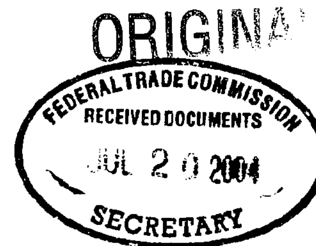
Comment #: 63

TransUnion

555 West Adams Street
Chicago, IL 60661
Tel 312 466 7730
Fax 312 466 7986
jblenke@transunion.com
www.transunion.com

John W. Blenke
Executive Vice President
General Counsel



July 19, 2004

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex M)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: FACT Act Section 318(a)(2)(C) Study, Matter No. P044804

This comment letter is submitted on behalf of TransUnion LLC ("TransUnion") in response to the captioned matter. TransUnion is a Delaware limited liability company with businesses that operate as a "consumer reporting agency" as that term is defined under the Fair Credit Reporting Act ("FCRA"). TransUnion has approximately 4,000 employees with operations on five continents and in 34 countries. TransUnion has access to consumer credit information supplied by data furnishers on substantially all of the credit active consumers in the United States.

In general, we are concerned with the underlying assumption of this study, which is that consumers are not receiving the same information as users of consumer reports. That premise is not correct. Every consumer reporting agency is required to disclose "all information" the consumer reporting agency has in its files related to a consumer whenever that consumer requests his or her file. [15 U.S.C. § 1681g(a)(1)] If "all information" is provided to the consumer, it cannot logically be asserted that a user of a consumer report relating to the consumer will have access to more information about that consumer from that consumer reporting agency than what is available to the consumer from that consumer reporting agency.

We are very aware of our obligations under the FCRA and we are careful to timely fulfill these obligations. We believe that the current obligation—to disclose *all the information* to the consumer, which is in his or her file *at the time of the request*—is the best solution available to allow the consumer to review the most relevant, and the most up-to-date information, contained in a consumer's file. We also believe that the benefits available from this solution would be materially weakened if it was replaced or supplemented with a requirement that a consumer reporting agency disclose "the same credit report that the creditor relied on". Simply, such a new or additional requirement would cause confusion and be misleading to consumers. In addition, this new requirement will impose extraordinary costs and service obligations, as well as impossible technical burdens, on consumer reporting agencies and the consumer financial industry.

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The Consumer Experience

In providing consumer disclosures under FCRA Section 609 [15 U.S.C. §1681g], TransUnion uses the same basic automated file selection logic applied to the selection of consumer reports delivered to our customers when that customer has a "permissible purpose" to obtain that report. Notwithstanding this approach, in certain circumstances we supplement this automated selection logic with a manual review process to ensure that any reasonably relevant fragmented file information held in our data base, that we believe may belong to the consumer, is included in the disclosure to the consumer, even though that information may not have been provided to any user of a consumer report related to that consumer. Our goal is that the disclosure to the consumer be as complete and robust as possible as through this disclosure of information we reasonably expect to have personal contact with that consumer. This personal contact and resulting dialogue with the consumer provide us with an opportunity, that we may not ever have otherwise, to appropriately combine fragmented file information held in our data base with the right consumer. Since the purpose of the consumer disclosure is to allow the consumer to review their file for accuracy and completeness, in order to make appropriate changes to information that is not correct, we believe it is a reasonable business practice that the disclosure to the consumer be as full and abundant as possible to provide the best protections to the consumer and achieve maximum possible file accuracy.

We see no benefit, for the consumer, the consumer reporting agency or the user of a consumer report, that would be derived from any obligation or requirement to supply to the consumer the same credit report a creditor relied upon when that creditor made an "adverse" decision related to the consumer. The reasons for this belief are as follows:

First, it is clear that a goal of the FCRA is for the consumer reporting agency to have reasonable procedures to assure "maximum possible accuracy" with respect to consumer files. [15 U.S.C. §1681e(b)] If this new requirement is adopted it will effectively mandate that the consumer reporting agency retain all historical consumer files provided to all users of consumer reports for some reasonable period of time. The reason for this action is that the consumer reporting agency will have no idea, until after the fact, whether a consumer report provided to a user will lead to an "adverse action" decision. The retention of all these files will, in essence, now comprise information in that "consumer's file". Clearly, this will mean that information now contained in the consumer's file, since it includes historical snapshots, will by definition be stale, and thus inaccurate. A result not supported by the FCRA.

