools as well as students’ individual metrics, which ultimately became proxies for class and race.⁵¹ Racial minorities and students in lower-income schools were systematically predicted to score lower than their teachers’ assessments, while students attending private schools with a history of grade inflation received higher scores.⁵² The predictive weights coupled with biased datasets meant that test scores reflected resources and other factors that had nothing to do with the college entry exams. Yet the results of these predictive algorithms were

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Press Release, Dep’t of Just., *Justice Department Files Statement of Interest in Fair Housing Act Case Alleging Unlawful Algorithm-Based Tenant Screening Practices* (Jan. 9, 2023), <https://www.justice.gov/opa/pr/justice-department-files-statement-interest-fair-housing-act-case-alleging-unlawful-algorithm>.

⁴⁸ *Id.*

⁴⁹ *Policy Basics: The Housing Choice Voucher Program*, CENTER FOR BUDGET AND POLICY PRIORITIES (Apr. 12, 2021), <https://www.cbpp.org/research/housing/the-housing-choice-voucher-program>; Manuela Tobias & Jeanne Kuang, *Could This COVID Program Help Reduce the California Housing Crisis?*, CALMATTERS (May 2, 2023), <https://calmatters.org/housing/2022/08/california-housing-crisis-emergency-vouchers/>.

⁵⁰ Dan Kolkman, *What the World Can Learn From the UK’s A-level Grading Fiasco* (Aug. 26, 2020), LSE BLOGS, <https://blogs.lse.ac.uk/impactofsocialsciences/2020/08/26/fk-the-algorithm-what-the-world-can-learn-from-the-uks-a-level-grading-fiasco/>.

⁵¹ *Id.*

⁵² *Id.*

relied upon, which denied thousands of children the opportunity to attend universities they were admitted to.⁵³

A similar discriminatory impact has been observed in companies that rely on algorithms to filter job applicants. An algorithm used by Amazon was trained on data derived from a predominantly male work force, which disproportionately down-ranked female applicants.⁵⁴ The algorithm was intended to identify potential applicants, yet the negligent design of the algorithm associated job success with gender.⁵⁵ And more recently, a study found that the IRS's audit selection algorithm disproportionately targeted Black taxpayers because of its approach that disproportionately flagged tax returns claiming of certain tax credits that supplement low-income workers' incomes to alleviate poverty.⁵⁶

These examples of vouchers, college entry predictions, job applications, and tax credits illustrate how algorithms can easily exacerbate racial and gender discrimination, even unintentionally. They also show how algorithms must be carefully curated to ensure their results predict what they purport to predict. These principles apply equally in the context of tenant screening algorithms and demonstrate the need for such algorithms to be tested and audited to try to prevent biased rental decisions and discriminatory effects.

37. What steps, such as auditing, are taken to ensure that algorithms that evaluate, grade, or make recommendations about prospective tenants are not discriminating against prospective tenants on the basis of race, sex (which includes sexual orientation and gender identity), disability, or other protected class, and how are such steps carried out?

The CFPB has noted that tenant screening companies have not published any third-party validations for their scoring models.⁵⁷ Unfortunately, there is generally no information available about the exact method by which a score is calculated. Tenant screening companies will generally argue that the information is proprietary and protected by trade secret law.⁵⁸ Even in the Arroyo lawsuit (discussed in greater detail below in question 19), a rare case in which plaintiffs have been able to access this information, these details were filed under seal and inaccessible to the public.⁵⁹ While this case demonstrates that plaintiffs can gain access to details relating to screening company's scoring algorithms, **we urge the FTC to use its authority under § 6 of the FTC Act to access and, where possible, make available this information on a more public basis.**

⁵³ Jeffrey Dastin, *Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women*, REUTERS (Oct. 18, 2018), <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Jim Tankersley, *Black Americans Are Much More Likely to Face Tax Audits, Study Finds*, N.Y. TIMES (Jan. 31, 2023), <https://www.nytimes.com/2023/01/31/us/politics/black-americans-irs-tax-audits.html>.

