

CFPB Continues Focus on Credit Reporting with Guidance on FCRA Compliance

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On January 11, the CFPB issued two advisory opinions providing guidance to consumer reporting agencies (CRAs) on the Bureau's views on FCRA compliance obligations with respect to background check reports and credit file disclosures.

In its first [advisory opinion](#), the CFPB identifies the "reasonable procedures" CRAs must undertake to prepare a consumer report to ensure it has the "maximum possible accuracy of the information concerning the individual about whom the report relates" as required under FCRA § 607(b). Specifically, CRAs should have procedures in place that:

- prevent reporting information that is duplicative or that has been expunged, sealed, or otherwise legally restricted from public access;
- include any existing disposition information for arrests, criminal charges, eviction proceedings, or other court filings.
- prevent the reporting of duplicative information and negative information that is outdated, with each item of negative information being subject to its own reporting period, the timing of which depends on the date of the negative item itself.

In addition, the Bureau further interpreted § 1681c, which generally prohibits the reporting of an adverse item of information . . . which antedates the report by more than seven years." The CFPB stated that the occurrence of the adverse event (often when the crime is charged) starts the running of the reporting period; (2) that period is not restarted by subsequent events; and (3) a nonconviction disposition of a criminal charge cannot be reported beyond the seven-year period.

In the second [advisory opinion](#), the CFPB clarifies that the FCRA entitles consumers to all sources of the information contained in their files, including both the originating sources and any intermediary or vendor sources, so that consumers have the opportunity to correct any incorrect information.

Specifically, the advisory opinion explains that consumers requesting their files:

- Only need to make a request for their report and provide proper identification. Consumers do not need to use specific language or industry jargon to trigger a consumer reporting agency's file disclosure requirement under FCRA section 609(a).
- Must be provided with their complete file with clear and accurate information that is presented in a way that an average person could understand.
- Must be provided with information in a format 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.
- Must be provided with the sources of the information in their file, including both the original and any intermediary or vendor source or sources. For example, when a credit score or a tenant screening recommendation is provided, FCRA requires the CRA to include information that formed the basis for the score or recommendation.

In both advisory opinions, the CFPB warned CRAs of liability for a “willful” violation of the FCRA if they fail to heed the provided guidance.

Putting it into Practice: In recent years, the CFPB has issued guidance and proposed rulemaking on a variety of issues related to FCRA compliance, including sale of consumer data, exclusion of medical debt information from consumer credit reports, and the ability of states to independently regulate credit reporting markets (see previous blog posts [here](#), [here](#), and [here](#)). These advisory opinions are the CFPB's latest efforts on this topic and underscore that the agency's continued use of regulation through means other than rulemaking (advisory opinions, informal guidance, press releases, enforcement actions) to quickly expand the reach of federal laws and regulations without the formality of notice and comment rulemaking. CRAs should closely review their policies and procedures to ensure they are in accord with the Bureau's latest guidance and actions on the FCRA.

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