

**PREPARED STATEMENT OF THE  
FEDERAL TRADE COMMISSION**

Before the

**SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT  
COMMITTEE ON BANKING AND FINANCIAL SERVICES  
UNITED STATES HOUSE OF REPRESENTATIVES**

on

**FINANCIAL PRIVACY, THE FAIR  
CREDIT REPORTING ACT, AND H.R. 10**

July 21, 1999

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**I. INTRODUCTION**

Chairwoman Roukema and members of the Subcommittee, I am Robert Pitofsky, Chairman of the Federal Trade Commission ("FTC" or "Commission"). I appreciate this opportunity to present the Commission's views on H.R. 10, the Fair Credit Reporting Act ("FCRA") and financial privacy.<sup>(1)</sup> The Commission supports the work of the Committee in striving to provide financial privacy protections for consumers and supports such provisions currently in H.R. 10.

We live in a burgeoning information economy. The personal computer revolution of the 1980s, and the explosive growth of interactive technologies in the 1990s, have made it possible for businesses to collect, aggregate, store, and market personal information in ways unthinkable only a generation ago. The commercial use of this information can have great benefits for consumers and industry, by allowing more cost-effective marketing systems. At the same time, it raises concerns because of the speed and ease with which vast amounts of sensitive information can be aggregated and disseminated.

It is not surprising to learn that, of all the types of information collected about them, American consumers view their financial information as extremely sensitive, indeed as sensitive as their medical histories.<sup>(2)</sup> Congress has long recognized this fact in enacting laws to protect financial information, such as the FCRA and the Right to Financial Privacy Act. As custodians of sensitive financial information, financial institutions must take their customers' privacy concerns into account. The Commission has extensive experience dealing with privacy and consumer protection issues, including those related to the financial services industry, and I am pleased to present the Commission's perspective in this complex area.

**II. THE COMMISSION'S CONSUMER PROTECTION MISSION**

The FTC is a law enforcement agency whose mission is to promote the efficient functioning

individuals' creditworthiness by regulating consumer reporting agencies, such as credit bureaus, and establishing important protections for consumers with regard to the privacy of their sensitive financial information.<sup>(15)</sup> The FCRA was enacted, in part, to address privacy concerns associated with the sharing of consumers' financial and credit history contained in consumer credit reports.<sup>(16)</sup> The FCRA limits the disclosure of consumer reports only to entities with specified "permissible purposes" (such as evaluating individuals for credit, insurance, employment, or similar purposes) and under specified conditions (including certification of the permissi(s)-15(4)3(c)6(if)5(ie)6(d)2(")1.6 scn 19edion 1g c/CS1 cD(7b gposts.(16)

information, with appropriate exceptions, raises serious privacy concerns.

Second, the 1996 amendments to the FCRA include a provision that permits affiliated companies to share consumer report information free from many of the FCRA's restrictions, so long as a notice and the opportunity to opt-out is provided before such non-transaction and non-experience information is shared.<sup>(29)</sup> Most importantly, affiliated companies are permitted to share any information included in a credit report procured by one of the affiliates.<sup>(30)</sup> Prior to this change, an affiliate that regularly communicated consumer report information to related companies (beyond its own transactions and experiences), which then used this information to make decisions in consumer transactions would have been a consumer reporting agency; the consumer would have had full FCRA rights, including access and dispute rights, as to that information.<sup>(31)</sup> Under the amendments, that is no longer the result, if notice and the opportunity to opt out are provided. Thus, a consumer who is denied a loan by Company A, based on erroneous consumer information obtained from its Affiliate Companies B and C now has no right to see and correct the information, and has a right to only a limited adverse action notice.<sup>(32)</sup> Stated more generally, a consumer could be repeatedly denied the benefits of obtaining credit or other services with no right to challenge the accuracy of pooled information kept in the files of a company not involved with the consumer's transaction.

#### **IV. THE PRIVACY PROVISIONS OF H.R. 10**

While the Commission generally supports the privacy provisions in H.R. 10, it believes that one specific additional consumer protection should be provided and that the bill's current provisions could be improved in two ways to ensure that legislation adequately protects consumers.

