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# From Policy to Practice: Leveraging HUD's Guidance to Fair and Inclusive Tenant Screening

November 21, 2024





# Welcome!

# Agenda

- Context Setting
- Overview of Fair Housing Guidance
- Issues + Research
  - TechEquity “Screened out of Housing”
  - UpTurn “Tenants Pay the Price”
- Policy Development + Implementation



## Today's Presenters:

- **Ariel Nelson**, National Consumer Law Center
- **Chi Chi Wu**, National Consumer Law Center
- **Hannah Holloway**, Tech Equity
- **Jasmine Rangel**, PolicyLink
- **Marie Claire Tran Leung**, National Housing Law Project
- **Natasha Duarte**, Upturn
- **Rasheedah Phillips**, PolicyLink
- **Wonyoung So**, MIT



# Context Setting

## Frameworks, Laws, and Strategies



**HOUSING AS A  
HUMAN RIGHT**



**FAIR HOUSING**



**AFFIRMATIVELY  
FURTHERING  
FAIR HOUSING**

# Fair Housing Concerns in Tenant Screening

## Criminal History Records

Over representation of Black, Latine, LGBTQIA+, and Women in the carceral system

More records = More Denials  
Criminal records ≠ tenancy

## Algorithmic Screening

Algorithmic products package someone's history into a format that lets landlords automate denials

## Eviction Records

People with an eviction record have a harder time accessing safe and affordable housing, regardless of the outcome of the case.

Landlords frequently refuse to rent to prospective tenants if they have an eviction on their record.

Evictions are disproportionately filed against Black and Latinx/e women, leading to substantial fair housing concerns for denials based on eviction records

## Source of Income

Landlords and screening companies have and continue to deliver housing denials for people with vouchers or other sources of “nontraditional” income.

## Credit History

Various protected groups face systemic barriers to accessing lines of credit or financial opportunities that can affect their credit scores.

## Federal Policy Advances

- **Office of Fair Housing and Equality Opportunity: Guidance on the Application of the Fair Housing Act to the Screening of Applicants for Rental Housing**
- Culminating effort by HUD and advocates across the country that built on:
  - 2016 HUD Guidance on Criminal Records
  - 2022 Biden-Harris Administration Blueprint for a Renters' Bill of Rights
  - 2023 CFPB/FTC Request for Information on Tenant Screening
  - CFPB Bulletins
  - 2024 Joint Guidance from Federal Trade Commission (FTC), Consumer Financial Protection Bureau (CFPB), Department of Housing and Urban Development (HUD), and Department of Justice (DOJ) that helps tenants navigate the application process





# HUD Guidance

Chi Chi Wu

Ariel Nelson

National Consumer Law Center



# Overview of HUD Guidance on Tenant Screening

From Policy to Practice: Leveraging HUD's Guidance for Fair  
and Inclusive Tenant Screening

November 21, 2024

Chi Chi Wu ([cwu@nclc.org](mailto:cwu@nclc.org))  
Ariel Nelson ([anelson@nclc.org](mailto:anelson@nclc.org))



# Summary of HUD Guidance

- [Guidance on Application of the Fair Housing Act to the Screening of Applicants for Rental Housing](#) (Apr. 28, 2024)
- Applies FHA anti-discrimination provisions to tenant screening practices
- Focuses on the three main components of tenant screening reports:
  - Credit reports/scores
  - Criminal records
  - Eviction filings
- Discusses use of machine learning and artificial intelligence (AI) by tenant screening agencies



# Application of Fair Housing Act

- Claims available under FHA against both landlords and tenant screening companies
- Relies on three-part disparate impact standard
- Private remedies available



# Recommendations for Landlords

- Adopt clear, detailed, and publicly available screening policies.
  - Customize screening product to conform to policies instead of “off the shelf” product.
  - Make an independent determination based on screening policies, even when screening report makes a denial recommendation.
- Provide applicants with an opportunity to dispute the accuracy or relevance of any negative information.



# Recommendations for Tenant Screening Companies

- Conduct civil rights monitoring
- Refrain from providing denial recommendations or low “grades” in a conclusory fashion
- Allow applicants to dispute whether a record should be include even when accurate, such as when an eviction is related to domestic violence



# Recommendations for Landlords AND Tenant Screening Companies

- **Relevancy**

- Waiving screening criteria not relevant for an applicant's individual circumstances (e.g., minimum income requirement when rent will be paid by someone else).
- Disregarding records without a negative outcome (e.g., an eviction record if the tenant prevailed) or if there is insufficient disposition information.

- **Accuracy**

- Tenant screening may fail to meet the second step of the FHA disparate impact analysis of being necessary for a legitimate nondiscriminatory interest if it uses records that are rife with inaccuracies.