⁵⁷ CONSUMER FIN. PROT. BUREAU, TENANT BACKGROUND CHECKS MARKET 41 (2022), https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf.

⁵⁸ NELSON, *supra* note 9, at 10.

⁵⁹ Order Granting 81 Motion for Leave to File Under Seal and Granting 83 Motion to Seal, *Connecticut Fair Housing Ctr. v. CoreLogic Rental Property Sols., LLC*, No. 3:18-cv-00705 (D. Conn. Aug. 30, 2019), ECF No. 85.

Discrimination in Algorithmic Tenant Screening

14. Do tenant screening practices have unique impacts on certain groups or communities? For example, are there unique impacts on historically underserved populations, such as Black, Indigenous, and people of color; the LGBTQI+ community (especially trans and gender nonconforming individuals); military service members; immigrants; public housing voucher recipients; renters with disabilities; or others?

While many are adversely affected by discriminatory screening practices, two groups that are particularly affected are recipients of Section 8 housing vouchers and people of color. Many individuals fall into both of these categories and may be adversely affected by the issues described in this section, compounding their difficulty in finding housing.

Section 8 housing recipients are particularly vulnerable to unfair screening practices because the program places them on a **tight timeline** to find housing. The public housing authority gives recipients as little as 60 days⁶⁰ to find housing that meets the strict requirements of the program, or they risk losing their coveted voucher.⁶¹ Applicants also lose a small application fee each time they are rejected, which can be a hardship for low-income applicants who are repeatedly denied.⁶²

This is a scenario that HOME has faced repeatedly. While local housing authorities generally give their tenants a full 120 days to find housing, many tenants still find this time period insufficient once they realize that their applications are being consistently denied based on inaccurate tenant screening reports. When these applicants get rejected for an unknown reason despite having good credit scores, stable employment, and no criminal records, they rarely have the time or ability endure the process of requesting their tenant screening report each time they are rejected.

Consider how the Section 8 timeline interacts with the FCRA rules. Even when followed correctly, FCRA gives screening companies 30 days to respond to a request for a tenant's report, and then an additional 30-day period to investigate and correct any mistakes an applicant may report. This alone can pass the 60-day minimum required for Section 8. Even if applicants have a full 120 days, the rush of the Section 8 timeline pushes applicants to move on to new housing opportunities quickly once they have been denied, and the housing they applied for has likely rented long before they are able to dispute an inaccurate report.

⁶⁰ The exact duration varies between public housing authorities, but regulations only require a baseline of 60 days. 24 CFR 982.303(a). In addition, the Department of Housing and Urban Development issued several notices pushing for housing authorities to provide deadline waivers due to the COVID-19 pandemic. *See, e.g.*, Notice PIH 2022-09, Streamlined Regulatory Waivers for the Housing Choice Voucher (including Mainstream and Mod Rehab) Program, (April 11, 2022) <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2022-09.pdf>.

⁶¹ Maya Miller, *What You Need to Know About How Section 8 Really Works*, PROPUBLICA (Jan. 9, 2020, 5:30 AM EST), <https://www.propublica.org/article/what-you-need-to-know-about-how-section-8-really-works>.

⁶² *E.g.*, Jennifer Ludden, *Rental Application Fees Add Up Fast in a Tight Market. But Limiting Them Is Tough*, NPR (Jan. 13, 2023), <https://www.npr.org/2023/01/13/1148426491/rental-application-fees-housing-affordable-market-states-laws>.

People of color face additional barriers in the tenant screening process because they are more likely than white applicants to be falsely reported as having a criminal record or history of evictions for two reasons. First, similarity among names within certain racial and gender groups means that name collisions are more likely to occur within a racial and gender group. In particular, Hispanic and Asian Americans' records are more likely to be falsely matched with another individual during a simple record search.⁶³ For example, 12 million Latinx people have the same 26 surnames.⁶⁴ Second, certain racial and gender groups are more frequently the subject of negative reports, with Black women most likely to be evicted,⁶⁵ and Black men most likely to have previous involvement with the justice system.⁶⁶ The result is that criminalization and over-eviction of particular groups, especially Black and Latinx people, has an adverse impact on other members of the same group in the tenant screening process.

