



April 27, 2015

The Honorable Jeb Hensarling
Chairman
House Committee on Financial Services
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
Washington, DC 20515

Re: H.R. 347 (Royce), Facilitating Access to Credit Act (Oppose)

Dear Chairman Hensarling and Ranking Member Waters:

The undersigned national consumer organizations would like to express our strong opposition to H.R. 347 (Royce and Hinojosa), the misleadingly-named “Facilitating Access to Credit Act of 2015.” This bill would unnecessarily allow credit bureaus to be exempt from coverage by the Credit Repair Organizations Act (CROA). This would be a dangerous mistake. **CROA is a vital and important consumer protection law. There is no need to weaken CROA to allow the promotion of credit monitoring products that are of dubious value and that have been the subject of highly deceptive marketing as revealed by law enforcement actions and Congress’s own findings.**

Currently, CROA broadly applies to any person who, in return for money, provides services to improve a consumer’s credit record. Only non-profit organizations and a few other entities are exempted. In addition to requiring key disclosures, and mandating important contract terms, the Act prohibits anyone offering credit repair services from violating standards of truthfulness, fraud or deception.

The proposed amendment creates a broad exception from CROA’s protections. It exempts any consumer reporting agency (CRA) from CROA if the agency is either (1) a “nationwide” CRA or (2) is supervised as a “larger” participant by the CFPB. Below are some examples of consumer protections in the current law that would not be available if H.R. 347 became law.

- When *debt collectors* collect debts by deceptively promising improvement of a consumer's credit rating, CROA's prohibition against deception applies.
- When *subsidiaries of credit bureaus* offer to improve credit scores, just like credit repair services do, CROA provides a level playing field and equal protection against deception.

Regarding the first example, a number of debt collectors are supervised as larger participants by the CFPB. If they also have an affiliate that is a CRA, H.R. 347 would exempt the debt collector from CROA, and permit the collector to make false promises about how payment of a debt would improve a consumer's credit record, without the protections of CROA. A number of debt collectors do have a CRA affiliate, such as Certegy, a debt collector of bounced checks that was recently the subject of an FTC enforcement action.

As for the nationwide CRAs, these include the well-known credit bureaus Experian, Equifax and TransUnion. For years, the credit bureaus have sought an exemption from CROA in order to expand their sale and business of high-priced credit monitoring and other subscription products, the marketing of which has been notoriously rife with deception and abuse. These abuses are well-documented and include:

- The Federal Trade Commission (FTC) imposed a fine and consent decree against Consumerinfo.com d/b/a Experian Consumer Direct for deceptive practices in its promotion of credit monitoring products.
- Congress was so concerned about the credit bureaus' aggressive and deceptive promotion of credit monitoring products, done while burying information about access to truly free credit reports and lower-cost credit scores required by the Fair Credit Reporting Act, that it included a requirement in the Credit CARD Act that any advertisement of a "free credit report" include a special disclosure referring consumers to www.AnnualCreditReport.com.
- The CFPB's first two enforcement actions, against Discover and Capital One, were over misleading marketing tactics in the sale of add-on products, including credit monitoring services which provided access to credit reports and scores from the credit bureaus. Subsequently the CFPB took action against JPMorgan Chase and Bank of America for similar abuses in the marketing of add-ons that included credit monitoring products. Collectively, these banks paid \$1.38 billion in restitution and \$79 million in civil fines in these cases.
- The most recent enforcement action involving credit monitoring is the November 2014 joint action by the FTC and the Attorneys General of Illinois and Ohio against three companies that sold credit monitoring products online. These three companies allegedly lured consumers with "free" access to their credit scores and then billed them a recurring fee of \$29.95 per month for a credit monitoring program the consumers never ordered. The three defendants agreed to pay \$22 million in consumer refunds. While this action was not taken directly against the credit bureaus, these defendants stated that consumers would receive their "TransUnion, Equifax, and Experian scores," which presumably were obtained from the credit bureaus directly or indirectly. The action illustrates the widespread abuses that occur with credit monitoring products, and involves conduct similar to what Experian was penalized for in the enforcement action mentioned in the first bullet above.

There is absolutely no reason to exempt the credit bureaus from CROA so they can aggressively offer even more paid products similar to credit monitoring without the protections and disclosures required by the Act.

Another problem with the credit bureaus' credit monitoring products is that, instead of providing a score that is actually used by lenders, such as FICO (which constitutes 90% of the scores sold to lenders), the credit bureaus usually sell their own proprietary, in-house scores. These scores are essentially useless to consumers, because they do not tell consumers what they really need to know: the FICO score on which their credit decisions will likely be based. The products that H.R. 347 would exempt from compliance would presumably provide advice to improve credit scores based on these meaningless scores. For example, Experian's freecreditscore.com website states "Calculated on the PLUS Score model, your Experian Credit Score indicates your relative credit risk level for educational purposes and is not the score used by lenders."

Congress was concerned enough about this issue – the fact that the credit bureaus push their own proprietary in-house scores instead of the scores used by lenders – that they required the CFPB to issue a report about it. And the CFPB actually conducted not just one, but two, studies about the issue. In the first of two studies, the CFPB stated a potential harm of this issue as –

A consumer, unaware of the variety of credit scores available in the marketplace, may purchase a score believing it to be his or her “true” (or only) credit score, when in fact there is no such single score In these circumstances, the consumer would have spent money on a score or subscribed to a credit monitoring service that he or she otherwise might not have purchased. Believing he or she purchased a FICO score may lead to dissatisfaction upon learning otherwise.

A consumer who buys credit score improvement advice may be similarly frustrated when that advice is to improve a score that no lender uses. In the second of the two studies, the CFPB found that, for one out of five consumers, the difference between a real FICO score and an in-house score is so great as to put the consumer in an entirely different risk category.

Finally, we are also concerned that HR 347 preempts state law, which would leave the sale of credit monitoring completely unregulated. HR 347 would prevent a state regulator from taking action against a credit bureau that is misleading consumers by selling products that are supposed to, but do not really, improve credit scores.

H.R. 347 weakens an important law available to consumers. We strongly urge your opposition.

Sincerely,

Chi Chi Wu
National Consumer Law Center (on behalf of its low-income clients)

Lisa Donner
Americans for Financial Reform

Mitria Wilson
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Linda Sherry
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Barbara van Kerkhove
Empire Justice Center

cc: Members of the House Financial Services Committee