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H.R. 1015

FEDERAL TRADE COMMISSION ANALYSIS AND RECOMMENDATIONS

July 25, 1994

H.R. 1015, the "Consumer Reporting Reform Act of 1994," was passed by the United States House of Representatives on June 13, 1994. It would amend the Fair Credit Reporting Act ("FCRA").[1] If passed, the bill would also enact the "Credit Repair Organizations Act." For the past several years, the Commission has urged modification of the FCRA to reflect the many changes that have occurred in the credit reporting industry during the past two decades. As discussed below, H.R. 1015, as passed by the House, contains many provisions that the Commission has long supported, several that the Commission has opposed, and several new provisions that warrant comment. The Commission will not attempt to address each provision in the bill but, instead, will focus on several aspects of the proposed legislation that appear particularly significant, or on which the agency has had no earlier opportunity to comment.

Since 1989, the Commission has testified before Congress nine times in favor of FCRA reform.[2] In addition, in 1991, the

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[1] S. 783, also known as the Consumer Reporting Reform Act of 1994, is the United States Senate's bill to amend the FCRA. It contains many provisions similar to those in H.R. 1015 and passed the Senate by a vote of 87-10 on May 4, 1994.

[2] On September 13, 1989, the Commission testified on possible reform of the existing law at an oversight hearing held by the Subcommittee on Consumer Affairs and Coinage of the House Banking, Finance and Urban Affairs Committee. On June 12, 1990, the Commission testified before the same House Subcommittee on several bills to amend the FCRA -- H.R. 4213, introduced by Representative Richard Lehman; H.R. 4122, introduced by Representative Charles Schumer; and H.R. 3740, introduced by Representative Matthew Rinaldo. On June 6, 1991, the Commission testified again on these bills, which had been reintroduced without significant change, as H.R. 194, H.R. 421, and H.R. 670, respectively. On October 22, 1991, the Commission testified on FCRA reform before the Subcommittee on Consumer and Regulatory Affairs of the Senate Committee on Banking, Housing, and Urban Affairs, and again on October 24, 1991, before the House Subcommittee on Consumer Affairs and Coinage. On November 18, 1991, the Commission submitted comments on H.R. 3596, a bill introduced by Representative Torres. On January 9 and 10, 1992, the Commission testified at field hearings of the Consumer (continued...)

Commission entered into a wide-ranging consent agreement with one of the three major credit bureaus in the United States, TRW Inc., addressing both accuracy and privacy concerns raised under the existing FCRA.[3] H.R. 1015 contains a number of desirable consumer protections that the Commission has previously advocated, some of which appear in the TRW consent agreement. Specifically, the Commission has supported provisions in H.R. 1015 that:

- Impose responsibility on those who furnish information to credit bureaus for the accuracy of information that they report and require prompt reinvestigation of information disputed by consumers;

- Provide the Commission with civil penalty authority, in addition to its existing cease and desist authority, to create a greater deterrence for non-compliance by those subject to the law;

- Require credit bureaus to reinvestigate consumer disputes within thirty days;

- Prohibit consumer reporting agencies from providing consumer reports for target marketing without the consent of the consumers to whom the reports relate;

- Prohibit the improper use of credit reports and restrict the use of credit reports to stated purposes; and,

- Restrict the activities of credit repair clinics by, among other things, requiring that their services be performed in advance of payment by consumers.

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[2] (...continued) Subcommittee of the Senate Committee on Commerce, Science and Transportation in Las Vegas and Reno, Nevada, respectively, concerning FCRA reform and, specifically, S. 1853, introduced by Senator Richard Bryan. On May 27, 1993, the Commission testified on S. 783, a bill introduced by Senators Richard Bryan, Christopher S. (Kit) Bond, and Donald W. Riegle to amend the FCRA, before the Senate Banking, Housing and Urban Affairs Committee. Most recently, on October 20, 1993, the Commission testified on H.R. 1015, a bill introduced by Representative Torres, to amend the FCRA, before the House Banking, Finance and Urban Affairs Subcommittee on Consumer Credit and Insurance.