Despite the repeated adverse outcomes to rental applicants, screening companies are known for taking a slapdash approach to name matching. This is despite the fact that field is the subject of substantial research and development efforts.⁶⁷ Nevertheless, some of the techniques used by tenant screening companies are naïve and prone to multiple points of failure. Compare the detailed exploration of various multi-stage algorithms in the links above with the wildcard search method that was used to deny Terrance Enright access to housing, despite the fact that better methods have been available since at least 1966.⁶⁸

19. How accurate (including complete) are criminal records, both from public records sources like courts and as provided by tenant screening companies? Where there are inaccuracies, where do these errors originate?

Our experience shows that criminal records are misused in the screening context, either by inaccurately matching an individual to criminal records belonging to someone else, or by including criminal records that are excessively old, outdated, or mischaracterized.

The first point is demonstrated well by the story of Tyrone Henderson,⁶⁹ who was subject to a criminal-record check through a database managed by SafeRent. The search came back positive, finding several felony convictions for an individual with the same first and last name and date of birth as Mr. Henderson. While Mr. Henderson was incorrectly labeled as a felon in his background check (in this case conducted during the job search process), there is nothing to

⁶³ CONSUMER SNAPSHOT, *supra* note 33, at 11; Joseph T. Lariscy, *Differential Record Linkage by Hispanic Ethnicity and Age in Linked Mortality Studies: Implications for the Epidemiologic Paradox*, 23 J. AGING & HEALTH 1263 (2011).

⁶⁴ Kirchner & Goldstein, *supra* note 12.

⁶⁵ Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction/>.

⁶⁶ Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, NAT'L INST. OF JUST. J., (June 14, 2012), Fig. 2, <https://nij.ojp.gov/media/image/19511>.

⁶⁷ *E.g.*, George Papadakis et al., *The Return of JedAI: End-to-End Entity Resolution for Structured and Semi-Structured Data*, VERY LARGE DATA BASES, at 1950 (Aug. 2018), <https://github.com/scify/JedAIToolkit> (last visited May 30, 2023); ZinggAI, *Zingg*, GITHUB (2021), <https://github.com/zinggAI/zingg>.

⁶⁸ Vladimir I. Levenshtein, *Binary Codes Capable of Correcting Deletions, Insertions, and Reversals*, 10 SOVIET PHYSICS DOKLADY 707 (1966).

⁶⁹ NELSON, *supra* note 9, at 11.

indicate that the information itself wasn't an accurate criminal record belonging to a different Tyrone Henderson.

The case of Carmen and Mikhail Arroyo represents the second scenario. In this case, Carmen Arroyo sought to have her son, Mikhail, move back in with her after he was severely disabled in an accident, and applied for a larger apartment in her building and to have Mr. Arroyo added as a resident. Their application was denied after CoreLogic discovered that Mr. Arroyo had been arrested, but not convicted, of retail theft several years prior.⁷⁰ The use of a minor arrest record violated HUD policy instructing public housing authorities that arrest records alone could not be the basis for denying housing admission.⁷¹ Our experience with individual clients also shows that screening companies regularly rely on records that are decades out of date in making blanket housing determinations.

Both of these scenarios can be best remedied by reassessing the role that criminal history plays in someone's ability to be a successful tenant and in the tenant screening process at all. At the very least, tenant screening companies should check the criminal records found in automated screening reports for relevance—both for recency and level of offense, and whether the particular offense relates to renter stability. While the methods used by SafeRent and other providers can effectively uncover potential records, a secondary screening by a human could quickly uncover many false matches. In one striking example, HOME of Virginia encountered an individual who was rejected for housing on the basis of a criminal record for an individual who was still in prison in another state at the time of the application. In the case of Mr. Arroyo, a human could have quickly identified that the arrest record was minor and out of date. And in the Henderson case, further examination of the record likely would have uncovered that the individuals had different middle names, appearances, or addresses.

