

THE FACTS ABOUT BACKGROUND SCREENING

As employers, landlords and volunteer groups seek to make informed decisions related to hiring and ensuring safety in our workplaces and communities there continues to be a focus on background screening. Workplace violence, fraud, embezzlement, and theft are a multi-billion dollar drain on our economy— a cost that can easily be mitigated. Background screening is an effective tool to prevent this drain, in addition to providing a variety of different uses that benefit public well-being. The terms "background screening" or "background check" can mean different things when used in different contexts, however, and it is important to understand the distinctions.

"A background check" when conducted by a third party known as a Consumer Reporting Agency is regulated by the Fair Credit Reporting Act (FCRA) as well as state and local laws. It is the process of researching and compiling data from both private and public sources for purposes including:



There are Various Kinds of Background Checks

Employers routinely request background checks for **potential new hires, contractors and existing employees**, particularly for positions where employees may work with vulnerable populations or have access to consumers' financial information. **Tenant screening** is a process used primarily by residential landlords and property managers to evaluate prospective tenants. **Volunteer screening** is also performed by CRAs to screen the backgrounds of individuals who volunteer with groups and organizations that typically involve vulnerable groups, such as children and the elderly.

Background checks conducted by CRAs require an individual's consent. These checks can contain information from a variety of resources and may include:

- Criminal and civil record checks at county courthouses, state repositories, federal courts and/or international courts;
- Driving records checks;
- Drug testing;
- Verification of employment, education, professional licensure;
- Reference checks;
- Registry checks; such as sex offender and child and elder abuse lists;
- Office of Foreign Assets Control (OFAC) Specially Designated Nationals List (SDNL);
- Export Denial List Search;
- Patriot Act Searches (terrorist watch lists);
- Office of Inspector General (OIG) Search and other healthcare sanction lists;
- Financial Industry Checks, including SEC filings, FINRA and Federal Reserve Sanctions;
- Credit History (note – one's credit score is not included in a pre-employment screening report);
- Accessing the FBI's criminal database system when mandated by law.

There is No Single Government Database Containing Complete and Up-to-Date Records Regarding a Person's Criminal History

“Due to its limitations, the FBI system is not considered a reliable enough source to use as a single source for a background check for employment, volunteer or tenant screening purposes.”

The “FBI Database” is commonly thought of as the gold standard for background screening, however that is not the case. The FBI database is actually not one single database, but a collection of different systems organized under the National Crime Information Center (NCIC), including the FBI Identification Record, National Instant Criminal Background Check System (NICS) and the Interstate Identification Index System or “III” System.

Due to its limitations, the FBI system is not considered a reliable enough source to use as a single source for a background check for employment, volunteer or tenant screening purposes. According to a 2015 Government Accountability Office (GAO) report, if a state or county fails to report arrest records or a court disposition then that data will not appear on the FBI Identification Record. This reliance on arrest and court records, coupled with the passive collection system, can lead to a large number of incomplete files.

CRAs Are Subject to Extensive Federal and State Oversight

The FCRA spells out the rights, obligations and responsibilities for consumers, employers and CRAs. CRAs are required to use reasonable procedures to assure maximum possible accuracy when preparing consumer reports for employment or tenancy purposes. Consumers have a right to request a copy of their report and to dispute the completeness or accuracy of the information in their report. Reinvestigations are done at no cost to the consumer. Employers must provide notice to consumers before ordering a background check and must notify the consumer if they consider taking adverse action*

Background checks conducted by CRAs are highly regulated by the Fair Credit Reporting Act as well as state and local consumer protection laws. In addition, the Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance on the use of criminal background checks for employment screening purposes, which is directed toward employers who use such reports.

**The FCRA requires a 2-step process for employers to follow if they are considering not hiring, promoting, etc. the consumer due to information contained in the consumer report.*

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PBSA Members Do Not Conduct Background Checks for Gun Purchases

Currently, when a gun is purchased from a Federal Firearm Licensed (FFL) seller, a background check is performed through the National Instant Criminal Background Check System (NICS). This is an important distinction to make when discerning the differences between a one-time instant background check for gun purchases as opposed to the more thorough background checks performed for employment, tenant and volunteer recruitment.