Second, there is no way possible for the consumer reporting agency to go back in time to correct inaccurate information on a historical report, if such information even did exist. For example, if a report provided six months ago contained an incorrect item of information and that information was already corrected by the applicable data furnisher and is accurately reflected in the current information contained in the file for that consumer, there is nothing for the consumer reporting agency to do. In addition if that incorrect item still is on the consumer's current file, the consumer has the ability under the FCRA today to have that information reinvestigated and corrected reports sent to

those users of his or her file who may have acted differently if they would have had the correct information. [15 U.S.C. §1681i(d)] This remedy is not enhanced by the retention and disclosure of historical consumer credit reports.

Third, assuming for argument's sake that it was technically and financially possible for the consumer reporting agency to retain a copy of the hundreds of millions of consumer reports it provides to users, would this supplemental information enhance or provide further clarification to the disclosure that is to be made to the consumer? We believe it would not. Today, it is not uncommon for consumer disclosures to reach 6 or 7 pages in length. If each historical report[1] had to be added to a disclosure requested by the consumer, and since it would be information in the file of the consumer there is a definite argument that they would all have to be disclosed even if there was no "adverse action" taken in connection with that report, the length of this disclosure would explode, resulting in a very burdensome and confusing document. This would create a very significant burden for both the consumer and the consumer reporting agency, as the consumer would have to wade through a significant amount of irrelevant and stale data and the consumer reporting agency would have to assist the consumer in understanding these excessively lengthy disclosures, even if they were not relevant.[2] What clarity there is in consumer disclosures would be greatly obscured and the costs to the consumer reporting agency to provide the disclosures and service consumer requests for clarification would materially and significantly increase. Of course, these costs would have to be passed on to the users of consumer reports who, we assume, would pass these increased costs on to consumers through application fees, annual fees or the interest rate.

We conclude, therefore, that from the perspective of the consumer's experience—in his or her ability to review the file for accuracy and completeness in order to register requests for reinvestigations or to spot possible identity fraud—the current operation of the FCRA is effective and the best solution.

Consumer Reporting Agencies Disclosing "The Same Credit Report"

There are technical, operational and extreme financial difficulties with the concept of consumer reporting agencies disclosing the same file that the user relied on in taking an adverse action. Some of these are insurmountable. For example:

- Users may obtain and merge several consumer reports or other information from multiple sources. This merged or modified report would be the report relied on in taking the adverse action. As long as the user of the consumer report has a "permissible purpose" to obtain the report, a consumer reporting agency has no control over how the report is used, or what that user does with the report for its internal purposes. There is no possible way we can know the form or content of the

[1] I.e., every report provided for an "account review" or for the granting of credit or other permissible purpose, since any of these may result in an adverse action.
[2] 15 U.S.C. §1681h(c) requires every consumer reporting agency to provide trained personnel to explain the information contained in the disclosure.

final report relied upon by the user. Simply, a consumer reporting agency cannot disclose what it does not have or know.

- A consumer reporting agency does not know which reports will result in an adverse action until it is contacted by the consumer. Thus, we would be required to keep a copy of every report we produced for some reasonable period of time, perhaps at least six months. This would equate to hundreds of millions of credit reports, with billions of additional tradelines. In 2003, the number of consumer file disclosures that TransUnion made equated to approximately 0.24% of the number of consumer reports[3] provided to all users. It is not reasonable or technically and economically feasible to require us to maintain copies of every one of the hundreds of millions of reports we produce, when such a low percentage can be expected to result in a consumer request. As you can imagine, the cost for additional data servers or storage devices and the staff to support that technology alone for this purpose would be tens of millions of dollars. Moreover, even if we were able to do so (and it is very questionable whether we could timely find sufficient qualified staff and build the required capacity), as noted above it would render many file disclosures extremely dense and confusing, since it is arguable that we would be required to disclose each historical report we had in the file on a consumer at the time of that consumer's request.
- The passage of time between the issuance of the credit report to the users and to our receipt of the consumer's request for a disclosure will always result in more up to date information being available. That is the relevant information that should be disclosed, as noted above, not stale information that has been updated.

