July 16, 2004

Federal Trade Commission
Office of the Secretary
FACTAStudy@ftc.gov

Re: Study of the Effects of Requiring that a Consumer Receive the Same Report as a Creditor when Adverse Action is Taken Against the Consumer
(FACT Act Section 318(a)(2)(C) Study, Matter No. P044804)

Comments of:

The National Consumer Law Center on behalf of its low-income clients,
The Consumer Federation of America,
Consumers Union,
The Electronic Privacy Information Center,
Privacy Times, and
U.S. Public Interest Research Group

The National Consumer Law Center ("NCLC")[1] on behalf of its low-income clients, the Consumer Federation of America[2], Consumers Union[3], The Electronic Privacy Information Center[4], The Identity Theft Resource Center[5], Privacy Rights

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[1] **The National Consumer Law Center** is a nonprofit organization specializing in consumer credit issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys around the country, representing low-income and elderly individuals, who request our assistance with the analysis of credit transactions to determine appropriate claims and defenses their clients might have. As a result of our daily contact with these practicing attorneys, we have seen numerous examples of invasions of privacy, embarrassment, loss of credit opportunity, employment and other harms that have hurt individual consumers as the result of violations of the Fair Credit Reporting Act. It is from this vantage point – many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities – that we supply these comments. *Fair Credit Reporting* (5th ed. 2002) and *Credit Discrimination* (3rd ed. 2002) are two of the eighteen practice treatises that NCLC publishes and annually supplements. These comments are written by Anthony Rodriguez, staff attorney at NCLC and Brad Scriber, Consumer Federation of America.

[2] The **Consumer Federation of America** is a non-profit association of 300 pro-consumer groups, which was founded in 1968 to advance the consumer interest through research, advocacy and education.

[3] **Consumers Union**, the publisher of Consumer Reports®, is an expert, independent nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. To achieve this mission, we test, inform, and protect. To maintain our independence and impartiality, CU accepts no outside advertising, no free test samples, and has no agenda other than the interests of consumers. CU supports itself through the sale of our information products and services, individual contributions, and a few noncommercial grants.

[4] The **Electronic Privacy Information Center** is a public interest research center in Washington, D.C. It was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values.

Clearinghouse[6], Privacy Times[7], and U.S. Public Interest Research Group[8] submit the following comments on the Commission's study of whether to require that consumers receive the same report as creditors when there is an adverse action.

Introduction

When an adverse action is taken against a consumer because of information contained in the consumer's credit report, the consumer needs to know the basis for that action. The consumer has suffered harm *because of information in the credit report.* In fact this is the underlying rationale of much of the Fair Credit Reporting Act (FCRA).

The fact that a consumer can receive a report different from one that a creditor would receive is largely a result of technological changes since the passage of the act. When the credit reporting industry relied on physical reports in physical file folders, the requirement that a consumer have access to clear and accurate disclosures of "all the information in the consumer's file at the time of the request" was quite straightforward. However, with the transformation of data storage from paper storage in cabinets to digital storage in computers, the nature of credit reports changed as well. Information about a consumer became less coherent and credit reports became more fleeting, the result of queries of enormous databases. As a result the information in a credit report became extremely dependent on the details of the query of the database and the rules for how credit information would be matched to the identifying information provided. A credit report is now a temporary arrangement of distinct data elements whose composition is dependent on these rules and the target personal identifying information provided. In addition, credit reporting agencies employ different sets of standards for queries from consumers and queries from creditors and other report users, resulting in alternative versions of a consumer's file. These changes undermine a primary function of the FCRA – allowing consumers access to the information in their reports.

Congress has asked the FTC to evaluate whether consumers should receive the same credit report that the creditor relied upon when taking the adverse action. The underlying rationale for even considering the issue of whether to require that the exact same report be provided to the consumer is the importance of the specific information contained in the report.

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[5] The **Identity Theft Resource Center** is a national nonprofit organization that focuses exclusively on identity theft. It was established in 1999. ITRC's mission is to research, analyze and distribute information about the growing crime of identity theft. It serves as a resource and advisory center of identity theft information for consumers, victims, law enforcement, the business and financial sectors, legislators, media and governmental agencies.