# Recommendations for Landlords AND Tenant Screening Companies Cont.

- **Transparency**
  - Tenant screening policies should be in writing, made public, and readily available
  - Denial letters should contain as much detail as possible as to all reasons for the denial, including the specific standard(s) that the applicant did not meet and how they fell short
- **Disputes and mitigating factors**





# Credit History

“Because of these disparities, overbroad screenings for credit history may have an unjustified discriminatory effect based on race or other protected characteristics. ***HUD is unaware of any studies showing that credit reports and scores accurately predict a successful tenancy***, and as mentioned above they were not designed for this purpose. Many households prioritize paying the rent over other debts during times of financial hardship, yet their choice to do so—which should indicate they will continue to prioritize paying rent—is generally not considered in their favor in the credit history analysis.

“Given these significant and recognized limitations of credit scores as a predictor of likelihood to pay rent and given the disparities noted above, ***overreliance on credit history poses a significant risk of having an unjustified discriminatory effect based on race or other protected characteristics.***”(emphasis added)



# Eviction Records

- **Discusses problems with eviction court records**
  - Ambiguous information on how the case was resolved or falsely represented a tenant's eviction history
  - Disproportionate effect of eviction on Black and Hispanic renters, women, families with children, and people with disabilities.
- **Old, incomplete, and irrelevant eviction records should not be used**
- **Applicants should not be denied based on proceedings where the tenant prevailed, a settlement was reached, or the matter was dropped**
  - Notes FCRA requires tenant screening companies to include existing disposition information for eviction records.
- **Eviction for non-payment of rent from a market-rate unit should not be relevant when an applicant has begun receiving rental assistance (e.g., from a government agency).**
- **“Problematic” to rely on a past eviction filed against a tenant in retaliation for asserting their right**

# Criminal Records

- **Justice-involved people are disproportionately people of color and people with disabilities**
  - Overbroad criminal records screenings are likely to have an unjustified discriminatory effect because of these disparities.
- **Overbroad screenings include:**
  - Failure to differentiate between offenses based on their nature, severity, or how long ago they occurred
  - Use of records that did not result in a conviction
  - No opportunity to provide mitigating information
- **For disabled applicants, reasonable accommodation may be required**
  - E.g., not considering a criminal record if the individual's disability makes it unlikely that they would reoffend



# AI and Tenant Screening

- FHA applies to housing decisions made using AI
- Choose complex models that are more interpretable
  - If a complex model has a discriminatory effect and is not transparent, may be difficult to ascertain that a legally sufficient justification exists
- Models should be trained using demographically representative data
- Models should be validated as having accurately and equitably predicted behaviors, and should be reassessed periodically
  - ***Is there any data or research showing that current models are in fact predictive?***



# Resources

- **NCLC Digital Library article (free)**
  - [New Guidance Suggests Remedies for Tenant Screening Practices](#)
- **NCLC Legal Treatises (paywall)**
  - [Fair Credit Reporting](#)
  - [Credit Discrimination](#)
- **Cases (some predate HUD guidance)**
  - Legal Aid Chicago v. Hunter Properties, Inc., Co. 1:23-cv-04809 (N.D. Ill.) (challenging “no evictions” policy; dismissed for lack of standing, but court subsequently allowed plaintiff to amend complaint)
  - Connecticut Fair Housing Center v. CoreLogic Rental Property Solutions, No. 3:18-cv-705 (D. Conn.) (challenging criminal history screening product; on appeal to the 4th Cir.)
  - Louis v. SafeRent Solutions, LLC, No. 22-cv-10800 (challenging tenant screening score/credit history information; class settlement after motion to dismiss denied)
  - Byrd v. JW Property Management, LLC, No. 3:23-cv-00266 (M.D. Fla.) (challenging automatic rejection of applicants with eviction record; motion to dismiss denied)



Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. [www.nclc.org](http://www.nclc.org)



# Issues + Research

Wonyoung So  
Hannah Holloway  
Massachusetts Institute of  
Technology  
TechEquity



& Wonyoung So

# SCREENED OUT OF HOUSING

How AI-Powered  
Tenant Screening Affects the  
California Rental Market





# ALGORITHMIC OR AI TENANT SCREENING

What's the Issue?

With automated decision-making systems and artificial intelligence, the raw data from a person's consumer or civil reports is crunched by machines that generate scores, recommendations, and predictions about rental applicants that are decontextualized from the data (whether theirs or not) that informed the assessment.



