

# CFPB Kicks Off Rulemaking to Remove Medical Bills from Credit Reports

English

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*Proposals under consideration would help end coercive debt collection tactics, clean up inaccurate data, and improve credit score predictiveness*

SEP 21, 2023

**WASHINGTON, D.C.** – The Consumer Financial Protection Bureau (CFPB) today announced it is beginning a rulemaking process to remove medical bills from Americans’ credit reports. The CFPB outlined proposals under consideration that would help families financially recover from medical crises, stop debt collectors from coercing people into paying bills they may not even owe, and ensure that creditors are not relying on data that is often plagued with inaccuracies and mistakes.

“Research shows that medical bills have little predictive value in credit decisions, yet tens of millions of American households are dealing with medical debt on their credit reports,” said CFPB Director Rohit Chopra. “When someone gets sick, they should be able to focus on getting better, rather than fighting debt collectors trying to extort them into paying bills they may not even owe.”

A [2022 report \(cfpb.gov/about-us/newsroom/cfpb-estimates-88-billion-in-medical-bills-on-credit-reports/\)](https://cfpb.gov/about-us/newsroom/cfpb-estimates-88-billion-in-medical-bills-on-credit-reports/) found that roughly 20% of Americans report having medical debt, but [previous research \(cfpb.gov/about-us/newsroom/cfpb-study-finds-medical-debt-overly-penalizes-consumer-credit-scores/\)](https://cfpb.gov/about-us/newsroom/cfpb-study-finds-medical-debt-overly-penalizes-consumer-credit-scores/) by the CFPB has shown that medical billing data on a credit report is less predictive of future repayment than reporting on traditional credit obligations. Mistakes and inaccuracies in medical billing are common and can be compounded by problems such as disputes over insurance payments or complex billing practices.

The Fair Credit Reporting Act restricts creditors’ ability to use medical information in making credit decisions and places limits on the inclusion of medical information on credit reports.

The FCRA also granted five financial regulators authority to create regulatory exemptions to the restriction on creditors' use of medical information, and in 2005, those regulators created an exception to allow creditors to rely on medical data if it could be characterized as "financial information."

The document released today is an outline of proposals and alternatives under consideration for the CFPB's medical debt rulemaking. If finalized, they would:

- **Remove medical bills from consumers' credit reports:** Consumer reporting companies would be prohibited from including medical debts and collection information on consumer reports that creditors use in making underwriting decisions.
- **Stop creditors from relying on medical bills for underwriting decisions:** The proposal would narrow the 2005 exception and prohibit creditors from using medical collections information when evaluating borrowers' credit applications.
- **Stop coercive collection practices:** As unpaid medical bills would no longer appear on consumers' credit reports used by creditors in making underwriting decisions, debt collectors would no longer be able to use the credit reporting system as leverage to pressure consumers into paying questionable debts.

The proposal would not stop creditors from obtaining medical bill information for other purposes, such as verifying the need for medical forbearances, or evaluating loan applications to pay for medical services.

In advance of beginning the rulemaking process, the CFPB has engaged with the public on this issue. In a [public hearing](https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-director-r-ohit-chopra-for-the-cfpb-hearing-on-medical-billing-and-collections/) (cfpb.gov/about-us/newsroom/prepared-remarks-of-director-r-ohit-chopra-for-the-cfpb-hearing-on-medical-billing-and-collections/) in July 2023, the CFPB met with and listened to people from across the country on the impact poor medical billing practices and coercive credit reporting have on patients and families. The CFPB, [in partnership with other agencies](https://www.consumerfinance.gov/about-us/newsroom/inquiry-into-costly-credit-cards-and-loans-pushed-on-patients-for-health-care-costs/) (cfpb.gov/about-us/newsroom/inquiry-into-costly-credit-cards-and-loans-pushed-on-patients-for-health-care-costs/), is currently reviewing information submitted by the public on medical billing practices, including high-cost specialty financial products such as medical credit cards and installment loans. The CFPB continues to [receive complaints](https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin-medical-billing_report_2022-04.pdf) (https://files.consumerfinance.gov/f/documents/cfpb\_complaint-bulletin-medical-billing\_report\_2022-04.pdf) from the public about illegal debt collection and credit reporting practices related to medical billing.