While these examples are easily uncovered by a human audit, any sort of **algorithmic inspection would merely duplicate the existing problems**. Without substantial improvements in technology, we do not believe that automated software or audits can reliably catch these issues, nor do we believe randomly checking a small percentage of the applications would be appropriate to meet the magnitude of this problem.

35. What information about applicants is relayed by consumer reporting agencies to landlords and property managers?

In most cases, the most important component of a tenant screening report is a single summary score or recommendation. Even when companies may provide more detailed

⁷⁰ “The sole criminal record upon which [Defendant] relied in making the CrimSAFE report for Mikhail Arroyo is a single charge in Pennsylvania for “grade S” retail theft . . . when he was twenty years old and prior to his accident. A ‘Grade S’ in Pennsylvania means ‘summary offense,’ which is below the level of a misdemeanor and is often called a non-traffic citation.” Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., 478 F. Supp. 3d 259, 280 (D. Conn. 2020) (internal citations omitted).

⁷¹ Connecticut Fair Hous. Ctr. v. Corelogic Rental Prop. Sols., 369 F. Supp. 3d 362, 371 (D. Conn. 2019).

information, that information is frequently unhelpful⁷² or simply ignored.⁷³ Because of this, the algorithm used to compute the score is of critical importance.

Unfortunately, there is generally no information available about the exact method by which a score is calculated. Tenant screening companies will generally argue that the information is proprietary and protected by trade secret law. Instead, we will note the similarity between these scores and other risk assessment algorithms. One example that has recently received significant scrutiny is the use of algorithms in bail adjudication. While bail screening algorithms, also known as pre-trial risk assessments, claim to be an unbiased way to evaluate the risk of releasing a defendant while they await trial, they frequently end up mirroring the existing racial biases inherent in the system.⁷⁴ The result is that algorithms provide a sense of reliability that seems fair to judges and prosecutors, but maintains the same discriminatory impact. ProPublica conducted a detailed analysis of a risk assessment tool called COMPAS and found that it was disproportionately likely to rate Black defendants as more likely to re-offend and was twice as likely to label a Black defendant as high risk, only to have them not reoffend.⁷⁵

These algorithms hide bias behind a veil of complexity, making it hard to understand exactly how they discriminate. One possibility, however, is that certain seemingly unbiased details can end up as a proxy for race. As an easy example, someone's zip code can act as a proxy for race.⁷⁶ An individual living in a Black, Latinx, or other community more like to be overpoliced may be screened out by an algorithm that looks at arrest or crime rates by zip code. Regardless of any discriminatory intent from landlords, screening practices that eliminate applicants based on criminal history have a disparate impact on Black, Latinx, and LGBTQIA+ to receive adverse housing decisions;⁷⁷ however, the records that inform screening reports have been noted by federal agencies like the Department of Justice (DOJ) to not possess important information like disposition that may add nuances to the information influencing a landlord's housing decision.⁷⁸

⁷² Consider the Arroyo example above, where “[t]he only information [CoreLogic] provided to WinnResidential about Mr. Arroyo’s disqualifying record is his name, date of birth and under a field labeled jurisdiction, the entry ‘000000033501.PA.’” *Id.* at 367.

⁷³ Wonyoung So, *Which Information Matters? Measuring Landlord Assessment of Tenant Screening Reports*, HOUS. POL’Y DEBATE, Aug. 2022, at 14,

⁷⁴ Sam Levin, *Imprisoned by Algorithms: The Dark Side of California Ending Cash Bail*, GUARDIAN (Sept. 7, 2018, 10:09 AM EDT), <https://www.theguardian.com/us-news/2018/sep/07/imprisoned-by-algorithms-the-dark-side-of-california-ending-cash-bail>; Sean Allan Hill II, *Bail Reform and the (False) Racial Promise of Algorithmic Risk Assessment*, 68 UCLA L. REV. 910, 946 (2021).

