

**STATEMENT OF CHAIRMAN SPENCER BACHUS  
SUBCOMMITTEE ON  
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT  
“THE ROLE OF FCRA IN EMPLOYEE BACKGROUND CHECKS AND  
THE COLLECTION OF MEDICAL INFORMATION”**

Good morning. The Subcommittee will come to order. Our hearing today is the fifth in the series of hearings this Subcommittee is holding on FCRA. We have previously held hearings covering the importance of a national uniform credit system to consumers and the economy and more specifically on how FCRA helps consumers obtain more affordable mortgages and credit in a timely and efficient manner. Today we will learn about how FCRA regulates employee background checks and the collection of health information.

This hearing consists of two panels. The first panel will focus on the application of FCRA to employee screening and other background checks. Witnesses will include various business groups, human resource managers, and private investigators. The second panel will examine how medical information is collected and used for various financial products, including a discussion of the prohibition on the use of health information in the credit-granting process. Panelists will include representatives of the life and health insurance industry, banking industry, and independent experts.

While we usually think of FCRA in the context of credit information, it also applies to background checks for employees. For example, information collected for an employer by a third party about an employee’s criminal record, driving record, educational record, or prior employment history in some instances falls within the FCRA’s coverage. The 1996 amendments to FCRA established consumer protections for employee background screening. Some of these

include: consumer consent before a prospective employer may obtain a consumer report; disclosure of the report to the consumer once it is completed; and notice to the consumer of his rights before taking an adverse action based on the report.

Many employers conduct background checks of their employees as a safety precaution. Moreover, according to a 2002 Harris poll, a majority of Americans support their employers conducting detailed background checks. Congress has mandated background checks for many workers in the financial services industry, as well as for nuclear, airport, and childcare businesses. As a result, mandatory background checks are now required for workers at ports and for those who transport hazardous chemicals. The number of worker background checks has dramatically increased since 9/11 due to heightened security concerns.

In light of the fact that background checks are becoming commonplace, one issue that we need to look at is the FTC's staff Vail opinion letter. It makes it more difficult for employers to conduct investigations. Under the Vail letter, if an employer believes that an employee is engaging in workplace misconduct – such as committing sexual harassment, racial discrimination or embezzling funds -- the employer can't hire an independent third party investigator without getting the wrongdoer's consent and telling him how he will be investigated. This makes absolutely no sense. If you're trying to catch a criminal, why warn him in advance? Strangely, employers can investigate alleged misconduct without following any of the Vail letter requirements if they do so internally. The Vail letter makes it unworkable to hire an outside, unbiased party to do an impartial investigation. Even the FTC admits that the law should be fixed.

Our second panel will turn to a different but equally important subject, the collection of medical information and how the FCRA and other Federal and State laws govern its use. The FCRA prohibits consumer reporting agencies from furnishing reports containing medical information without the consumer's consent. Congress passed another law, the Health Insurance Portability and Accountability Act of 1996, which limits the sharing of health information by health care plans and providers. In addition, the States have various laws governing how insurance companies use and share information. This panel of experts will help us to understand whether there are gaps in the convergence of these laws, and whether financial providers are using or should be prevented from using individuals' medical information in an inappropriate way.

I want to again express my gratitude to Chairman Oxley, Ranking Member Frank and Mr. Sanders for working with me on FCRA reauthorization, and note that for the second week in a row we accommodated all of the Minority's witness requests.

The chair now recognizes the Ranking Member of the Subcommittee, Mr. Sanders, for any opening statement he would like to make.