

## **THE WASHINGTON REPORT**

### **September 2015**

#### At the Supreme Court

On September 9<sup>th</sup>, the Supreme Court announced that oral arguments in *Spokeo v. Robins* have been scheduled for Monday November 2<sup>nd</sup>.

#### On Capitol Hill

On September 24<sup>th</sup>, Sen. Pat Toomey (R-PA) introduced S. 2077 to “amend the [FCRA] to clarify the ability to request consumer reports in certain cases to establish and enforce child support payments and awards.”

On September 16<sup>th</sup>, Representative Steve Cohen (D-TN) introduced HR 3524, the *Equal Employment for All Act*. The Senate version, S. 1981, is sponsored by Senator Elizabeth Warren (D-MA) and was introduced August 5<sup>th</sup>. The bill would amend the Fair Credit Reporting Act (FCRA) to restrict the use of information bearing on creditworthiness, credit standing, or credit capacity for employment purposes or employment adverse actions.

On September 10<sup>th</sup>, Rep. Elijah Cummings (D-MD) introduced HR 3470, the *Fair Chance Act*, which would “prohibit federal agencies and federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer.” Sen. Cory Booker (D-NJ) introduced the Senate version, S. 2021. According to a statement published on the House Oversight and Government Reform Committee’s website, the bill would assist formerly incarcerated individuals in obtaining a “fairer chance at securing employment.”

#### At the Department of Commerce

On September 28<sup>th</sup>, the U.S. Mission to the European Union (EU) issued a statement indicating that the US and EU continue to negotiate reforms to the EU-US Safe Harbor Program for transfers of personal information from the EU to the United States and to question what the mission refers to as “numerous inaccurate assertions about intelligence practices of the United States” in a September 23<sup>rd</sup> opinion from the European Court of Justice’s Advocate General which recommended that the ECJ invalidate the EU’s decision finding that the Safe Harbor program provides “adequate” privacy protection under EU law.

#### At the CFPB

On September 8<sup>th</sup>, the CFPB filed an amicus brief with the U.S. Supreme Court in *Spokeo, Inc. v Robins*, a lawsuit alleging that Spokeo, Inc. (Spokeo) violated the FCRA by publishing inaccurate information on the plaintiff. In its brief, the CFPB expressed support for the plaintiff’s standing to sue, arguing that a plaintiff can show the “injury in fact” requirement for Article III standing “by demonstrating an invasion of his own legally protected interests” as long as the plaintiff can show the invasion was “actual and concrete.”

On August 25<sup>th</sup>, the Consumer Financial Protection Bureau (CFPB) released its monthly consumer complaint “snapshot,” which focused on credit reporting complaints. According to the CFPB, consumer credit reporting complaints “sharply increased compared to the prior month and the prior year.”

#### At the EEOC

On September 8<sup>th</sup>, the U.S. Equal Employment Opportunity Commission (EEOC) announced that BMW Manufacturing Co., LLC (BMW) entered into a consent decree, requiring BMW to pay \$1.6 million to settle EEOC allegations.

#### At the FTC

On September 16<sup>th</sup>, the Federal Trade Commission (FTC) published a blog post about the Fair Credit Reporting Act’s (FCRA) Furnisher Rule. In the post, the FTC highlighted its recent enforcement action against Tricolor Auto Group (TAG), requiring TAG to pay approximately \$82,000 to resolve alleged violations of the FCRA by “fail[ing] to have written policies and procedures regarding the accuracy of reported credit information, and fail[ing] to properly investigate disputed consumer credit information.”

On September 8<sup>th</sup>, the FTC released a closing letter regarding an FTC Staff investigation into an employer’s compliance with the FCRA which involved the exception to the definition of consumer report in FCRA § 603(y) for certain employment investigations.