### Process

Contract with a third-party survey firm



### Targeting

Field surveys to tenants AND landlords in California

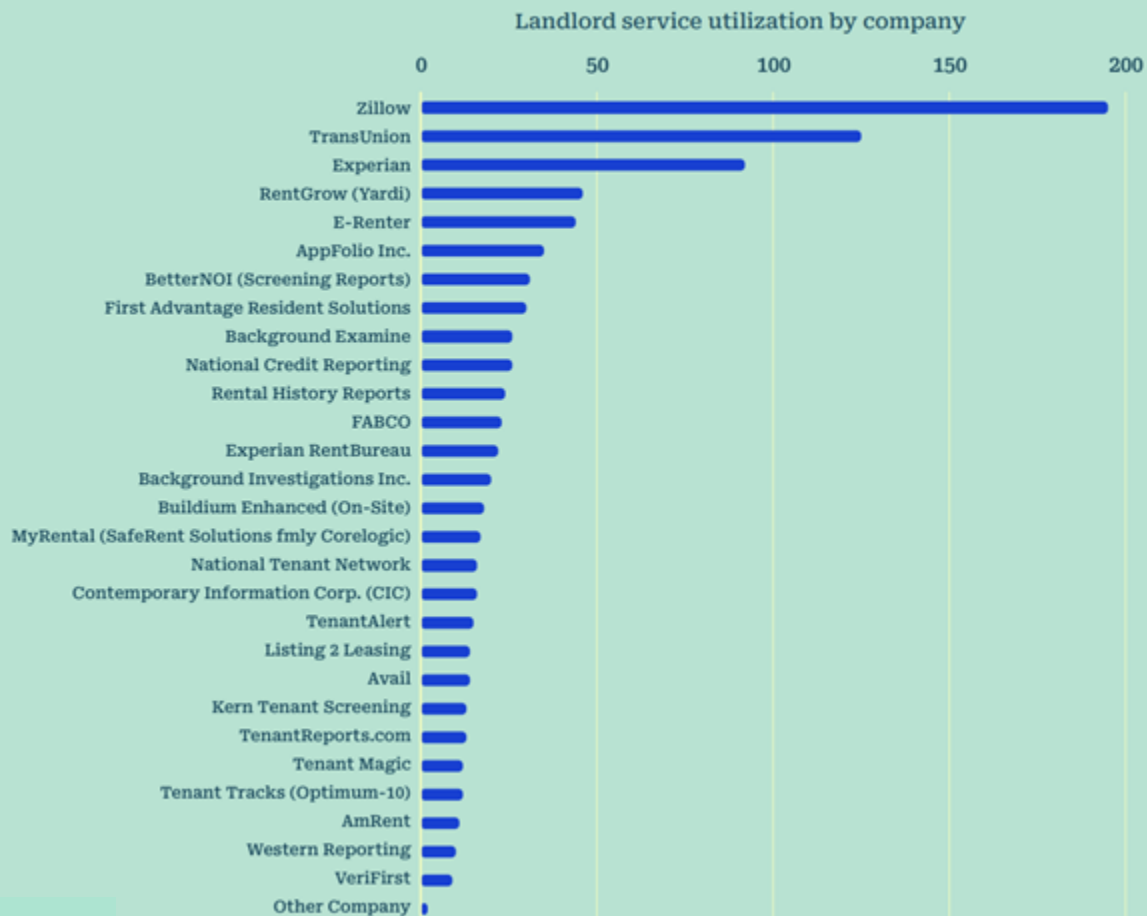


### Outcome

Over 1000 tenant responses and 400 landlord responses

# KEY RESEARCH FINDINGS

Figure 8: “What services or companies do you use to assess rental applications?”



# AI-ENABLED TENANT SCREENING IS COMMON



Only 59% of landlords receive the underlying screening reports

# 38%

of landlords do not receive an applicant's underlying reports

# TYPES OF INFORMATION LANDLORDS RECEIVE FROM SCREENING REPORTS

Figure 3. "What kind of information do you receive from the tenant screening service? Check all that apply."



