



CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1022

Fair Credit Reporting; Background Screening

AGENCY: Consumer Financial Protection Bureau.

ACTION: Advisory opinion.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing this advisory opinion to affirm that, when preparing consumer reports, a consumer reporting agency that reports public record information is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the Fair Credit Reporting Act (FCRA) if it does not have certain procedures in place. For example, it must have procedures that prevent reporting of information that is duplicative or that has been expunged, sealed, or otherwise legally restricted from public access. This advisory opinion also highlights certain aspects of the reporting period for adverse items under FCRA section 605(a)(5).

DATES: This advisory opinion is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Seth Caffrey, Amanda Quester, or Ruth Van Veldhuizen, Senior Counsels, Office of Regulations at (202) 435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.¹ Refer to those procedures for more information.

I. Advisory Opinion

A. Background

¹ 85 FR 77987 (Dec. 3, 2020).

The majority of landlords and employers conduct background checks before renting property or hiring employees.² Landlords and employers typically conduct background checks by obtaining consumer reports from consumer reporting agencies.³ Consumer reporting agencies that prepare consumer reports for these purposes are commonly known as background screening companies, and the reports that they prepare are commonly known as background screening reports.⁴

Background screening companies vary in size, the users they serve, the services they provide, and the geographic regions they cover.⁵ The reports they provide sometimes include information about a consumer's credit history, rental history, employment, salary, professional licenses, criminal arrests and convictions, and driving records.⁶ Background screening companies also vary in how they obtain information and prepare reports. Different companies use different identifying information to conduct searches; search different databases, external and internal, to access information; apply different criteria to determine whether a record in a database matches an individual; and employ different procedures for updating information.⁷

In many instances, background screening reports contain inaccurate information about consumers.⁸ For example, some background screening reports contain information about the wrong consumer, such as when a report shows an eviction record or criminal conviction that

² CFPB, *Bulletin 2021-03: Consumer Reporting of Rental Information* (July 1, 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information_bulletin-2021-03_2021-07.pdf; CFPB, *Market Snapshot: Background Screening Reports*, at 3-4 (Oct. 2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

³ See 15 U.S.C. 1681a(d) (defining “consumer report”); 1681a(f) (defining “consumer reporting agency”).

⁴ See generally CFPB, *Market Snapshot: Background Screening Reports* (Oct. 2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

⁵ See *id.* at 5.

⁶ See *id.* at 2.

⁷ See *id.* at 8.

⁸ See generally Nat'l Consumer Law Ctr., *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing*, at 3 (Dec. 2019), <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>; Sarah E. Lageson & Robert Stewart, *Faulty Background Checks Are Violating Privacy and Ruining Lives*, The Hill (Sept. 28, 2023), <https://thehill.com/opinion/technology/4227081-faulty-background-checks-are-violating-privacy-and-ruining-lives/> (describing study that concluded that 74 percent of total criminal charges reported on 101 participants' reports did not have matches in official state reports and that a background report erroneously attributed 50 charges to a participant who in fact had only two drug convictions).

belongs to someone else.⁹ Some also contain duplicative information, such as when a report shows the same eviction or criminal conviction twice, giving the impression that the consumer's eviction or criminal history is more extensive than it really is.¹⁰ In addition, some background screening reports omit existing disposition information, such as when an eviction action or criminal charges have been dismissed, giving a misleading picture of a consumer's rental or criminal history.¹¹

Some background screening reports also include arrests, convictions, or other court records that should not be included because they have been expunged or sealed or otherwise legally restricted from public access.¹² Some States and localities have taken steps to make it easier to seal or expunge certain records, including eviction records.¹³ Additionally, public access to certain criminal records maintained by government entities that reflect a disposition other than conviction or that have reached a specified age without active prosecution is legally

⁹ In November 2021, the Bureau issued an advisory opinion highlighting that a consumer reporting agency that prepares consumer reports using name-only matching (*i.e.*, matching information to the particular consumer who is the subject of a consumer report based solely on whether the consumer's first and last names are identical or similar to the names associated with the information) does not use reasonable procedures to assure maximum possible accuracy under FCRA section 607(b). *Fair Credit Reporting: Name-Only Matching Procedures*, 86 FR 62468 (Nov. 10, 2021).