The CFPB is taking steps to empower consumers by having them take more control over their personal financial data and how it is being used by companies. In addition to today's announcement, the CFPB [previously launched](https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-inquiry-into-the-business-practices-of-data-brokers/) (cfpb.gov/about-us/newsroom/cfpb-launches-inquiry-into-the-business-practices-of-data-brokers/) an inquiry into the practices of data brokers, and how companies that track and collect information on people's personal lives impact consumers. As [announced](https://www.consumerfinance.gov/about-us/newsroom/remarks-of-cfpb-director-r-ohit-chopra-at-white-house-roundtable-on-protecting-americans-from-harmful-data-broker-practices/) (cfpb.gov/about-us/newsroom/remarks-of-cfpb-director-r-ohit-chopra-at-white-house-roundtable-on-protecting-americans-from-harmful-data-broker-practices/) on August 15, 2023, the CFPB is considering proposals relating to data brokers.

The document released today is an outline of proposals and alternatives under consideration for the CFPB's Fair Credit Reporting Act Rulemaking. The medical debt announcement, and the August announcement on data brokers, are part of that rulemaking.

[Read today's Outline of Proposals and Alternatives Under Consideration.](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf)  ([https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-reporting-rule-sbrefa\\_outline-of-proposals.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf))

[Read Director Chopra's remarks at a call hosted by Vice President Kamala Harris](https://cfpb.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-on-medical-debt-at-a-press-call-hosted-by-vice-president-kamala-harris/) ([cfpb.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-on-medical-debt-at-a-press-call-hosted-by-vice-president-kamala-harris/](https://cfpb.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-on-medical-debt-at-a-press-call-hosted-by-vice-president-kamala-harris/))

[Additional related materials are available on our rulemaking page.](https://cfpb.gov/rules-policy/small-business-review-panels/small-business-review-panel-for-consumer-reporting-rulemaking/) ([cfpb.gov/rules-policy/small-business-review-panels/small-business-review-panel-for-consumer-reporting-rulemaking/](https://cfpb.gov/rules-policy/small-business-review-panels/small-business-review-panel-for-consumer-reporting-rulemaking/))

Consumers can submit complaints about financial products or services by visiting the [CFPB's website](https://cfpb.gov/complaint/) ([cfpb.gov/complaint/](https://cfpb.gov/complaint/)) or by calling (855) 411-CFPB (2372).

Employees who believe their companies have violated federal consumer financial protection laws are encouraged to send information about what they know to [whistleblower@cfpb.gov](mailto:whistleblower@cfpb.gov).

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*The Consumer Financial Protection Bureau is a 21st century agency that implements and enforces Federal consumer financial law and ensures that markets for consumer financial products are fair, transparent, and competitive. For more information, visit [consumerfinance.gov](https://consumerfinance.gov) ([cfpb.gov/](https://cfpb.gov/)).*

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damaged because of inaccurate or arbitrary information in a credit report.”<sup>39</sup> The FCRA achieves this by, among other things, providing consumers the right to obtain, upon request, all information in their file and the sources of that information and the right to dispute any incomplete or inaccurate information. The statutory right provided by FCRA section 609(a)(2) enables consumers to understand the true sources of any incomplete or inaccurate information in their file and helps them to address such errors more effectively.<sup>40</sup> For example, many consumer reporting agencies, including background screening companies, obtain public records information from vendors. Vendors often provide only distilled versions of these records that do not contain all the information housed by the jurisdiction from which the records originated and sometimes contain mistakes or fail to include the most up-to-date status of the public records. If a consumer reporting agency discloses to a consumer only the original jurisdiction as the source of the information and does not also disclose the vendor, or conversely, if the consumer reporting agency discloses to a consumer only the vendor and does not also disclose the original source of the information, the consumer may not be able to correct any erroneous public records information that could be included in their files at all of the consumer reporting agencies that receive data from the vendor.<sup>41</sup> Interpreting FCRA section 609(a)(2) to allow a consumer reporting agency to disclose to a consumer only a single source of the information, and not all sources of the information, would undermine the FCRA’s purposes by limiting consumers’ ability to understand the sources of the often

highly sensitive information in their file and to address and prevent further dissemination of incomplete or inaccurate data.

