

**Consumer Financial Protection Bureau**  
**Fair Credit Reporting Act + Background Checking**

Published 1.11.24

[Advisory Opinion Text](#)



**Brief:**

The Fair Credit Reporting Act (FCRA) regulates consumer reporting and imposes obligations on consumer reporting agencies, the entities that furnish information to them, and the users of consumer reports. In passing the FCRA, Congress recognized “a need to ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s privacy. In a recent advisory opinion, the Consumer Financial Protection Bureau (CFPB) doubled down on the obligation within the FCRA that credit reporting entities “shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.” Most recently, these accuracy measures have been called into question due to increasing inaccuracies in background reporting as it pertains to dismissed, sealed, and expunged records and the presence of old or redacted information appearing in them.

**Background and Policy Objectives**

In 1970, Congress enacted the Fair Credit Reporting Act (FCRA) to protect the public against consumer-based harms. One such protection against false information is outlined in section 607(b) of the code as it pertains to the “what” of the report and section 605(a) outlines the “when” of the report. As laws and policies continue to emerge that allow for sealing, expungement, and pardoning of prior criminal records, both of these sections of the code are applied in this AO to reporting accuracy with respect to adverse information in background checking. While the essential legal interpretations of the CFPB are merely that, it does provide both strategic and legally-grounded arguments that are useful in the promotion of economic mobility and to the civic education for directly impacted consumers..

**Economic Mobility Nexus**

As cited in *Building the Table...* the JustUS Coordinating Council calls on the Federal government to be an employer that “leads the way through a set of reforms that create a more inclusive workforce and drive workplace protections.” For job and housing applicants who are directly impacted, the protection from background checking companies reporting information that has been legally removed from public record or is well beyond the seven-year period outlined in FCRA is a key driver toward economic mobility. As fair hiring and housing policies continue to advance at a rate far slower than the needs of directly-impacted, it is imperative Clean Slate laws and administrative post-conviction relief mechanisms can be used as a tool for full participation in society. Background checking companies must not be permitted to report redacted, outdated, or inaccurate information and, in doing so, nullify the economic benefits of these relief mechanisms.

**Additional Considerations:**

**Educational Outreach**

The major legal analyses and interpretation by the CFPB found in this AO serve as a valuable tool to those in communities working to establish their own economic mobility or to support another person on their journey. The arguments presented in this AO should be disseminated in a meaningful way to federal, state and local liaisons who can ensure awareness of these issues and the potential accountability that can be sought through the CFPB’s complaint tool. Similarly, the nexus of this topic and the reentry experience should be highlighted in the CFPB’s “Your Money, Your Goals: Focus on Reentry” [toolkit](#) to ensure existing partners are providing the most up-to-date guidance for consumers who are directly impacted. Finally, the CFPB must liaise with community members who are directly impacted to maximize the benefit of credible messengers into the most disparately impacted areas and to gather their experience and expertise in this space.

**Ongoing Evaluation and Willfulness:**

The ongoing effectiveness and application of this advisory opinion will be incumbent upon the number of complaints that are received. The precedent needed to enshrine these legal interpretations in the AO will only occur if the communities most impacted are empowered to advocate for their rights. Finally, the issuance of this AO creates the formal non-major rule filing needed for charges filed to enhance sanctions due to practices “inconsistent with “authoritative guidance” from a relevant agency