

Consumer Reporting Companies Warned About Inaccurate Background Checks, by Richard Perr, Esq., 2-15-2024

The Consumer Financial Protection Agency (CFPB) has cautioned consumer reporting companies about using old, inaccurate information in background check reports and sloppy credit file sharing practices.

The CFPB made its position clear in two recent advisory opinions the agency hopes will “ensure that the consumer reporting system produces accurate and reliable information and does not keep people from accessing their personal data.”

Background checks are often critical factors when landlords and employers make rental and employment determinations, according to the agency, which enforces consumer financial laws. The information in the reports can cover a person’s credit history, rental history, employment, salary, professional licenses, criminal arrests and convictions, and driving records. However, CFPB research has found that at least in one area, tenant background checks, errors and false information contribute to higher costs and barriers to quality rental housing.

Reasonable Procedures

The CFPB issued the first advisory opinion on background screening to highlight that consumer reporting companies, covered by the Fair Credit Reporting Act, must maintain “reasonable procedures” to avoid producing reports with false or misleading information. Specifically, the procedures should:

- Prevent reporting information that is duplicative or that has been expunged, sealed, or otherwise legally restricted from public access; and,
- Include any existing disposition information if it reports arrests, criminal charges, eviction proceedings, or other court filings.

In addition, the advisory opinion reminds consumer reporting companies that they may not report outdated negative information—and that each negative item of information is subject to its own reporting period, the timing of which depends on the date of the negative item itself, according to the agency. For example, a criminal charge that does not result in a conviction generally cannot be reported by a consumer reporting company beyond the seven-year period that starts at the time of the charge.

File Disclosure Requirement

The second advisory opinion addresses the fact that people have the right to see the information consumer reporting companies keep about them, as well as where the information originates. Disclosure of a person’s complete file, upon their request, is a critical component of a person’s right to dispute false or misleading information.

According to the opinion, “the potential for the vast quantity of information contained in consumer files to include errors poses significant risks to accuracy, fairness, and consumer privacy in the consumer reporting system.”

Consumers must be provided with all sources for the information contained in their file, including both the originating sources and any intermediary or vendor sources, so they can correct any misinformation.

As outlined by the CFPB, individuals requesting their files:

- Only need to make a request for their report and provide proper identification – they do not need to use specific language or industry jargon to be provided their complete file.
- Must be provided their complete file with clear and accurate information that is presented in a way an average person could understand.
- Must be provided the information in a format that will assist them in identifying inaccuracies, exercising their rights to dispute any incomplete or inaccurate information, and understanding when they are being impacted by adverse information.
- Must be provided with the sources of the information in their file, including both the original and any intermediary or vendor source or sources.

These latest opinions are in line with the CFPB's continued focus on consumer reporting companies to address deficiencies and remind them of their obligations to consumers under the Fair Credit Reporting Act as outlined in a CFPB report earlier last year.

Consumer reporting agencies should review their protocol and procedures in the wake of the new advisory opinions and make adjustments where necessary.

Kaufman Dolowich Can Help

The attorneys in our Consumer Financial Services team at Kaufman Dolowich are well-versed in the constantly changing regulatory landscape that defines the financial services industry. If you need assistance in complying with the ever-evolving regulatory environment we can help.