

Fast Facts: FCRA Data Broker Practices Proposed Rule

Proposed Rule: The proposed rule would amend Regulation V to implement the Fair Credit Reporting Act (FCRA) definitions of consumer report and consumer reporting agency, as well as certain other FCRA provisions, to, among other things, ensure that FCRA protections are applied to sensitive consumer information that the statute was designed to protect, including information sold by data brokers.

Proposed effective date: The CFPB is considering six months or one year after the final rule is published in the *Federal Register*.

Comments due: March 3, 2025

Available at: www.consumerfinance.gov/rules-policy/rules-under-development/protecting-consumer-information-in-the-consumer-reporting-marketplace-regulation-v/

About this document: The CFPB has issued a proposal to amend Regulation V. The proposal seeks public comment on Federal rules governing consumer reporting. This document generally provides a high-level overview of the topics covered in the proposal.

Consumer reports

The CFPB is proposing to implement the statutory definition of consumer report by specifying when a report is used or expected to be used for purposes covered by the FCRA, when communications of consumer identifying information are consumer reports, and when communication of de-identified consumer information, such as aggregated information, constitutes a consumer report.

Topic	Description in proposed rule	Location in proposed rule
Statutory restatement of definition	<p>The proposal restates the statutory definition of consumer report with minor wording and organizational changes for clarity.</p> <ul style="list-style-type: none">Proposed § 1022.4(a)(1) restates the “bear[s] on” prong of the definition.	1022.4(a); (f); and (g)



Topic	Description in proposed rule	Location in proposed rule
	<ul style="list-style-type: none"> ▪ Proposed § 1022.4(a)(2) restates the “used or expected to be used” prong of the definition, providing that the information must be used, expected to be used or collected (in whole or in part) to serve as a factor in establishing a consumer’s eligibility for consumer credit or insurance, for employment purposes, or for any other purpose authorized under FCRA section 604. ▪ Proposed § 1022.4(f) and (g) restate provisions addressing exclusions from the definition of consumer report. 	
“Used”	<p>The proposal would provide when information is “used” for one of the consumer report definition’s specified purposes.</p> <p>Generally, if a recipient of information in a communication uses the information for one of those specified purposes, the communication of the information would constitute a consumer report (assuming the other elements of that definition are met), regardless of whether the person communicating the information collected the information or expected the information to be used for that purpose. The analysis would consider whether <i>any</i> recipient of the information—not just the immediate recipient of the communication—used the information for one of the specified purposes.</p> <p>If the communication of the information is a consumer report under these circumstances, the person communicating the information would be a consumer reporting agency, assuming the other elements of that definition are met.</p>	1022.4(b)
“Expected to be Used”	<p>The proposal would establish two tests for determining whether information is expected to be used for one of the consumer report definition’s specified purposes:</p> <ol style="list-style-type: none"> 1. The person making the communication expects or should expect that a recipient of the information (whether the direct 	1022.4(c)

Topic	Description in proposed rule	Location in proposed rule
	<p>recipient or a downstream recipient) will use it for such a purpose; or</p> <p>2. It is information about a consumer’s credit history, credit score, debt payments, or income or financial tier.</p> <p>Information would need to satisfy only one of the tests for the “expected to be used” element of the definition of consumer report to be met. If either test were satisfied, the communication of the information would be a consumer report and the person communicating the information would be a consumer reporting agency, assuming the other elements of those definitions were met.</p>	
<p>Personal identifiers for a consumer collected by a consumer reporting agency</p>	<p>The proposal would provide that the definition of consumer report includes the communication by a consumer reporting agency of a consumer’s personal identifiers if 1) those personal identifiers were originally collected by a consumer reporting agency, and 2) if that collection was at least in part for the purpose of preparing a consumer report about the consumer. The personal identifiers at issue in this proposal are only information that comes from entities that are already consumer reporting agencies that furnish consumer reports. Because the communication of these personal identifiers for the consumer would be a consumer report, the furnishing of such information would generally only be permitted for the permissible purposes in the FCRA.</p> <p>Personal identifiers are information about the consumer that typically appear at the top of a consumer report. The proposal provides examples of information that would constitute personal identifiers for a consumer, such as a consumer’s name(s), age, date of birth, address(es), telephone number(s), email address(es), Social Security number (SSN) or Individual Taxpayer Identification Number (ITIN).</p>	<p>1022.4(d)</p>
<p>De-identification of consumer information (e.g., via aggregation)</p>	<p>The CFPB is considering a number of options for reducing the risk of re-identification of de-identified consumer report data that is sold outside the protections of the FCRA. The proposal would provide when communications of de-identified consumer report</p>	<p>1022.4(e)</p>