[6] The **Privacy Rights Clearinghouse** is a nonprofit consumer education and advocacy organization based in San Diego, CA, and established in 1992. The PRC advises consumers on a variety of informational privacy issues, including financial privacy, medical privacy and identity theft, through a series of fact sheets as well as individual counseling available via telephone and e-mail. It represents consumers' interests in legislative and regulatory proceedings on the state and federal levels. www.privacyrights.org

[7] **Privacy Times** is a Washington newsletter published since 1981. Evan Hendricks, editor of Privacy Times is also author of *Credit Reports & Scores: How the System Really Works, What You Can Do.*

[8] **U.S. PIRG** (www.uspirg.org) is the national lobbying office for the State Public Interest Research Groups (www.pirg.org). State PIRGs are non-profit, non-partisan public interest advocacy groups.

The issue is not so much whether the consumer sees exactly the same construct of letters and words that the creditor has seen, as whether the consumer has the necessary data to protect herself from harm.

Providing consumers with copies of credit reports -- or equivalent information that creditors receive from credit reporting agencies -- is important for consumers for three essential reasons:

1) Consumers need to know the information relied upon by creditors when an adverse action is taken;

2) Consumers need the information to be able to discover and correct any inaccuracies that may be contained in credit reports received by creditors; and

3) When disputes arise, consumers and creditors need to refer to the same information to ensure they are reviewing and discussing the same report or information that has been relied upon by the creditor.

Access to this specific information -- the critical data that the consumer needs to exercise important rights under the Fair Credit Reporting Act – is the driving force behind the questions underlying the study requested by Congress. This is the principle that should guide the FTC's answer to the question that Congress has asked it to address. The questions surrounding what kind of report, the format and the timing of the credit report provided to the consumer after an adverse action (as well as a risk based pricing action) should be answered by the FTC in the context of the importance of the specific information to the consumer.

The Commission raises a number of questions relating to the technical mechanics of providing identical reports, as well as the feasibility in light of confusion among consumers, and identity theft. The types of reports used differ among creditors, and some reports may be available only in electronic form or in a format which consumers may have difficulty understanding. There are also differences in requirements for identifiers and these differences may affect the content of a credit report; credit reports may also relate to more than one consumer; and identity theft may be affected by a requirement that consumers receive the same report as creditors. These are all important issues, each of which will be addressed below. However, these are technical issues, which can be addressed and overcome in a reasonable manner so long as we maintain our focus on the goal – to provide the essential and relevant information to consumers to ensure that they can fully exercise their rights under the Fair Credit Reporting Act.

A. Consumers are entitled to know what information led to the creditor's adverse action.

1. Creditors that provide only generic and non-specific information regarding the reasons for the adverse action prevent consumers from assessing the accuracy of the information upon which the action was based.

Under the FCRA the notice of adverse action must disclose that the action was based at least in part upon the consumer report and must identify the reporting agency that issued the report. Unlike the Equal Credit Opportunity Act, the FCRA does not require disclosure of the reasons for adverse action.[9] This lack of disclosure is a major impediment for consumers who seek to know what information in their credit report led to adverse action (or risk-based pricing). The lack of specificity also prevents consumers from correcting inaccurate information and enforcing their right under the FCRA to dispute the accuracy of the information that formed the basis for the adverse action. Moreover, even under ECOA creditors only provide generic reasons for denials of credit such as, "unable to grant credit under the terms and conditions requested" or "insufficient credit history," leaving consumers to guess as to what information in the subscriber's credit report that led to these cryptic explanations for the adverse actions. Research on mortgage applicants revealed that four non-specific, stock explanations were provided as the primary explanation for 68 percent of the applicants' credit ratings[10].

The lack of specificity in ECOA adverse action notices as to why the adverse action is taken, and the lack any requirement in the FCRA to include an explanation, frustrate efforts by consumers to evaluate the legitimacy of the adverse credit determinations. Because the FCRA does not require an explanation for the adverse action, it becomes even more important for consumers to receive an exact copy of the credit report or the equivalent information in an easily understandable format. The Commission's study should reflect this important need for the same information creditors have relied upon to take adverse actions.

ECOA also requires notice of adverse action be given to the applicant within 30 days of a credit application.[11] The FCRA notice should be sent at the same time as the denial, but there is no requirement under the FCRA that the denial meet any time deadlines. In the case of consumers receiving copies of the same credit reports or equivalent information received by creditors, the timing is not as important as the need for consumers to receive the specific information for the adverse action. For example the report or information provided to the consumer after an adverse action should identify the creditor, state the specific account, and identify whatever negative information in the report that resulted in the adverse action. We recommend that the study explore a timing standard consistent with the requirement that employers deliver a copy of the credit report at the time of the adverse action, and the requirements added by FACTA for mortgage lenders to provide credit scores to consumers "as soon as reasonably practicable."

