

CFPB Issues Two Advisories on the Fair Credit Reporting Act

Article By:

Mercedes Kelley Tunstall

When the Consumer Financial Protection Bureau (“CFPB”) took over responsibilities for interpreting the Fair Credit Reporting Act (“FCRA”) from the Federal Trade Commission (“FTC”) in 2011, the agency seemed to take a good amount of time figuring out the importance of this original privacy legislation dating all the way back to 1970. But, in the last two years, the CFPB has come into its own regarding the FCRA and accordingly has issued guidance, advisories and even [updated the implementing regulation for the FCRA, Regulation V](#). And so 2024 started off with not one, but two, new advisories touching on FCRA issues and concerns.

The [first advisory, on Background Screening](#), issued on January 11, 2024, addresses a suite of problems that arise mainly when consumer reports are used for housing or employment decisions. Consumer reports can be used for a variety of purposes (see the CFPB’s updated [advisory opinion on permissible purposes](#)), but are often conflated into just being “credit reports” used to make credit decisions. In this case, the specific kind of consumer report being addressed provides background information to potential employers, landlords and property management companies that focuses less on credit information, and more on things such as rental histories, utility payment histories, criminal records and eviction proceedings. Generally speaking, the FCRA requires that any negative information reported on a consumer report should remain on the report for no longer than seven years. This advisory opinion specifies that the seven year timeframe runs from the commencement of any proceeding, criminal, eviction or otherwise, and not from the disposition of the proceeding, and any updated proceedings on the same issue do not start a new seven year period running. In addition, the advisory opinion addresses data accuracy requirements of the FCRA and indicates that consumer reporting agencies providing these background screening consumer reports are “not using reasonable procedures to assure maximum possible accuracy” unless that have procedures in place to: 1) prevent reporting of information that is duplicative; 2) prevent reporting of information that has been expunged, sealed or legally restricted from public access; and 3) ensure that to the extent a disposition of a proceeding is available, such disposition is reported alongside the proceeding itself. In explaining the genesis of #2, the CFPB referenced state laws (e.g., in Pennsylvania and Virginia) that forbid the disclosure of criminal history records for non-law enforcement purposes in timeframes much shorter than the FCRA’s seven year timeframe and observed reports that “in most states” the only disposition information available on a proceeding is when there is a conviction, but not when there is a dismissal or other kind of disposition.

The [second advisory, on File Disclosures](#), also issued on January 11, 2024, focuses on reminding consumer reporting agencies that they must provide a consumer with full information on their own

consumer report. This means that the complete file should be provided “with clear and accurate information that is presented in a way an average person could understand” and that the information should be presented such that consumers can easily identify inaccuracies and understand how to exercise their rights to dispute any incomplete or inaccurate information. The advisory also touches on an important issue that has affected the consumer reporting industry for many years – the proliferation of intermediaries and vendors that not only collect information for consumer reporting agencies, but that also offer users of consumer reports a variety of custom analyses, scoring and other features not typically supported by the large credit reporting companies. As the CFPB observes, “if a consumer identifies an error in an item of information in their file, but the consumer reporting agency has only disclosed to the consumer the original source of the information and not also the vendor source that directly provided the information to the consumer reporting agency and from which the error arose, the consumer would not be able to identify the source of the erroneous information and may not be able to correct it.” Accordingly, the advisory opinion directs consumer reporting agencies to disclose “to a consumer both the original source and any intermediary or vendor source (or sources) that provide the item of information.”

Both of these advisory opinions address points of pain that have affected consumers for many years; years during which the marketplace has not been spurred into action to resolve themselves. Although these advisory opinions are useful in prioritizing steps consumer reporting agencies should be taking regarding the information they gather and report on consumers, it will most likely take the industry months or even years to reliably be able to conform with the expectations indicated in these advisory opinions.

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