In addition to provisions authorizing Federal and State enforcement,<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> A violation is willful when it is inconsistent with “authoritative guidance” from a relevant agency.<sup>45</sup> 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.

## 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,<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup>

Pursuant to the Congressional Review Act,<sup>49</sup> 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).

**Rohit Chopra,**

*Director, Consumer Financial Protection Bureau.*

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## 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 January 23, 2024.

**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](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau is issuing this advisory opinion

<sup>39</sup> S. Rep. No. 91–517, at 1 (1969).

<sup>40</sup> Courts have recognized the importance of the disclosure of all sources for consumers to dispute inaccuracies and prevent the reoccurrence of inaccuracies. *See, e.g., Clark v. Trans Union LLC*, No. 3:15cv391, 2016 WL 7197391, at \*11 (E.D. Va. Dec. 9, 2016) (stating that “the omission of LexisNexis as a source deprived Clark of her congressionally-mandated right to correct the mistake with LexisNexis, or with anyone else to whom LexisNexis also may have disclosed the inaccurate information. Moreover, the failure to include LexisNexis in the report creates a material risk that LexisNexis could continue to report inaccurate information to others in the future.”); *Leo v. AppFolio, Inc.*, No. 17–5771 RJB, 2018 WL 623647, at \*8 (W.D. Wash. Jan. 30, 2018) (noting that AppFolio’s failure to properly identify the vendor who provided the data would make it harder for the plaintiff to correct the misreporting).

<sup>41</sup> *See, e.g., Clark v. Trans Union LLC*, No. 3:15cv391, 2016 WL 7197391, at \*11 (E.D. Va. Dec. 9, 2016); *Leo v. AppFolio, Inc.*, No. 17–5771 RJB, 2018 WL 623647, at \*8 (W.D. Wash. Jan. 30, 2018).

<sup>42</sup> 15 U.S.C. 1681s.

<sup>43</sup> 15 U.S.C. 1681o (emphasis added).

<sup>44</sup> 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”).

<sup>45</sup> *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 70 (2007); *Fuges v. Sw. Fin. Servs., Ltd.*, 707 F.3d 241, 253 (3d Cir. 2012).

<sup>46</sup> Pub. L. 111–203, 124 Stat. 1376 (2010).

<sup>47</sup> 12 U.S.C. 5512(b)(1).

<sup>48</sup> 44 U.S.C. 3501–3521.

<sup>49</sup> 5 U.S.C. 801 et seq.

through the procedures for its Advisory Opinions Policy.<sup>1</sup> Refer to those procedures for more information.

## I. Advisory Opinion

### A. Background

The majority of landlords and employers conduct background checks before renting property or hiring employees.<sup>2</sup> Landlords and employers typically conduct background checks by obtaining consumer reports from consumer reporting agencies.<sup>3</sup> 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.<sup>4</sup>

Background screening companies vary in size, the users they serve, the services they provide, and the geographic regions they cover.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

In many instances, background screening reports contain inaccurate information about consumers.<sup>8</sup> 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 belongs to someone else.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> Some States and localities have taken steps to make it easier to seal or expunge certain records, including eviction records.<sup>13</sup>

*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).

<sup>9</sup> 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).

<sup>10</sup> 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](https://www.nclc.org/wp-content/uploads/2023/09/202309_Report_Digital-Denials.pdf).

<sup>11</sup> See *id.* at 38.

<sup>12</sup> 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](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>.

<sup>13</sup> 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); DC 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

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 restricted in certain circumstances.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> As a result, these

(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/>.

<sup>14</sup> 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.”).

<sup>15</sup> 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.

<sup>16</sup> See, *e.g.*, *Moran v. The Screening Pros, LLC*, 25 F.4th 722, 724–25 (9th Cir. 2022); *Moran v. The*

<sup>1</sup> 85 FR 77987 (Dec. 3, 2020).

<sup>2</sup> 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](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](https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf).

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

<sup>4</sup> See generally CFPB, *Market Snapshot: Background Screening Reports* (Oct. 2019), [https://files.consumerfinance.gov/f/documents/201909\\_cfpb\\_market-snapshot-background-screening\\_report.pdf](https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf).

