

CFPB Takes Action to Curb Unchecked Worker Surveillance

Booming “black box” scores subject to federal standards, including accuracy and dispute rights

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WASHINGTON, D.C. – Today, the Consumer Financial Protection Bureau (CFPB) issued guidance to protect workers from unchecked digital tracking and opaque decision-making systems. The guidance warns that companies using third-party consumer reports – including background dossiers and surveillance-based, “black box” AI or algorithmic scores about their workers – must follow Fair Credit Reporting Act (FCRA) rules. This means employers must obtain worker consent, provide transparency about data used in adverse decisions, and allow workers to dispute inaccurate information. As companies increasingly deploy invasive tools to assess workers, this ensures workers have rights over the data influencing their livelihoods and careers.

“Workers shouldn’t be subject to unchecked surveillance or have their careers determined by opaque third-party reports without basic protections,” said CFPB Director Rohit Chopra. “The kind of scoring and profiling we’ve long seen in credit markets is now creeping into employment and other aspects of our lives. Our action today makes clear that longstanding consumer protections apply to these new domains just as they do to traditional credit reports.”

The CFPB’s circular addresses the use of third-party consumer reports by employers to make employment decisions about their workers. These reports increasingly extend beyond traditional background checks and may encompass a wide range of information and assessments about workers. For example, some employers require workers to install apps on their personal phones that monitor their conduct, which may be used to assess their performance.

Currently, such consumer reports may be used to:

- **Predict worker behavior:** This includes assessing the likelihood of workers engaging in union organizing activities or estimating the probability that a worker will leave their job, potentially influencing management decisions about staff retention and engagement strategies.

- **Reassigning workers:** Automated systems may use data on worker performance, availability, and historical patterns to reassign team members.
- **Issue warnings or other disciplinary actions:** These consumer reports might flag potential performance issues, leading to automated warnings or recommendations for disciplinary measures (potentially including firing) without direct human oversight.
- **Evaluate social media activity:** Some reports may include analysis of workers' social media presence, potentially impacting hiring or other decisions.

While background checks have long been a part of employment and hiring practices, the emergence of new technologies has expanded the scope and depth of worker tracking. These reports often contain sensitive information unknown to workers, which can significantly impact hiring decisions, job assignments, and career advancement. Inaccurate reports may cause workers to lose job opportunities, face unfair treatment, or suffer career setbacks due to information they did not even know existed, let alone had a chance to dispute.

Congress passed the FCRA in response to concerns about companies that assemble detailed dossiers about consumers and sell this information. In doing so, Congress was particularly cognizant of the impact of so-called "credit reporting" on consumers' employment. As Congress plainly stated, and as many courts have noted, the FCRA applies both to information used for initially evaluating a consumer for employment and to information used for ongoing employment purposes.

The Fair Credit Reporting Act's protections with respect to consumer reports include:

- **Consent:** Workers often have no idea that this personal information is being collected about them or used by employers. The CFPB circular makes clear that when companies provide these reports, the law requires employers to obtain worker consent before purchasing them. This ensures that workers will be aware of and can make informed decisions about the use of their personal information in employment contexts.
- **Transparency:** One of the top complaints from workers is that they do not even know what information is in these dossiers. The CFPB circular emphasizes that employers are required to provide detailed information to workers when taking adverse action – including firing, denials of promotions, and demotions or other reassignments – based on the reports. This allows workers to understand the basis for employment decisions and challenge any inaccuracies that may have influenced the decisions.
- **Disputes:** Workers also complain that this critical information is often wrong. The CFPB circular makes clear that when a worker disputes what is in a report, companies are required to correct or delete inaccurate, incomplete, or unverifiable information. This process is crucial for ensuring that workers are not unfairly penalized due to errors in these reports and have the opportunity to set the record straight.
- **Limits:** It is often unclear what employers are doing with the information they obtain or if they are using it for other purposes beyond worker evaluation. The CFPB circular makes clear that employers can only use these reports for purposes that are allowed under the

law. For example, employers generally cannot sell this information on the open market or use it to market financial products to their workers.

These protections are essential in an era where worker data is increasingly commodified and used to make critical employment decisions. By enforcing these rights, the CFPB aims to ensure that workers have control over their personal information and are protected from abuses. The CFPB will be working with other federal agencies and state regulators to ensure the responsible use of worker data.

The CFPB encourages employers to review their current practices regarding the use of third-party consumer reports to ensure compliance with FCRA requirements.

Today's action builds on previous CFPB activity to help workers. The CFPB has [highlighted](https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-shows-workers-face-risks-from-employer-driven-debt/) (cfpb.gov/about-us/newsroom/cfpb-report-shows-workers-face-risks-from-employer-driven-debt/) the growing prevalence of employer-driven debt and challenges workers and consumers face when they become indebted to an employer as a condition of employment. The CFPB has [taken enforcement action](https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-coding-boot-camp-bloomtech-and-ceo-austen-allred-for-deceiving-students-and-hiding-loan-costs/) (cfpb.gov/about-us/newsroom/cfpb-takes-action-against-coding-boot-camp-bloomtech-and-ceo-austen-allred-for-deceiving-students-and-hiding-loan-costs/) against multiple vocational schools that make false claims about hiring rates and deceive trainees about loans and their costs. The CFPB has also [clarified](https://files.consumerfinance.gov/f/documents/cfpb_coverage-of-franchise-financing_2023-05.pdf) [📄](https://files.consumerfinance.gov/f/documents/cfpb_coverage-of-franchise-financing_2023-05.pdf) (https://files.consumerfinance.gov/f/documents/cfpb_coverage-of-franchise-financing_2023-05.pdf) when the Equal Credit Opportunity Act applies with respect to franchisees seeking credit to finance their businesses. And the CFPB [proposed an interpretive rule](https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-interpretive-rule-to-ensure-workers-know-the-costs-and-fees-of-paycheck-advance-products/) (cfpb.gov/about-us/newsroom/cfpb-proposes-interpretive-rule-to-ensure-workers-know-the-costs-and-fees-of-paycheck-advance-products/) to ensure workers receive clear disclosures about the costs and fees associated with paycheck advance products, which often carry APRs over 100%.

[Read today's circular](https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-06-background-dossiers-and-algorithmic-scores-for-hiring-promotion-and-other-employment-decisions/) (cfpb.gov/compliance/circulars/consumer-financial-protection-circular-2024-06-background-dossiers-and-algorithmic-scores-for-hiring-promotion-and-other-employment-decisions/).

Consumers can submit complaints about financial products or services by visiting the [CFPB's website](https://www.consumerfinance.gov/complaint/) (cfpb.gov/complaint/) or by calling [\(855\) 411-CFPB \(2372\)](tel:855411CFPB2372).

Employees who believe their company has violated federal consumer financial protection laws are encouraged to send information about what they know to whistleblower@cfpb.gov.

The Consumer Financial Protection Bureau is a 21st century agency that implements and enforces Federal consumer financial law and ensures that markets for consumer financial products are fair, transparent, and competitive. For more information, visit www.consumerfinance.gov (http://www.consumerfinance.gov/).


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