



Federal Trade Commission

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Mr. Chairman, I am Janet Steiger (David Medine), Chairman of the Federal Trade Commission (Associate Director for Credit Practices of the Federal Trade Commission's Bureau of Consumer Protection). I am delighted to have the opportunity to present the Commission's views on possible remedies for some of the problems that consumers experience in their dealings with the consumer reporting industry and, specifically, to comment on S. 1853, the bill that you have introduced to amend the FCRA.¹

In the past few years at the Commission we have observed a steady increase in the number of complaints and inquiries from consumers about consumer reporting agencies and consumers' rights under the FCRA.² Although, in part, this increase may reflect heightened public awareness of the issues involved, it is clear that there is significant dissatisfaction among consumers with the way the consumer reporting system works. Many members of the

¹ While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission.

² Approximately 8,700 FCRA-related consumer complaints and inquiries were received by the Commission in calendar year 1990. (This figure does not capture telephone calls to the Commission's regional offices.) This represents an increase of about 3,000 over the number received in 1989, or an increase of about fifty percent in a single year. Based on preliminary figures, it appears that calendar year 1991 will reflect another, somewhat smaller, increase in FCRA-related correspondence. By the end of the 1991 fiscal year, for example, the Commission had received 1,200 more written complaints than it had received in calendar year 1990, and it appeared that telephone complaints had increased somewhat as well. We do not know whether this increase in complaints is solely attributable to an increase in inaccuracies or whether it reflects other factors, such as heightened consumer awareness.

consumer reporting industry also have come to acknowledge that change is necessary if they are to retain public confidence in their ability to impart information fairly and accurately. Among the FCRA-related complaints and inquiries we receive, consumers complain most frequently about inaccurate information in their reports. Consumers also complain that credit bureaus fail to reinvestigate their disputes expeditiously, that it sometimes takes months to straighten out their reports, and that their ability to obtain credit in the interim is seriously impaired.

The importance to consumers and creditors of accurately reported credit history information can hardly be underestimated. Creditors view credit history as a key indicator of credit risk, and so it is important to consumers who pay their debts in a timely fashion that their reports accurately reflect their good payment histories. It is equally important to creditors that the decision to accept or decline a credit application be made on the basis of accurate information. Only one or two items of adverse information can transform what would otherwise be an acceptable report into one that is unacceptable. Thus, a high level of accuracy in consumer reporting is important if the system is to function fairly and efficiently.

When enacting the FCRA, Congress set a standard for consumer reporting agencies with respect to accuracy. It mandated that consumer reporting agencies maintain reasonable procedures to

assure the maximum possible accuracy of the information they report. Recognizing that inaccuracies would occasionally occur, however, Congress also provided consumers with important self-help remedies so that they could challenge errors and obtain corrections when necessary.

The FCRA gives consumers the right to learn when their reports have contributed to an adverse credit, employment or insurance decision, the right to review their reports, the right to dispute any incomplete or inaccurate information their reports might contain, and the right to sue consumer reporting agencies for violation of their rights. Because FCRA rights can be effectively used by consumers only if consumers understand them, Commission staff spends considerable time responding to questions from consumers about how best to deal with consumer reports and consumer reporting agencies. Despite our best efforts, however, it appears that the existing law does not adequately protect consumers. In addition, consumer complaints and investigative work by Commission staff suggest that consumer reporting agencies too often fail to measure up to the standards that the FCRA requires.

Since 1971, when the FCRA became effective, the Commission has brought approximately forty actions to enforce the FCRA. The most recent Commission action involved TRW Inc., which maintains information on approximately 170 million consumers and is one of

three major consumer reporting agencies operating nationwide. This enforcement action, which was resolved voluntarily by entry of a consent order, focused primarily on issues of accuracy.

The Commission charged that TRW had violated the FCRA by failing to maintain procedures to meet the maximum possible accuracy standard in its consumer reports. Inaccuracies in consumers' reports generally arise in one of two ways. Sometimes inaccuracies result from errors made by creditors in reporting payment history information to the consumer reporting agency. Frequently, however, the consumer reporting agency itself creates inaccurate reports by including information about one consumer in a report on another consumer. When information about two or more consumers is compiled in a single report, a "mixed file" results. Consumers with common names or family members with similar names and a shared address are particularly likely to find mixed file information in their reports.

Because, in the case of TRW, so many of the inaccuracies in consumers' reports allegedly stemmed from mixed file errors, the consent order requires TRW to seek more complete identifying information about consumers from creditors and to modify its computer software system so that consumer reports will be based on more detailed matching of information. These provisions should help ensure that information in a given consumer's file relates to that consumer and not someone else. We anticipate

that by revising its computer programs and systematically monitoring the accuracy of its consumer reports, which the consent order also requires, TRW will significantly improve the accuracy of the consumer reports it prepares.