¹⁰ See Nat'l Consumer Law Ctr., *Digital Denials: How Abuse, Bias, and Lack of Transparency in Tenant Screening Harm Renters*, at 37 (Sept. 2023), https://www.nclc.org/wp-content/uploads/2023/09/202309_Report_Digital-Denials.pdf.

¹¹ See *id.* at 38.

¹² See, e.g., *id.* at 5, 31, 35; Consent Order, *In re Gen. Info. Servs., Inc.*, 2015-CFPB-0028 (Oct. 29, 2015), https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf; CFPB, Press Release, *CFPB Takes Action Against Two of the Largest Employment Background Screening Report Providers for Serious Inaccuracies* (Oct. 29, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-two-of-the-largest-employment-background-screening-report-providers-for-serious-inaccuracies/>; Consent Order, *United States v. HireRight Sols., Inc.*, 1:12-cv-01313 (D.D.C. Aug. 8, 2012), <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120808hirerightstip.pdf>.

¹³ See, e.g., Or. Rev. Stat. sec. 105.163 (allowing sealing of eviction records in certain circumstances, such as when there is a judgment or judgment of dismissal entered in the consumer's favor); D.C. Code sec. 42-3505.09 (requiring that eviction records be sealed in certain circumstances, such as (1) after 30 days have passed from final resolution if the eviction proceeding does not result in a judgment for possession in favor of the housing provider or (2) three years after the final resolution of the eviction proceeding if the eviction proceeding results in a judgment for possession in favor of the housing provider); Cal. Civ. Proc. Code sec. 1161.2 (requiring certain eviction records to be sealed at filing, and limiting access to those records to a small list of exceptions, unless judgment is entered for the landlord within 60 days of the complaint being filed); see also Margaret C. Love, *Collateral Consequences Res. Ctr., 50-State Comparison: Expungement, Sealing & Other Record Relief* (Oct. 2021), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>.

restricted in certain circumstances.¹⁴ As explained in part C.1 below, the CFPB interprets the FCRA to prohibit background screening companies from including in consumer reports information that would not be publicly available to the user due to these restrictions.

Background screening companies sometimes also include obsolete criminal record information in background screening reports.¹⁵ For example, the CFPB is aware that, when some consumer reporting agencies report criminal cases that have been dismissed, they have used the disposition date to start the seven-year reporting period for records of arrests and other non-conviction criminal record information, rather than the “date of entry” for records of arrest or the date of the criminal charge for other non-conviction criminal record information.¹⁶ As a result, these consumer reporting agencies have included adverse information in consumer reports longer than FCRA section 605(a) permits.

When these types of information appear in background screening reports, the consequences for consumers can be grave. Consumers’ rental housing applications may be denied, or they may end up paying more for such housing or be limited to locations or types of rental housing that they would not otherwise have selected, all of which is particularly challenging for consumers in a market characterized by high rents.¹⁷ Consumers’ employment

¹⁴ See, e.g., 28 CFR 20.21(b); 18 Pa. Cons. Stat. sec. 9121(b)(2) (generally restricting State and local police departments from disseminating information regarding the initiation of criminal proceedings to individuals or noncriminal justice agencies when three years have elapsed from the date of arrest, no disposition is indicated in the record, and nothing in the record indicates that proceedings seeking conviction remain pending); 6 Va. Admin. Code 20-120-50.A.1 (generally prohibiting dissemination of criminal history records to noncriminal justice agencies or individuals when one year has elapsed from the date of arrest, no disposition of the charge has been recorded, and no active prosecution of the charge is pending); see also SEARCH, The Nat’l Consortium for Justice Info. and Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information*, at 41 (2005), <https://www.search.org/files/pdf/RNTFCSCJRI.pdf> (“In most States, authorized noncriminal justice requestors receive less than the full record; most often they are provided conviction-only information.”).

