

Congress Considers Changes to FCRA to Expand Consumer Credit Files and Limit Use of Credit Reports for Employment Decisions

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The Fair Credit Reporting Act (FCRA) regulates consumer reporting agencies (CRAs) and the use of consumer reports. The FCRA's stated purpose includes requiring CRAs to adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner that is fair and equitable to the consumer.¹ Two purportedly consumer-oriented bills amending the FCRA are currently in committee in Congress. H.R. 4172, "The Credit Access and Inclusion Act of 2015," has bipartisan support, but is opposed by certain consumer groups. H.R. 3524, the "Equal Employment for All Act of 2015," is a Democratic-supported bill with less chance of passage, but reflects trends in state law. H.R. 4172 permits "utility and telecom companies and landlords to report on-time payment data to CRAs," which, supporters claim, "helps those with little to no credit build their credit scores based on a full picture of their payment history." Now, utility and telecom companies report only negative information, or do not report at all, due in part to regulatory uncertainty. State laws in California, New Jersey, and Wisconsin that effectively prohibit "full-file" reporting would be preempted. The credit reporting industry has claimed that H.R. 4172 would improve credit histories of Americans deemed "credit invisibles." Sponsors estimate nearly 100 million Americans would establish or raise their credit scores. But consumer groups are concerned that supporters underestimate the amount and significance of additional negative payment history that would be reported. H.R. 3524 prohibits CRAs from furnishing consumer reports to an employer "if the employer seeks to use such information in a denial of employment." Currently, such use is a statutorily "permissible purpose." Sponsors argue consumer reports are "often inaccurate and bear little to no correlation to job performance."

Opponents respond that their use is limited, and is especially important for employees in charge of financial assets, as financial difficulties are an indicator for employee fraud. Sponsors claim 11 states and New York City already have laws similar to H.R. 3524. Therefore, employers and CRAs must take precautions to ensure their use of consumer reports in employment decision-making complies with their jurisdictions' laws. _____

1 15 U.S.C. § 1681(b).

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