# USE OF MINORITY REPORT-ESQUE PREDICTIVE SCORING FOR RENTERS IS PREVALENT

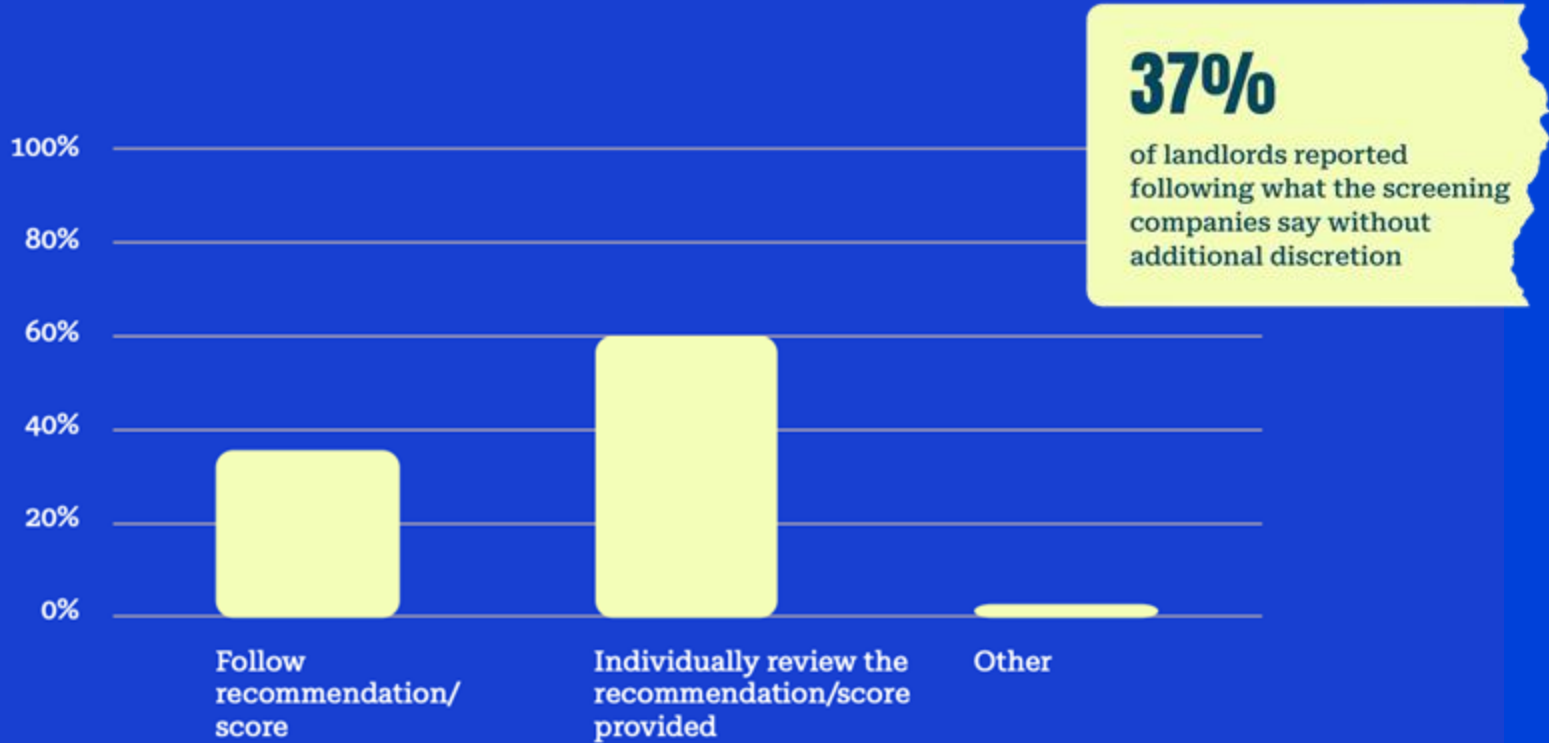


Examples of predictive analytics: the risk an applicant might pay rent late, break their lease, or damage the property.

# 20%

of respondents reported receiving predictive information

**Figure 4.** “If [the screening company provides] scores/recommendations, how do you use the recommendations/scores for the final decision-making?”





# AI TENANT SCREENING SYSTEMS DISPROPORTIONATELY IMPACT THE MOST VULNERABLE RENTERS

Figure 5. Portfolio breakdown across all respondents

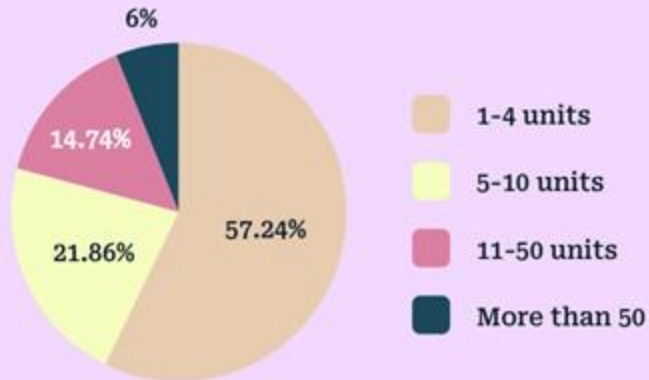
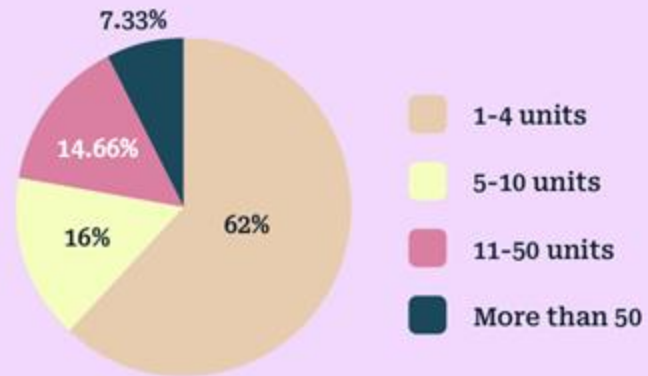
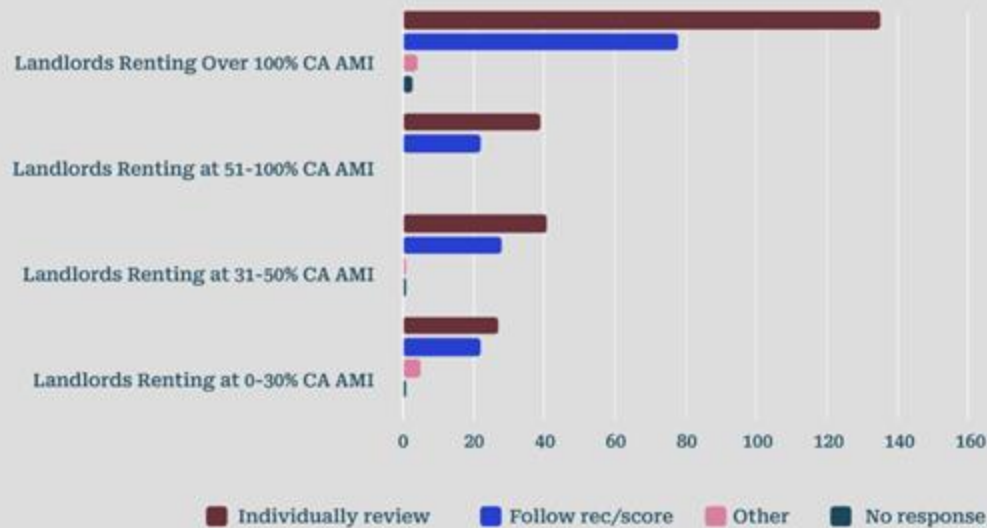