Topic	Description in proposed rule	Location in proposed rule
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data, such as aggregated data reports, are still consumer reports, and the options presented for comment include:

- *Alternative 1:* De-identified consumer report data is a consumer report.
- *Alternative 2:* De-identified consumer report data is a consumer report if the information is still linked or linkable to the consumer.
- *Alternative 3:* De-identified consumer report data is a consumer report if certain conditions are met. These conditions could include a combination of any or all of the following:
 - The information is still linked or reasonably linkable to a consumer;
 - The information is used to inform a business decision about a particular consumer, such as a decision whether to target marketing to that consumer; or
 - A person who directly or indirectly receives the communication, or any information from the communication, identifies the consumer to whom information from the communication pertains.

Consumer reporting agency

The CFPB is proposing to codify the statutory definition of consumer reporting agency and interpret what “assembling or evaluating” means in the statutory definition of consumer reporting agency.

Topic	Description in proposed rule	Location in proposed rule
Statutory restatement of definition	The proposal restates the statutory definition of consumer reporting agency with minor wording and organizational changes for clarity.	1022.5(a)
"Assembling or evaluating"	<p>The proposal would provide that a person assembles or evaluates (as that phrase is used in the definition of consumer reporting agency) consumer credit information or other information about consumers if the person:</p> <ol style="list-style-type: none"> 1. Collects, brings together, gathers, or retains such information; 2. Appraises, assesses, makes a judgment regarding, determines or fixes the value of, verifies, or validates such information; or 3. Contributes to or alters the content of such information. <p>The proposal includes examples of conduct that would constitute assembling or evaluating under these interpretations:</p> <ul style="list-style-type: none"> ▪ Collecting information about a consumer from a consumer's bank account and assessing it, such as by grouping or categorizing it based on transaction type; ▪ Altering the content of information the person has received about a consumer, such as by modifying the year date fields to all reflect four, rather than two, digits to ensure consistency; ▪ Determining the value of information about a consumer, such as when a company that hosts an online database regarding consumers' criminal histories arranges or orders search results in order of perceived relevance to users, or provides scores, color coding, or other indicia of weight or import to users; 	1022.5(b)

Topic	Description in proposed rule	Location in proposed rule
	<ul style="list-style-type: none"> ▪ Retaining information about consumers, such as when a consumer’s data files containing payment information are retained in a database or electronic filing system; or ▪ Verifying or validating information about consumers, such as comparing a consumer’s date of birth received from a third-party data provider to the consumer’s date of birth listed in an external database for accuracy or for proper formatting, regardless of whether any action is taken to correct any errors found. 	

Permissible purposes

The CFPB is proposing to address what furnishing a consumer report means for purposes of the permissible purpose provisions in the FCRA. The CFPB is also proposing to codify statutory permissible purpose provisions, as well as issue additional implementing regulations for some of those permissible purpose provisions.

Topic	Description in proposed rule	Location in proposed rule
Statutory restatement of permissible purpose provision	The proposal restates, with minor wording and organizational changes for clarity, the statutory requirement that a consumer reporting agency may furnish a consumer report only under specific enumerated circumstances (permissible purposes).	1022.10(a)
Furnish a consumer report	<p>The proposal would provide what “furnish” means as used in the permissible purpose requirement. A consumer reporting agency would furnish a consumer report if it provided the consumer report to a person or if it facilitated a person’s use of any information from the consumer report for the person’s financial gain. This may be providing the information to a third party or facilitating the use, such as by using the information on behalf of the third party for the third-party’s financial gain.</p> <p>For example, under the proposal, if a consumer reporting agency gives a third party the benefit of consumer report information by</p>	1022.10(b)

