

Questions and Answers Regarding Opposition to H.R. 347

Recently, supporters of H.R. 347, the misleadingly-named “Facilitating Access to Credit Act of 2015,” have advanced a number of arguments as to why the nationwide credit reporting agencies should be exempt from coverage by the Credit Repair Organizations Act (CROA). We address some of these arguments.

1. Supporters of H.R. 347 have cited the three-day waiting period as a barrier to providing useful credit education products. Is that a real concern?

First, H.R. 347 would not just eliminate the three-day waiting period. It would also exempt the nationwide credit reporting agencies from CROA’s prohibitions against deception and advance payment for credit repair services, and its disclosure requirements. It would also preempt any state law claims for deception in the marketing of credit monitoring products that fall under CROA.

The intent of the three-day waiting period is to give the consumer a chance to think over and back out of a questionable deal. Also, there is actually no need under CROA to wait three days. CROA already gives the seller the option of providing services immediately, as long as it gives the consumer a written contract that includes a three-day right to cancel and obtain a refund. This three-day right to cancel and not incur a charge is important, and needs to be preserved.

2. Supporters of H.R. 347 argue that exempting the nationwide credit bureaus from CROA’s prohibition against deceptive advertising is not a problem because they would still be subject to the FTC’s authority to enforce the FTC Act’s general prohibition against unfair and deceptive acts and practices, and the CFPB’s authority to enforce the Dodd-Frank Act’s prohibition against unfair, deceptive or abusive acts and practices. Isn’t that sufficient?

Those protections do not provide the same relief for consumers, because neither allows a consumer to seek a remedy in a court on his or her own behalf. What the supporters of H.R. 347 are arguing is that the credit bureaus should be exempted from private enforcement under CROA because of the existence of FTC and CFPB enforcement authority. This is a terrible idea for consumers. Private remedies are critical for consumer protection laws - not just CROA, but the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), and many other federal consumer protection laws. For decades, the FTC and/or state attorneys general have had enforcement authority under CROA, the FCRA, and the FDCPA. While those agencies have brought good cases, it is private

consumers who have been the main source of enforcement. Those agencies did not have the resources to go after all the bad actors. And even though the CFPB has greater resources, the Bureau also has its limits on how much it can do. Private remedies are the backstop to ensure that these consumer protection laws always have an enforcement mechanism. After all, it is the consumer whose rights are violated who has the greatest interest in enforcing those rights.

3. Why is it necessary to apply CROA's protections to the nationwide credit bureaus?

The most important protections under CROA with respect to the nationwide credit bureaus are the prohibitions against deception in offering credit repair products, the prohibition against advance payment for credit repair services, and the three-day right to cancel. The importance of retaining the prohibition against deception is demonstrated by the credit bureaus' heavy marketing of credit monitoring products, including products that meet CROA's definition of "credit repair" services, which has involved deceptive marketing in the past. CROA does not prevent the honest offering of services that genuinely help consumers with their credit reports. CROA gives consumers some very common-sense and fair protections – a short period to cancel and protection against being required to pay for services before they are delivered. These protections should not deter a provider of legitimately helpful products.

H.R. 347 also preempts any claims under state consumer protection laws for deception by the nationwide credit bureaus in the marketing of credit monitoring products that fall under CROA. There is no justification for exemption CRAs from these bedrock prohibitions against deception.