

CFPB Issues Bulletin on Rental Screening and Issues of Concern

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On July 1, the Consumer Financial Protection Bureau (CFPB or Bureau) released a [FCRA Tenant Screening Enforcement Compliance Bulletin](#), outlining its enforcement focus areas as the country transitions to a post-pandemic rental market. The Bureau states that it “intends to look carefully at the accuracy and dispute-handling practices of [consumer reporting agencies “CRAs”] that report rental information, including whether their procedures to match information to consumers are reasonable; whether they report eviction information that is inaccurate, incomplete, or misleading (such as may result from a failure to have reasonable procedures to report information about the disposition of an eviction filing, to prevent the inclusion of multiple entries for the same eviction action in the same consumer report, or to prevent the inclusion of eviction information that has been sealed or expunged); and whether they conduct timely and reasonable investigations of consumer disputes[.]”

The bulletin takes the view that tenants are at an increased risk due to the impact of the COVID-19 pandemic and that the “economic recovery of renters and their ability to secure new rental housing should not be impeded by noncompliance with the law.” The CFPB is “concerned that that existing problems with the accuracy of tenant-screening and other consumer reports will be exacerbated” by a wave of evictions.

The CFPB says it is “particularly concerned” that “the procedures that some tenant-screening companies use to match public records [...] to specific consumers may create a high risk that inaccurate data will be included in tenant-screening reports” and that the “risk of mismatching” may fall heaviest on “Hispanic, Black, and Asian individuals because there is less surname diversity than among the white population.” (p. 12). The Bureau cites that “[t]wenty-six surnames cover a quarter of the Hispanic population and 16 percent of Hispanic people reported one of the top 10 Hispanic names. The pattern is similar for Asians and [B]lacks.” Without providing any specific detail, the bulletin says the CFPB will “pay particular attention” to whether CRAs are “using a sufficient number of identifiers to match consumer report information to the consumer, [...] including whether CRAs are using name-matching procedures or limited identifiers likely to heighten the risk of inaccurate matching.”

The CFPB also says that CRAs may be reporting eviction public records “without having reasonable procedures to report information about the disposition of the eviction filing” or to “exclude from consumer reports eviction information that has been sealed or expunged,” and that the CFPB “will hold CRAs and furnishers accountable for failing to comply with the FCRA and Regulation V” and “will take appropriate enforcement action to address violations and seek all appropriate corrective measures, including remediation of harm to consumers.”

The Bureau then detailed what it will focus on for CRAs engaged in reporting rental information. “For CRAs

Reporting Rental Information:

1. Whether CRAs are reporting accurate rental information.
2. Whether CRAs are using a sufficient number of identifiers to match consumer report information to the consumer who is the report's subject, including whether CRAs are using name-matching procedures or limited identifiers likely to heighten the risk of inaccurate matching.
3. Whether CRAs are reporting eviction information that is inaccurate, incomplete, or misleading (such as may result from a failure to have reasonable procedures to report information about the disposition of an eviction filing, to prevent the inclusion of multiple entries for the same eviction action in the same consumer report, or to prevent the inclusion of eviction information that has been sealed or expunged).
4. Whether CRAs comply with their obligations to investigate disputed information in a consumer report, including whether they are conducting timely and reasonable investigations.”

This bulletin demonstrates the CFPB's continued interest in CRAs, and especially matching issues. CRAs reporting rental history information should review the bulletin with care and consult with compliance counsel about best practices for matching those records, which often contain limited personal identifiers. The bulletin seems to foreshadow enforcement actions against CRAs reporting such information, particularly as COVID-19 national eviction bans expire.

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