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March 8, 2007

Federal Trade Commission/Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Accuracy Pilot Study: Paperwork Comment (FTC file no. P044804)

To Whom It May Concern:

The American Financial Services Association (“AFSA”¹) submits this comment letter in response to the notice of a second pilot study to aid the Federal Trade Commission in conducting a study of the accuracy and completeness of consumer reports pursuant to Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (72 Fed. Reg. 5435, February 6, 2007). AFSA commented on the initial pilot study (see our letter to the FTC of December 16, 2005), and appreciates this opportunity to comment on the notice of this second pilot study.

AFSA supports the Commission’s decision to initiate this second pilot study. This is a reasonable second step into a large and complex subject.

As before, we applaud the Commission’s decision not to attempt to draw statistical conclusions from this pilot study. No such conclusions could be drawn from a sample size of 120. The Commission is taking the right approach toward this limited-purpose study.

AFSA wishes to make two observations about the proposed methodology.

First, the results generated by the study will be critically determined by the threshold of “materiality” that is used to determine which alleged errors in consumer reports will be driven through the dispute process by the contractor preparing the dispute letters for the consumers. Yet, this threshold is not prescribed by the FTC, but apparently

¹ The American Financial Services Association, founded in 1916, is the trade association for a wide variety of consumer finance companies. AFSA's mission is to protect and improve the consumer credit business, maintain a positive public image, and create a legislative climate in which reasonable credit regulation can and will be enacted. AFSA operates in the public interest, encourages and maintains ethical business practices, and supports financial education for consumers of all ages.

left for the contractor to determine, perhaps in subsequent consultation with FTC staff. While it would be tempting to assume that the contractor will use the same threshold as did the contractor in the first study – a change of 30 points in credit score² – it appears that the contractor for this second pilot study may not be the same, as the FTC plans to rebid the project. Because the materiality threshold will be so determinative of the study’s results, we suggest that the FTC prescribe it. The 30-point threshold used by the contractor in the first pilot study appears reasonable to us.

Second, possibly for the purpose of obtaining “approximately equal representations of credit scores across the designated categories [poor, fair, and good],” the FTC envisions that the contractor would obtain referrals from financial institutions of applicants for credit from those institutions, for whom, as the FTC points out, the institutions will have had a “permissible purpose” (under the Fair Credit Reporting Act) for obtaining credit reports.³ It is not clear to us, however, that those institutions would have a further permissible purpose to use those credit reports to segment applicants by credit score in order to refer them to the FTC’s contractor for this pilot study. If that is the FTC’s view, it should say so. Such a statement would provide necessary clarity for any financial institution that was invited to make such referrals to the contractor, and might be more broadly useful for purposes of interpreting the Fair Credit Reporting Act.

Speaking more generally, the FTC should provide more clarity on the methods the contractor might use to obtain the 120 consumers for the study group and how the contractor would achieve the “approximately equal distribution” that the FTC desires⁴ (including how the FTC would define the concepts of “poor, fair, and good” credit scores – the industry does tend to categorize consumers by score ranges, but those categories do not necessarily correspond to those that the FTC has in mind). The FTC, in its Notice, leaves it to the contractor to employ “methods” subject only to the condition that “no method ... violate the permissible purposes for obtaining a consumer’s credit report ...”⁵ Greater direction for the benefit of the contractor and the financial institutions who may be involved in the study is essential for two reasons: First, the first pilot study, despite the FTC’s desire that it be skewed (if at all) toward lower credit scores,⁶ apparently resulted in some skewing toward higher scores.⁷ And second, the permissible purposes of the FCRA are closely defined and limited in number, receiving constant attention from financial institutions to ensure that they comply.

² 72 Fed. Reg. at 5439 n.19.

³ *Id.* at 5437.

⁴ *Id.*

⁵ *Id.*

⁶ 69 Fed. Reg. 61675, 61676 (Oct. 20, 2004).

⁷ Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (December 2006), p. 4.

AFSA looks forward to reviewing the results of the second pilot study, and to commenting on any proposed conclusions that the Commission might draw and on proposed methodology of future, more comprehensive studies on this subject.

We appreciate the opportunity to respond to the Notice. If you have any questions about this letter, please contact the undersigned at (202) 466-8606.

Sincerely,

Robert McKew
Senior Vice President and General Counsel
American Financial Services Association