⁷⁵ Julia Angwin, Jeff Larson, Surya Mattu & Lauren Kirchner, *Machine Bias*, PROPUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

⁷⁶ Alexandra George, *Thwarting Bias in AI Systems*, CARNEGIE MELLON U.: COLL. ENG’G, <https://engineering.cmu.edu/news-events/news/2018/12/11-datta-proxies.html>.

⁷⁷ Alexi Jones, *Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System*, PRISON POL’Y INITIATIVE (March 2, 2021), <https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/>.

⁷⁸ U.S. DEP’T OF JUST., THE ATTORNEY GENERAL’S REPORT ON CRIMINAL HISTORY BACKGROUND CHECKS 5 (2006) https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/ag_bgchecks_report.pdf; Juan Pablo Garnham, Carl Gershenson & Matthew Desmond, *New Data Release Shows That 3.6 Million Eviction Cases Were Filed in the United States in 2018*, EVICTION LAB (July 2022) <https://evictionlab.org/new-eviction-data-2022/>.

It is an arduous process to examine an individual algorithm to determine whether individual variables are acting as a proxy for race,⁷⁹ but it is easy to imagine that tenant screening algorithms inadvertently use such a proxy in a way that goes beyond incorrect eviction and tenant screening records. As a result, landlords are heavily relying on simplistic scores based on data and evaluation methods that are likely racially biased. But it is impossible to determine how such bias enters the process due to the efforts screening companies employ to avoid scrutiny.

RECOMMENDATIONS

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

Our nation’s housing challenges do not begin and end with affordability. In fact, the challenges that exacerbate the ability for everyday individuals—especially low-income people and people of color—to afford a safe and dignified place to live often begin at the application process. To realize an equitable housing system that enables individuals of all backgrounds to access affordable housing opportunities close to their families, social, and cultural networks, the FTC and CFPB must take action and provide tenants with the necessary protections to access affordable and dignified housing.

The FTC and CFPB’s Authority to Regulate Algorithmic Tenant Screening

Both the FTC and the CFPB have significant authority to address inaccurate reports through FCRA. It is well established that tenant screening reports are consumer reports covered by FCRA,⁸⁰ and that the FTC has authority to bring enforcement actions when they engage in a “a pattern or practice of violations” of FCRA.⁸¹ Indeed, the FTC has already reached settlements with two algorithmic tenant companies for violating FCRA’s data accuracy requirements.⁸² However, in practice, given the large number of tenant screening companies and individual nature of certain violations, we suggest that a better use of CFPB and FTC resources would be for the CFPB to enact regulations under 15 U.S.C. § 1681s(e), clarifying that reckless use of algorithms to violate or circumvent FCRA constitutes a violation of FCRA, then relying on a mixture of state and FTC enforcement action under § 1681s(a) and (c).

⁷⁹ *Id.*

⁸⁰ See, Fed. Trade Comm’n, *What Tenant Background Screening Companies Need to Know About the Fair Credit Reporting Act*, (Oct. 2016), <https://www.ftc.gov/business-guidance/resources/what-tenant-background-screening-companies-need-know-about-fair-credit-reporting-act>.

⁸¹ 15 U.S.C. § 1681s(a)(2)(A).

⁸² Press Release, Fed. Trade Comm’n, *Tenant Background Report Provider Settles FTC Allegations that It Failed to Follow Accuracy Requirements for Screening Reports* (Dec. 8, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/12/tenant-background-report-provider-settles-ftc-allegations-it-failed-follow-accuracy-requirements>; Press Release, Fed Trade Comm’n, *Texas Company Will Pay \$3 million to Settle FTC Charges That It Failed to Meet Accuracy Requirements for its Tenant Screening Reports* (Oct. 16, 2018), <https://www.ftc.gov/news-events/news/press-releases/2018/10/texas-company-will-pay-3-million-settle-ftc-charges-it-failed-meet-accuracy-requirements-its-tenant>.