Users Disclosing "The Same Credit Report"

Requiring all users to disclose the "same report" would, similarly, result in many cases of insufficient or misleading disclosure and thus harm the interests of accuracy and completeness. Approximately 99.9% of the consumer reports (including account reviews) generated by TransUnion are in electronic form, and conveyed either via data transmission or some type of physical media (e.g., tape). In most, but not all, of these cases, the report that is viewed, or used, by our customer is only in a machine-readable format. In some cases, the customer may also view a "print-image" or "human-readable" format. The remaining reports are presented in human-readable formats, transmitted by TransUnion as such and printed in the customer's office. In most cases, therefore, for a consumer report to be usable by the consumer that report would have to be translated to a human understandable format, confirmed as to its accuracy in the reformatted form, and then printed by the user in its office.

There are thousands of unique user systems. The possibility of errors and omissions—of information being dropped or improperly converted during any reformatting process—seems significant, given the number of users of credit reports. We can imagine that consumer reporting agencies would be required by users to confirm the integrity of that

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[3] Including account reviews performed by users of credit reports since an adverse action decision may result from such a review.

user's system so they have some form of assurance that the reformatting of files is reasonably accurate. The costs to provide such a service, as well as the time required to perform the function correctly, would be extraordinary.

There are other important considerations in the concept of users making these disclosures. One is the fact that certain users may not use, view, or rely on all the information in the credit report, and yet which would nevertheless be pertinent to any disclosure to the consumer. For example, some users of reports may only seek certain elements from a consumer's file, such as historical analysis of revolving credit accounts if that consumer has only applied for that type of product from that user. Another is the impact on small businesses—there are thousands of small businesses who are consumer reporting agencies or users of consumer reports; each one of these must bear the cost of developing this disclosure capability and integrating it with each other or make the decision simply not to do business with such entities. Such a result will significantly impair competition within the consumer data industry.

Lastly, we believe it is also appropriate to note that nothing in the FCRA prohibits a user of a consumer report from disclosing its contents to the consumer. On the contrary, 15 U.S.C. §1681e(c) states that "(A) consumer reporting agency may not prohibit a user of a consumer report furnished by the agency…from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report." In addition, 15 U.S.C. § 1681b(b)(3) requires employers using consumer reports, under certain circumstances, to provide a copy of the report to the consumer. We understand that there are other segments of the market, such as mortgage lending, in which the users routinely provide consumers with copies of their credit reports, whether or not state law requires such action. Our sense is that the market is operating efficiently—that consumers are receiving copies of the credit report directly from users when doing so makes sense.

Multiple Reports to Users and Consumers

The Commission asked several questions about the incidence of multiple "in files" being returned in response to a request for a credit report on a single individual. At present, approximately 4% of user requests for on-line, specific credit reports result in multiple "in files" being returned. In the third quarter of 2004, as part of our ongoing review and improvement of our automated file selection and matching logic, we expect to implement refinements to this logic and reduce the incidence level to 0% for credit reports on residents of the 50 United States.

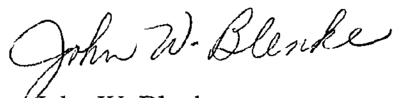
As noted above, we use the same basic automated file selection logic for credit reporting and for FCRA Section 609 consumer disclosures. However, in certain circumstances the consumer disclosure is supplemented with a manual review to ensure a more full and abundant disclosure. It will therefore continue to be possible for a consumer to receive multiple "in files" on his or her disclosure even after the third quarter enhancement is installed. We intend to test further refinements to our automated logic with the goal that

over time manual reviews may be eliminated and file fragments will be minimized. Implementation of enforceable national standards on data furnishers with respect to the submission of data would provide significant movement toward this goal.

Conclusion

Consumer reporting agencies must continue to provide consumers with disclosure of all the information in their files at the time of the request. Substituting or adding to this disclosure with an historical, "same report" concept, were that possible, would be misleading to the consumer and harmful to the credit industry. Either alternative would be a disservice to the interests of consumers, consumer reporting agencies and users of consumer reports.

Sincerely,



John W. Blenke