<sup>5</sup> See *id.* at 5.

<sup>6</sup> See *id.* at 2.

<sup>7</sup> See *id.* at 8.

<sup>8</sup> 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/>

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.<sup>17</sup> Consumers' employment 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.<sup>18</sup> 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."<sup>19</sup> 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."<sup>20</sup> 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."<sup>21</sup> 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."<sup>22</sup>

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."<sup>23</sup> 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 disposition<sup>24</sup> of a criminal charge cannot be reported beyond the seven-year period that begins to run at the time of the charge. Consumer 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."<sup>25</sup> 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.<sup>26</sup> This advisory opinion highlights the Bureau's interpretation of three other

<sup>24</sup> 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.

<sup>25</sup> 15 U.S.C. 1681e(b).

<sup>26</sup> 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](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](https://files.consumerfinance.gov/f/documents/cfpb_sterling-infosystems-inc_complaint_2019-11.pdf).

*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](https://files.consumerfinance.gov/f/documents/cfpb_sterling-infosystems-inc_complaint_2019-11.pdf).

<sup>17</sup> 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\\_2023.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.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](https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf).

<sup>18</sup> 15 U.S.C. 1681–1681x.

<sup>19</sup> 15 U.S.C. 1681(a)(4).

<sup>20</sup> S. Rep. No. 91–517, at 1 (1969).

<sup>21</sup> *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").

<sup>22</sup> 15 U.S.C. 1681(b).

<sup>23</sup> 15 U.S.C. 1681e(b).

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 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.<sup>27</sup> For example, in situations

<sup>27</sup> 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](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

where charges have been dismissed, it is misleading and inaccurate to report that an individual has been arrested for the charges without also reporting that the charges have been dismissed.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup> 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

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.

<sup>28</sup> 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>.

<sup>29</sup> 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/>.

<sup>30</sup> Black's Law Dictionary (11th ed. 2019).

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.<sup>31</sup> Once a 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.<sup>32</sup> 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

<sup>31</sup> 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.")

<sup>32</sup> 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.

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.<sup>33</sup>

The CFPB and the Federal Trade Commission (FTC) have brought several cases illustrating the aspects of section 607(b) discussed in this advisory opinion.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup>

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

The FCRA restricts a consumer reporting agency from including obsolete information in a consumer report.<sup>41</sup> 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.”<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup>

Moreover, in the case of a non-conviction disposition of criminal charges, the disposition does not start its own seven-year reporting period.<sup>45</sup> 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).<sup>46</sup> 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.<sup>47</sup>

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”;<sup>48</sup> for

<sup>44</sup> 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.

<sup>45</sup> *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.”).

<sup>46</sup> 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.”).

<sup>47</sup> *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.”).

<sup>48</sup> 15 U.S.C. 1681c(a)(3).

<sup>33</sup> 15 U.S.C. 1681(a)(5)(C).

<sup>34</sup> 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](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>.

<sup>35</sup> 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](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/>.

<sup>36</sup> 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>.

<sup>37</sup> 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/2012/08/120808hirerightcmpt.pdf>.

<sup>38</sup> 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](https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf).

<sup>39</sup> 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](https://files.consumerfinance.gov/f/documents/cfpb_transunion-rental-screening-solutions-inc-trans-union-llc_complaint_2023-10.pdf).

<sup>40</sup> *Id.* at ¶¶ 24–53.

<sup>41</sup> 15 U.S.C. 1681c.

<sup>42</sup> 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).

<sup>43</sup> *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.”).



bankruptcy cases, the reporting period ends 10 years “from the date of entry of the order for relief or the date of adjudication.”<sup>49</sup> 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 seven-year reporting period; however, a 1998 amendment deleted that provision.<sup>50</sup> 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.<sup>51</sup>

In addition to provisions authorizing Federal and State enforcement,<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> A violation is willful when it is inconsistent with “authoritative guidance” from a relevant

agency.<sup>55</sup> 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.

## 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,<sup>56</sup> 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.<sup>57</sup>

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.<sup>58</sup>

Pursuant to the Congressional Review Act,<sup>59</sup> 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).

### Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024–00788 Filed 1–22–24; 8:45 am]

**BILLING CODE 4810-AM-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2023–1498; Project Identifier MCAI–2023–00459–T; Amendment 39–22643; AD 2023–25–16]

RIN 2120-AA64

### Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A330–800, and A330–900 series airplanes. This AD was prompted by a determination that part of a certain production ground test procedure used to confirm inner fuel tank integrity was not accomplished properly on certain airplanes. This AD requires a fuel tank leak test and, depending on findings, accomplishment of applicable corrective action, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective February 27, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 27, 2024.

#### ADDRESSES:

*AD Docket:* You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1498; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

#### Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website [easa.europa.eu](https://easa.europa.eu). You may find this material on the EASA website at [ad.easa.europa.eu](https://ad.easa.europa.eu).

- For Airbus SAS service information identified in this AD, contact Airbus

<sup>49</sup> 15 U.S.C. 1681c(a)(1).

<sup>50</sup> 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, Public Law 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 Public Law 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”).

<sup>51</sup> *Moran*, 943 F.3d at 1185.

<sup>52</sup> 15 U.S.C. 1681s.

<sup>53</sup> 15 U.S.C. 1681o (emphasis added).

<sup>54</sup> 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”).

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

<sup>56</sup> Public Law 111–203, 124 Stat. 1376 (2010).

<sup>57</sup> 12 U.S.C. 5512(b)(1).

<sup>58</sup> 44 U.S.C. 3501–3521.

<sup>59</sup> 5 U.S.C. 801 *et seq.*

**REGULATION B – ECOA AND FCRA  
ADVERSE ACTION NOTICE CHEAT SHEET**

APPLICATION	WHOSE CONSUMER CREDIT REPORT CONTRIBUTED TO CREDIT DECISION	WHICH SECTION TO COMPLETE ON A COMBINED ADVERSE ACTION NOTICE (ECOA AND FCRA)	
One Consumer Applicant	<input type="checkbox"/> Applicant <input checked="" type="checkbox"/> N/A (credit report not used in decision)	<input checked="" type="checkbox"/> Top Section (ECOA) completed <input type="checkbox"/> Bottom Section (FCRA) completed <input checked="" type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section.	
One Consumer Applicant	<input checked="" type="checkbox"/> Applicant <input type="checkbox"/> N/A (credit report not used in decision)	<input checked="" type="checkbox"/> Top Section (ECOA) completed <input checked="" type="checkbox"/> Bottom Section (FCRA) completed <input type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section.	
Joint Consumer Application	<input type="checkbox"/> Primary Applicant <input type="checkbox"/> Co-Applicant <input checked="" type="checkbox"/> N/A (credit report not used in decision)	➤ Primary Applicant <input checked="" type="checkbox"/> Top Section (ECOA) completed <input type="checkbox"/> Bottom Section (FCRA) completed <input checked="" type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section.	➤ Co-Applicant <input type="checkbox"/> Top Section (ECOA) completed <input type="checkbox"/> Bottom Section (FCRA) completed <input type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section. <input checked="" type="checkbox"/> No notice to co-applicant Note: Co-applicant can receive the ECOA notice, too, but it is not required by Reg. B
Joint Consumer Application	<input checked="" type="checkbox"/> Primary Applicant <input type="checkbox"/> Co-Applicant <input type="checkbox"/> N/A (credit report not used in decision)	➤ Primary Applicant <input checked="" type="checkbox"/> Top Section (ECOA) completed <input checked="" type="checkbox"/> Bottom Section (FCRA) completed <input type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section.	➤ Co-Applicant <input type="checkbox"/> Top Section (ECOA) completed <input type="checkbox"/> Bottom Section (FCRA) completed <input type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section. <input checked="" type="checkbox"/> No notice to co-applicant