The FTC also has significant authority to address the issues plaguing algorithmic tenant screening under the FTC Act. When tenant screening reports are viewed as a product provided to landlords for a fee, the decision to hide the source and type of information used in creating the report unfairly deprives customers of the ability to investigate the quality of the screening service received. Furthermore, a tenant screening company acts deceptively when it holds out the information it provides as a true, accurate, and unbiased report of a tenant's background, but behaves recklessly regarding the information in the report.

Because algorithm providers and tenant screening companies are frequently engaging in prohibited acts, the FTC may require them to share significant information about their practices on an annual basis under 15 U.S.C. § 46(b). We urge that the Commission use this authority to compel tenant screening companies to reveal at least the following on an annual basis:

- (1) A list of the specific sources of data used to evaluate applicants
- (2) An explanation of how the company queries each of these data sources
- (3) Whether the screening company provides one or more scores or recommendations
- (4) If so, the methods by which these scores or recommendations are calculated
- (5) Whether a human is involved in reviewing the veracity or relevance of the information provided
- (6) The methods by which screening subjects may report and correct information, and the distribution of response times to such requests
- (7) A record of what ratings are assigned to different groups based on racial and gender groups, including an average score and a percent who fall into representative score brackets
- (8) A record of how a representative tenant report is scored differently based on if an individual has their name, race, gender, or housing voucher status included
- (9) Details on the number of appeals or requested consumer reports each year
- (10) Details on the portfolio size and location of housing provider clients

The use of this authority in the context of tenant screening is particularly important because the FTC is uniquely able to compel production of trade secret information under this authority. As discussed in depth above, one of the major barriers to regulation in this space that vendors are able to hide their practices behind a veil of trade secrecy, preventing potential tenants and advocates from discovering how these companies evaluate applicants. But the FTC can compel the production of trade secrets under its § 46(b) investigative authority, share this information with Congress under § 46(f), and engage other federal agencies, such as HUD and the DOJ, that have additional enforcement authority in this space.

Specific Recommendations

The FTC and CFPB can intervene to alleviate concerns that algorithms will contribute to the broader housing crisis in the nation, which include the following:

- **Proactive reports:** Increase availability of reports and specifically standardize the type of information that can or should be included. Proactive reports would allow prospective

tenants to check and correct their reports *before* they apply, whereas the status quo is that tenants only find out about their adverse screeners *after* they are denied.

- **Codify and streamline dispute process:** As discussed above, tenant screening companies each have their own dispute process. These differences make corrections – when they do occur – often futile or moot. A wrongfully denied applicant will likely encounter a different screening company in subsequent applications, which may pick up on the same errors that the previous company corrected. Streamlining this process across the industry with information sharing mechanisms will increase the willingness for rental applicants to establish their rights, and it will meaningfully increase the accuracy of screening reports.
- **Mandatory and repeated audits:** tenant screening companies and their algorithms should be audited frequently, and the agencies should consider banning the use of invalidated ones. This audit should consider the entire lifecycle of the screen from:
 - Data intake and validation process: to pass this stage of the audit, the screening company must show that their data sources and associations are highly unlikely to include bad or outdated information, and robustly assess the tenant in question.
 - Algorithmic decision-making: what weights are being used (how is the AI system valuing vouchers or other housing assistance tools that reduce the likelihood of delinquency). Important here is that stigmatized tools that have little or no significant bearing on an individual’s ability to pay rent should be weighted appropriately such that vouchers, for instance, would not be cause for denial.
- **Pre-Deployment data impact assessments:** require a data impact assessment prior to implementation of a new technology or prior to the implementation of a model that would impact access to housing; these assessments should be reviewed by a regulatory authority prior to the technology being deployed on the public.
- **Ban coded or simplified results:** reports should be purely informative and refrain from making denial or approval recommendations. Toward that end, color-coded results or mere approval/denial suggestions should be discouraged or, at a minimum, included with a detailed rationale prior to any dispute resolution process being triggered.
- **Congressional recommendations:** provide recommendations to Congress to reconsider dispute period under FCRA and consider placing a hold on a landlord’s ability to rent a particular unit when an applicant receives a negative report but believes it is based on errant information.