

FEDERAL TRADE COMMISSION

RIN 3084- [AA94]

Public Comment on Methodology and Research Design for Conducting a Study of the Effects of Credit Scores and Credit-Based Insurance Scores on Availability and Affordability of Financial Products

AGENCY: Federal Trade Commission

ACTION: Notice and request for public comment.

SUMMARY: The Fair and Accurate Credit Transactions Act of 2003 (“FACT Act” or “Act”) requires the Federal Trade Commission (“FTC” or “Commission”) and the Federal Reserve Board (“Board”) to conduct a study on the effects of credit scores and credit-based insurance scores on the availability and affordability of financial products. These products include credit cards, mortgages, auto loans, and property and casualty insurance. The Act requires the FTC to seek public input about “the prescribed methodology and research design of the study.” As part of its efforts to fulfill its obligations under the Act, the FTC seeks public comment on how the FTC and the Board should conduct the study.

DATES: Comments must be received by August 16, 2004.

ADDRESSES: Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments should refer to “FACT Act Scores Study, Matter No. P044804,” to facilitate their organization. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to: Federal Trade

Commission/Office of the Secretary, Room H-159 (Annex N), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC urges that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments that do not contain any nonpublic information may be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as a part of or as an attachment to email messages directed to: FACTAscoringstudy@ftc.gov. If a comment contains nonpublic information, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled “Confidential.”¹

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at www.ftc.gov. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

¹ Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Jesse Leary, Deputy Assistant Director, (202) 326-3480, Division of Consumer Protection, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The FACT Act was signed into law on December 4, 2003. Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159 (2003). In general, the Act amends the Fair Credit Reporting Act (“FCRA”) to enhance the accuracy of consumer reports and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. To promote increasingly efficient national credit markets, the FACT Act also establishes uniform national standards in key areas of regulation regarding consumer report information. The Act contains a number of provisions intended to combat consumer fraud and related crimes, including identity theft, and to assist its victims. Finally, the Act requires a number of studies be conducted on credit reporting and related issues.

Section 215 of the FACT Act requires the FTC and the Board, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, to conduct a study on the effects of credit scores and credit-based insurance scores on the availability and affordability of financial products. These products include mortgages, auto loans, credit cards, and property and casualty insurance. Section 215 further requires the FTC and the Board to study: 1) “the statistical relationship, utilizing a multivariate analysis that controls for prohibited factors under the Equal Credit Opportunity

Act and other known risk factors, between credit scores and credit-based insurance scores and the quantifiable risks and actual losses;” and 2) “the extent to which, if any, the use of credit scoring models, credit scores, and credit-based insurance scores impact on the availability and affordability of credit to the extent information is currently available or is available through proxies, by geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, and creed, including the extent to which the consideration or lack of consideration of certain factors by credit scoring systems could result in negative or differential treatment of the protected classes, under the Equal Credit Opportunity Act, and the extent to which, if any, the use of underwriting systems relying on these models could achieve comparable results through the use of factors with less negative impact.”

The study is due December 4, 2005.

II. Request for Comments

The Act requires the FTC to seek public input about “the prescribed methodology and research design of the study.” As part of its efforts to fulfill its obligations under the Act, the FTC seeks public comment on how the FTC and the Board should conduct the study. Public comment is requested on all aspects of the study. In addition, the FTC seeks comment on the following questions:

1. How should the effects of credit scores and credit based insurance scores on the price and availability of mortgages, auto loans, credit cards, other credit products, and property and casualty insurance be studied? What is a reasonable methodology for measuring the price and availability of mortgages, auto loans, credit cards, other credit

products, and property and casualty insurance, and the impact of credit scores and credit based insurance scores on those prices and availability?

2. An effect can often only be measured relative to a counterfactual (that is, relative to some hypothetical alternative situation). To determine the effects of credit scores on the price and availability of credit products, what is a reasonable counterfactual to the current use of credit scores? To determine the effects of credit-based insurance scores on the price and availability of property and casualty insurance, what is a reasonable counterfactual to the current use of credit-based insurance scores?

3. Paragraph (a)(2) of Section 215 requires a study of “the statistical relationship, utilizing a multivariate analysis that controls for prohibited factors under the (ECOA) and other known risk factors, between credit scores and credit-based insurance scores and the quantifiable risks and actual losses experienced by businesses.” (The ECOA “prohibited factors” are race, color, religion, national origin, sex or marital status, and age.) What is an appropriate multivariate technique for studying this relationship? What data would be required to undertake such an analysis? What data are available to undertake such an analysis?

4. What is an appropriate methodology to determine whether the use of credit scores or credit based insurance scores results in “negative or differential treatment” of ECOA-protected classes?

5. What is an appropriate methodology to determine whether the use of specific factors in credit scores or credit based insurance scores results in “negative or differential treatment” of ECOA protected classes?

6. What is an appropriate methodology to determine whether there are factors that are not considered by credit scores or credit based insurance scores that result in “negative or differential treatment” of ECOA protected classes?

7. In order to address paragraphs (a)(2) and (a)(3) of Section 215, data are needed on the geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, or creed of borrowers, potential borrowers, insurance customers, or potential insurance customers. Are these data available, and if so, where?

8. If the data discussed in question 7 are not available, what proxies are available for the geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, or creed of borrowers, potential borrowers, insurance customers, or potential insurance customers?

9. If there are proxies for the geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, or creed of borrowers, potential borrowers, insurance customers, or potential insurance customers, what type of analysis would allow inferences to be drawn using the proxies instead of actual data on individual characteristics? What limitations are there to the inferences that can be drawn using proxies in place of data on individual characteristics?

10. One potential proxy for individual characteristics may be Census data about the location where a borrower or insurance customer resides. What type of analysis would allow inferences to be drawn using data about the characteristics of the location where a borrower or insurance customer resides instead of data on individual characteristics? What limitations are there to the inferences that can be drawn using data about the characteristics

of the location where a borrower or insurance customer resides in place of data on individual characteristics?

Authority: Sec. 112(b), Pub. L. 108-159, 117 Stat. 1956 (15 U.S.C. 1681c-1).

By direction of the Commission.

Donald S. Clark
Secretary