The Commission's complaint also charged TRW with failing to reinvestigate disputed information within a reasonable period of time and failing to delete inaccurate or unverified information from consumer reports promptly. The consent order requires TRW to reinvestigate consumer disputes within thirty days, to convey to the creditor the nature of the consumer's dispute so that the creditor understands what is at issue, and to delete any information that is not confirmed within the thirty-day period. Information that is confirmed to be accurate after thirty days have elapsed may be reported, but only if the consumer is notified first.

We believe that these and other provisions of the consent order that the Commission has entered into with TRW will do much to improve the accuracy of TRW's reports. We note, however, that the Commission's enforcement efforts are subject to the limits of a law that was enacted twenty years ago. Although that law provides a framework for enforcement action, as evidenced by the TRW consent order, there is no question that the law could be more effective than it is at present. An updated law could strengthen enforcement capabilities and also, by clarifying the

responsibilities of the consumer reporting industry, facilitate improvements in consumer reporting that could reduce the need for formal enforcement action.

The Commission previously has supported legislative proposals to strengthen the FCRA so that it will better protect the accuracy and privacy of information reported by consumer reporting agencies.³ We continue to believe that legislation to amend the FCRA is warranted, and we commend you for your efforts in this regard. I will turn now to S. 1853, the bill you have introduced to amend the FCRA.

The proposed bill includes many provisions that would strengthen the FCRA significantly and that the Commission has supported in the past. It would help make consumer reporting

³ 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. Most recently, on November 18, 1991, the Commission has submitted comments on H.R. 3596, a bill introduced by Representative Esteban Torres, Chairman of the House Subcommittee on Consumer Affairs and Coinage.

more accurate by making creditors responsible for the accuracy of the information they report to consumer reporting agencies and also by strengthening consumers' rights to dispute inaccurate information in their reports. It would help protect consumers' privacy by requiring consumer reporting agencies to make available to consumers records of those who have obtained consumer report information on them and their purposes for doing so. It would also permit consumers to sue those who obtain report information unlawfully, under false pretenses. It would give the Federal Trade Commission the power to enforce FCRA violations through the imposition of civil penalties. It would also bring credit repair organizations under the law, which the Commission has long advocated. I address each of these proposed changes in more detail below.

New Standards for Information Furnishers

One extremely important provision in the bill is its proposed requirement that creditors and others who furnish information to consumer reporting agencies be held to the same procedural standard of care that the FCRA currently imposes on consumer reporting agencies themselves -- that is, information furnishers would be required to follow reasonable procedures to assure the maximum possible accuracy of the information they report. Another important provision, which reinforces the preceding one, would permit consumers to sue furnishers of

information for negligent or willful violation of the law, just as they now can sue consumer reporting agencies for such violations.

Together, these two provisions would equalize the compliance obligations of information furnishers and consumer reporting agencies. At present, the FCRA imposes no legal responsibility on furnishers of information with respect to the accuracy of the information they transmit to consumer reporting agencies. Therefore, when consumers dispute information supplied by a creditor, they must rely on the creditor's voluntary cooperation to resolve the matter. If a creditor reconfirms erroneous information that the consumer has challenged, the consumer has no recourse under the FCRA. By establishing a minimum standard that information providers must meet and by giving consumers a means of enforcing that standard, these proposed changes should significantly reduce inaccuracies in consumer reports that are caused by creditor error.

Stronger Reinvestigation Rights for Consumers

S. 1853 would strengthen consumers' dispute and reinvestigation rights in several other ways as well. It would require consumer reporting agencies to complete reinvestigations within thirty days or report to consumers why they were unable to do so. Although most disputes reportedly are resolved within thirty days

at present, some take many months to resolve for no apparent reason. Specifying a time limit of general applicability may speed resolution of such cases. Other proposed changes that the Commission supports are requirements that the consumer reporting agency review any information the consumer supplies that is relevant to the reinvestigation, inform the consumer of the reinvestigation's outcome, and, if the source of disputed information confirms it, identify that source. If corrections are made pursuant to the reinvestigation, S. 1853 would require the agency to provide the consumer with a corrected report. The bill also would require notice to the consumer if information that has been deleted from the consumer's file in the course of a reinvestigation is subsequently restored, a requirement that the Commission also supports.⁴ Strengthening and adding greater specificity to consumers' reinvestigation rights is likely to be of great assistance to consumers who must correct misinformation in their reports.