APPLICATION	WHOSE CONSUMER CREDIT REPORT CONTRIBUTED TO CREDIT DECISION	WHICH SECTION TO COMPLETE ON A COMBINED ADVERSE ACTION NOTICE (ECOA AND FCRA)	
Joint Consumer Application	<input checked="" type="checkbox"/> Primary Applicant <input checked="" type="checkbox"/> Co-Applicant <input type="checkbox"/> N/A (credit report not used in decision)	<p>➤ Applicant</p> <input checked="" type="checkbox"/> Top Section (ECOA) completed <input checked="" type="checkbox"/> Bottom Section (FCRA) completed <input type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section.	<p>➤ Co-Applicant</p> <input checked="" type="checkbox"/> Top Section (ECOA) completed <input checked="" type="checkbox"/> Bottom Section (FCRA) completed <input type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section. <input type="checkbox"/> No notice to co-applicant
Joint Consumer Application	<input type="checkbox"/> Primary Applicant <input checked="" type="checkbox"/> Co-Applicant <input type="checkbox"/> N/A (credit report not used in decision)	<p>➤ Applicant</p> <input checked="" type="checkbox"/> Top Section (ECOA) completed <input type="checkbox"/> Bottom Section (FCRA) completed <input checked="" type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section.	<p>➤ Co-Applicant</p> <input checked="" type="checkbox"/> Top Section (ECOA) completed <input checked="" type="checkbox"/> Bottom Section (FCRA) completed <input type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section.
Commercial Application	<input type="checkbox"/> Guarantor	<input checked="" type="checkbox"/> Top Section (ECOA) completed <input type="checkbox"/> Bottom Section (FCRA) completed <input checked="" type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section.	
Commercial Application	<input checked="" type="checkbox"/> Guarantor	<input checked="" type="checkbox"/> Top Section (ECOA) completed <input type="checkbox"/> Bottom Section (FCRA) completed <input checked="" type="checkbox"/> Mark “Disclosure Inapplicable” box on FCRA section.	

## FACTA MEDICAL RULES EFFECTIVE April 1, 2006

The **F**air and **A**ccurate **C**redit **T**ransactions **A**ct has been amended to include Medical Information Rules.

Under these rules, the creditor may NOT take the consumer's

- ✓ physical
- ✓ mental
- ✓ behavioral health
- ✓ medical condition
- ✓ history of medical condition or treatment
- ✓ type of treatment
- ✓ or prognosis

into consideration when making a credit decision.

If the applicant who is wheeled into the bank on a gurney assisted by a nurse carrying oxygen and medical supplies has sufficient income, credit history, identification, etc. necessary to qualify for the loan requested, the loan must be granted even though the applicant may pass away right after the closing. This same loan would be approved if the applicant were a marathon runner and that runner could be struck by a vehicle the day following the closing. That's the point. EVERYONE is the same under the law. Creditors never question the mortality of healthy-looking or young applicants and their vulnerability is a reality. Car accidents, crime, war, terrorism, loss of job, etc. all take their toll. It is true that the ill and the elderly have more stacked up against them, but reality is that everyone is vulnerable when it comes to loss of life or income. That's the reason for the new Medical Rules. EVERYONE regardless of race, sex, national origin, marital status, age or medical condition must be treated the same.






The Lender will also be prohibited from asking an applicant to provide information about existing medical conditions and the Lender may not discriminate against an applicant because they are receiving health-related incomes, such as disability insurance or worker's compensation benefits.







ANY medical information about a consumer that the Lender receives whether because it was volunteered by the customer or it was stated on an insurance request form, etc. must be kept secured and cannot be discussed with employees unless they have a need to know. For example, an applicant discloses that he has AIDS during the interview process. This information cannot have any bearing on whether the loan is approved or denied. Additionally, the Lender cannot SHARE that information with any other employee. No one has a need to know this information.

### CONTINUING INCOME

Though the applicant may be ill, the Lender is not allowed to use this fact in making the credit decisions, but will be able to consider the probability of continued income in making the credit decision, **providing** that is a step taken for every application, not just for ones where the income is derived from disability insurance, workers compensation, etc. If the Lender only verifies income and probability of continued income for applicants with medically derived income, the Lender is violating the Medical provisions of FACTA.