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[9] 15 U.S.C. § 1681m(a).

[10] *See Credit Score Accuracy and Implications for Consumers*, Consumer Federation of America and the National Credit Reporting Association, December 17, 2002.

[11] 12 C.F.R. § 202.9(a)(1)(i).

There are many barriers for consumers to evaluate their credit reports and it is more likely that consumers will review their credit reports if the consumer is given the credit report information that forms the grounds for the adverse action at or near the time an adverse action occurs. Consumers cannot act on information in their credit reports, either to flag identity theft or to correct errors, if they do not see it. Therefore, the Commission should study both how to solve the problem of different versions of a credit report being generated for creditors and for consumers, and how other barriers to consumers viewing their credit reports could be reduced through this process. Industry sponsored research has revealed that only 7.8 percent of consumers who suffer adverse actions request to see their credit reports.[12] There are obviously significant barriers to consumers taking the steps necessary to request a copy of their reports – even after suffering an adverse action. It is likely that a number of factors are responsible for this, which may include consumer intimidation regarding the process or lack of awareness of the likelihood that their credit report contains errors or indications of identity theft. The Commission's study should evaluate how these barriers might be lowered if creditors were required to deliver the copy of the same report or specific information that caused the adverse action and to do so at the earliest possible opportunity.

As a practical matter, given current industry practices, creditors may be the only ones able to provide the consumer with the same report that they relied upon when making their decision. As described above, credit reports are generated from a query of a credit reporting agency's database at a specific moment based on a specific set of identifying information. Our understanding is that currently CRAs do not store the precise details of each query, or an archive of every report generated. Given that credit report data is updated on an ongoing basis, even if the identifying information could be resubmitted, the database would very likely have changed from its status at the time of adverse action.

By reading the same or equivalent information that the user has relied upon to take an adverse action at or near the time of the adverse action consumers are likely to be more familiar with the financial accounts and transactions that are the cause of the adverse action and be in a better position to evaluate whether such information is accurate. Providing consumers with timely notice, however will only be effective if it is accompanied by the specific information that forms the basis for the adverse action. The Commission's study should thus reflect the need for both specific information and timely notice so that consumers can act as a check on the system and ensure that the adverse action was taken for appropriate reasons.

The request for public comment notes that the report a consumer receives "may contain more up-to-date information" than the report that the creditor relied on. This seems to make an assumption that there is a delay resulting from the time required for a consumer to request a report after being told of the adverse action and for it to be provided to the consumer. The proposal also poses a specific question asking whether giving consumers an "older version" might somehow be detrimental because some errors

[12] See description of Arthur Andersen study in Klein, Daniel, and Jason Richner. 1992. "In Defense of the Credit Bureau." Cato Journal. Vol 12. Issue 2. pp. 393-411.

might already have been corrected. First, it is unlikely that errors would be spontaneously corrected without input from the consumer, but even if that were to happen, the paramount issue for consumers is why they were given adverse actions. Consumers will only benefit from access to their credit files if the actual, relevant file information used to evaluate their applications for credit is provided to them.

2. The format of credit reports received and used by creditors should not deny consumers the opportunity to evaluate the accuracy of the information in the subscriber reports that form the basis for the adverse action.

There currently is no standard or consistent form for the credit files or reports received by creditors and other users of credit reports. The term "same credit file" is somewhat of a misnomer since creditors may not see the consumer's credit file or credit report, but instead have access to a computer terminal and database in which the creditor will see a consumer's credit score or other credit information. There are many variations of the information that creditors have access to from credit reporting agencies, but the format should not be grounds to deny consumers the ability to assess the accuracy of such information.

Creditors are able to screen out information from a consumer's credit file and rely on the screened out information to make the adverse action decision. For example, a creditor may view a credit score but also search for other negative information like a bankruptcy or default. The creditor does not view the consumer's file or credit report but only the limited information the creditor has sought out, based on its particular business needs in order to make a credit determination. In light of such variations, it becomes imperative that the Commission establish standards that will provide consumers with the equivalent information seen by creditors. Only with consistent standards as to the type of information consumers are entitled to receive after adverse action will consumers be in a position to evaluate the same information provided to, and relied upon by, creditors.

The Consumer Credit Reporting Reform Act of 1996 required every consumer reporting agency to develop a form on which disclosures must be made.[13] The forms were developed for maximizing comprehensibility and standardization of disclosures. There is no reason why similar requirements cannot be created with respect to reports or information from reports that consumers should be given after an adverse action has been taken. The Commission's study should explore the feasibility of form disclosures for credit information to consumers when adverse action is taken by creditors.

