

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

Division of Credit Practices

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Thomas E. Kane
Attorney

October 27, 1998

Re: Sections 603(h) and 604(b)(3) of the Fair Credit Reporting Act

Dear Mr. Solomon:

This responds to your request for a staff opinion regarding the Fair Credit Reporting Act ("FCRA"). You state that your client, a title insurance company, frequently enters into contracts with individuals to sell its insurance, examine title, and close real property transactions. According to your letter, the individuals work out of offices owned or leased by them or their employer. Your client does not consider the individuals to be its employees.

In an attempt to reduce embezzlement, your client plans to request that the individuals described above who handle funds from loan transactions involving your client agree in writing to permit your client to obtain investigative consumer reports or other types of consumer reports on them. You ask whether these individuals would be considered employees under the Fair Credit Reporting Act and note that, if your client does obtain these consumer reports for "employment purposes," it would have to comply with Section 604(b)(3) before taking any adverse actions against the individuals.⁽¹⁾ Section 603(h) states that "the term 'employment purposes' when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee."

As we stated in the enclosed letter (*Allison*, 2/23/98), Commission staff subscribes to the view that the term "employment purposes," as used in the FCRA, should be interpreted broadly. This view is consistent with the Federal Trade Commission's position in Comment 603(h)-2 of its Commentary on the Fair Credit Reporting Act,⁽²⁾ which states that "[a] report in connection with security clearances of a government contractor's employees would be for 'employment purposes' under this section." That comment codified a 1986 Commission staff opinion letter, concerning consumer reports that the Defense Intelligence Agency ("DIA") was obtaining on employees of DIA's defense contractors to determine whether the employees were eligible for security clearances, which concluded that DIA was obtaining the consumer reports for "employment purposes."⁽³⁾

Staff believes that your client's relationship with the individuals who sell title insurance, examine titles, and close real property transactions would be similar to the relationship between DIA and the contractor's employees referred to in Comment 603(h)-2 and the underlying opinion letter. Like DIA, your client would be obtaining reports on individuals

who are not its employees but will be performing work for your client. Also like DIA, your client would be obtaining the reports to determine whether the individual subjects of the reports are trustworthy. Thus, if your client obtained consumer reports on these persons, it would be obtaining them for "employment purposes" and would have to comply with Section 604(b)(3).⁽⁴⁾

The views set forth in this informal staff opinion are those of the staff and are not binding on the Commission.

Sincerely,

Thomas E. Kane

Enclosures

1. Section 604(b)(3) provides:

In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates (A) a copy of the report; and (B) a description in writing of the rights of the consumer under this title, as prescribed by the Federal Trade Commission under section 609(c)(3).

Section 615 imposes additional duties after a person has taken adverse action based on a consumer report for any reason.

2. 16 C.F.R. § 600 Appendix, 55 Fed. Reg. 18,804, 18,813 (May 4, 1990).

3. Ralph C. Clontz, Jr., *Fair Credit Reporting Manual* (rev. ed. & Supp. 1988), Letter No. 379 (copy enclosed).

4. Your client would also have to comply with Sections 604(b)(1)(A), 604(b)(2), and other sections that specifically refer to consumer reports obtained for "employment purposes."