[3] Federal Trade Commission v. TRW Inc., 784 F. Supp. 361 (N.D. Tex. 1991).

State Enforcement

H.R. 1015 would permit state attorneys general to bring civil actions based on violations of the amended FCRA on behalf of the residents of their states. The Commission is concerned that this provision could result in inconsistent application of the FCRA nationwide.[4] As the number of agencies enforcing the Act increases, so too does the potential for inconsistent enforcement and court decisions, especially when dealing with a statute as complex as the FCRA. In choosing cases and strategies, the Commission is in the best position to take into account the effect of precedent on issues affecting large numbers of consumer reporting agencies, users of consumer reports and consumers.

Form of Credit Reports

It has been noted in Congressional hearings on FCRA reform that some credit reports can be difficult for consumers to read because of the many codes and abbreviations they contain. In order to exercise fully their statutory rights, consumers must first be able to read and understand their reports. To address this problem, the Commission supports in principle a requirement that consumer reporting agencies develop disclosure forms that make disclosures as clear as possible. The Commission's role in this statutory scheme should be to ensure compliance with that provision. By contrast, H.R. 1015 would require the Commission to mandate the "form" such disclosures should take, rather than allowing consumer reporting agencies themselves the opportunity to use their expertise in developing and, as changed circumstances dictate, modifying their disclosure forms. It would be preferable to require only that the disclosure forms be understandable and non-deceptive to the reasonable consumer, and to delete the requirement that the Commission standardize the forms. Once forms can be understood by consumers, standardization may not be necessary.

Requirements for Adverse Action in Employment

The Commission supports in principle the proposal to afford consumers some protection against adverse employment decisions based upon a possibly inaccurate consumer credit report. Specifically, we support the requirement that employers provide actual or prospective employees with a copy of the consumer report together with a description of the consumer's statutory rights before taking any adverse action based on a consumer report.

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[4] See Commission testimony on H.R. 1015 before the House Banking, Finance and Urban Affairs Committee, Subcommittee on Consumer Credit and Insurance, October 20, 1993.

However, the Commission is concerned about the third requirement imposed upon employers in H.R. 1015: that the employer provide the consumer with a "reasonable period (not required to exceed 5 business days following receipt of the report by the consumer)" to respond to any information in the report that is disputed by the consumer before the employer takes action based on the consumer report. While a specification of a time period is a helpful improvement over the original version of the bill, additional clarification of what is intended by this "reasonable period . . . to respond" would likely be helpful to employers. In addition, we anticipate that requiring an employer to delay hiring decisions for any period of time will impose costs upon the affected businesses. Since we have no information about the magnitude of these costs, we are unable to determine whether the benefits of this proposal may outweigh its costs.

Prescreening

The prescreening issue, which has stimulated considerable debate among consumer groups, creditors, and the credit reporting industry, is an issue that involves significant privacy considerations. In 1973, the Federal Trade Commission expressed the view that a practice known as prescreening, in which a creditor asks a credit bureau to provide names of people who meet specified credit-granting criteria, was permissible under Section 604 if the creditor subsequently offered credit to all of the people whose names appeared on the prescreened list.[5] The Commission recognized that a prescreened list constitutes a series of consumer reports and, as such, may not be released by a credit bureau absent a permissible purpose. The Commission determined, however, that even though the consumers whose names were on the list had not themselves sought an extension of credit from the creditor, the creditor created a credit-related connection with those consumers that could be deemed adequate to permit prescreening because the creditor had agreed in advance to extend credit to these consumers. The Commission also expressed the view that the benefit of the offer of credit justified what it perceived to be a modest invasion of the consumer's privacy. The Commission's Commentary on the FCRA, which represents the Commission's view of what the law requires, was published in the Federal Register in May 1990[6] and,

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[5] 38 Fed. Reg. 4945 (Feb. 23, 1973) (publication of six final interpretations under FCRA).

[6] Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act, 16 C.F.R. Part 600 (1991) (hereinafter "FCRA Commentary"). The Commentary represents the Commission's interpretation of what the FCRA currently requires and may be relied on in judicial decisions. It is published in an (continued...)