3. Coding of credit report information is no excuse for consumers to be denied the ability to ascertain what information the creditor used to take adverse action.

The report or credit information received by creditors is often coded in such a way that the average consumer would be unable to understand the meaning of the report or

[13] Pub. L. No. 104-208, § 2408(2), 110 Stat. 3009 (Sept. 30, 1996).

information.[14] In addition, many of the reports received by creditors are in the original digital format. Creditors and others have "CPU" manuals that allow them to decipher the meaning of the credit reports they receive. However, the CPU decoding manual is not readily available to consumers or their advocates, creating additional barriers to evaluating the accuracy of the information received by the creditors.

This coded data will be useless to consumers unless it is decoded and made available in a format that consumers can understand. Only then will consumers be able to determine whether the grounds for the adverse action were appropriate. The Commission's study should assess the need to decode this information so that consumers can understand the information that led to an adverse action.

4. Different requirements for identifiers, depending on whether the requester is a creditor or a consumer, deny consumers the ability to learn what information was received by creditors and caused the adverse action.

Any differences in requirements for identification between creditors and consumers result in different information being reported. This inconsistency undermines accuracy and the ability of consumers to assess whether adverse action (or risk-based pricing) was based on accurate information.

It has been a longstanding practice by credit reporting agencies to require consumers to provide more identifying information than that which is requested from creditors and other users of credit reports. Often consumers are required to provide seven or eight identifiers whereas creditors and other users only provide three or four.

Consumers are routinely asked for more specific identifying information, including name, addresses (current and former), place of employment, social security numbers, and aliases, before they are provided with a copy of their own report. There are legitimate privacy protection reasons for requesting such information, but the same requirements appear not to apply to users of credit reports that often only provide a few identifying factors and receive credit reports or files containing information regarding multiple consumers. So long as creditors are allowed to use fewer and less accurate identifiers to obtain consumer credit reports, inaccuracies will lead to improper adverse actions taken against consumers. Even worse, consumers may be precluded from knowing about such inaccuracies because the information will relate to another consumer and the victim of the adverse action will not have access to the inaccurate information being reported.

Consumers who are subjected to partial matches or mismerges often become victims of the inaccuracies and negative information that does not pertain to them. The damage and costs associated with mismerges and other inaccuracies in credit reports was well documented in hearings before the House and Senate on FACTA. This practice is

[14] The coding of credit reports and their variations is discussed in another section of these comments.

likely a violation of the requirement to provide all information that has been furnished.[15] The Commission's study should address the problem of partial matches and mismerges in the context of evaluating whether consumers should receive the same report or equivalent information that creditors receive.

B. Lenders who use tri-merged reports and fail to disclose the adverse content relied upon from one or all three reports deny consumers the ability to determine whether inaccurate information is contained in one or more of the three reports.

Users of credit reports for mortgage lending purposes often rely upon "tri-merged" reports that consist of credit information compiled by all three major credit reporting agencies, or in some cases merged reports with information from two agencies. Consumers must be provided with any and all information from one or all trimerged reports and the summary version of those reports that form the basis for any adverse action.

The merged mortgage report differs from individual reports and may summarize information in a way that is distinct from any underlying report. Many mortgage lenders request credit reports from the three major credit bureaus when taking a mortgage application. To simplify and organize the information in these reports information is often presented in summary form to "de-dupe" or hide duplicate information about accounts received from different credit bureaus. However, the information on a given consumer varies drastically among the credit bureaus – enough in 29 percent of cases to return a credit score different by at least 50 points and in four percent of cases to return a credit score different by 100 point or more[16]. As stated before, and as reflected in studies on the accuracy of credit reports, the explanations provided by consumers for adverse action are often vague and unhelpful to the consumers and are an unacceptable substitute for the underlying credit report information.[17]

"De-duping" is an imperfect process. Algorithms can mistakenly group items that are unrelated, and can mask inconsistencies among bureaus, or even amplify the derogatory nature of the information. In one scenario, credit information is presented with the most derogatory version of the information prominently displayed, and contradictory information received from other bureaus that is more favorable is suppressed. In another approach, all the negative information is summarized, and the summary can present a version of the consumer's credit history that differs from that received from any one bureau. For example, one bureau may report that a consumer has been 60 days late on an account one time, but another may report that the consumer was 30 days late on two occasions. Some de-duping algorithms would summarize this information and indicate that the consumer was 30 days late twice, *and* 60 days late once. Lenders have the ability to review the duplicate entries if they choose, and consumers should be allowed the same capability. In order for consumers to both understand what

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[15] FTC Official Staff Commentary, § 609(g) item 2.
[16] *See Credit Score Accuracy and Implications for Consumers*, Consumer Federation of America and the National Credit Reporting Association, December 17, 2002.
[17] *Ibid.*

information formed the basis for their credit evaluation, and be able to dispute incorrect or incomplete information, they must have access to all the underlying information that supports a merged credit report as well as the "de-duped" version of the information that summarized the reports for the lender.