¹⁵ The FCRA limits the length of time that certain items of information may appear in a consumer report. 15 U.S.C. 1681c. For example, the FCRA generally prohibits the reporting of “[a]ny . . . adverse item of information . . . which antedates the report by more than seven years.” 15 U.S.C. 1681c(a)(5). This advisory opinion uses the term “obsolete” to refer to information that is older than the applicable FCRA time limit.

¹⁶ See, e.g., *Moran v. The Screening Pros, LLC*, 25 F.4th 722, 724-25 (9th Cir. 2022); *Moran v. The Screening Pros, LLC*, 943 F.3d 1175, 1182 (9th Cir. 2019); Complaint at ¶¶ 19-20, *Bureau of Consumer Fin. Prot. v. Sterling Infosys., Inc.*, No. 1:19-cv-10824 (S.D.N.Y. Nov. 22, 2019), https://files.consumerfinance.gov/f/documents/cfpb_sterling-infosystems-inc_complaint_2019-11.pdf.

¹⁷ See Joint Ctr. for Hous. Studies of Harvard Univ., *The State of the Nation’s Housing*, at 1-2, 22 (2023), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2

applications may be rejected, they may be passed over for promotions or denied security clearances, and they may lose their jobs. Even if none of these things happen, a consumer may spend considerable time and energy, and incur considerable expense, attempting to correct inaccuracies. Consumers often do not see their reports, if at all, until after they are denied, and efforts to correct information with one company may not carry over to the hundreds of other background screening companies or those that sell data to them.

In 1970, Congress enacted the Fair Credit Reporting Act (FCRA) to protect against these types of harms. The FCRA regulates consumer reporting and imposes obligations on consumer reporting agencies, the entities that furnish information to them, and the users of consumer reports.¹⁸ In passing the FCRA, Congress recognized “a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s privacy.”¹⁹ Accordingly, Congress designed the FCRA “to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information” and “to prevent an undue invasion of the individual’s right of privacy in the collection and dissemination of credit information.”²⁰ A primary purpose of the FCRA is “to protect consumers from the transmission of inaccurate information about them, and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner.”²¹ The statute is meant to ensure, among other things, that consumer reporting agencies provide information “in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information.”²²

023.pdf (noting that “renter cost burdens have risen to their highest recorded level, underscoring the worsening affordability challenges facing many renters with lower incomes”); CFPB, *Tenant Background Checks Market* at 5 (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf.

¹⁸ 15 U.S.C. 1681-1681x.

¹⁹ 15 U.S.C. 1681(a)(4).

²⁰ S. Rep. No. 91-517, at 1 (1969).

²¹ *Guimond v. Trans Union Credit Info.*, 45 F.3d 1329, 1333 (9th Cir. 1995) (citations omitted); *see also Porter v. Talbot Perkins Children’s Servs.*, 355 F. Supp. 174, 176 (S.D.N.Y. 1973) (noting that the FCRA was intended “to protect an individual from inaccurate or arbitrary information about himself in a consumer report that is being used as a factor in determining the individual’s eligibility for credit, insurance or employment”).

²² 15 U.S.C. 1681(b).

Because of the importance of consumer report accuracy to businesses and consumers, the structure of the FCRA creates interrelated legal standards and requirements to support the goal of accurate credit reporting. Among these is the requirement that, when preparing a consumer report, consumer reporting agencies “shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”²³ This requirement remains as important today as it was when the statute was enacted in 1970, and concerns about the accuracy of information included in consumer reports are long standing.

The CFPB is issuing this advisory opinion to underscore certain obligations that the FCRA imposes when background screening reports are provided and used. First, this advisory opinion highlights that consumer reporting agencies must comply with their FCRA obligation to “follow reasonable procedures to assure maximum possible accuracy” under section 607(b). In particular, a consumer reporting agency that reports public record information is not using reasonable procedures to assure maximum possible accuracy if it does not have reasonable procedures in place to ensure that (1) it does not report information that is duplicative or that has been expunged, sealed, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entities that maintain the records and (2) it includes any existing disposition information if it reports arrests, criminal charges, eviction proceedings, or other court filings.