Figure 6. Breakdown of landlords that rely on screening recommendations by portfolio size



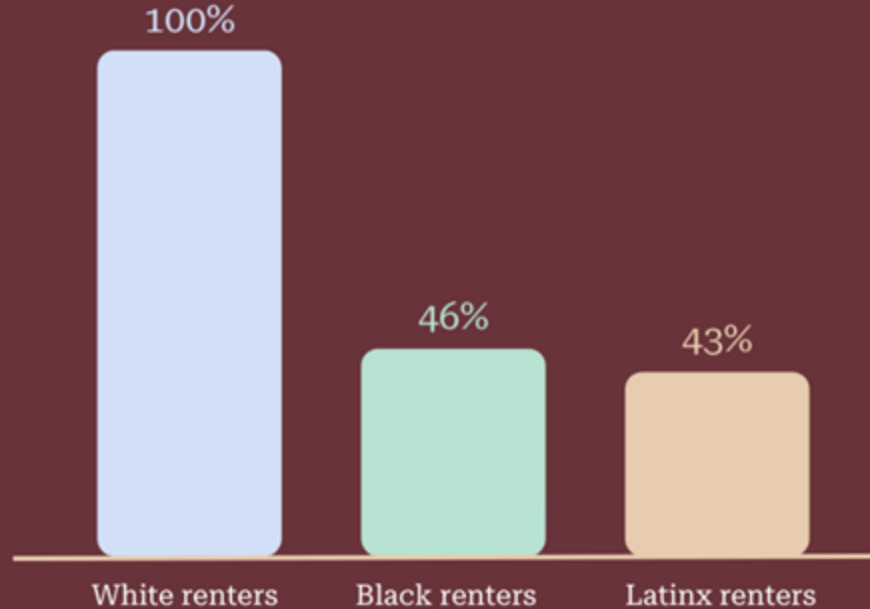
# AI TENANT SCREENING SYSTEMS DISPROPORTIONATELY IMPACT THE MOST VULNERABLE RENTERS

Figure 7: Landlord review process by rental pricing



# TENANT RESPONSES

Likelihood that their rental application would be accepted (relative to white renters)



# RENTERS ARE OFTEN LEFT IN THE DARK, DEEPENING POWER IMBALANCES THAT THREATEN HOUSING RIGHTS

**ONLY 3%  
OF RENTERS**

knew the name of the screening or consumer reporting agency their landlord used.

TECH  
EQUITY



# RENTERS ARE OFTEN LEFT IN THE DARK, DEEPENING POWER IMBALANCES THAT THREATEN HOUSING RIGHTS



Our research shows that renters are often confused about who is assessing rental applications



This confusion indicates that renters may not be equipped to enforce their rights

# IMPLICATIONS

# RE: HUD GUIDANCE

## Burdens for Justice?

### A. The Relationship Between Housing Providers and Screening Companies

#### 1. The Role of Housing Providers

Housing providers should remember that they are responsible for avoiding discriminatory housing decisions, even when they use a tenant screening company to assist in the process. They should develop policies and practices to ensure that all denials reflect their own sound judgment.

Housing providers should adopt screening policies that are clear, detailed, and publicly available, and only use tenant screening services that will help them implement these policies.<sup>51</sup> Customizing the criteria, standards, and weights being used, rather than purchasing an “off the shelf” product, can help ensure screenings conform to stated policies.

When a housing provider receives a screening report with a denial recommendation, the housing provider should make an independent determination whether, under their screening policies, the information in the report is in fact disqualifying. If not, the housing provider should accept an applicant notwithstanding the denial recommendation and consider

<sup>50</sup> See 24 C.F.R. § 100.500(c)(2); see also *Inclusive Cmty. Project*, 576 U.S. at 541.

<sup>51</sup> 24 C.F.R. § 100.500(c)(2).

<sup>52</sup> 24 C.F.R. § 100.500(c)(3); accord *Inclusive Cmty. Project*, 576 U.S. at 527.

<sup>53</sup> 15 U.S.C. §§ 1681–1681x; see generally *Advisory Opinion, Fair Credit Reporting; Background Screening*, 89 Fed. Reg. 4171 (Jan. 23, 2024).

<sup>54</sup> See *Langolis v. Abington Hous. Auth.*, 234 F. Supp. 2d 33, 69 (D. Mass. 2002) (“If the justification is in tension with other laws, it is difficult to see how it can qualify as ‘legitimate’ in order to justify a measure with a racially disparate impact.”).