⁴ This requirement would help resolve the longstanding problem of automatic reinsertion of deleted information that occurs when a creditor fails to correct the computer tapes that it sends to the credit bureau each month. Although the creditor may agree that the consumer's version of the dispute is correct, if the creditor fails to change its internal records the inaccurate information in the records may override the correction that the credit bureau has made. This provision in S. 1853 would ensure that if such information is reinserted, the consumer would be made aware of that fact and thus be able to challenge the reinserted information before adverse consequences ensue.

More Effective Disclosures for Consumers

S. 1853 would promote consumers' understanding of the reinvestigation rights discussed above by requiring consumer reporting agencies to disclose them to consumers within thirty days of receiving notice of a dispute. In addition, the bill would require anyone who takes adverse action against a consumer based on the contents of his or her consumer report to notify the consumer that the report was a factor in the decision and to identify the consumer reporting agency that supplied the report. At present, the FCRA requires such notice only when credit, employment or insurance is denied based on a consumer report. The Commission has long advocated that the notice requirement be extended to any situation in which a person has a permissible purpose for reviewing a consumer's report and bases an adverse decision upon it.⁵

⁵ For example, a landlord has a permissible purpose under Section 604(3)(E) of the FCRA for obtaining a consumer report on a prospective tenant. Section 615 of the Act, however, expressly requires notice to the consumer that the consumer's report was an adverse factor only in decisions concerning credit, employment, or insurance. The underlying purpose of the notice provision, which is to give consumers the chance to correct any misinformation in their reports that might affect them unfairly, applies with equal force to any situation in which a person has a permissible purpose for obtaining a report. Thus, the Commission advocates making Sections 604 and 615 coextensive.

Increased Privacy Protections for Consumers

S. 1853 would help protect consumers' privacy by requiring consumer reporting agencies to include in the consumer's file records identifying those who have obtained consumer report information on them and the purposes they have asserted for doing so. Provisions requiring identification of users and their stated purposes for obtaining reports are designed to enable consumers to determine whether those who have obtained copies of their consumer reports actually had permissible purposes for doing so. The Commission has supported provisions in legislation introduced previously that would ensure that consumer reporting agencies maintain records enabling consumers to identify persons who access their reports directly. This bill also requires identification of an end user who obtains a report indirectly, through an intermediary. In addition, the bill provides consumers the right to bring a civil action for damages against anyone who obtains their report by false pretenses. In conjunction, these provisions could expose and deter impermissible access to consumer report information.

Increased Administrative Enforcement Powers for the Commission

In another important provision, this bill would give the Commission the authority to enforce violations of the FCRA as if they were Commission trade regulation rule violations -- i.e., by

seeking the imposition of civil penalties. The Commission has repeatedly requested this additional enforcement power when commenting on possible areas of FCRA reform and is pleased to see its inclusion in this bill.⁶ At present, the FCRA permits the Commission to enforce the law only through injunctive, or cease and desist, orders. We believe that compliance with the FCRA will be enhanced if consumer reporting agencies know that violations may result in civil fines as well.

Regulation of Credit Repair Organizations

The Commission is pleased to find that the proposed bill includes provisions to address the problem of credit repair fraud. Fraudulent companies that lead consumers to believe that they can "repair" their bad credit histories have bilked consumers of millions of dollars in the past several years, have caused consumer reporting agencies to waste time and money reinvestigating spurious disputes, and have been the focus of numerous enforcement actions by the Federal Trade Commission and state and local enforcement authorities. S. 1853 proposes that no credit repair organization be permitted to charge or receive

⁶ Providing the Commission the authority to enforce violations of the FCRA by imposing civil penalties would make those enforcement powers consistent with the Commission's existing power to enforce two other consumer credit protection statutes, the Equal Credit Opportunity Act, 15 U.S.C. Section 1691, and the Fair Debt Collection Practices Act, 15 U.S.C. Section 1601, both of which provide for civil penalty enforcement authority.

any money prior to completion of the services that it has agreed to perform for the consumer. This approach to controlling abuses by credit repair organizations, which resolves the problem of making defrauded consumers whole when the perpetrator has fled, has been used in New York and Tennessee. Although stringent, it is an approach that the Commission believes is warranted given the credit repair industry's history of consumer fraud. The bill also would make credit repair organizations subject to the Commission's enforcement authority under the FCRA, which would permit the Commission to invoke the civil penalty authority that the bill provides for violations by credit repair companies. The bill would provide consumers a private right of action as well. These measures should go far to reduce credit repair fraud.

In sum, S. 1853 would do a great deal to address serious, recurrent problems in the credit reporting industry. We appreciate the opportunity to comment on this bill.