



November 4, 2021

Statement of CFPB Director Rohit Chopra

Regarding the Advisory Opinion to Curb False Identity Matching

As the economy recovers from the pandemic, many Americans are seeking new jobs and housing. But too many have been blocked, due to false identity matching by a background screening company or another outfit that sells our personal data. Unfortunately, it is difficult for individuals to detect when they have been harmed by improper screening and consumer reporting practices.

Companies who assemble and use consumer data to determine the eligibility of applicants for employment, rental housing, credit, and insurance must take reasonable steps to fortify consumer reports against false and inaccurate information. To ensure that background screeners fulfill their legal requirements, it is important for regulators to have a clear window into their practices.

Today, the Consumer Financial Protection Bureau took a step towards ending the pervasive harms to individuals, landlords, and employers caused by false and shoddy identity matching. Through an advisory opinion, the CFPB has affirmed that matching on name alone is a practice that falls well below the statutory mandate to follow reasonable procedures to assure maximum possible accuracy of consumer information before placing it into a consumer report, as required by the Fair Credit Reporting Act (FCRA). This is not a novel interpretation - courts have repeatedly confirmed that name matching alone fails to comply with the FCRA.

This advisory opinion focuses on one method of matching being used in the industry, known as “name-only matching.” This method is especially likely to lead to inaccuracies in consumer reports. Name-only matching occurs when a consumer reporting agency uses only first and last name to determine whether a particular item of information relates to a particular individual, without using other personally identifying information such as address, date of birth, or Social Security number.

Errors are particularly common when using name-only matching given that many individuals have the same or similar names, meaning that it’s not unlikely that thousands, even tens of thousands, of individuals, may share a particular first and last name combination. Of course, name-only matching is only one example of inadequate and skimpy procedures, and nothing in today’s advisory opinion suggests that the responsibility to follow reasonable procedures to assure maximum possible accuracy can be met with a thoughtless application of any particular loose matching criteria, even if more than names alone are matched. And I would warn consumer reporting companies against trying to evade their responsibilities under the FCRA simply by issuing a disclaimer that their report might not be matched to the right person.

These sloppy practices hurt all of us. They hurt prospective renters in search of affordable housing. Even when they are able to locate a safe and affordable unit, many prospective renters are unlawfully blocked from an opportunity to live in the home of their choice due to careless

data practices by tenant screeners. These inaccuracies also hurt the small landlords who rely on tenant screening companies to help them make smart decisions about their business and who themselves often confront an opaque and uncompetitive market in information about tenants.

False identity matching is especially harmful for communities of color who are disproportionately impacted by these sloppy practices. The risk of mismatching from name-only matching is likely to be greater among Hispanic, Black, and Asian individuals because there is less surname diversity in those populations than among the non-Hispanic white population.¹ As a result, these illegal acts further reinforce and exacerbate racial disparities in access to employment and affordable housing.

Today's advisory opinion underscores the obligations and requirements of background screeners and other consumer reporting agencies to use reasonable procedures to assure maximum possible accuracy and prevent consumer harm. The legal interpretation defines conduct that is prohibited under the FCRA. In many cases, firms will need to employ significantly more rigorous procedures, including individualized reviews of files, to assure maximum possible accuracy.

Following the issuance of today's opinion, the CFPB intends to take a number of additional steps:

First, the CFPB will be closely collaborating on enforcement actions with the Federal Trade Commission in this market. The FTC has begun to take its consumer protection responsibilities more seriously, particularly when it comes to abuse and misuse of personal data. In the background screening context, the FTC may be able to prosecute unfair or deceptive conduct not covered by the Consumer Financial Protection Act.

Second, when prosecuting violations under the Fair Credit Reporting Act, in addition to civil penalties, the CFPB will seek to redress the full range of harms to victims, in addition to civil penalties. The law authorizes the CFPB to seek restitution and damages for violations of the FCRA. In situations where sloppy practices lead to loss of employment and housing opportunities, the harms to victims can be substantial.² In addition, the CFPB will make

¹ Joshua Comenetz, *Frequently Occurring Surnames in the 2010 Census* 3-7 (Oct. 2016), <https://www2.census.gov/topics/genealogy/2010surnames/surnames.pdf>; U.S. Census Bureau, *Hispanic Surnames Rise in Popularity* (Aug. 9, 2017), <https://www.census.gov/library/stories/2017/08/what-is-in-a-name.html> (“Twenty-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 blacks.”). Relatedly, one study estimated that four of the top 13 most common first-and-last-name combinations in the United States are names of Spanish origin. Specifically, the study estimated that there are more than 25,000 individuals in the United States each named Maria Garcia, Maria Rodriguez, Maria Hernandez, or Maria Martinez. See Lee Hartman, Southern Illinois University, *John Smith et al.: Some observations on how the 20 most popular first names combine with the 20 most popular surnames in the United States* (n.d.), <https://web.archive.org/web/20190225042148/http://mypage.siu.edu/lhartman/johnsmith.html>.

² While serving at the Federal Trade Commission, Director Chopra raised concerns with the Commission's settlement with AppFolio to address faulty matching procedures in its tenant screening business. Among other deficiencies, the settlement provided no help for victims. Dissenting Statement Of Commissioner Rohit Chopra In the Matter of AppFolio, Comm'n File No. 1923016 (December 8, 2020) https://www.ftc.gov/system/files/documents/public_statements/1584330/20201208_final_chopra_statement_on_app_folio_-_updated_0.pdf.

appropriate referrals, including to the Department of Justice’s Civil Rights Division, when the conduct might implicate violations of anti-discrimination laws.

Finally, the CFPB will be supporting the FTC in its work to monitor business models that rely on harvesting and monetizing personal data. Big Tech giants and less well-known data brokers may be trafficking data and consumer reports that triggers obligations under the FCRA, including restrictions on permissible purposes. The CFPB will be using its tools to ensure that individuals are protected in accordance with the law.

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