<sup>55</sup> See HUD 2022 Criminal Records Guidance at 9–10.

# RE: HUD GUIDANCE

## Issues of Default Value

RESIDENT SCREENING CRITERIA					
<b>WORKFLOW</b>					
1. RUN CREDIT (INCLUDING SOCIAL SECURITY FRAUD CHECK & RISK SCORE), PREMIUM NATIONAL CIVIL COURT, AND RENTBUREAU.					
2. IF CREDIT PASSES, PREMIUM NATIONAL CRIMINAL WITH BEST PRACTICE SUPPLEMENTAL (INCLUDING NATIONAL SEX OFFENDER) and OFAC WILL RUN AUTOMATICALLY.					
A. IF NO ITEMS CAN BE REEVALUATED THE SCREENING IS COMPLETE.					
CREDIT SCORING PARAMETERS		CREDIT RESULTS			
Problem Type	Years/Balances Scored	Credit Risk	Result		
Collections, Charge-offs, Judgments, Open Bankruptcy	3 Years	Limited Established Credit	Accept w/ Conditions - Guarantor Required		
Late Payments	3 Years	No Established Credit	Accept w/ Conditions - Guarantor Required		
Closed Bankruptcy	6 Months	Minor	Accept w/ Conditions - Guarantor Required		
Foreclosures (Reevaluation)	Score	Moderate	Accept w/ Conditions - Guarantor Required		
Student Loans	Do Not Score	High	Accept w/ Conditions - Guarantor Required		
Medical Debt	Do Not Score	Severe	Accept w/ Conditions - Guarantor Required		
Account Balances	Do Not Score Under \$100				
Second Bureau Pull	Do Not Pull a 2nd Bureau Report				
INCOME CRITERIA		EMPLOYMENT/ RESIDENCY CRITERIA			
Rent-to-Income Ratio	Result	Employment	Residency	Result	
Ratio less than or equal to 40%	Accept w/ Conditions - Guarantor Required	Length of History	N/A	N/A	N/A
Ratio between 30% - 35%	N/A		N/A	N/A	N/A
Ratio more than 40%	Accept w/ Conditions - Guarantor Required		-	No Residency History	N/A
			A Negative History	A Negative History	Decline



# THANK YOU!

[hannah@techequity.us](mailto:hannah@techequity.us)

[wso@mit.edu](mailto:wso@mit.edu)



# Issues + Research

Natasha Duarte  
Upturn

# Tenants Pay the Price

The Trap of Portable  
Tenant Screening Reports

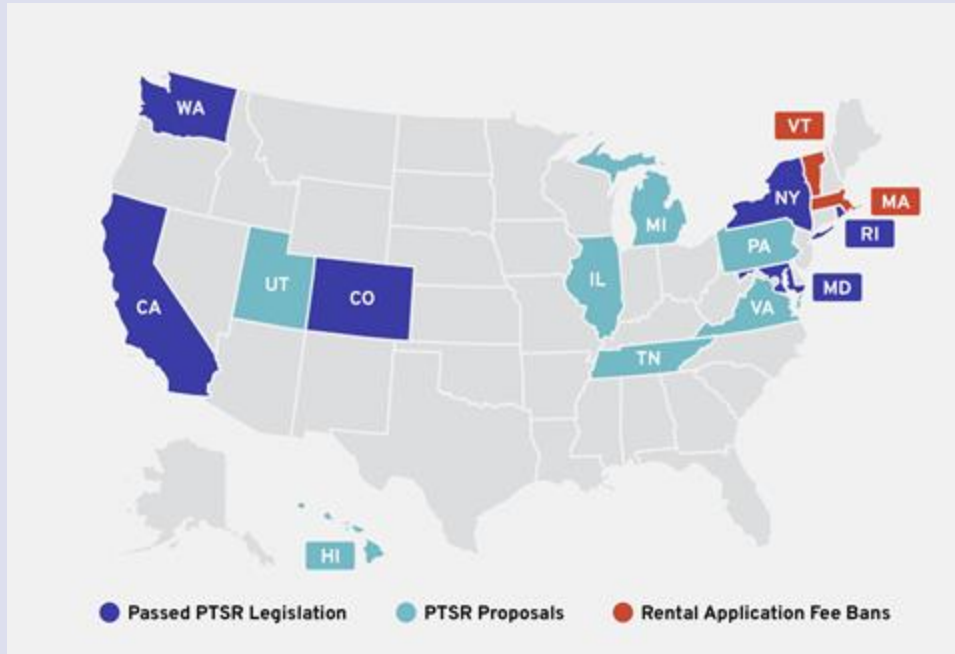


# Rental application fees and tenant screening work together to compound housing insecurity and discrimination.

- A Zillow survey estimated that the typical fee is \$40-59 and a survey by the National Consumer Law Center found that fees can range from \$25-350. Can add up to hundreds or thousands of dollars during one housing search.
- This is a junk fee: no value to tenants; potential source of profit for landlords; and incentivizes landlords to purchase tenant screening reports regardless of their actual value.
- Tenant screening reports funded by these fees exacerbate housing discrimination: use eviction, credit, and criminal records to exclude people from

# “Portable tenant screening report” legislation has emerged as a proposed solution.

At least 7 states have passed some kind of PTSR legislation and bills have been introduced in several other states.

