

Commentary”).² The 1990 Commentary provided broad guidance on the Commission’s interpretation of the provisions of the FCRA, but specified that the interpretations were not trade regulation rules or regulations and did not have the force or effect of statutory provisions.³

II. Basis for Removal of the 1990 Commentary

Since the publication of the 1990 Commentary, the FCRA has been amended several times in the ensuing years. The two most extensive amendments were the Consumer Credit Reporting Reform Act of 1996 (the “1996 amendments”) ⁴ and the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”).⁵

The 1996 Amendments expanded the duties of consumer reporting agencies (“CRAs”), and also increased the obligations of § 609 of consumer reports, particularly employers. Most significantly, the 1996 Amendments imposed duties on a class of entities not previously treated by the FCRA—§ 609 of information to CRAs—by including requirements related to accuracy and the handling of disputes by the entities that provided information to CRAs.

In 2003, the FACT Act ⁶ further expanded the FCRA.⁷ It added several sections to assist consumers and businesses in combating identity theft and reducing the damage to consumers when that crime occurred, including granting consumers the right to request free annual reports from nationwide CRAs. The Commission, often in conjunction with the Federal financial agencies, issued numerous rules to

implement the various FACT Act provisions.⁸

As a result of these significant changes in the FCRA, as well as the passage of time, the 1990 Commentary has become partially obsolete.

In addition, on July 21, 2010, President Obama signed into law the Consumer Financial Protection Act of 2010 (“CFPA”).⁹ Under the CFPA, much of the authority of the Commission and the Federal financial agencies to publish rules, regulations, or guidelines under the FCRA transfers to the CFPB. Although the CFPA provides for the transfer of existing regulations and guidelines to the CFPB, the Commission does not believe that it is appropriate to transfer the Commentary given its staleness. Indeed, in some respects, the Commentary is in conflict with the law as it has been amended. Accordingly, the Commission is rescinding 16 CFR 600.1, 600.2, and the Appendix to Part 600—Commentary on the Fair Credit Reporting Act.

Under 5 U.S.C. 553(b)(A), the requirement to provide prior notice and an opportunity for public comment does not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. Further, under 5 U.S.C. 553(d)(2), the rescission may take effect immediately upon publication of this document in the **Federal Register**. Accordingly, the Commission rescinds 16 CFR 600.1, 600.2, and the Appendix to Part 600—Commentary on the Fair Credit Reporting Act, effective immediately.

III. Regulatory Flexibility Act

Because these statements of general policy and interpretations are not “rules” subject to the Regulatory Flexibility Act, § 5 U.S.C. 601(2), the Commission is not required to publish any initial or final regulatory flexibility analysis under the Regulatory Flexibility Act as part of such action. § 5 U.S.C. 603(a), 604(b).

List of Subjects in 16 CFR Part 600

Credit, Trade practices.

■ Accordingly, for the reasons set forth above, under the authority of 16 U.S.C. 1681s, the Commission amends Title 16, Chapter I, Code of Federal Regulations, by removing and reserving part 600.

⁸ The Commission’s FACT Act rules are listed on the agency Web site at <http://www.ftc.gov/ftc/fact>.

⁹ Title X, Public Law 111–203 (Dodd-Frank Wall Street Reform and Consumer Protection Act).

By direction of the Commission.

Donald S. Clark,

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² 55 FR 18804 (May 4, 1990). The 1990 Commentary followed a proposal published in August 1988. 53 FR 29696 (Aug. 8, 1988). It included eight interpretations that the Commission had issued in the 1970s (former 16 CFR 600.1 through 600.8).

³ 16 CFR 600.2, citing 16 CFR 1.73.

⁴ Title II, Subtitle D, Chapter 1, of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Public Law 104–208 (Sept. 30, 1996).

⁵ Public Law 108–159 (Dec. 4, 2003).

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⁷ During the seven years between the 1996 Amendments and the FACT Act, there were a number of more modest revisions, the most significant of which was a 1999 amendment that specifically authorized the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, and National Credit Union Administration to promulgate regulations under the FCRA for the banks and other entities subject to their jurisdiction. Section 506 of the Gramm-Leach-Bliley Act (Pub. L. 106–102 (Nov. 12, 1999); FCRA § 621(e)).

¹ The Commission voted 3–2 to publish this notice, without changes, in the **Federal Register**. Chairman Inez M. Tenenbaum, Commissioners Thomas Moore and Robert Adler voted to publish the notice. Commissioners Nancy Nord and Anne Northup voted against publication of the notice. Chairman Tenenbaum and Commissioners Nord and Northup filed statements regarding the vote. The statements may be viewed at <http://www.ftc.gov/ftc/notice>.