Second, consistent with prior cases and guidance discussed below, this advisory opinion highlights that, when consumer reporting agencies include adverse information in consumer reports, the occurrence of the adverse event starts the running of the reporting period for adverse items under FCRA section 605(a)(5), which is not restarted or reopened by the occurrence of subsequent events. Moreover, a non-conviction disposition²⁴ of a criminal charge cannot be reported beyond the seven-year period that begins to run at the time of the charge. Consumer

²³ 15 U.S.C. 1681e(b).

²⁴ As used in this advisory opinion, non-conviction disposition refers to a dismissal or a similar disposition of criminal charges such as dropped charges or an acquittal.

reporting agencies thus must ensure that they do not report adverse information beyond the reporting period in FCRA section 605(a)(5) and must at all times have reasonable procedures in place to prevent reporting of information that is duplicative or legally restricted from public access and to ensure that any existing disposition information is included if court filings are reported.

B. Coverage

This advisory opinion applies to all “consumer reporting agencies,” as that term is defined in FCRA section 603(f).

C. Legal Analysis

1. Reasonable Procedures to Assure Maximum Possible Accuracy When Preparing Background Screening Reports

FCRA section 607(b) provides that “[w]hen a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”²⁵ The Bureau has previously indicated that it is not a reasonable procedure to use name-only matching to match information to the consumer who is the subject of the report when preparing a consumer report.²⁶

This advisory opinion highlights the Bureau’s interpretation of three other aspects of section 607(b)’s “reasonable procedures to assure maximum possible accuracy” requirement that relate to background screening information used in consumer reports: (1) preventing duplication of information; (2) including any existing disposition information if arrests, criminal charges, eviction proceedings, or other court filings are reported; and (3) ensuring that information that has been expunged, sealed, or otherwise legally restricted from public access in a manner that

²⁵ 15 U.S.C. 1681e(b).

²⁶ See, e.g., *Fair Credit Reporting: Name-Only Matching Procedures*, 86 FR 62468 (Nov. 10, 2021); Consent Order at ¶¶ 4–13, *In re Gen. Info. Servs., Inc.*, 2015–CFPB–0028 (Oct. 29, 2015), https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf; Complaint at ¶¶ 5–11, 13–14, *Bureau of Consumer Fin. Prot. v. Sterling Infosys., Inc.*, No. 1:19–cv–10824 (S.D.N.Y. Nov. 22, 2019), https://files.consumerfinance.gov/f/documents/cfpb_sterling-infosystems-inc_complaint_2019-11.pdf.

would prevent users from obtaining it directly from the government entity that maintains the records is not included in consumer reports.

To comply with section 607(b) of the FCRA, consumer reporting agencies must have reasonable procedures in place to prevent duplicative information from being reported on consumer reports in order to ensure that reports do not inaccurately suggest that a single event occurred more than once. For example, inclusion of multiple entries for the same criminal conviction or the same eviction can wrongly suggest that a consumer was convicted or evicted more than once. Consumer reporting agencies that obtain information from multiple sources, or from a single source that in turn collects information from multiple sources, must take particular care to identify information that is duplicative to ensure that information is accurately presented in consumer reports. Similarly, when a consumer reporting agency reports multiple stages of the same court proceeding, it must have procedures in place to ensure that information regarding the stages of these court proceedings (such as an arrest followed by a conviction) is presented in a way that makes clear the stages all relate to the same proceeding or case and does not inaccurately suggest that multiple proceedings or cases have occurred. For example, at a minimum, such procedures should require that all information about one court case should be collated and presented together in manner that makes it clear it is a single case.