First, we suggest that H.R. 10's privacy protections requiring notice and opt-out before personal financial information is disclosed to nonaffiliated entities be extended to cover the disclosure of such information among *affiliated* companies.<sup>(33)</sup> This extension makes sense because consumers likely view different companies as separate entities, and are largely unaware of the fact or consequences of common ownership.<sup>(34)</sup> Thus, the distinction between the disclosure of personal financial information to an affiliated entity versus disclosure to a nonaffiliated one is not likely to be significant to consumers or to affect consumers' privacy interests in the underlying information. In sum, consumers should have the right to know about, and prevent if they so choose, transfers of sensitive personal financial data to *any* third parties, affiliated or non-

overrides the privacy protections of this bill should be permitted only where there is clear and conspicuous notice to the consumer of specifically what information sharing will be permitted by their consent and a clear expression from the consumer of that consent.

Finally, the bill should make it clear that its privacy provisions do not limit the FCRA's protections to the extent they apply

6. These include, for example, the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosures of credit terms, and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et. seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces over 30 rules governing specific industries and practices.

7. Public Law No. 105-318, 112 Stat. 3007, amending 18 U.S.C. § 1028 (1998). Specifically, the Act requires the Commission to establish procedures to (1) log the receipt of complaints by victims of identity theft; (2) provide these victims with informational ma

identify individuals. The study examined how such services operate and how they may

reporting agency (15 U.S.C. § 1681m), and compels consumer reporting agencies to disclose data in their file to consumers upon request (15 U.S.C. § 1681g) and to reinvestigate items disputed by the consumer in good faith. (15 U.S.C. § 1681i).

20. 15 U.S.C. §§ 1681n-1681o.

21. 15 U.S.C. § 1681s.

22. 15 U.S.C. §1681s(a)(2). The Act creates a private right of action for actual damages proven by a consumer, plus costs and attorneys fees. In the case of willful violations, the court may also award punitive damages to a consumer. 15 U.S.C. § 1681n(a)(2). Any person who procures a consumer report under false pretenses, or knowingly without a permissible purpose, is liable for \$1000 or actual damages (whichever is greater) to both the consumer and to the consumer reporting agency from which the report is procured. 15 U.S.C. § 1681n(b).

23. 15 U.S.C. § 1681s(c)(1)(B)(i-ii).

24. "Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses ..." may be fined and imprisoned for up to 2 years. 15 U.S.C. § 1681q. The Computer Fraud and Abuse Act prohibits unauthorized entry into credit bureau files, providing for fine and imprisonment (up to one year for a first offense, up to ten years for a second offense) of a person who "intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains information contained in . . . a file of a consumer reporting agency on a consumer, as such terms are defined in the [FCRA]." 18 U.S.C. § 1030(a)(2).

25. Equifax Credit Information Services, Inc., 120 F.T.C. 577 (1995); *FTC v. TRW, Inc.*, 784 F. Supp. 361 (N.D. Tex. 1991).

26. *Matter of Trans Union Corporation*, FTC Docket No. 9255. The Commission is currently considering an appeal of an initial decision of Administrative Law Judge James P. Timony, 1998 FTC LEXIS 88 (July 31, 1998).

27. Section 603(d) of the FCRA, 15 U.S.C. § 1681a(d)(2)(A)(i) ("The term 'consumer report' . . . does not include any report containing information solely as to transactions or experiences between the consumer and the person making the report.").

28. *Hatch v. US Bank Nat'l Ass'n* ND (D.Minn, filed June 9, 1999).

29. 15 U.S.C. § 1681a(d)(2)(A). As noted earlier, the FCRA does not in any way restrict the ability of an entity to share "transaction and experience" information with its affiliates.

30. Also, the exception allows affiliates to freely share other information beyond their transactions and

U.S.C. § 1681m(b)(2).

33. As noted above, the FCRA currently sets out a notice and opt-out mechanism for affiliate sharing of information that is not "transactions and experiences" information. As discussed *infra*, there is a need to clarify that H.R.10 does not undermine the protections currently afforded by the FCRA.

34. This is particularly true as the barriers are removed between banking and other types of businesses, and as the size of those corporate families expands. In fact, given such expansion and diversification, consumers have no reason to know that the information they give to an insurance company one day may find its way into the files of a bank or securities firm, which happens to be affiliated with that insurance company, the next day.

35. The Commission supports H.R. 10's notice, choice and security provisions and notes that in other contexts, it also has encouraged consideration of additional fair information practices.

36. Title V, Subtitle A, Section 502(a)(2).