

The Facts about Background Checks

Since the beginning of 2013, there has been a resurgence of interest in the topic of background checks. Most recently, background checks have taken center stage in the debate over immigration reform, often cited as one of several steps undocumented immigrants must complete on the potential pathway to citizenship. Before that, the tragic shooting at Sandy Hook Elementary school in Newtown, CT, prompted renewed calls for mandatory background checks in the political clash over gun control. While the context may change, the role of background checks is well established as an effective tool for a variety of uses. Interestingly, the term “background check” means different things when used in different contexts.

Despite the same terminology, specific details such as sources for information, regulatory oversight, and the degree of consumer protection in a background check may vary significantly, depending on their intended use. The National Association of Professional Background Screeners (NAPBS) has prepared this fact sheet as an educational tool to help explain the different types of background checks, what is meant by the term “background check” and how background checks are used today.

What is a background check?

A background check, also known as a background screen or a background investigation, is the process of looking up and compiling data from both private and public sources for purposes such as:

- Gun purchases
- Employment screening
- Tenant rental agreements
- Volunteer screening

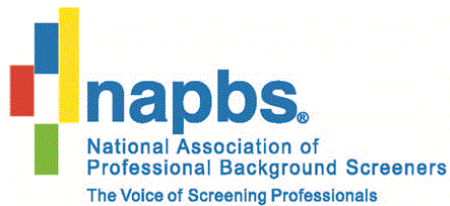
Are all background checks alike?

No. While the term “background check” is used as a generic term to cover the universe of checks that may be performed, they are quite different depending on the intended purpose.

What are the differences between various kinds of background checks?

Gun Purchase Background Check

Currently, when a gun is purchased from a Federal Firearm Licensed (FFL) seller, an instant background check is performed, with the buyers consent, through the National Instant Criminal Background Check System (NICS). This is done either by phone or online through the FBI’s E-Check system. Convicted felons, people convicted of violent domestic crimes, those determined by the courts to be dangerously mentally ill, and those residing in the United States without



documentation, are prohibited by federal law from buying firearms. These background checks are unique to gun purchases and are not conducted by private background screening companies, also known as Consumer Reporting Agencies or CRAs. In direct private gun sales, no background check is required.

Employment Background Check

Employers routinely request background checks for potential new hires and existing employees, particularly for positions where employees may work with vulnerable populations or have access to consumers' financial information. Employers rely upon background screens to make informed hiring decisions and to help mitigate the risk of workplace violence, employee theft, and negligent hiring lawsuits. Background checks performed for pre-employment or employment purposes are generally conducted by CRAs and are regulated by the Fair Credit Reporting Act (FCRA) and state and local laws.

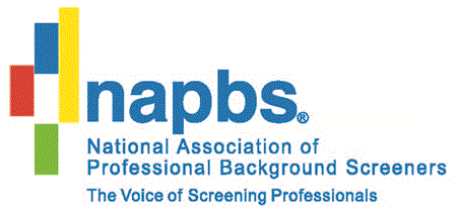
These checks can contain information from a variety of resources and may include:

- 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.

Employers use the information gathered from these searches as a factor in helping them assess the suitability of candidates vying for employment. ***Background screenings conducted by CRAs for employment purposes require an individual's consent.***

Tenant and Volunteer Background Check

Tenant screening is a process used primarily by residential landlords and property managers to evaluate prospective tenants. The purpose is to assess the likelihood the tenant will fulfill the terms of the lease or rental agreement. Tenant screening services generally fall under the same rules adhered to for employment screening, are conducted by CRAs, and are regulated by the FCRA.



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. Screening for volunteers is also regulated by the FCRA.

What Databases Are Used For The Different Kinds of Background Checks?

There are many different databases used to conduct background checks on individuals. The most commonly cited is the FBI database. **Ironically, the FBI database is actually not one single database, but a collection of different systems organized under the National Crime Information Center.** These systems include:

The FBI Identification Record: Often referred to as a criminal history record or a “rap sheet,” the FBI Identification Record is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service

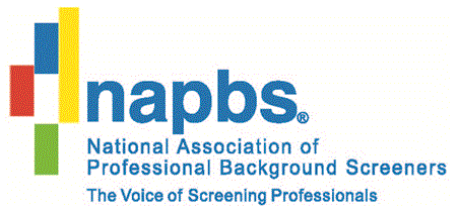
National Instant Criminal Background Check System (NICS): The FBI’s NICS is used when performing a one-time instant check for gun purchases. ***It does not play a role in employment, tenant and volunteer recruitment background screening.***

Interstate Identification Index System or “III” System: The III System contains automated criminal record information accessible through National Crime Information Center. A federal-state compact was created in 1999 which allows criminal history records from the FBI and State criminal history record repositories to be shared through the III System for noncriminal justice purposes such as governmental licensing and employment background checks. **Despite popular belief, the III System is not a complete national database of all criminal history records in the United States. In fact, many state records, whether from law enforcement agencies or courts, are not included or have not been updated.**

According to a 2006 Department of Justice (DOJ) report entitled *The Attorney General’s Report on Criminal History Background Checks*, the authors state that “although it is quite comprehensive in its coverage of nationwide arrest records for serious offenses, the [FBI’s Interstate Identification Index] is still missing final disposition information for approximately 50 percent of its records.” http://www.justice.gov/olp/ag_bgchecks_report.pdf

Bottom Line -- currently, there is no single government database containing complete and up-to-date records regarding a person’s criminal history.

Among those in the professional background screening community, the full range of FBI databases is considered one tool among many that may be used by some CRAs. However, 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. Not all CRAs have access to the FBI's database for noncriminal justice purposes. Those CRAs that have access can reference the FBI fingerprint database for employment or licensing only if required to do so by Federal or State law. 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.

Is there government oversight of CRAs?

Yes. The FCRA spells out the rights consumers have with respect to background reports prepared by CRAs, including the right to dispute the accuracy of the reports and CRAs obligations to reinvestigate such inaccuracies. The FCRA describes the obligations employers have to provide notice to consumers if information in the background report is going to be used adversely against them. And finally, the FCRA spells out the responsibilities of CRAs when preparing and providing such background reports for a limited purpose such as employment or tenancy. The regulations governing the actions of professional background screeners as well as end-users are spelled out in the FCRA and the CFPB's *A Summary of Your Rights Under the Fair Credit Reporting Act* and the *Notice to Users of Consumer Reports: Obligations of Users Under the FCRA*.

Background screening, when conducted by a CRA, is highly regulated including by the Federal Trade Commission and the Consumer Financial Protection Bureau as well as state and local consumer protection laws. In addition the Equal Employment Opportunity Commission is active in this space and just last year issued revised enforcement guidance on the use of criminal background checks for employment screening purposes, which is directed toward employers who use such reports.

For more information please visit the website of the National Association of Professional Background Screeners, www.napbs.com. For more information on the laws that govern background screening, please visit the Consumer Financial Protection Bureau at www.consumerfinance.gov and the Federal Trade Commission at www.ftc.gov.

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