

CFPB Issues Background Screening, File Disclosure Advisory Opinions

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On January 11, 2024, the Consumer Financial Protection Bureau (CFPB) issued two advisory opinions addressing consumer reporting agencies' (CRAs) obligations, under the Fair Credit Reporting Act (FCRA), related to information included in background check reports and consumer file disclosures.

The advisory opinions expand on a coordinated federal agency effort, initiated by the White House's January 2023 [Blueprint for a Renters Bill of Rights](#), and led, in part, by the CFPB, to ensure that the "background screening industry adheres to the law" and "tenant screening companies do not illegally disseminate false and misleading information about tenants and that tenants can challenge erroneous information." The White House issued [further measures in July 2023](#), which included agency guidance communicating the Biden administration's "expectations on informing renters of what information in their screening report is responsible for their application being denied."

The advisory opinions, along with the [accompanying press release](#), also represent one more step toward the bureau's broad goal of ensuring that "the consumer reporting system produces accurate and reliable information and does not keep people from accessing their personal data."

Background screening

The [first advisory opinion](#) solidifies the CFPB's position that, to comply with the FCRA's general requirement that CRAs follow reasonable procedures to ensure maximum possible accuracy, CRAs furnishing background screening reports must have procedures in place to:

1. Prevent the reporting of information that is duplicative, or that has otherwise been expunged, sealed, or is legally restricted.
2. Include existing disposition information if they report arrests, criminal charges, eviction proceedings or other court filings.

To the extent that adverse information is included in consumer reports, the opinion outlines when the reporting period for adverse items begins, and how subsequent events, such as the disposition of a criminal matter, affect how the item should be reported.

The advisory opinion is particularly focused on the use of background screening reports for tenant and employment screening, even though such reports may be used in a variety of contexts. In the tenant screening context, the bureau highlights that the consequences of inaccurate reporting may preclude consumers from securing housing or may result in consumers paying more for housing than they otherwise would have. In the employment context, the CFPB cites consequences such as inappropriate rejection of job applications, failure to obtain promotions or termination.

The opinion also reemphasizes the CFPB's commitment to working with other agencies to address the potential ill effects of inaccuracies in tenant and employment screening reports. In November 2022, for example, the CFPB published [two reports](#)

[highlighting issues with tenant background checks](#) and, in doing so, noted that it “works closely with the Federal Trade Commission (FTC) to hold the tenant screening industry accountable.” Further, in February 2023, [the CFPB and the FTC jointly issued a request for information](#) aimed at gathering information on use of tenant screening reports.

Also notable is last year’s [announcement of an information sharing agreement](#) between the CFPB and the National Labor Relations Board with the goal of “protecting American workers in labor and financial markets.” Although the immediate focus of the agreement was on employer-driven debt and employer surveillance and sale of data, the CFPB also may leverage this agreement to scrutinize information included in background check reports and utilized by employers, including how such information impacts consumers.

Consumer file disclosure

In the [second advisory opinion](#), the bureau stresses CRAs’ obligation to deliver all information in a consumer’s file to the consumer upon their request – an effort the bureau claims is necessary to address what it characterizes as “sloppy credit file sharing practices.”

The opinion explains that the disclosure of a person’s complete consumer reporting file, “upon their request, is a critical component of a person’s right to dispute false or misleading information.” Accordingly, the CFPB clarifies that, in its view, individuals need not use specific language or industry jargon (such as “complete file” or even “file”) when requesting their information, but rather only need to lodge the request and provide proper identification to access their complete file. The opinion also explains that information presented to the consumer in response to a file disclosure request must be in a form that will “assist them in identifying inaccuracies, exercising their rights to dispute any incomplete or inaccurate information, and understanding when they are being impacted by adverse information.”

The advisory opinion also reflects the CFPB’s position that, in connection with a consumer’s file disclosure request, a CRA must:

1. Provide the consumer with all information that formed the basis of any summarized information (e.g., a credit risk score or tenant screening score) that the CRA provided to the user, rather than the summary alone.
2. Disclose all sources of any item of information in the consumer’s file, meaning the “original source and any intermediary or vendor source (or sources) that provide the item of information from the original source” to the CRA.

Looking ahead

The two advisory opinions are part of the CFPB’s continued commitment to addressing inaccuracies in consumer reports, including through broad interpretation of the FCRA and demonstrated cooperation with other agencies. Given the multiagency, and White House, interest in this issue – particularly as it relates to rental housing and employment – additional coordinated action is expected.

To that end, CRAs, including background screening companies, should assess the adequacy of their procedures in light of the opinions, and continue to monitor activity around the CFPB’s plan to expand the FCRA’s reach through formal rulemaking, as reflected in the CFPB’s [outline of proposals and alternatives under consideration](#). Given that one purpose of the planned rulemaking is to address “issues that have arisen in the years since the FCRA’s enactment, or that are areas of particular risk for consumer harm,” it may be informed by issues identified in the CFPB advisory opinions and ultimately result in enhanced compliance responsibilities for CRAs, as well as other participants in the consumer reporting ecosystem.

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Key Contacts

Michelle L. Rogers Washington, DC	mrogers@cooley.com +1 202 776 2227
H Joshua Kotin Chicago	jkotin@cooley.com +1 312 881 6674
Jessica Pollet Santa Monica	jpollet@cooley.com +1 310 883 6529
Palmer Quamme Washington, DC	pquamme@cooley.com +1 202 776 2354

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