In addition to the use of merged reports, the mortgage underwriting process is worthy of particular attention because errors have the potential for the greatest harm to consumers in connection with a mortgage; consumers are usually charged for the cost of ordering the credit report; mortgage lenders often provide other information supporting the underwriting to applicants; and, under FACTA, mortgage lenders have a new requirement to provide credit scores to all consumers. Because mortgages are typically the largest loans a consumer will take out, errors in a consumer's credit reports or mixed files that lead to denial for a conventional mortgage can either result in significantly higher costs in the subprime market or outright denial of mortgage capital. It is standard practice in the industry to pass on the cost of the credit report to the consumer as a separate line item, so some consumers may expect that, having paid for the report, which consists of information about them, they should be able to receive a copy. In a parallel situation – the appraisal process – consumers are charged for the service required for the lender's underwriting and are usually given a copy of the report. Finally, FACTA requires mortgage lenders who use credit scores "in connection with an application initiated or sought by a consumer" for closed end or new open end home loans to provide those scores to the consumer "as soon as reasonably practicable".[18] Credit scores are usually delivered to mortgage lenders along with the underlying credit report information, so the added burden for mortgage lenders to provide the report in addition to the score may be rather small. For these reasons, in the mortgage context it may be particularly appropriate and efficient for the lender to deliver the copy of the same report used in the underwriting process to the consumer, and to do so "as soon as reasonably practicable".

C. Flaws in the current system that allow for different reports, mixed or mismerged files, and identity theft should not impede the right of consumers to dispute and correct inaccurate information in their credit files.

Under existing practices creditors are routinely provided information on more than one consumer. This occurs because algorithms used by credit reporting agencies are designed to accommodate such errors as transposed digits within SSNs, misspellings, aliases and changed last names (women who marry), by accepting "partial matches" of social security numbers and first names, and in some circumstances, assigning less importance to last names. Credit reporting agencies typically provide creditors with all data about the consumer and seek to ensure that nothing is missed. As a result, credit reporting agencies maximize disclosure of any *possible* information that might relate to consumer about whom a subscriber inquires. These loose and unregulated matching requirements create substantial burdens for consumers who are subjected to adverse action. Consumers not only suffer from adverse action, but also have substantial difficulties trying to correct the erroneous information because the information that led to the adverse action may not pertain to them and therefore they are denied access to it.

[18] 15 U.S.C. 1681(g)

This is a "no win" situation for consumers, which the Commission's study should address by requiring better matching requirements and disclosure of the specific information that led to the adverse action.

If stricter matching requirements were established in order for creditors and others to receive consumer reports, consumers' information would be less likely to be mixed with others whose negative information could lead to an adverse action. Moreover, consumers would be reassured that the information they are disputing pertains to them and not a third party. We encourage the Commission to coordinate this study with the study mandated by section 318(a)(2)(A) of FACTA examining the efficacy of requiring more precise matching of identifying information for requests of credit reports by users.

The practice by credit reporting agencies of tolerating partial matches has been a primary cause of mixed files and other inaccuracies, and has been readily exploited by identity thieves. Yet consumers are left with no little recourse since they cannot determine from the credit report they receive from the credit reporting agency that a third party has also been reported on and that the report on the third party had an adverse impact on the consumer's credit. Consumers should not be victimized twice by the system; first, by being associated with inaccurate information and second, by not having the ability to obtain and dispute the inaccurate information. This inherent flaw in the credit reporting system is particularly harmful when consumers have been subjected to adverse action or are affected by risk-based pricing.

In cases where the reason for denial is that the creditor does not think the consumer is who they say they are, it would be prudent to require a consumer who wishes to see the same report to meet a more stringent test to prove their identity. However, caution should be taken in setting this standard so as not to make it impossible for legitimate consumers who are denied because of a false impression that they are identity thieves to review their reports. On the question of information in a multiple infile or mixed report situation, some redaction of information may be in order. However, consumers who are victims of multiple infiles must have certain information about the accounts falsely appearing on the report.