## MEDICAL RULES

Scenario	Acceptable or Unacceptable Under FACTA	Reason
<p>The applicant disclosed 2 outstanding \$30,000 debts. One is owed on a credit card and the other is owed to a hospital. The Lender verifies the debts and discovers that both debts are 90 days past due. Loan is denied.</p>		<p>Because one debt is owed to a hospital, the Lender knows there has been or currently exists a medical issue. But the loan is not being denied because of this medical information. Any loan request that had 2 large delinquent loans outstanding would be denied. This is consistent with the Lender's practices.</p>
<p>The applicant requests a \$300,000 mortgage loan. The applicant's only source of income is \$35,000 per year in long-term disability payments. The loan is denied.</p>		<p>Income of \$35,000 is not sufficient to support a \$300,000 loan, regardless of the source of the income.</p>
<p>An applicant discloses the fact that he has AIDS during the application process. He informs the Lender that he is in the final stages of the disease. The reason for the loan is to get a dependable vehicle in which to take his dream vacation. The applicant meets the established requirements for a car loan, but the Lender denies the loan. The lender contemplates what he would do in the applicant's place and speculates he'd max out his credit card and go for broke. If the applicant does what the Lender would do and doesn't live long enough to pay off the loan, the bank will have to deal with the estate and that may be problematic.</p>		<p>The Lender is out of line speculating what the applicant might do. It's doubtful that this same Lender passes judgment on the longevity of the marriages of the applicant's he interviews, yet mortgage loans caught up in these types of battles can be problematic as well. There are all sorts of things that can go wrong after a loan is made.</p> <p>If an applicant meets the established requirements for the loan, the loan must be made.</p>
<p>The applicant for a mortgage loan is in a wheelchair and uses oxygen. The applicant qualifies for the loan, but based on the apparent medical condition, the Lender requires the applicant to obtain debt-cancellation insurance. The applicant does and the loan is approved.</p>		<p>Debt-cancellation insurance is not required of other applicants and should not have been required for this applicant.</p>
<p>The applicant requests a \$10,000 Home Equity loan and discloses a \$50,000 debt to a facility that treats terminal illnesses. The Lender verifies the debt and learns that the debt is current and there are no delinquencies in the repayment history. The Lender approves the loan.</p>		<p>The creditor has used the medical information consistent with what is allowed under the law.</p>

Scenario	Acceptable or Unacceptable Under FACTA	Reason
The application is for \$10,000. The purpose of the loan is vision correction surgery. The Lender contacts the surgeon to verify the amount and the surgeon indicates that surgery will not be performed. The Lender denies the loan.		The Lender may use this medical information to deny the application because the loan will not be used for the stated purpose. The Lender would deny any application where the money would not be used for the stated purpose.
The applicant receives worker's compensation benefits. Because the income is medically related, the lender verifies the income and determines that the applicant's income will soon cease and the applicant will not likely be returning to work.		The Lender doesn't routinely verify income and did so ONLY because the source of the income was worker's compensation benefits. Anyone's income can terminate the day after a loan closes. To follow up specifically on this one because it was medically related is a violation of the Medical provisions of FACTA.
The applicant informs the Lender that he has just been released from a hospital where he was treated for a mental disorder. The loan request is to pay the hospital bills. The applicant meets the loan requirements and the loan is approved.		The Lender has not violated the provisions of FACTA because the Lender did not ask for the medical information; it was provided voluntarily by the applicant. The medical information was not used in making the credit decision.
The applicant is seeking \$10,000 to purchase an auto. She has outstanding medical bills that equal \$100,000. The debt-to-income ratio for this loan request is way outside the requirements for this type of loan. The loan is denied.		The Lender can use medical information in determining the debt-to-income ratio. This application would have been denied regardless of where the \$100,000 debt was owed.
The applicant seeks \$5,000 for cosmetic surgery. The surgeon indicates that the surgery will only cost \$2,500. The Lender counteroffers a \$2,500 loan based on the information provided by the surgeon.		The Lender has a right to verify medical procedures and counteroffer for the actual cost of the procedure. Any loan request where the entire proceeds were not to be used as stated on the application would be handled this way.
The applicant's income is derived from long-term insurance. In underwriting the loan, the Lender determines that the debt-to-income ratios are outside the requirements. The Lender asks the young man to have his mother co-sign.		If all loan applications with debt-to-income ratios comparable to this loan require a co-signer, then the Lender has not violated FACTA. However, the Lender has violated the ECOA, which requires that the applicant be the one to select who will apply to become a co-signer on a loan. The Lender can never select the co-signer.