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	<p>using consumer reports to target advertising to consumers on behalf of the third-party, the consumer reporting agency has furnished a consumer report to the third party by facilitating the third party's use of the information from the consumer report for their financial gain.</p>	
Written instructions permissible purpose	The proposal restates, with minor wording and organizational changes for clarity, the statutory permissible purpose based on a consumer's written instructions (See FCRA section 604(a)(2)).	1022.11(a)
Written instructions permissible purpose: Conditions regarding disclosure and consent	<p>The proposal would implement the written instructions permissible purpose by providing that the consumer reporting agency or recipient of the consumer report must provide the consumer with a disclosure and obtain the consumer's signature and express consent to the furnishing of the consumer report for the identified product, service, or use before the permissible purpose is applicable. The proposed disclosure would be required to meet certain format and content requirements.</p> <p>Additionally, the permissible purpose is only applicable if the consumer has not revoked consent to the furnishing.</p>	1022.11(b)(1);(c)
Written instructions permissible purpose: Condition on furnishing	The proposal would implement the written instructions permissible purpose by providing that a consumer reporting agency may furnish a consumer report to a person under this permissible purpose only in connection with the product, service, or use identified by the consumer.	1022.11(b)(2)
Written instructions permissible purpose: Condition on procurement, use, and retention	<p>The proposal would also implement the written instructions permissible purpose by imposing limitations on the person to whom the consumer report is furnished. The proposal would limit a person to:</p> <ul style="list-style-type: none"> ▪ Procuring, using, and retaining the consumer report, and providing the consumer report to a third party, only as reasonably necessary to provide the consumer-specified product, service, or use; ▪ Procuring the consumer report no more than one year after the date of consumer consent; and 	1022.11(b)(3); (d)

Topic	Description in proposed rule	Location in proposed rule
	<ul style="list-style-type: none"> ▪ Sharing the consumer report with a third party only if the third party agrees by contract to comply with the above limitations. <p>The proposal would also include examples of when a consumer report is not reasonably necessary to provide the consumer-specified product, service, or use. The proposed examples of uses that are not reasonably necessary to provide any other product or service would include uses for targeted advertising, product or service cross-selling, or selling a consumer's report information.</p>	
Written instructions permissible purpose: Revocation of consent	The proposal would implement the written instructions permissible purpose by requiring that the person seeking the consumer's consent must also provide the consumer a method to revoke that consent. The proposal includes ease of use requirements and cost and penalty prohibitions for the revocation method that would be provided.	1022.11(b)(4)
Written instructions permissible purpose: Personal Financial Data Rights Rulemaking intersection	The proposal would explain that a written instructions permissible purpose exists where the consumer reporting agency furnishes a consumer report to a person that is an authorized third party under Subpart D of the CFPB's Personal Financial Data Rights Rule.	Preamble
Permissible purposes based on a reasonable belief	The proposal restates, with minor wording and organizational changes for clarity, the statutory permissible purposes based on a consumer reporting agency's reasonable belief about a person's intended use of the consumer report. (See FCRA section 604(a)(3)(A) through (F)).	1022.12(a); (b)(1)
Legitimate business need permissible purpose	The proposal would implement and interpret the permissible purpose that provides that a consumer reporting agency may furnish a consumer report to a person that it has reason to believe has a legitimate business need for the information in two scenarios:	1022.12(b)

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	<p>1. <i>Consumer-initiated transaction prong</i>: In connection with a business transaction that is initiated by the consumer; or</p> <p>2. <i>Account review prong</i>: To review an account to determine whether the consumer continues to meet the terms of the account.</p> <p>The proposal would clarify that the consumer-initiated transaction prong of the legitimate business need permissible purpose authorizes a consumer reporting agency to furnish a consumer report to a person <i>only</i> if the consumer reporting agency has reason to believe that the consumer has initiated a business transaction, and would provide examples of transactions that would and would not meet this requirement. Examples of consumer-initiated transactions would include a consumer applying to rent an apartment, open a brokerage account or a checking account, or offering to pay for merchandise by personal check. Examples that are not consumer-initiated business transactions would include consumers asking about the availability or pricing of products or services.</p> <p>The proposal would also emphasize that neither prong of the legitimate business need permissible purpose authorizes a consumer reporting agency to furnish a consumer report to a person if the consumer reporting agency has reason to believe the person is seeking information from the report to solicit the consumer for a transaction the consumer did not initiate or to otherwise market products or services to the consumer.</p>	
<p>Certain agency or other official requests</p>	<p>The proposal restates several statutory permissible purposes that cover circumstances under which a consumer reporting agency may furnish a consumer report in connection with certain agency or other official requests. (See FCRA sections 604(a)(1), 604(a)(3)(G), and 604(a)(4) through (6)).</p>	<p>1022.13</p>

Additional resources

Find more implementation information and sign up for updates about the consumer reporting rule implementation at <https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/fair-credit-reporting-act/>.