When arrests, criminal charges, eviction proceedings, or other court filings are reported, consumer reporting agencies must also have reasonable procedures in place to check for any available disposition information and to ensure that such information is included.²⁷ For example, in situations where charges have been dismissed, it is misleading and inaccurate to report that an

²⁷ See, e.g., Complaint at ¶ 22, *United States v. AppFolio, Inc.*, No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020), https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf (alleging that a tenant screening company failed to follow reasonable procedures to assure that the eviction and criminal record information included in tenant-screening reports accurately reflected the disposition). Even when disposition information is included, court filings can of course only be reported if doing so complies with the FCRA. As discussed below, consumer reporting agencies must, for example, have procedures in place to ensure that court filings are not reported if the information has been expunged, sealed, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entity that maintains the records.

individual has been arrested for the charges without also reporting that the charges have been dismissed.²⁸ Similarly, if a bankruptcy has been discharged, it would be misleading and inaccurate to report the bankruptcy filing without also reporting the result. Highlighting the importance of the accuracy requirements in the statute, the CFPB and FTC recently agreed to a stipulated order with TransUnion Rental Screening Solutions, Inc. (TURSS) that requires TURSS to follow written procedures reasonably designed to prevent reporting of court filings (in that case eviction proceeding records) without a final disposition after TURSS repeatedly provided tenant screening reports with eviction proceeding records that did not include available disposition information.²⁹

Similar considerations apply with respect to expunged records, sealed records, and public records that are otherwise legally restricted from public access. Background screening companies are responsible for maintaining procedures that ensure that any inclusion of charges or arrest records in a consumer report complies with the law in the relevant jurisdiction from which the record originates. To “expunge” means to remove from a record or to erase or destroy.³⁰ Expungement removes arrests, convictions, or other matters from a person’s public record entirely, as if they had never occurred. Sealing removes items in public records from public view. Similarly, applicable law restricts public access to certain criminal records maintained by government entities that reflect a disposition other than conviction or that have reached a specified age without active prosecution when certain conditions are met.³¹ Once a

²⁸ The Bureau notes that such disposition information appears to be available, in the majority of cases, within five years. For example, a 2018 survey of State criminal history information systems showed that in 48 States and the District of Columbia, an average of 64 percent of arrests in State databases in the past five years had final case dispositions reported. Becki R. Goggins & Dennis A. DeBacco, SEARCH, The Nat’l Consortium for Justice Info. and Statistics, *Survey of State Criminal History Information Systems, 2018* (Nov. 5, 2020), <https://www.ojp.gov/pdffiles1/bjs/grants/255651.pdf>.

²⁹ CFPB, Press Release, *CFPB and FTC Take Actions Against TransUnion for Illegal Rental Background Check and Credit Reporting Practices* (Oct. 12, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-take-actions-against-transunion-illegal-rental-background-check-and-credit-reporting-practices/>.

³⁰ Black’s Law Dictionary (11th ed. 2019).

³¹ See, e.g., 28 CFR 20.21(b); 18 Pa. Cons. Stat. sec. 9121; 6 Va. Admin. Code 20-120-50.A.1; see also SEARCH, The Nat’l Consortium for Justice Info. and Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information*, at 41 (2005), <https://www.search.org/files/pdf/RNTFCSCJRI.pdf> (“In most States, authorized noncriminal justice requestors receive less than the full record; most often they are provided conviction-only information.”).

conviction or other matter of public record has been sealed, expunged, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entity that maintains the records, it is misleading and inaccurate to include it as part of the individual's background in a consumer report because there is no longer any public record of the matter.

Consumer reporting agencies that report public record information are not using reasonable procedures to assure maximum possible accuracy if they do not have reasonable procedures in place to prevent the inclusion in consumer reports of information that has been expunged, sealed, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entity that maintains the records. These procedures could include, for example, reporting only newly-gathered information or cross-checking existing data against updated sources so that matters that have been sealed or expunged can be identified and removed. In some instances, consumer reporting agencies may also be able to request lists of expunged matters from the original source and then remove those matters from their databases.³² In addition, under FCRA section 611(a)(5)(C), consumer reporting agencies must maintain reasonable procedures to ensure that information that is deleted from a consumer's file under FCRA section 611(a)(5)(A) because it is inaccurate or incomplete or cannot be verified does not reappear, except in the limited circumstances specified in FCRA section 611(a)(5)(B). This would include ensuring information does not reappear in situations in which a third-party vendor resupplies information that the consumer reporting agency has already removed.³³

