

## **THE WASHINGTON REPORT**

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On Capitol Hill, the current debates over background screening primarily are focused on whether—and if so, to what extent—mandatory background checks for gun purchasers should be expanded. Competing bills have been introduced and congressional hearings have produced fireworks, although it is still unclear what legislation, if any, ultimately will pass.

Employment background screening activity also is underway on the Hill, but not receiving the same level of congressional attention as the gun-control legislation. Rep. Steve Cohen (D-TN), for example, has reintroduced his bill to prohibit the use of credit checks for many employment purposes (H.R. 645 in the current Congress). The bill has two dozen co-sponsors, although no hearing on the bill has been scheduled and the bill is not expected to move through the Republican-controlled House.

### **At the FTC**

Earlier this month, President Obama announced that he was elevating Commissioner Edith Ramirez to replace Jon Leibowitz as Federal Trade Commission (FTC) Chairman. Chairman Ramirez's background predominantly is anti-trust law, but as a Commissioner she also has been active on various privacy issues. She took the lead among the Commissioners, for example, in connection with the launch of the Asia Pacific Economic Cooperation (APEC) cross-border privacy rules. Speaking at the International Association of Privacy Professionals (IAPP) Global Privacy Summit in Washington in early March, Chairman Ramirez identified FTC enforcement in the privacy space as an FTC priority. She did not specifically reference Fair Credit Reporting Act enforcement, but it would be unwise to discount potential FTC FCRA enforcement efforts. Commissioner Julie Brill echoed the FTC enforcement effort when addressing the Direct Marketing Association a few days later.

The President has not yet nominated a replacement for former Chairman Leibowitz's seat on the Commission, so the FTC is operating for the time being with four Commissioners, two Democrats and two Republicans. Gridlock, however, is not expected at the Commission, which traditionally functions in a more collegial manner than some other federal Boards and Commissions where political affiliation is taken into account in making appointments.

Turnover also continues at the FTC Staff level with Anthony Rodriguez soon to depart the FTC. Rodriguez, a Staff Attorney in the Division of Privacy and Identity Protection, has taken the lead for the Staff in a number of high profile enforcement matters, including last year's FTC settlement with HireRight.

### **FTC and CFPB Coordination**

At a March 18<sup>th</sup> event sponsored by the U.S. Chamber of Commerce, Peggy Twohig, the CFPB's Assistant Director of Supervision Policy, and Charles Harwood, the Acting Director of the FTC Bureau of Consumer Protection, discussed how the two agencies are working together. Background screening was not a focus of the discussion, but a few points they made during the event are of broader interest:

- It is the goal of the two agencies to avoid “unintentional” overlap in their enforcement efforts, but the agencies do not rule out the possibility that they deliberately could both bring actions against the same company at the same time.
- The agencies maintain a joint list of ongoing investigations and each consults the list before opening a new investigation.
- The CFPB also shares its examination schedule with the FTC. Acting Director Harwood indicated that in one case the FTC was considering sending a Civil Investigative Demand to an unnamed company, but, instead chose to request information from the CFPB upon discovering that the CFPB had an examination of the company in question already underway.

In short, the agencies believe that their Memorandum of Understanding is working well for now and they have not observed any inconsistencies arising from instances where companies have sought informal guidance from the agencies.

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