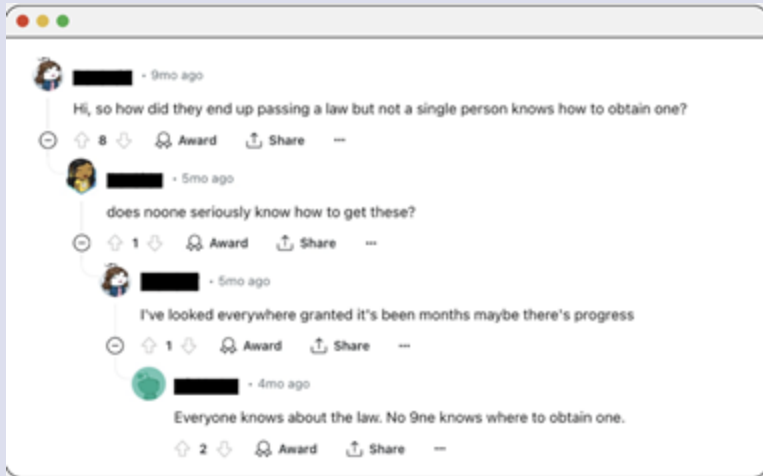


PTSR laws have major weaknesses that limit their effectiveness at reducing fees and threaten to further entrench tenant screening as a discriminatory barrier to housing.

➤ **It's too easy for landlords to avoid accepting portable tenant screening reports.**

About half of the existing laws (MD, WA, CA) and many proposed laws make it optional for landlords to accept portable reports. Other laws have loopholes, exceptions or burdensome requirements that allow landlords to reject the reports.

➤ **Tenants have no guidance and are confused about how to obtain and use portable reports.**



**“Everyone knows about the law. No one knows where to obtain one.”**

**“I tried this and my landlord did not accept it.”**

➤ **The laws place burdensome conditions on tenants seeking to use portable reports.**

E.g., requirements to certify that the info in the report hasn't changed in the last 30 days. This requirement puts tenants further at the mercy of tenant screening companies, which are notorious for reporting inaccurate information.

➤ **Reusable reports available for purchase don't necessarily align with state laws.**

BASIC	BASIC W/CRIMINAL	COMPREHENSIVE	COMPREHENSIVE W/CRIMINAL
<b>\$31.95</b> Per App	<b>\$35.95</b> Per app	<b>\$45.95</b> Per App	<b>\$49.95</b> Per App
Credit Report + Score Eviction Search Sex Offender Search OFAC / Terrorist Search	Credit Report + Score Eviction Search Criminal Search Sex Offender Search OFAC / Terrorist Search	Credit Report + Score Eviction Search Sex Offender Search OFAC / Terrorist Search Rental Verifications Employment Verification	Credit Report + Score Eviction Search Criminal Search Sex Offender Search OFAC / Terrorist Search Rental Verifications Employment Verification

- **Landlords remain in control of when and where tenants can purchase reports.**

Most PTSR vendors require an invitation from the landlord before sending a report.

- **PTSRs don't eliminate fees as a barrier to housing.**

<b>Vendor</b>	<b>Price(s)</b>	<b>Time allowance</b>	<b>Landlord invitation required?</b>
ApplyConnect	\$39.95	Up to 3 times within 30 days	Yes
MyScreeningReport	\$31.95 - \$49.95	30 days	Yes
RentSpree	\$54.99 - \$64.99	Up to 5 times per day within 30 days	Yes
Zillow	\$35	30 days	No*
Avail	\$30 for either a criminal background check, eviction report, or credit report OR \$55 for a bundle of all three	30 days	No



➤ **PTSR laws risk further entrenching discriminatory tenant screening.**

- All PTSR laws require some combination of criminal, eviction, and credit history reports. These records reflect disparities based on race and other protected classes and reproduce housing discrimination.
- Some PTSR laws require very broad background checks that likely conflict with HUD's tenant screening guidance, and in some cases may conflict with local tenant screening laws.
- PTSR laws further entrench unreliable, exploitative tenant screening companies.

**We recommend focusing on banning application fees altogether — and curtailing tenant screening — rather than focusing on portable tenant screening reports.**

Vermont and Massachusetts have passed legislation prohibiting rental application fees, though these laws could be improved upon:

- Explicitly ban application fees (not just by omission);
- Apply to all actors that might charge fees, including brokers;
- Include strong, proactive enforcement.

## **PTSR laws are disappointing but could be improved**

- Require landlords to waive fees when tenants use PTSRs;
- Allow tenants to provide their own reports directly to landlords;
- Restrict tenant screening criteria and/or prohibit portable reports from including information prohibited under local tenant protections;
- Notification requirements;
- Allow tenants to use portable reports longer than 30 days, and eliminate other onerous restrictions and exceptions;
- Include authority, funding, and mandates for strong, proactive enforcement.