³² Nat'l Consumer Law Ctr., *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing*, at 35-36 (Dec. 2019), <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>. The Administrative Office of Pennsylvania Courts regularly produces lists of expunged cases for entities that subscribe to its bulk distribution of criminal case data and contractually requires those entities to use the information to remove expunged cases. *Id.* at 23.

³³ 15 U.S.C. 1681i(a)(5)(C).

The CFPB and the Federal Trade Commission (FTC) have brought several cases illustrating the aspects of section 607(b) discussed in this advisory opinion.³⁴ For example, the CFPB alleged in one action that an employment background screening company, General Information Services, violated FCRA section 607(b) by, among other things, failing to use reasonable procedures to prevent the inclusion of expunged criminal records in consumer reports.³⁵ Similarly, the FTC alleged that another employment background screening company, HireRight Solutions, failed to take reasonable steps to ensure that the information in its consumer reports was current and reflected updates, such as the expungement of criminal records.³⁶ Because of this, the FTC charged, employers sometimes received information that incorrectly listed criminal convictions on individuals' records. In addition, according to the FTC's complaint, HireRight Solutions failed to follow reasonable procedures to prevent the same criminal offense information from being included in a consumer report multiple times.³⁷ In another action, the FTC alleged that a tenant screening company, AppFolio, failed to follow reasonable procedures to assure that the eviction and criminal record information included in tenant-screening reports accurately reflected the disposition, offense name, and offense type, and to prevent the inclusion of multiple entries for the same criminal or eviction action in the same report.³⁸

³⁴ The Bureau and the FTC have also previously issued guidance on these aspects of section 607(b). *See, e.g.*, CFPB, *Bulletin 2021-03: Consumer Reporting of Rental Information* (July 1, 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information_bulletin-2021-03_2021-07.pdf; Fed. Trade Comm'n, *What Tenant Background Screening Companies Need to Know About the Fair Credit Reporting Act* (Oct. 2016), <https://www.ftc.gov/business-guidance/resources/what-tenant-background-screening-companies-need-know-about-fair-credit-reporting-act>.

³⁵ *See* Consent Order, *In re Gen. Info. Servs., Inc.*, 2015-CFPB-0028 (Oct. 29, 2015), https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf; CFPB, Press Release, *CFPB Takes Action Against Two of the Largest Employment Background Screening Report Providers for Serious Inaccuracies* (Oct. 29, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-two-of-the-largest-employment-background-screening-report-providers-for-serious-inaccuracies/>.

³⁶ Consent Order, *United States v. HireRight Sols., Inc.*, 1:12-cv-01313 (D.D.C. Aug. 8, 2012), <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120808hirerightstip.pdf>.

³⁷ Complaint at ¶¶ 13-14, *United States v. HireRight Sols., Inc.*, 1:12-cv-01313 (D.D.C. Aug. 8, 2012), <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120808hirerightempt.pdf>.

³⁸ Complaint at ¶ 22, *United States v. AppFolio, Inc.*, No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020), https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf.

Additionally, the CFPB and the FTC alleged in a recent action that a rental screening company, TURSS, violated the FCRA by failing to follow reasonable procedures to assure maximum possible accuracy of information in background screening reports relied on by landlords and others.³⁹ Specifically, the agencies alleged that TURSS knowingly and recklessly failed to follow reasonable procedures to: (1) prevent the inclusion of multiple entries for the same eviction case in eviction proceeding records, (2) accurately report the case disposition in eviction proceeding records, (3) accurately label data fields in eviction proceeding records, and (4) prevent the inclusion of sealed eviction proceeding records.⁴⁰

