UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Credit Practices
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Helen Goff Foster
Attorney

September 2, 1998

Re: Section 604(a)(3) of the Fair Credit Reporting Act

Dear Mr. Ross:

This is in response to your correspondence concerning our recent opinion letter (*Coffey*, 2/11/98) on the Fair Credit Reporting Act (FCRA). You request that we extend the principles articulated there, regarding when a car dealer lawfully may request a consumer report, to the use of consumer reports by prospective employers. Specifically, you argue that the FCRA should be extended to prohibit prospective employers from obtaining consumer reports prior to a conditional offer of employment to the consumer. We conclude that the FCRA does not provide such a requirement.

Section 604 of the FCRA provides that a consumer reporting agency may furnish a consumer report only for specified permissible purposes. In *Coffey*, we addressed the meaning of Section 604(a)(3)(F), which states that a consumer report may be provided to a person "with a legitimate business need for the information" in connection with "a business transaction initiated by the consumer." That provision contained two limitations (legitimate business need by the report user, and transaction initiated by the consumer) that led us to the conclusion that a car dealer may lawfully request a consumer report only when it is clear to both the consumer and the car dealer that the consumer is actually initiating the purchase or lease of a specific vehicle. In contrast to that language, the provision that is the topic of your inquiry -- Section 604(a)(3)(B) -- has no such limitations, but rather provides a permissible purpose for a person who "intends to use the information for employment purposes." In light of this broad statutory language, we believe that Congress did not intend to limit the permissible use of consumer reports to only those circumstances where a conditional offer of employment has been made. Accordingly, we conclude that it is permissible for a prospective employer to obtain a consumer report on job applicants prior to making an offer or conditional offer of employment. Of course, prior to obtaining such report, an employer must comply with the notice and consent provisions of Section 604(b).

I hope that this information is helpful to you. The views expressed in this letter are those of the staff and do not necessarily represent the views of the Commission or of any individual Commissioner.

Sincerely,

Helen G. Foster