It is clearly incorrect to suggest that the only alternatives to mixed files are either to deny the consumer the ability to see the information which has resulted in an adverse action or to provide possibly sensitive information to the consumer that neither the creditor nor consumer should have seen in the first place. First and foremost, the problem of mixed files itself should be addressed and standards for matching algorithms that lead to multiple infiles and mixed reports should be fixed so that the problems do not occur. Secondly, the existence of the problem of multiple infiles and mixed reports should not be an excuse not to address the problem with consumers being unable to view the information used to take adverse actions against them.

The Commission has already been mandated to study this underlying problem, and should not use the existence of that problem to preclude it from making sound recommendations on the related problem of consumers being denied access to

information used in credit decisions. Until the problem of mismerged files is corrected, it may be possible to devise a standard that would allow for both the protection of the personal information of the other consumer mistakenly included in the credit report, and the ability of the actual consumer to remove information that does not pertain to them. The Commission may consider the feasibility of outlining a permissible level of redaction that would allow consumers to view the same credit report information used to evaluate them without compromising another consumer's personal information. In exploring the feasibility of this standard, we would suggest that the Commission consider:

- whether creating a more accurate system of matching identifying information would be more efficient or provide a better overall solution;
- that consumers must have sufficient information about the accounts in question to dispute them, such as enough of the account number for a creditor to identify the account and confirm that is does not belong to the consumer; and
- that consumers who are victims of identity theft need sufficient information about accounts fraudulently opened in connection with some of their personal information (e.g. an account opened with their social security number but another name) to dispute the information and protect themselves from future fraud.

D. When a consumer is denied credit on the basis of a credit score, the consumer should have access to the underlying credit information that produced the credit score.

Providing consumers with the underlying credit information when they are denied credit based on credit score is consistent with the principles we outlined above stressing the need for consumers to be able to protect themselves from harm from adverse actions, view the information used to evaluate them in order to identify errors, and dispute inaccurate information. To reiterate a comment made previously, if consumers do not see their credit report information, they cannot act on it, either to correct errors or catch identity theft. Credit scores alone do not provide specific information to consumers that would allow them to identify accounts that do not belong to them, unauthorized activity by identity thieves, or errors in the information reported on legitimate accounts.

Furthermore, consumer understanding of credit scoring is very low. Fully 61 percent of consumers say their knowledge of credit scores is fair or poor, and 27 percent believe that credit scores measure consumer knowledge of consumer credit, rather than creditworthiness.[19] Access to a credit score without access to the underlying credit report cannot provide the necessary information for evaluation of its accuracy or signs of identity theft, even by a consumer with good understanding of this specialized industry. Given that so few Americans have even a basic understanding of credit scores, providing the score can clearly not be a substitute for access to the underlying credit information.

E. Risk-based pricing should be included in the Commission's study.

[19] "Consumers Lack Essential Knowledge and Strongly Support New Protections, on Credit Reporting and Credit Scores." Consumer Federation of America. July 28, 2003.

Under the FACT Act, consumers who are subjected to risk based pricing determinations are entitled to a free credit report.[20] Requirements that consumers receive exact copies of credit reports received by creditors or receive equivalent information received by creditors should also apply to risk-based pricing decisions. The Commission and the Board of Governors for the Federal Reserve are to jointly prescribe the content and delivery of the risk-based pricing notice, however the FACT Act sets only a minimum requirement for the content of the notice. The Commission and the Board are not precluded from including in their study the effect of adding a requirement that creditors also provide an explanation as to what information in a credit report was relied upon to justify risk-based pricing determinations. The rationale detailed above to require an exact copy of the credit report or equivalent information that is easily understood by consumers also applies to consumers who are the subject of risk-based pricing. Accordingly, risk-based pricing determinations should also be included as part of the Commission's study.

Conclusion

We believe the Commission's study must address the need for consumers to have specific credit information that is relied upon by creditors who take adverse actions (including risk-based pricing). Only with such information will consumers be able to determine what specific information in the report received by the creditor led to the adverse action and assess and, if necessary, dispute the accuracy of information contained in that report. Regardless of whatever impediments may exist that impede consumer access to such information, including identifiers, report formats, identity theft and others, the Commission's study should be guided by the rights of consumers to know what has caused them harm how they can remedy the harm, and how to remedy the adverse information that caused the harm.

Sincerely,

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[20] 15 U.S.C. § 1681(m).