2. *Seven-Year Period for Reporting Adverse Information*

The FCRA restricts a consumer reporting agency from including obsolete information in a consumer report.⁴¹ FCRA section 605(a)(5) generally prohibits the reporting of “[a]ny . . . adverse item of information . . . which antedates the report by more than seven years.”⁴²

As the plain language of section 605(a)(5) makes clear, each adverse item of information is subject to its own seven-year reporting period, the timing of which depends on the date of the “adverse item” itself.⁴³ Thus, the reporting period applicable to one adverse item cannot be restarted or reopened by the occurrence of a subsequent event. Once the period applicable to a particular item expires, that item can no longer be reported. For example, an arrest is subject to a reporting period that ends seven years after the arrest’s date of entry, and subsequent events do not restart or reopen the reporting period applicable to the arrest.⁴⁴

³⁹ Complaint at ¶ 3, *FTC v. TransUnion Rental Screening Solutions, Inc.*, No. 1:23-cv-2659 (D. Colo. Oct. 12, 2023), https://files.consumerfinance.gov/f/documents/cfpb_transunion-rental-screening-solutions-inc-trans-union-llc_complaint_2023-10.pdf.

⁴⁰ *Id.* at ¶¶ 24-53.

⁴¹ 15 U.S.C. 1681c.

⁴² 15 U.S.C. 1681c(a)(5). FCRA section 605(a)(5) excludes from this prohibition records of convictions of crimes. *Id.* In addition, FCRA section 605(b) provides that this prohibition is not applicable in the case of any consumer credit report to be used in connection with certain specified transactions. 15 U.S.C. 1681c(b).

⁴³ *Moran v. The Screening Pros, LLC*, 943 F.3d 1175, 1184 (9th Cir. 2019) (“The statute’s use of ‘antedates’ connects the seven-year window directly to the adverse event itself.”).

⁴⁴ While records of conviction of a crime are not subject to the time limits set forth in section 605(a)(5), an arrest underlying a conviction is subject to the reporting period that ends seven years after the arrest’s date of entry.

Moreover, in the case of a non-conviction disposition of criminal charges, the disposition does not start its own seven-year reporting period.⁴⁵ This interpretation follows from a longstanding principle in the application of section 605(a): a consumer reporting agency “may not furnish a consumer report referencing the existence of adverse information that predates the times set forth” in section 605(a).⁴⁶ In other words, a consumer reporting agency generally cannot provide a consumer report containing information that reveals the existence of an adverse event that antedates the report by more than seven years. Otherwise the FCRA’s clear limitations on the reporting of obsolete information would be vulnerable to easy evasion. Because it necessarily would reveal the existence of the charge, a dismissal of a criminal charge or similar disposition such as dropped charges or acquittal generally could not be reported after the seven-year period that begins when the charge occurred.⁴⁷

This interpretation also follows from the structure of section 605(a) and a 1998 amendment to that provision. The contrast between section 605(a)(5) and several other paragraphs of section 605(a), in which Congress prescribed a different rule for specific categories of information, is instructive. For paid tax liens, the reporting period ends seven years “from date of payment”;⁴⁸ for bankruptcy cases, the reporting period ends 10 years “from the date of entry of the order for relief or the date of adjudication.”⁴⁹ Unlike these provisions, section 605(a)(5) contains no indication that Congress intended to tie the end of the reporting period to something other than the occurrence of the adverse item. The pre-1998 version of section 605(a) explicitly made “disposition” of a “record[] . . . of indictment” the trigger for the

⁴⁵ *Moran*, 943 F.3d at 1184 (“A dismissal indicates that the consumer no longer faces an indictment, an overall positive—but at least neutral—development. A dismissal is only adverse insofar as it discloses the previous adverse event, i.e., the charge.”).

⁴⁶ Fed. Trade Comm’n, *40 Years of Experience With the Fair Credit Reporting Act: An FTC Staff Report With Summary of Interpretations*, at 55 (2011); cf. *Moran*, 943 F.3d at 1184 (“Even though non-adverse information is typically not subject to reporting windows, a dismissal is different. A dismissal necessarily references the existence of the adverse event, to which the reporting window still applies.”).