# Policy Development + Implementation

Marie Claire Tran-Leung  
National Housing Law Project



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## **Policy Development & Implementation**

From Policy to Practice: Leveraging HUD's Guidance for  
Fair and Inclusive Tenant Screening

*November 21, 2024*

# HUD's 2016 Criminal History Guidance

- Legal analysis of screening practices under the Fair Housing Act: intentional discrimination, unjustified discriminatory effect
- Best practices to ensure fair housing compliance
- More limited focus than HUD's 2024 tenant screening guidance

2016 Guidance	2024 Guidance
Housing providers	Housing providers Tenant screening companies
Criminal history	Criminal history Eviction history Credit history

# What happened during the first Trump administration?

State and local advocates fight for protections for people with criminal records, at times relying on the guidance.

This work paved the way for progress under the Biden administration.

- HUD rule allows people with conviction histories to become fair housing testers.
- Proposed rule on the use of criminal history in HUD-assisted housing

## **Identifying the scope of the problem**

- Fair housing testing
- Reports

## **Outreach and education**

- Policymakers
- Housing providers, tenant screening companies, industry groups
- Tenants
- Fair housing groups, legal and other service providers



## **Administrative advocacy** to change admissions policies

### ➤ Local-level

- Public housing Admissions and Continued Occupancy Policies (ACOPs)
- Housing Choice Voucher (HCV) administrative plans
- Project-based Section 8 tenant selection plans

### ➤ State-level

- Low Income Housing Tax Credit qualified allocation plans (QAPs)
- State-subsidized housing programs – admissions policies?
- State fair housing entities – similar guidance?

## **Legislative advocacy** to change admissions policies

### ➤ Considerations

- Standalone legislative v. fair housing
- Process + substance
- Inquiry provisions & 1<sup>st</sup> Amendment
- Coalitions with directly-impacted leaders have greater impact

### ➤ Examples

- State: New Jersey
- Local: Seattle, DC, Cook County, Berkeley

## Additional types of advocacy

- Affirmatively furthering fair housing: in limbo at the federal level, but available in California
- State regulatory advocacy: California fair housing regulations
- Creative mechanisms for red states
- Affirmative litigation
  - Consult fair housing experts, especially for federal court!
  - In state courts, friendly civil rights or consumer agencies can be good partners.
  - Example: *Fortune Society v. Sandcastle*

## Questions?

Marie Claire Tran-Leung

National Housing Law Project

[mctranleung@nhlp.org](mailto:mctranleung@nhlp.org)



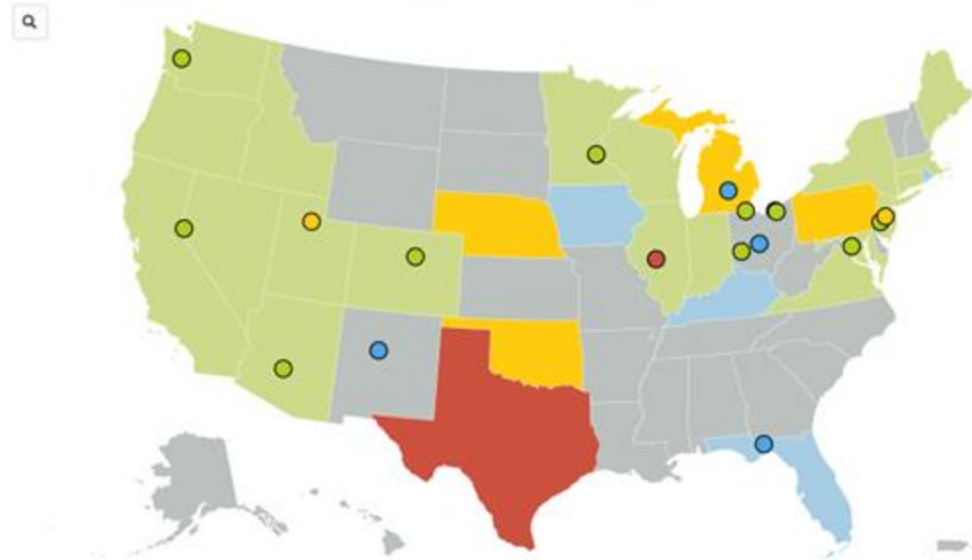
# Policy Development + Implementation

Rasheedah Phillips  
PolicyLink

### Eviction Record Sealing, Expungement, and Tenant Screening Policies are Gaining Traction

Status of state and local Eviction Record Sealing, Expungement, and Tenant Screening Policies (as of November 2024)

■ Implemented ■ Protections Expired/Repealed ■ Previously Considered ■ Currently Under Consideration



Source: PolicyLink Database of Eviction Record Sealing, Expungement, and Tenant Screening Regulations, U.S. Census Bureau

# Policies are Gaining Traction

## Wrap-Up

- Stay Engaged + Take Actions!
- Upcoming opportunities from PolicyLink
- Resources
- Survey