⁴⁷ *Moran*, 943 F.3d at 1184 (“A related later event should not trigger or reopen the window, as the adverse event already occurred. To hold otherwise, thereby allowing this information to be reported through disclosure of a dismissal, would circumvent Congress’s intent to confine adverse criminal information to a seven-year window.”).

⁴⁸ 15 U.S.C. 1681c(a)(3).

⁴⁹ 15 U.S.C. 1681c(a)(1).

seven-year reporting period; however, a 1998 amendment deleted that provision.⁵⁰ This amendment “significantly altered [the] statute,” indicating clearly that the end of the reporting period under section 605(a)(5) depends on the date of the adverse item itself—not on the date of disposition.⁵¹

In addition to provisions authorizing Federal and State enforcement,⁵² the FCRA contains two provisions relating to civil liability to consumers for noncompliance. Section 617 provides that “any person who is *negligent* in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to” the consumer’s actual damages, and costs and reasonable attorney’s fees.⁵³ Section 616 provides that “any person who *willfully* fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to” actual or statutory damages of up to \$1,000 per violation, such punitive damages as the court allows, and costs and reasonable attorney’s fees.⁵⁴ A violation is willful when it is inconsistent with “authoritative guidance” from a relevant agency.⁵⁵ As with any guidance issued by the CFPB on the FCRA, or predecessor agencies that were responsible for administering the FCRA prior to the CFPB’s creation, consumer reporting agencies risk liability under section 616 if they violate the FCRA in a manner described in this advisory opinion, regardless of whether the consumer reporting agencies were previously liable for willful violations prior to its issuance.

⁵⁰ In the original FCRA, “[r]ecords of arrest, indictment, or conviction of crime” were reportable for seven years, starting at the “date of disposition, release, or parole.” 15 U.S.C. 1681c(a)(5) (1996). The 1998 amendment to the FCRA deleted this paragraph. Consumer Reporting Employment Clarification Act, Pub. L. 105-347, sec. 5(2), 112 Stat. 3211. The amendment moved “records of arrest” to pre-existing paragraph (a)(2), which now requires the reporting of “[c]ivil suits, civil judgment, and records of arrest” to end seven years after “date of entry,” 15 U.S.C. 1681c(a)(2). See Pub. L. 105-347, sec. 5(1), 112 Stat. 3211. (Information of this type can be reported “until the governing statute of limitations has expired,” if that period is longer. 15 U.S.C. 1681c(a)(2).) The 1998 amendment also removed criminal convictions altogether from the restriction on reporting obsolete information. *Id.*, sec. 5(3), codified at 15 U.S.C. 1681c(a)(5) (prohibiting reporting, past seven years, of “any other adverse item of information, other than records of convictions of crimes”).

⁵¹ *Moran*, 943 F.3d at 1185.

⁵² 15 U.S.C. 1681s.

⁵³ 15 U.S.C. 1681o (emphasis added).

⁵⁴ 15 U.S.C. 1681n (emphasis added); *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57-58 (2007) (construing meaning of “willful”).

⁵⁵ *Safeco Ins.*, 551 U.S. at 70; *Fuges v. Sw. Fin. Servs., Ltd.*, 707 F.3d 241, 253 (3d Cir. 2012).

II. Regulatory Matters

This advisory opinion is an interpretive rule issued under the Bureau’s authority to interpret the FCRA, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010,⁵⁶ which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.⁵⁷

The Bureau has determined that this advisory opinion does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.⁵⁸

Pursuant to the Congressional Review Act,⁵⁹ the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule’s published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a “major rule” as defined by 5 U.S.C. 804(2).

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Director, Consumer Financial Protection Bureau.

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⁵⁶ Pub. L. 111-203, 124 Stat. 1376 (2010).

⁵⁷ 12 U.S.C. 5512(b)(1).

⁵⁸ 44 U.S.C. 3501-3521.

⁵⁹ 5 U.S.C. 801 *et seq.*